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CLINICAL LAW PROGRAM

IMMIGRATION CONSEQUENCES OF MARYLAND OFFENSES

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THIS CHART ATTEMPTS TO CAPTURE AND CONVEY INFORMATION IN AN EVER-CHANGING AND COMPLICATED AREA OF THE LAW. IT CAN BE A USEFUL TOOL, BUT IT IS **NOT A SUBSTITUTE FOR CONTEMPORANEOUS RESEARCH THAT IS SPECIFIC TO YOUR INDIVIDUAL CASE.**

Furthermore, it merely identifies the categories of immigration consequences that can arise from criminal convictions under Maryland law – ONLY ONE PIECE OF THE INFORMATION NEEDED TO GIVE COMPETENT ADVICE TO NONCITIZENS FACING CRIMINAL CHARGES. The consequences of crimes hinge not only on the statute and case law, but also on a defendant's prior criminal history *and* particular immigration status and eligibility for immigration relief. This chart is not to be used as a final authority on whether a given conviction would cause immigration consequences for an individual. **CONSULT AN IMMIGRATION PRACTITIONER FOR CASE-SPECIFIC ADVICE ON REPRESENTING YOUR IMMIGRANT CLIENT IN CRIMINAL PROCEEDINGS.**
Please see important warnings on page 2.

This chart is intended for use by judges and criminal practitioners representing immigrant clients and those advising them, and it therefore sometimes opts for a conservative interpretation of possible consequences. It does not reflect every possible argument that an immigration attorney might make before an immigration official or court to avoid consequences.

The chart is organized numerically by section of the Maryland Code. Selected traffic offenses follow the criminal offenses. Unpublished BIA decisions referenced may be available at: www.irac.net/unpublished/index.

You can find the most up-to-date version of the chart here or at: https://www.law.umaryland.edu/Programs-and-Impact/Chacon-Center/.

If you have suggested additions or amendments for the chart, please contact Maureen Sweeney at msweeney@law.umaryland.edu.

This chart was written principally by Maureen A. Sweeney of the Chacón Center for Immigrant Justice at Maryland Carey Law. The current update benefited from the capable research and drafting assistance of Faiza Chappell and Leslye E. Orloff, NIWAP, American University, Washington College of Law and was made possible, in part, by support from the William S. Abell Foundation

W A R N I N G S

In order to give competent advice about the immigration consequences of criminal activity, an attorney must have broad knowledge of the immigration law. The immigration consequences of crimes hinge not only on a constantly changing area of the law, but also on a defendant's prior criminal history and particular immigration status and eligibility.

PROBATION BEFORE JUDGMENT IN MARYLAND IS A CONVICTION
A probation before judgment under Md. CR §6-220(b) is a conviction for immigration purposes. 8 U.S.C. §1101(a)(48)(A).

SUSPENDED SENTENCES COUNT FOR IMMIGRATION PURPOSES AS FULL SENTENCES TO INCARCERATION. 8 U.S.C. §1101(a)(48)(B).
It is sometimes better for a noncitizen to serve more active time than to take a long, suspended sentence.

ATTEMPTS AND CONSPIRACIES OFTEN HAVE THE SAME CONSEQUENCES AS THE PRIMARY OFFENSE.
Attempts and conspiracies to commit crimes that are considered aggravated felonies are themselves aggravated felonies under 8 U.S.C. §1101(a)(43)(U). Any conviction for attempt or conspiracy to commit a crime involving moral turpitude (CIMT) is likewise a CIMT.[1]

A **DUI or DWI conviction** will make an otherwise removable individual an ICE enforcement priority, will be a strong negative discretionary factor, and will weigh against a finding of "good moral character". *See*, e.g., *Matter of Castillo-Perez*, 27 I&N Dec. 664 (A.G. 2019); *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018).

TEMPORARY PROTECTED STATUS / Deferred Action for Childhood Arrivals (DACA) / PROSECUTORIAL DISCRETION / ICE ENFORCEMENT PRIORITIES
Immigration consequences for those in the above programs and enforcement priorities depend largely on the number of misdemeanor or felony convictions an individual has, regardless of what the offenses are. The definitions of felony and misdemeanor vary from program to program. If your client participates in one of these programs or is potentially eligible for one, consult an immigration attorney.

IMMIGRANT CRIME VICTIMS WHO BECOME INVOLVED IN THE CRIMINAL JUSTICE SYSTEM who are eligible for immigration relief as VAWA self-petitioners, VAWA cancellation of removal, VAWA suspension of deportation, or who are U visa or T visa applicants may be eligible for waivers of certain types of crime related inadmissibility. See NIWAP's inadmissibility for victims comparison charts: https://niwaplibrary.wcl.american.edu/inadmissibility-comparison-charts-for-victims. It is important that victims who may have inadmissibility issues be referred to an immigration attorney with expertise in criminal immigration issues and who also has expertise on immigration relief for victims of crime and abuse.

Immigration Consequences of Maryland Offenses

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR §1-301 Accessory After the Fact (formerly common law crime)	Yes, if sentence ≥ 1 year. (S) (Obstruction of Justice).[2]	Likely, especially if underlying crime is a CIMT. [3]	Not a controlled substance offense;[4] likely not a firearms offense.	F 5 yrs; or max. poss. sentence of underlying F, whichever is less.	Keep sentence < one year to avoid aggravated felony. This is a good alternative plea to CR CL§ 5-601(a)(2), CL§ 5-602, CL§ 5-604. In some circumstances, accessory after the fact can be a good alternate plea to avoid an aggravated felony or controlled substance or firearms offense, even if it is a CIMT. Consult an immigration attorney about your client.
CR § 2-201 Murder – First degree	Yes *under subsection (A) (murder)	Yes			
CR § 2-204 Murder – Second degree	Yes *under subsection (A) (murder)	Yes			
CR § 2-205 Murder – Attempt – First Degree	Yes *under subsection (U) (attempt to commit murder)	Yes			

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 2-206 Murder – Attempt – Second Degree	Yes. *under subsection (U) (attempt to commit murder)	Yes.			
CR § 2-207 Manslaughter	Possibly. Divisible offense. Voluntary manslaughter could be found to be a crime of violence (and thus an aggravated felony if sentence ≥ 1 year) *under subsection (F) (crime of violence).[5] Involuntary manslaughter is not an aggravated felony.[6]	Very likely, though there is an argument that involuntary manslaughter is not a CIMT.[7]			Where possible, plead specifically to involuntary manslaughter or keep the sentence less than a year to avoid an aggravated felony.
CR § 2-209 Manslaughter – by vehicle or vessel	No[8]	Very likely, though there is an argument that it is not[9]		F	Alternate plea to §2-210 could avoid CIMT.
CR § 2-210 Causing death of another by vehicle or vessel in criminally negligent manner	No[10]	Likely not[11]			

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-202 Assault – First degree	Possibly, if sentence imposed ≥ 1 year[12] *under subsection (F) (crime of violence). Likely divisible.	Yes[13]	Possible firearms offense[14]		Keep record clear of mention of use of firearm and preferably do not designate the subsection the person is convicted under. Alternate plea: Second degree assault (Md. CR § 3-203), which is neither a crime of violence nor a CIMT not a firearms offense.
CR § 3-203(a) Assault – Second degree	No.[15]	No.[16]	Should not be crime against a child, because victim's age is not an element.[17] Not a crime of domestic violence.[18]	M 10Y	To try to avoid wrongful charging by ICE, avoid mention of the victim's age or identity if s/he is a child, family member or police officer, if possible. To be 100% sure to avoid prosecution for the aggravated felony, keep sentence < 1 year.
CR § 3-203(c) Assault – second degree, felony assault on a police officer	No.[19]	Possibly, though it should not be[20]		F 10 Y	Alternate plea: Second degree assault under Md. CR § 3-203(a) or under § 203 generally, without specifying a subsection.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-204 Reckless Endangerment	No[21]	Yes[22]	Possibly a firearms offense – divisible statute[23]	M 5Y	Alternate plea: Second degree assault (Md. CR § 3-203). Alternate plea where vehicle is involved: Life-threatening injury by motor vehicle or vessel while under the influence/impaired (CR § 3 – 211(c)) or Reckless Driving under Md. Transp. §21-901.1. Plead specifically to §3-204(a)(1) to avoid a firearms offense.
CR § 3 –211(c) Life-threatening injury by motor vehicle or vessel while under the influence of alcohol	No[24]	No[25]		M 3Y	Though DUI/ DWI offenses are not removable offenses, they weigh as heavy negatives for prosecutorial or IJ discretion and can make someone an enforcement priority. Avoid if possible.[26]
CR § 3 –211(d) Life-threatening injury by motor vehicle or vessel while impaired by alcohol	No[27]	No[28]		M 2Y	Though DUI/ DWI offenses are not removable offenses, they weigh as heavy negatives for prosecutorial or IJ discretion and can make someone an enforcement priority. Avoid if possible.[29]

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-211(e) Life-threatening injury by motor vehicle or vessel while impaired by drugs	No[30]	No[31]	Controlled substances offense	M 2Y	To avoid controlled substances violation, plead generally to § 3-211 without specifying this subsection or mentioning or identifying any drug or drug use. Though DUI/ DWI offenses are not removable offenses, they weigh as heavy negatives for prosecutorial or IJ discretion and can make someone an enforcement priority. Avoid if possible.[32]
CR § 3-211(f) Life-threatening injury by motor vehicle or vessel while impaired by a CDS	No[33]	No[34]	Controlled substances offense	M 2Y	To avoid controlled substances violation, plead generally to § 3-211 without specifying this subsection or mentioning or identifying any drug or drug use. Though DUI/ DWI offenses are not removable offenses, they weigh as heavy negatives for prosecutorial or IJ discretion and can make someone an enforcement priority. Avoid if possible.[35]
CR § 3-303 Rape – First degree	Yes *under subsection (A) (rape)	Yes		F	Alternate plea: Second degree assault (Md. CR § 3-203).

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-304[36] Rape – Second degree	Most likely,[37] *under subsection (A) (rape, sexual abuse of a minor) or possibly under subsection (F) (crime of violence, if sentence ≥ 1 year)	Yes	Possible crime against a child	F	Alternate plea: Second degree assault (Md. CR § 3-203) to avoid both CIMT and aggravated felony. Alternate pleas: Child abuse (Md. CR §3-601) or Sexual abuse of a minor (Md. CR §3-602). The abuse offenses would be CIMTs but not aggravated felonies.
CR § 3-305 (repealed in 2017) Sexual Offense – First degree	Yes if sentence ≥ 1 year * under subsection (F) (crime of violence)[38]	Yes		F	Alternate plea: Second degree assault (Md. CR § 3-203) to avoid both CIMT and aggravated felony.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-306 (repealed in 2017 and consolidated into 3-304) Sexual Offense – Second degree – sexual act by force or threat or with disabled person or child under 14	Divisible statute. Possibly,[39] if the sentence is ≥ 1 year * under subsection (F) (crime of violence).	Yes	Possible crime against a child or crime of domestic violence.	F 20Y	Alternate plea: Second degree assault (Md. CR § 3-203) to avoid both CIMT and aggravated felony. If trying to substitute a second degree assault charge, keep record of conviction clear of reference to victim's age or capacity.[40] Alternate plea: First degree assault (Md. CR §3-202) with a sentence < 1 year. This would be a CIMT, but not an aggravated felony if sentence < 1 year. Alternate pleas: Child abuse (Md. CR §3-601) or sexual abuse of a minor (Md. CR §3-602). These would be CIMTs and likely crimes against a child but not aggravated felonies.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-307 Sexual Offense – Third degree – sexual contact (1) without consent and with dangerous weapon, injury, threats, or assistance, or (2)-(5) with disabled or child victim or intercourse with 14-15 year old	Divisible statute.[41] No, if record shows offense was subsection (a)(3). Yes, if record shows offense was subsection (a)(5) *under subsection (A) (rape or sexual abuse of minor); or if record shows offense was (a)(1)(i)-(iii) and sentence is ≥ 1 year* under subsection (F) (crime of violence).[42] Unlikely for subsection (a)(2).[43] Very likely for subsection (a)(4). Note: Convictions for rape or sexual abuse of a minor are aggravated felonies regardless of sentence.	Divisible statute with complicated case law. Prospectively, the BIA will consider any subsection to be a CIMT, but for convictions prior to 2/27/20, subsections (a)(3), (a)(4) and (a)(5) will NOT be CIMTs in the 4th Cir.[44] There are arguments that none of the subsections are CIMTs, so attorneys should preserve challenges.[45]	Possible crime of child abuse (subsections (a)(3), (a)(4), or (a)(5)) or crime of domestic violence.	F 10Y	Plead specifically to (a)(3) to avoid aggravated felony. Or plead specifically to (a)(1) and keep sentence less than 1 year to avoid aggravated felony. These would likely be CIMTs but not aggravated felonies. If possible, remove reference to victim's age from the record. Alternate plea: Second degree assault (Md. CR § 3-203).[46] Alternate plea: First degree assault (Md. CR §3-202) with a sentence < 1 year. This would be a CIMT, but not an aggravated felony. Alternate plea: Second degree child abuse (Md. CR §3-601(d)) or sexual abuse of a minor (Md. CR §3-602). These would be CIMTs and likely crimes against a child but not aggravated felonies.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-308 Sexual Offense – Fourth degree – sexual contact without consent or sexual conduct with 14-15 year old or with student	Divisible statute.[47] Yes, if record shows offense was subsection (b)(2), (b)(3), (c)(1), or (c)(2) *under subsection (A) (rape or sexual abuse of minor). It is not a crime of violence. Note: Sexual abuse of a minor is an aggravated felony regardless of length of sentence.	Divisible.[48] Subsection (b)(1) is not a CIMT. Other subsections may depend on the date of the conviction.	Possible crime of child abuse for subsections (b)(2)-(3) and (c)(1)-(2).	M	To avoid aggravated felony, plead specifically to subsection (b)(1) and clear the record of reference to age of the victim.[49] Alternate plea: Second degree assault (Md. CR § 3-203).[50] Alternate plea: Second degree child abuse (Md. CR §3-601(d)) or sexual abuse of a minor (Md. CR §3-602). These would be CIMTs and likely crimes against a child but not aggravated felonies.
CR § 3-309 Rape – Attempt – First degree	Yes[51] *under subsection (A) (rape), (U) (attempt). Follows §3-303.	Yes		F	Alternate plea: Second degree assault (Md. CR § 3-203).

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-310 Rape – Attempt– Second Degree	Most likely,[52] *under subsection (U) (attempt), subsection (A) (rape), subsection (F) (crime of violence) if sentence ≥ 1 year. Follows § 3-304.	Yes		F	Alternate plea: Second degree assault or attempt (Md. CR § 3-203). Keep record clear of reference to victim's minor age or capacity.[53] Alternate pleas: Child abuse (Md. CR §3-601) or Sexual abuse of a minor (Md. CR §3-602) or lesser sex offenses (*see* Md. CR §3-307 or 308). These would be CIMTs but not aggravated felonies.
CR § 3-311 (repealed in 2017) Sexual Offense – Attempt – First Degree	Yes, if sentence ≥ 1 year *under subsection (F) (crime of violence), (U) (attempt). Followed §3-305.	Yes		F	Alternate plea: Second degree assault (Md. CR § 3-203) or attempt, to avoid both CIMT and aggravated felony.
CR § 3-312 (repealed in 2017) Sexual Offense – Attempt – Second Degree	Divisible statute. Possibly, if sentence ≥ 1 year *under subsection (F) (crime of violence), (U) (attempt). Followed §3-306.	Yes	Possible crime against a child or crime of domestic violence	F	Alternate plea: Second degree assault (Md. CR § 3-203). Keep record clear of reference to victim's age or capacity.[54] See suggestions for §3-306.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-314 Sexual conduct by correctional or Div of Juv Justice employee with inmate	Divisible statute.[55] Yes, if record of conviction shows intercourse with a minor (*under subsection (A) sexual abuse of a minor).	Yes	Possible crime against a child	M 3Y	Alternate plea: Second degree assault (Md. CR § 3-203). If possible, keep record free of reference to victim's age.[56] If pleading to this offense, plead specifically to sexual contact and not intercourse. If minor victim, keep record clear of age and of mention of intercourse.
CR § 3-315 Continuing course of conduct with child	Depends on the underlying constituent offenses. Follows §§3-303, -304, -305, -306, and/or -307.	Yes	Crime against a child	F 30 Y	See suggestions for §§3-303, -304, -305, -306, and/or -307.
CR § 3-323 Incest	No	No[57]		F 10Y	

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-324 Sexual Solicitation of Minors	Possibly, (*under subsection (A) sexual abuse of a minor. The offense is arguably overbroad because it includes solicitation of a law enforcement officer.[58] If it is not overbroad, it is divisible and depends on the act being solicited.[59]	Yes, after 2/27/20 in the 4th Cir.[60] Possibly without date restriction in other circuits.			
CR § 3-402 Robbery	Yes, if sentence ≥ 1 year *under subsection (F) (crime of violence)	Yes		F	Keep sentence < 1 year to avoid the aggravated felony.
CR § 3-402 Robbery – Attempt	Yes, if sentence ≥ 1 year *under subsection (F) (crime of violence); (U) (attempt)	Yes		F	Keep sentence < 1 year to avoid the aggravated felony.
CR § 3-403 Robbery with a dangerous weapon	Yes, if sentence ≥ 1 year *under subsection (F) (crime of violence)	Yes	No firearms offense[61]	F	Keep sentence < 1 year to avoid the aggravated felony. Keep record free of mention of a firearm, to be certain to avoid firearms offense.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR §3-403 Robbery with a dangerous weapon – Attempt	Yes, if sentence ≥ 1 year *under subsection (F) (crime of violence), (U) (attempt)	Yes	No firearms offense[62]	F	Keep sentence < 1 year to avoid the aggravated felony. Keep record free of mention of a firearm, to be certain to avoid firearms offense.
CR §3-601 Child abuse	No[63]	Yes	Crime against a child	F 15-40Y	Alternate plea: Second degree assault (Md. CR § 3-203) keeping record of conviction free of reference to family relationship or age of victim.[64]
CR §3-602 Sexual abuse of a minor	No.[65]	Yes	Crime against a child	F	Alternate plea: Second degree assault (Md. CR § 3-203) keeping record of conviction free of reference to family relationship or age of victim.[66]
CR §3-602.1 Neglect of a minor	No	Yes[67]	Crime against a child	M 5 Y	
CR §3-604 Abuse or Neglect of a Vulnerable Adult in the first degree	No.[68]	Yes[69]		F 10 yrs, $10,000, or both	Alternate plea: Second degree assault (Md. CR § 3-203).
CR §3-605 Abuse or Neglect of a Vulnerable Adult in the Second Degree	No.[70]	Yes[71]		F 5 yrs, $5,000, or both	Alternate plea: Second degree assault (Md. CR § 3-203).

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-802 Stalking	No.	Likely[72]	Crime of stalking (INA § 237(a)(2)(E))	M 5 Y	Alternate plea: Harassment (Md. CR § 3-803). Alternate plea: Second degree assault (Md. CR § 3-203).
CR § 3-803 Harassment	No	Likely, but defendant may qualify for petty crimes exception if no prior CIMT.		M 90 days	Can be a safe plea if the defendant has no other criminal record, because it will fit within the "petty crimes" exception to the CIMT grounds of inadmissibility (8 U.S.C. §1182(a)(2)(ii)(II))) and removability (8 U.S.C. §1227(a)(2)(A)(i)(I)) if defendant has no prior CIMT.
CR § 4-101 Carrying a dangerous weapon (not a handgun) – concealed or with intent to use[73]	No[74]	Possibly. Divisible statute.[75]	This is *not* a firearms offense, because it is overbroad and includes non-firearm weapons.[76]	M 3Y	Plead to § 4-101 generally or to subsection (c)(1), and keep record of conviction clear of reference to intent to use the weapon. A plea to subsection (c)(1) may be a good option for someone eligible to adjust to permanent residency. See note 75.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 4-203 Wearing, carrying or transporting a handgun	No[77]	Possibly. Divisible statute.[78]	Yes, Firearms offense	M 10Y	A plea to subsection (a)(1)(i) or (ii) of §4-203 will be a firearms offense, but not a CIMT and thus may be a good option for someone eligible to adjust to permanent residency. See note 78.
CR § 4-204 Use of handgun or antique gun (or any firearm) in crime of violence or felony	No[79]	Yes	Not a firearms offense because the definition of "firearm" in this offense is broader than the federal definition (explicitly includes antique guns, which are excluded from analogous federal statute).[80]	M 5 Y min - 20 Y	Plea to § 4-101(c)(1) would avoid CIMT. Plea to § 4-203 would possibly avoid CIMT (but would be firearms offense). See note 78. Consider plea to CR §1-301 (with sentence under one year) to avoid CIMT, if underlying crime is not a CIMT.
CR § 5-601(a)(1) Controlled dangerous substance – ***anything other than marijuana*** -- Possessing or administering	No	No	YES! Controlled substances offense (unless substance involved is not on federal controlled substance schedules).[81]	M 4Y	If at all possible, avoid a conviction. Try for a stet or conditional stet. Alternate pleas: Trespass (§6-402 or §6-403); Disorderly conduct (§10-201). Alternate plea: Possession of paraphernalia (§5-619) – *only if you can keep the identity of the substance out of the record.*[82]

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?**	**ARE THERE OTHER GROUNDS OF REMOVABILITY?** (Such as controlled substance, domestic violence, firearms?)	**POSSIBLE SENTENCE** (Felony/ Misdemeanor Under Maryland Law)	**SUGGESTIONS OR POSSIBLE ALTERNATE PLEA**
CR § 5-601(a)(1) Controlled dangerous substance – Marijuana -- Possessing or administering	No	No	YES! Controlled substances offense, *unless* it is a single offense for personal use involving less than 30 grams.[83] However, even if the amount <30g, it *will* be a ground of inadmissibility and could be problematic for anyone who travels outside the U.S. or may apply for permanent residence, though a waiver may be available.	<10g civil offense ≥10g M 1Y	If possible, negotiate dismissal and civil citation under § 5-601.1 for possession of <10g. Unless <30g, this criminal offense will subject the individual to removal proceedings. Specify that it was <30g and for personal use or keep amount of marijuana out of the record. This will avoid removability and may preserve the possibility of a waiver for inadmissibility (for anyone who travels or may apply for permanent residence).
CR § 5-601.1 Civil citation for possession of < 10g marijuana	No	No	No – not a criminal offense and therefore not a controlled substances conviction	Civil violation – fine, but no jail time	Not a criminal conviction. Does not carry immigration consequences. Good disposition.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 5-601(a)(2) Controlled dangerous substance -- Obtaining by fraud or deceit	No	Yes	Yes, Controlled substances offense	M 4Y	Consider plea to CR §1-301, accessory after the fact and keep sentence to under one year. Immigration consequence depends on individual's criminal and immigration history. Consult an immigration attorney.
CR § 5-602 Controlled dangerous substance – Marijuana – manufacture, distribute, dispense or possession with intent	No[84]	Yes	Yes, Controlled substances offense	F up to 20Y	Plea to simple possession will avoid the CIMT but will still be a controlled substance offense. Plea to §5-605 (keeping common nuisance) will likely avoid CIMT but will be controlled substance offense if substance is identified. In some cases (depending on the individual's immigration history and situation), a plea to CR §1-301, accessory after the fact (with a sentence < 1 year), may be more advantageous, as it will still be a CIMT but can avoid the controlled substances offense. Consult an immigration attorney. Also see suggestions for §5-601(a)(1).

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 5-602 Controlled dangerous substance – ***anything other than marijuana*** – manufacture, distribute, dispense or possession with intent	Yes, *under subsection (B) (illicit trafficking in a controlled substance). Note: Drug trafficking is an aggravated felony regardless of length of sentence.	Yes	Yes, Controlled substances offense	F up to 20Y	Plea to simple possession will avoid the aggravated felony and the CIMT but will still be a controlled substance offense. Plea to §5-605 (keeping common nuisance) will likely avoid aggravated feloney and CIMT but will be controlled substance offense if substance is identified. In some cases (depending on the individual's immigration history and situation), a plea to CR §1-301, accessory after the fact (with a sentence < 1 year), may be more advantageous, as it will still be a CIMT but can avoid the aggravated felony and controlled substances offense. Consult an immigration attorney. Also see suggestions for §5-601(a)(1).

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 5-604 Counterfeit Substance	Yes,[85] *under subsection (B) (illicit trafficking in a controlled substance). Note: Drug trafficking is an aggravated felony regardless of length of sentence.	Yes[86]	Yes, Controlled substances offense	F up to 5 Y for 1st offense	Consider plea to CR §1-301, accessory after the fact and keep sentence to under one year. Applicability of immigration consequence depends on defendant's criminal and immigration history. Consult an immigration attorney. Also see controlled substances strategy for §5-601(a)(1).
CR § 5-605 Keeping common nuisance	No	No[87]	Likely, but only if record identifies a specific controlled substance[88]		Keep identity of the controlled substance out of the record.
CR § 5-612 Volume dealer	Yes, *under subsection (B) (illicit trafficking in a controlled substance). Note: Drug trafficking is an aggravated felony regardless of length of sentence.	Yes	Controlled substances offense	F Min 5Y	

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 5-613 Drug kingpin	Yes, *under subsection (B) (illicit trafficking in a controlled substance). Note: Drug trafficking is an aggravated felony regardless of length of sentence.	Yes	Controlled substances offense	F 20-40Y	
CR § 5-617 Distributing faked controlled dangerous substance	Possibly, if construed as a fraud offense with loss that exceeds $10,000,[89] *under subsection (M)(i) (fraud or deceit with loss to victim that exceeds $10,000)	Yes[90]	Controlled substances offense[91]	F 5Y	Should not be a drug trafficking aggravated felony, but will have other consequences. Alternate plea: Possession or purchase of non-controlled substance (Md. CR § 5-618). If loss (or potential loss) to victim is less than $10,000, put it on the record. If more, don't.
CR § 5-618 Possession or purchase of non-controlled substance	No	No	Possibly[92]	M 1Y	Do not identify the CDS that the defendant believed the non-controlled substance to be.[93]

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 5-619 Drug paraphernalia	No[94]	No	Controlled substances offense 1) if CDS is identified in the record[95] and 2) unless related to single offense of possession of <30g of marijuana for personal use.[96] However, even if the amount <30g, it *will* be a ground of inadmissibility and could be problematic for anyone who travels outside the U.S. or may apply for permanent residence, though a waiver may be possible.	M 2Y for 2nd or later conviction	Either 1) keep the record free of mention of any specific CDS or 2) specify that paraphernalia was related to possession of <30g marijuana for personal use, if possible. Alternate plea: Civil citation for possession of < 10g marijuana. Good disposition with no immigration consequences. Alternate plea: Disorderly conduct (Md. CR §10-201). Alternate plea: Trespass or Wanton trespass (Md. CR §6-402 or §6-403).

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 5-621 Use or possession of a firearm in a drug trafficking crime	Arguably not[97]	Yes	Controlled substance offense and firearms offense[98]	F 20Y	Alternate plea: Possession of handgun (Md. CR § 4-203(a)(1)(i) or (ii)). This will avoid the aggravated felony, controlled substance offense and CIMT but will be a firearms offense, making it a less damaging option for someone applying for permanent residence.
CR § 5-622 Felon in possession of firearm	Yes *under subsection (E) (firearms offe3-204nse)	Possibly[99]	Probably not a firearms offense[100]	F 5Y	Alternate plea: Possession of handgun (Md. CR § 4-203(a)(1)(i) or (ii)), which would be a firearms offense but could be a good option for someone applying for permanent residence.
CR §§6-102 to -105 Arson/Malicious Burning in various degrees	Yes*under subsection (E)(arson) and likely (F) if sentence is ≥ 1 year (crime of violence) [101]	Yes[102]			Alternate plea: Malicious destruction of property (Md CR §6-301) (avoids the aggravated felony and the CIMT). Alternate plea: Reckless endangerment (Md CR §3-204) (avoids the aggravated felony but is still likely a CIMT, though arguably not).

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR §6-106 Burning to defraud	Yes*under subsection (E)(arson) and possibly under subsection (M)(fraud or deceit) if loss > $10,000	Yes			
CR § 6-202 Burglary – First degree – breaking and entering a dwelling with intent to commit theft or a crime of violence.	No[103]	Yes[104]		F 20Y	Alternate plea to avoid CIMT: Fourth degree burglary (Md. CR § 6-205).
CR § 6-203 Burglary – Second degree – breaking and entering storehouse with intent (a) to commit theft, violence, or arson or (b) to steal a firearm	No[105]	Yes, if intended crime is a CIMT.[106] Note that theft under Md. CR §7-104 is not a CIMT, so burglary to commit theft is arguably not a CIMT.[107]	Probably not a firearms offense even if convicted under § 6-203(b)[108]	F 15Y	Have the record affirmatively reflect an intended crime that is not a CIMT (can include intent to commit theft under §7-104). Avoid mention of firearm if possible. Alternate plea: Fourth degree burglary (Md. CR § 6-205).

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 6-204 Burglary – Third degree – breaking and entering a dwelling with intent to commit a crime	No[109]	Yes[110]		F 10 Y	
CR § 6-205 Burglary – Fourth degree – breaking and entering (a) a dwelling or (b)storehouse or (c)being in dwelling/ storehouse with intent to commit theft or (d)possession of burglar's tools	No.[111]	Possibly, under subsection (a) – divisible statute.[112] Note that theft under Md. CR §7-104 is not a CIMT, so non-dwelling burglary to commit theft should not be a CIMT.		M 3Y	Plead to § 6-205 generally or to subsection (b), (c) or (d) to avoid the CIMT. Do not plead specifically to subsection (a).

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 6-206 Breaking and entering motor vehicle – rogue and vagabond – (a) possession of burglar's tools or (b) presence in another's vehicle with intent to commit theft of vehicle or property	No.	No.[113]		3Y	
CR §6-301 Malicious destruction of property	No.	Should not be, but there is mixed case law so be cautious.[114]		≥$1000 M - 3 Y < $1000 M - 60 D	
CR § 6-402 to -403 Trespass/ Wanton trespass	No	No.[115]		M 0D &/or $500 fine	Trespass is generally a safe plea, unless defendant needs to avoid any misdemeanor conviction (for TPS, for example, or DACA).

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 7-104 Theft – (a) Unauthorized control of property, (b) control by deception, (c) possession of stolen property, (d) control of property lost, mislaid, or delivered by mistake; or (e) theft of services	No.[116]	No.[117]		< $100 – 90 days < $1000 – 18 Mo. < $10,000 – 10 Y < $100K – 15 Y And/or fines of $500 - $25K	
CR § 7-105 Theft or unauthorized use of a motor vehicle	No.[118]	No.[119]		F 5Y	To be extra cautious and avoid prosecution for an aggravated felony, keep sentence < 1 year or plead to §7-104. Alternate pleas: Md. CR § 7-104, Theft; Md. CR § 7-203, Unauthorized use of property; Transp. § 14-102, Use of vehicle without consent
CR § 7-203 Unauthorized removal of property (incl. vehicle)	No.[120]	No.[121]		M $100 fine +/or 6 mo (min) – 4Y	Alternate plea: Transp. § 14-102, Use of vehicle without consent

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR §8-103 Obtaining property or services by bad check	Likely, if loss to the victim > $10,000. *under subsection (M) (deceit w/ loss > $10K) [122]	No.[123]		< $100 M 90 days <$500 M 18 mo >$500 F 15Y	If the loss to the victim < $10,000, this should be a safe plea.
CR § 8-204 Credit card theft	Divisible. Not likely for subsection (a)(1)(i), taking credit card without consent.[124]	Divisible.[125] Likely for subsections (a)(1)(ii) thru (d)			Plead specifically to subsection (a)(1)(i) or to theft under §7-104.
CR §9-101 to 9-102 Perjury/ Subornation of Perjury	Yes, if sentence ≥ 1 year[126] *under subsection (S) (obstruction of justice)	Yes[127]		M 10Y	Keep sentence < 1 year to avoid the aggravated felony.
CR § 9-306 Obstructing Justice	Yes, if sentence ≥ 1 year[128] *under subsection (S) (obstruction of justice)	Yes		M 5Y	Keep sentence < 1 year to avoid the aggravated felony.
CR § 9-408 Resisting Arrest (formerly common law offense)	No.[129]	No.		M 3 Y	

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR §§9-501 to -503 False Statement to law enforcement	No, unless the misrepresentation results in a loss or attempted loss of > $10,000.[130] *under subsection (M)(i) (fraud or deceit with loss exceeding $10,000)	Possibly.[131] A plea to §9-503 may be safer because it does not include intent to deceive. May qualify as a "petty offense".		M: 6 Mo. or $500 fine	Any of these 3 offenses can be a safe plea *if the defendant has no other CIMTs on her record*, because it will fit within the "petty crimes" exception to the CIMT grounds of inadmissibility and removability.[132]
CR § 10-201 Disorderly conduct/ disturbing the peace	No	No.[133]		M: 60D	
CR § 11-107 Indecent exposure	No	No[134]		M: 3 Y	

Immigration Consequences of Selected **Maryland Transportation Offenses**

NOTE on TRAFFIC OFFENSES: IF A TRAFFIC OFFENSE DOES NOT CARRY JAIL TIME, IT WILL MOST LIKELY NOT HAVE A RESULTING IMMIGRATION CONSEQUENCE.

OFFENSE (MD. Transp. Code)	**IS IT AN AGGRA-VATED FELONY ?**	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?**	**ARE THERE OTHER GROUNDS OF REMOVABILITY?** (controlled substance, firearms, domestic violence)	**POSSIBLE SENTENCE** (Felony/Misdemeanor)	**SUGGESTIONS OR POSSIBLE ALTERNATIVE PLEAS**
§ 16-101(a) - Driving Without a License	No	No	No	60 days; 2nd + offense: 1 year	Safe plea
§16-303(c) - Driving With a Suspended or Revoked License	No	No[135]	No	1 year; 2nd + offense: 2 years	Safe plea
§ 21-902(a), (b), (c) - Drive or attempt to drive while under the influence of alcohol (per se); impaired by alcohol or drugs, or any combination of the two; or while transporting a minor	No[136]	No[137]	No	2 years; 2nd + offense: 3 years; 3rd + offense: 4 years.	Though DUI/ DWI offenses are not removable offenses, they weigh as heavy negatives for discretion and can make someone an enforcement priority. Avoid if possible.[138]
§ 21-902 (d) - Drive or attempt to drive any vehicle while impaired by any controlled substance; or while transporting a minor.	No[139]	No[140]	Controlled Substances Offense	2 years; 2nd + offense: 3 years; 3rd + offense: 4 years.	

[1] The 4th Circuit held in *Etienne v Lynch*, 813 F3d 135 (4th Cir. 2015), that the proper generic federal conspiracy offense for categorical analysis purposes under the INA was the common law definition of conspiracy, which does not include a required element of an overt act (even though the contemporary conspiracy offense does include such a requirement). As such, in the 4th Circuit, Maryland's conspiracy offense (which does not require an overt act) nonetheless meets the federal generic definition, and a Maryland conviction for conspiracy to commit an aggravated felony therefore constitutes an aggravated felony under the INA. 813 F.3d 142. Note, however, that if a respondent is in a circuit that applies the contemporary conspiracy definition as the generic, a Maryland conspiracy conviction will *not* meet the generic definition. For example, the BIA, in a case that was decided in the 9th Circuit (which applies the contemporary conspiracy definition as the generic) held in an unpublished, nonprecedential decision that conspiracy under Maryland common law is not an aggravated felony because it does not require an overt act. *S-A-M-*, AXXX XXX 071 (BIA unpub, 10/6/17). Creative litigators may also want to consider that the 4th Circuit applies the contemporary conspiracy definition as the generic in sentencing guideline cases, distinguishing *Etienne* and the analysis conducted under the INA. *See United States v. McCollum*, 885 F. 3d 300, 308 (4th Cir. 2018). To be clear, though, under current binding 4th Circuit case law, Maryland conspiracy WILL meet the federal definition and trigger immigration consequences.

[2] The BIA has held that the federal offense of Accessory after the Fact (18 U.S.C. § 4) is an aggravated felony on obstruction of justice grounds, if a sentence of one year or more is imposed. *Matter of Batista-Hernandez*, Int. Dec. 3321 (BIA 1997). The BIA set out a generic definition of "obstruction of justice" as crimes that included (1) "active interference with proceedings of a tribunal or investigation, or action or threat of action against those who would cooperate in the process of justice" and (2) a specific intent to interfere with the process of justice." *See Matter of Espinoza-Gonzalez*, 22 I. & N. Dec. 889, 893 (BIA 1999). The BIA found that a "critical element" of obstruction of justice was "an affirmative and intentional attempt, motivated by a specific intent, to interfere with the process of justice." Under the BIA's definition, it is highly probable that Immigration and Customs Enforcement will deem a conviction under Maryland's accessory after the fact statute to be an aggravated felony under "obstruction of justice."

[3] *Matter of Rivens* 25 I & N Dec. 623 (BIA 2011) finding that accessory after the fact is a CIMT only if the underlying offense is such a crime; *Matter of Sanchez-Marin*, 11 I. & N. Dec. 264 (BIA 1965) (finding the crime of accessory after the fact was a CIMT where the underlying crime involved moral turpitude). *See also, Cabral v. I.N.S.*, 15 F.3d 193 (1st 1994) finding that accessory to murder constitutes a crime involving moral turpitude when the accessory is charged with knowing the murder has been committed and intentionally aiding the principle to avoid apprehension or punishment). *Matter of Mendez*, 27 I&N Dec. 219 (BIA 2018) finding that misprision of felony in violation of 18 U.S.C. § 4 (2006) is categorically a crime involving moral turpitude. *Matter of Robles*, 24 I&N Dec. 22 (BIA 2006), reaffirmed. *Robles-Urrea v. Holder*, 678 F.3d 702 (9th Cir. 2012), followed in jurisdiction only.

[4] The BIA has held that the federal offense of Accessory after the Fact (18 U.S.C. § 4) does not significantly relate to a controlled substance offense, but is an aggravated felony on obstruction of justice grounds, if a sentence of one year or more is imposed. *Matter of Batista-Hernandez*, Int. Dec. 3321 (BIA 1997). Accessory after the fact may also be considered a CIMT. *Matter of Sanchez-Marin*, 11 I. & N. Dec. 264 (BIA 1965) (finding the crime of accessory after the fact was a CIMT where the underlying crime involved moral turpitude). It can be a useful disposition, however, when it is essential to avoid a controlled substances or firearms offense.

[5] Manslaughter is defined in Maryland by the common law and can be either voluntary or involuntary. Voluntary manslaughter is an intentional killing. *See Whitehead v.* State, 262 A.2d 316, 319 (Md. 1970) (listing the elements of Maryland manslaughter as (1) adequate provocation; (2) killing in sudden heat of passion; (3) causal connection between the provocation, the passion, and the fatal act. As such, many judges may find it to be a *crime of violence* (and thus an aggravated felony if the sentence imposed is equal to or greater than one year). Immigration lawyers should argue voluntary manslaughter is not a crime of violence under 18 USC §16(a) because it does not include as an element the use of violent force and could encompass actions, such as poisoning, which would not involve the use of force. 18

USC §16(b) has been struck down as void for vagueness. *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018). Immigration attorneys should therefore argue that voluntary manslaughter is not a crime of violence, but defense attorneys should NOT rely on this, as immigration judges could very well continue to find it a crime of violence.

[6] The Fourth Circuit in *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005), held that a Virginia involuntary manslaughter conviction did not constitute an aggravated felony since the offense required a mental state of only reckless disregard for human life, which did not rise to the level of intentionality required by the Supreme Court in *Leocal v. Ashcroft*, 125 S. Ct. 337 (2004) to show the intentional "use of force" component of a *crime of violence*. Maryland's common law crime of involuntary manslaughter is analogous to Virginia's for these purposes.

[7] Any voluntary homicide is a CIMT. *See Delucia v. Flagg*, 297 F.2d 58 (7th Cir. 1961). Thus, voluntary manslaughter is a CIMT.

Involuntary manslaughter in Maryland, which requires a *mens rea* of reckless disregard for human life, will also almost certainly be held to be a CIMT. Involuntary manslaughter in Maryland can be committed in three ways: (1) by doing some unlawful act (*malum in se)* endangering life but which does not amount to a felony, or by exercising gross negligence in either (2) doing some act lawful in itself, or (3) the omission to perform a legal duty. *State v. Pagotto*, 361 Md. 528, 548 (Md. 2000). In either the second or third case, the requisite *mens rea* is such that the defendant, "conscious of the risk," acted with "a wanton or reckless disregard of human life" constituting a "gross departure from what would be the conduct of an ordinary and prudent person so as to amount to a disregard of the consequences and indifference to the rights of others." *Id; State v. Gibson*, 4 Md. App. 236; 242 A.2d 575 (Md. Ct. Spec. App. 1968). aff'd at 254 Md. 399, 254 A.2d 691 (1969). This is almost precisely the *mens rea* held by the BIA to support a finding of a CIMT in *Matter of Franklin*, 20 I. & N. Dec. 867, 867-77 (BIA 1994) (finding manslaughter to be a CIMT where the *mens rea* required was recklessness, defined as a "conscious disregard of a substantial and unjustifiable risk" which constituted "a gross deviation from the standard of care that a reasonable person would exercise in the situation."). Furthermore, Maryland courts have equated "gross negligence" with "recklessness." *Albrecht v. State*, 97 Md. App. 630, 632 A.2d 163 (Md. Ct. Spec. App. 1993), rev'd on other grounds, 336 Md. 475, 649 A.2d 336 (1994).

However, this may be open to challenge under 4th Cir law. In *Sotnikau v. Lynch*, the Fourth Circuit held that a Virginia involuntary manslaughter conviction under Va. Code § 18.2–36 is not a CIMT because it can be predicated on proof that the offender *failed to appreciate or be aware of the risks* emanating from his conduct and thus lacks the *mens rea* element of harmful intent. 846 F.3d 731 (4th Cir. 2017). There may be little relevant difference between Md. § 2-209 and Va. Code § 18.2–36. Whether one ignores a known risk or ignores a risk that one should be aware of, that person has not acted intentionally, and therefore arguably has not committed a CIMT. See also *Emmanuel Pourmand*, A212 062 570, at 2 (BIA June 18, 2018) (unpublished) (holding that an involuntary manslaughter conviction under a nearly identical California statute is not a CIMT because its "gross negligence mens rea…is legally indistinguishable from the criminal negligence mens rea" and stating, "we have long held - and recently reaffirmed - that crimes committed with gross or criminal negligence lack a sufficiently culpable mental state").

[8] *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005); *see also supra* note 6.

[9] The BIA has held 3-209 to be a CIMT in an unpublished decision. *Magdaleno Lobato Hernandez*, A209 151 392, at 2 (BIA Sept. 8, 2017) (unpublished). Section 3-209 incorporates the "gross negligence" requirement of common law manslaughter in Maryland, *Faulcon v. State*, 211 Md. 249, 126 A.2d 858 (1956); *Connor v. State*, 225 Md. 543, 171 A.2d 699, cert. denied, 368 U.S. 906, 82 S. Ct. 186, 7 L. Ed. 2d 100 (1961), and thus a conviction under this statute has been held to be a CIMT. *See supra* note 6.

However, this may be open to challenge in the 4th Cir under *Sotnikau v. Lynch*, in which the Fourth Circuit held that a Virginia involuntary manslaughter conviction under Va. Code § 18.2–36 is not a CIMT because it can be predicated on proof that the offender *failed to appreciate or be aware of the risks* emanating from his conduct and thus lacks the *mens rea* element of harmful intent. 846 F.3d 731 (4th Cir. 2017). *See* note 7.

[10] *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005); *see also supra* note 6.

[11] The "criminal negligence" standard in Md. § 2-210 is nearly identical to the standard in Va. Code § 18.2–36 found not to be a CIMT in *Sotnikau v. Lynch.* 846 F.3d 731 (4th Cir. 2017). *See also Matter of Perez- Contreras*, 20 I&N Dec. at 615, 618-19 (BIA 1992) ("Since there was no intent required for conviction, nor any conscious disregard of a substantial and unjustifiable risk, we find no moral turpitude inherent in the statute.")

[12] First degree assault involves either (a)(1) the intentional infliction of serious physical injury on another or (a)(2) assault with a firearm. Under current BIA case law, a crime involving the intentional infliction of bodily harm is a crime of violence. *Matter of Martin*, 23 I. & N. Dec. 491 (BIA 2002). However, subsection (a)(1) does not include as an element the use of violent force and is therefore not a crime of violence under 18 USC §16(a). 18 USC §16(b) has been struck down as void for vagueness. *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018). Immigration attorneys should therefore challenge a crime of violence categorization for subsection (a)(1), but defense attorneys should NOT rely on this, as immigration judges are nonetheless likely to find this offense to be a crime of violence. Subsection (a)(2), involving assault with a firearm, will very likely be a crime of violence. To avoid the aggravated felony for either subsection, defense counsel should keep the sentence to under one year if possible.

[13] An assault with a deadly weapon or with intent to injure is a CIMT. *Matter of Logan*, 17 I. & N. Dec. 367 (BIA 1980); *Matter of P-*, 3 I&N Dec. 5 (BIA 1947).

[14] The "firearms" included within Md. CR § 3-202(a)(2) specifically include antique firearms (defined at Md. CR § 4-201 to include antique guns and replicas). Use of an antique firearm does not violate the federal firearm statutes on which the ground of deportability for firearms offenses is based. Thus, § 3-202 is overbroad and should not be a firearms offense under the INA. *See Gordon v. Barr*, 965 F.3d 252 (4th Cir. 2020), holding VA firearm statute overbroad because it included antique firearms. *See also, Matter of Chairez*, 26 I. & N. Dec. 349 (BIA 2014) (involving a state statute that did not specify whether or not antique firearms were included in the definition of firearms). To be cautious, defense attorneys should keep the record inconclusive as to whether a firearm was used at all and, if use of a firearm is included in the record, the attorney should keep the record inconclusive as to what type of firearm. Immigration attorneys should argue that the offense is overbroad and categorically not a firearms offense.

[15] *United States v. Royal*, 731 F.3d 333 (4th Cir. 2013) (Md CR §2-203 can involve any offensive touching, whether violent or not, and is therefore categorically not a crime of violence).

[16] Under the categorical approach, simple assault is not a CIMT. *Matter of Short*, 20 I&N Dec. 136 (BIA 1989).

[17] *See Matter of Velazquez-Herrera*, 24 I. & N. Dec. 503 (2008) ("crime of child abuse" must have an element requiring that the victim be a child); *Matter of Soram*, 25 I&N Dec. 378 (BIA 2010).

[18] §3-203 is not a crime of violence, so it cannot be a crime of domestic violence. *United States v. Royal*, 731 F.3d 333 (4th Cir. 2013) (Md CR §2-203 can involve any offensive touching, whether violent or not, and is therefore categorically not a crime of violence).

[19] This subsection prohibits causing physical injury to a law enforcement officer, but it does not contain an element of the use of force. It would be possible to violate this section without physical force by poisoning an officer, for example.

[20] This subsection of the offense (§3-203(c)) could be considered a CIMT because it includes the intentional infliction of physical injury on a law enforcement officer, but immigration lawyers should challenge this because the injury can be minor and not constitute the "reprehensible act" required for a CIMT.

[21] Recklessness does not rise to the level of intentionality to constitute the use of force for purposes of determining whether an offense is a crime of violence. *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005); *see* note 6, above.

[22] The *mens rea* for reckless endangerment is a gross and wanton deviation from reasonable conduct. *Albrecht v. State*, 97 Md. App. 630, 632 A.2d 163 (Md. Ct. Spec. App. 1993), rev'd on other grounds, 336 Md. 475, 649 A.2d 336 (1994). This is almost precisely the *mens rea* held by the BIA to support a finding of a CIMT in *Matter of Franklin*, 20 I. & N. Dec. 867, 867-77 (BIA 1994) (finding manslaughter to be a CIMT where the *mens rea* required was recklessness, defined as a "conscious disregard of a substantial and unjustifiable risk" which constituted "a gross deviation from the standard of care that a reasonable person would exercise in

the situation."). Furthermore, Maryland courts have equated "gross negligence" manslaughter with "recklessness." *Pagotto v. State*, 127 Md. App. 271, 732 A.2d 920 (1999).

However, this may be open to challenge under 4th Cir law. In *Sotnikau v. Lynch*, the Fourth Circuit held that a Virginia involuntary manslaughter conviction under Va. Code § 18.2–36 is not a CIMT because it can be predicated on proof that the offender *failed to appreciate or be aware of the risks* emanating from his conduct and thus lacks the *mens rea* element of harmful intent. 846 F.3d 731 (4th Cir. 2017). There may be little relevant difference between Md. § 2-209, §3-204, and Va. Code § 18.2–36. Whether one ignores a known risk or ignores a risk that one should be aware of, that person has not acted intentionally, and therefore arguably has not committed a CIMT. See also *Emmanuel Pourmand*, A212 062 570, at 2 (BIA June 18, 2018) (unpublished) (holding that an involuntary manslaughter conviction under a nearly identical California statute is not a CIMT because its "gross negligence mens rea…is legally indistinguishable from the criminal negligence mens rea" and stating, "we have long held - and recently reaffirmed - that crimes committed with gross or criminal negligence lack a sufficiently culpable mental state").

[23] CR §3-204(a)(2) prohibits discharging a firearm from a motor vehicle, which would likely be a firearms offense under 8 U.S.C. §1227(a)(2)(C), depending on how "firearm" is defined for this provision. If it is defined the same as in §3-202(a)(2), it would include antique firearms, which would make this provision overbroad. Given the uncertainty criminal defense counsel should avoid this offense if possible, but immigration attorneys should research further.

[24] *Leocal v. Ashcroft*, 125 S. Ct. 337 (2004); *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005).

[25] This offense requires a *mens rea* of negligence, and for this reason is not a CIMT.

[26] *Matter of Castillo Perez*, 27 I&N Dec. 664 (A.G. 2019) (2) Evidence of two or more convictions for driving under the influence during the relevant period establishes a presumption that an alien lacks good moral character under INA § 101(f), 8 U.S.C. § 1101(f). *See also Matter of SINIAUSKAS*, 27 I&N Dec. 207 (BIA 2018). DUI/DWI is a significant adverse consideration in determining whether an alien is a danger to the community in bond proceedings. Attorneys should reference current ICE prosecutorial discretion guidance to determine likely priority for people with DUI/DWI convictions. Given the possibility that this guidance can change, defense counsel should avoid these offenses when possible.

[27] *Leocal v. Ashcroft*, 125 S. Ct. 337 (2004); *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005).

[28] This offense requires a *mens rea* of negligence, and for this reason is not a CIMT.

[29] *Matter of Castillo Perez*, 27 I&N Dec. 664 (A.G. 2019) (2) Evidence of two or more convictions for driving under the influence during the relevant period establishes a presumption that an alien lacks good moral character under INA § 101(f), 8 U.S.C. § 1101(f). *See also Matter of SINIAUSKAS*, 27 I&N Dec. 207 (BIA 2018). DUI/DWI is a significant adverse consideration in determining whether an alien is a danger to the community in bond proceedings. Attorneys should reference current ICE prosecutorial discretion guidance to determine likely priority for people with DUI/DWI convictions. Given the possibility that this guidance can change, defense counsel should avoid these offenses when possible.

[30] *Leocal v. Ashcroft*, 125 S. Ct. 337 (2004); *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005).

[31] This offense requires a *mens rea* of negligence, and for this reason is not a CIMT.

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[33] *Leocal v. Ashcroft*, 125 S. Ct. 337 (2004); *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005).

[34] This offense requires a *mens rea* of negligence, and for this reason is not a CIMT.

[35] *Matter of Castillo Perez*, 27 I&N Dec. 664 (A.G. 2019) (2) Evidence of two or more convictions for driving under the influence during the relevant period establishes a presumption that an alien lacks good moral character under INA § 101(f), 8 U.S.C. § 1101(f). *See also Matter of SINIAUSKAS*, 27 I&N Dec. 207 (BIA 2018). DUI/DWI is a significant adverse consideration in determining whether an alien is a danger to the community in bond proceedings. Attorneys should reference current ICE prosecutorial discretion guidance to determine likely priority for people with DUI/DWI convictions. Given the possibility that this guidance can change, defense counsel should avoid these offenses when possible.

[36] Section 3-304 was amended in 2017 to consolidate it with the former §3-306, second degree sex offense. Attorneys should be careful to analyze the statute in effect at the time the offense was committed.

[37] The BIA held second degree (statutory) rape under former Maryland Art. 27, § 463(a)(3) to be an aggravated felony because it was considered a crime likely to result in the use of force under 18 USC §16(b). *See Matter of B-*, 21 I. & N. Dec. 287 (BIA 1996). However, §16(b) has since been struck down as void for vagueness, so there is an argument that 3-304 is not a crime of violence. *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018). Immigration lawyers should also argue that subsection (a)(2) (prohibiting intercourse with disabled person) and subsection (a)(3) (relating to minor victims) do not necessarily involve the use of force and therefore, are not crimes of violence, making the statute at least divisible.

In *Matter of Keeley*, the BIA defined "rape" as an "act of vaginal, anal, or oral intercourse or digital or mechanical penetration of the vagina or anus, no matter how slight" when the victim is "overcome by force or fear" or is incapable of "giving *effective or meaningful consent."* *Matter of Keeley*, 27 I&N Dec. 146, 148 (BIA 2017). This would likely include (a)(1) and (a)(2) as rape offenses and thus categorically aggravated felonies. However, the generic federal definition of rape adopted in *Matter of Keeley* is inconsistent with statutes defining rape that existed in 1996 when Congress enacted § 1101(a)(43)(A). 18 U.S.C. § 2241. *See also* 10 USC 920: Art. 120. For example, "aggravated sexual abuse," a term that effectively replaced the federal rape statute repealed in 1986, requires either the actual of threatened use of force or the active facilitation of another person's incapacitation (through a drug or other agent), such that it does not encompass offenses like (a)(2) where a person can be convicted for having actual or constructive knowledge of the victim's incapacitation.

Given BIA precedent and the likelihood that courts may find §3-304 to be the equivalent of rape or sexual abuse of a minor, it will likely be considered an aggravated felony and criminal defense attorneys should avoid a conviction under this section.

[38] *Larios-Reyes v. Lynch*, 843 F.3d 146 (4th Cir. 2016). This offense would not be sexual abuse of a minor in the 4th Cir. because it does not include an element of sexual gratification, which is required by the 4th Circuit for sexual abuse of a minor. *See U.S. v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013) (noting that the 4th Cir has defined generic sexual abuse of a minor to require a purpose of sexual gratification) and Md CR §3-301(e) (defining sexual act to include, among other things, an act "that can reasonably be construed to be for sexual arousal or gratification, *or* for the abuse of either party"). The aggravated felony may thus be avoided if the sentence is kept under one year. *However*, if the defendant travels outside the 4th Circuit, this offense could well be found to be sexual abuse of a minor. *Matter of Esquivel-Quintana*, 26 I&N Dec. 469 (BIA 2015) (finding age differential of 3 years made statutory rape provision categorically sexual abuse of a minor).

[39] The BIA held the predecessor to this offense to be an aggravated felony crime of violence under 18 USC §16(b). *See Matter of B-*, 21 I. & N. Dec. 287 (BIA 1996) (finding second degree (statutory) rape under former Maryland Art. 27, § 463(a)(3) to be an aggravated felony because it was considered a crime likely to result in the use of force). *See also, Wireko v. Reno*, 211 F.3d 833 (4th Cir. 2000) (finding a conviction under a Va. misdemeanor sexual battery statute to be an aggravated felony). However, §16(b) has since been struck down as void for vagueness, so there is an argument that 3-306 is not a crime of violence. *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018).

Immigration lawyers could also argue that subsection (a)(2) (prohibiting sexual act with disabled person) and subsection (a)(3) (relating to minor victims) do not necessarily involve the use of force and therefore, are not crimes of violence, making the statute at least divisible.

Second degree sex offense under §3-306 does *not* constitute sexual abuse of a minor in the 4th Circuit because it does not necessarily include an element requiring that the act be committed for purposes of sexual gratification, which the 4th Circuit has held to be an element of generic sexual abuse of a minor. *See U.S. v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013) (noting that the 4th Cir has defined generic sexual abuse of a minor to require a purpose of sexual gratification) and Md CR §3-301(e) (defining sexual act to include, among other things, an act "that can reasonably be construed to be for sexual arousal or gratification, *or* for the abuse of either party"). *However*, if the defendant travels outside the 4th Circuit, this offense could well be found to be sexual abuse of a minor. *Matter of Esquivel-Quintana*, 26 I&N Dec. 469 (BIA 2015) (finding age differential of 3 years made statutory rape provision categorically sexual abuse of a minor).

[40] *See* caution for §3-203(a) regarding assault against family members or children.

[41] This statute is divisible. *Larios-Reyes v. Lynch*, 843 F.3d 146 (4th Cir. 2016). Court held that § 3–307(a)(5) constituted sexual abuse of a minor but § 3–307(a)(3) did not.

[42] Subsection (a)(5) is sexual abuse of a minor but subsection (a)(3) is not. *Larios-Reyes v. Lynch*, 843 F.3d 146 (4th Cir. 2016). On the same reasoning, Subsection (a)(4) would also very likely be sexual abuse of a minor. Since §3-307 is a divisible statute and Larios-Reyes was convicted under § 3–307(a)(3), the 4th Cir. looked at whether § 3-307(a)(3)'s elements categorically matched the elements of the generic federal definition of "sexual abuse of a minor." In Maryland, a perpetrator is not required to act for the purpose of sexual gratification in order to be convicted under § 3–307(a)(3). Acting for the purpose of abuse is enough. Maryland's appellate courts have interpreted "abuse" to include much more conduct than what the INA includes. The court found that § 3–307(a)(3) is broader than the federal generic offense of "sexual abuse of a minor" and therefore does not constitute the aggravated felony of "sexual abuse of a minor" under § 1101(a)(43)(A) of the INA. The BIA has also held third degree sexual offense under Md. Code Ann., Crim. Law 3-307(a)(3), to not be sexual abuse of a minor in light of *Larios-Reyes v. Lynch*, 843 F.3d 146 (4th Cir. 2016) in an unpublished decision. *Victor Manual Lopez-Lopez*, A042 916 662 (Dec. 21, 2016).

However, if the defendant travels outside the 4th Circuit, this offense could well be found to be sexual abuse of a minor. *Matter of Esquivel-Quintana*, 26 I&N Dec. 469 (BIA 2015) (finding age differential of 3 years made statutory rape provision categorically sexual abuse of a minor). Because this is an area of unsettled law, criminal defense counsel should avoid a conviction where possible.

Subsections (a)(1)(i)-(iii) would likely be crimes of violence (and thus an aggravated felony if the sentence were a year or longer), though Subsection (a)(1)(iv) would not necessarily require violence and immigration attorneys should argue that the provision is overbroad.

[43] Subsection (a)(2) is not limited to minors and is not likely to be an aggravated felony.

[44] In *Matter of Jimenez-Cedillo (II)*, 27 I&N Dec. 782 (BIA 2020), the Board reaffirmed *Matter of Jimenez-Cedillo (I)* (27 I&N Dec. 1 (BIA 2017) and held all of 3-307 to be a CIMT but agreed not to apply its holding retroactively. Thus, convictions under 3-307(a)(3), (a)(4), and (a)(5) prior to February 27, 2020, are not CIMTs. While the BIA will consider convictions after that date CIMTs, immigration attorneys should preserve a challenge to the *Jimenez-Cedillo* decisions to raise to the Fourth Circuit.

[45] Arguably, section 3-307(a)(2) is not a CIMT because it only requires negligence. Whether 3-307(a)(1) is a CIMT depends on what (if any) level of knowledge the defendant was required to have vis-à-vis the vicitm's lack of consent.

[46] *But see* caution for §3-203(a) regarding assault against family members or children.

[47] Section 3-308 is divisible with regard to whether it constitutes sexual abuse of a minor. If the record of conviction (ROC) indicates that the defendant was convicted of intercourse under subsections (b)(3) or (c)(2), it will be sexual abuse of a minor. However, a conviction for sexual contact or a sexual act with a minor under the

other subsections may *not* constitute sexual abuse of a minor because they do not necessarily include an element requiring that the act be committed for purposes of sexual gratification, which the 4th Circuit has held to be an element of generic sexual abuse of a minor. *See U.S. v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013) (noting that the 4th Cir has defined generic sexual abuse of a minor to require a purpose of sexual gratification). Md CR §3-301(e) and (f) specifically defines sexual contact and a sexual act to include an act "that can reasonably be construed to be for sexual arousal or gratification, *or* for the abuse of either party." *However*, if the defendant travels outside the 4th Circuit, this offense could well be found to be sexual abuse of a minor. *Matter of Esquivel-Quintana*, 26 I&N Dec. 469 (BIA 2015) (finding age differential of 3 years made statutory rape provision categorically sexual abuse of a minor). Because this is an area of unsettled law, criminal defense counsel should avoid a conviction where possible.

This offense is categorically not a crime of violence. Victor Enrique Tally-Barrios, A041-736-376 (BIA unpub. Oct. 8, 2013) (finding the precursor statute to be nondivisible and categorically not a crime of violence under 18 USC 16(a) because statute does not require use of force).

[48] The BIA held in an unpublished decision that (b)(1) is not a CIMT because the defendant need not be aware of the victim's lack of consent. Hector Reymundo Henriquez Dimas, A061 729 721 (BIA Oct. 17, 2019). Assuming (b)(2), (b)(3), (c)(2), and (c)(3) do not require any culpable mental state with regard to the victim's age, the CIMT analysis would depend on the date of conviction per *Matter of Jimenez-Cedillo II*, 27 I&N Dec. 782 (BIA 2020). See 3-307, above.

[49] A specific plea to sexual contact or a sexual act (as opposed to intercourse) could also possibly avoid the aggravated felony of sexual abuse of a minor, but this argument has not been tested and it is better to avoid these offenses if possible.

[50] *But see* caution for §3-203(a) regarding assault against family members or children.

[51] An attempt to commit an aggravated felony constitutes an aggravated felony for immigration purposes. *See* INA § 101(a)(43)(U).

[52] An attempt to commit an aggravated felony constitutes an aggravated felony for immigration purposes. *See* INA § 101(a)(43)(U).

[53] *See* caution for §3-203(a) regarding assault against family members or children.

[54] *See* caution for §3-203(a) regarding assault against family members or children.

[55] Section 3-314(c) is divisible with regard to whether it constitutes sexual abuse of a minor. If the record of conviction (ROC) indicates that the defendant was convicted of intercourse, it will be sexual abuse of a minor. However, a conviction for sexual contact or a sexual act with a minor will *not* constitute sexual abuse of a minor because it does not necessarily include an element requiring that the act be committed for purposes of sexual gratification, which is an element of generic sexual abuse of a minor. *See U.S. v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013) (noting that the 4th Cir has defined generic sexual abuse of a minor to require a purpose of sexual gratification). Md CR §3-301(e) specifically defines sexual contact and a sexual act to include, among other things, an act "that can reasonably be construed to be for sexual arousal or gratification, *or* for the abuse of either party." They are therefore missing an element of the generic offense of sexual abuse of a minor.

It is unclear whether any part of 3-314 could be found to be a crime of violence in the wake of *Dimaya v. Sessions*, 138 S.Ct. 1204 (2018), which held 18 USC §16(b) void for vagueness. None of the subsections includes an element of the use of force, as required to find a crime of violence under 18 USC §16(a). For example, immigration lawyers could argue that subsection (b) (prohibiting correctional employee from having sex with inmate) involves neither the use of force nor a lack of consent therefore is neither a crime of violence aggravated felony (an issue not addressed in *Wireko*) nor rape.

[56] S*ee* caution for §3-203(a) regarding assault against family members or children.

[57] This statute is overbroad, prohibiting generally intercourse with individuals so closely related that it would be illegal for them to marry under Maryland law. These include parents and children, but also siblings. Crimes that arise out of a forbidden marital status between consenting adults are not CIMT's. *Matter of B-*, 2 I. & N. Dec. 617 (BIA 1946).

[58] There is a good argument that the law enforcement component renders 3-324 overbroad, as it is an alternative means to an otherwise indivisible second element of the offense. *See Choudry v. State*, 231 Md.App. 656 (2017 (holding that the offense has three elements: (1) solicitation, (2) of a minor or a law enforcement officer posing as a minor, and (3) to engage in a prohibited sex act.). Given the definition of sexual abuse of a minor adopted by the CA4, and the legislative history of the statute as discussed in *Choudry*, immigration attorneys should argue that the statute is overbroad.

[59] For example, an attempt to solicit 3-307(a)(3) would not be an aggravated felony but one under 3-307(a)(5) would be. See *Jimenez-Cedillo v. Sessions*, 885 F.3d 292 (4th Cir. 2018).

[60] On Feb. 27, 2020, the BIA held in *Matter of Jimenez-Cedillo (II)*, 27 I. & N. Dec. 782 (BIA 2020), that a conviction under this section is a CIMT, but it applied the ruling only prospectively in the Fourth Circuit. It reserved decision on retroactivity in other circuits. (The Fourth Circuit had questioned whether §3-324 could be a CIMT because of the breadth of conduct it included, but it remanded to the BIA, which then issued the above decision. *Jimenez-Cedillo v. Sessions*, 885 F.3d 292 (4th Cir. 2018)). This decision may be open to challenge. Since there is no *mens rea* requirement for the age of the child, it is important to watch how the 4th Circuit treats the offense in the future. It may affect the CIMT analysis.

[61] A conviction under this section does not constitute a deportable firearms offense because the "dangerous weapon" does not have to be a gun, *Couplin v. State*, 37 Md. App. 567, 378 A.2d 197 (1977), cert. denied, 281 Md. 735 (1978), but could be a cord, *Bennett v. State*, 237 Md. 212, 205 A.2d 393 (1964); or a knife, *Hobbs v. Pepersack*, 301 F.2d 875 (4th Cir. 1962); *Bell v. State*, 5 Md. App. 276, 246 A.2d 286 (1968).

[62] A conviction under this section does not constitute a deportable firearms offense because the "dangerous weapon" does not have to be a gun, *Couplin v. State*, 37 Md. App. 567, 378 A.2d 197 (Md. Ct. Spec. App. 1977), cert. denied, 281 Md. 735 (1978), but could be a cord, *Bennett v. State*, 237 Md. 212, 205 A.2d 393 (1964); or a knife, *Hobbs v. Pepersack*, 301 F.2d 875 (4th Cir. 1962); *Bell v. State*, 5 Md. App. 276, 246 A.2d 286 (1968).

[63] *Gomez v. United States*, 690 F.3d 194, 201-03 (4th Cir. 2012) holds that second degree child abuse under the predecessor statute to § 3-601(d) is categorically not a crime of violence, and thus not an aggravated felony. For purposes of the analysis of a crime of violence, there is no substantive difference between the current first degree and second degree child abuse provisions.

[64] *See* caution for §3-203(a) regarding assault against family members or children.

[65] *Amos v. Lynch*, 2015 WL 3606848 (4th Cir. June 10, 2015) (predecessor statute held not to be sexual abuse of a minor because least culpable conduct includes failure to prevent abuse and requires no affirmative act of abuse); *see also, U.S. v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013) (predecessor offense to §3-602 is categorically neither a crime of violence nor sexual abuse of a minor because it requires neither force nor an intent to gratify sexual urges).

[66] *See* caution for §3-203(a) regarding assault against family members or children.

[67] Md CR §3-602.1 includes the requirement that the failure to provide for a minor be "intentional." This is likely sufficient *mens rea* for this offense to be considered a CIMT.

[68] Md CR §3-604 is not a crime of violence because it does not require a use or threat of force and can be violated through simple neglect.

[69] Md CR §3-604(a) defines neglect for these purposes as the *intentional* failure to provide necessary assistance. This is likely sufficient *mens rea* for this offense to be considered a CIMT. *See, Shakirat Modupe Baruwa v. Caterisano*, 2010 U.S. Dist. LEXIS 60185, 2010 WL 2509967 (D. Md. June 17, 2010) (holding that §3-605, which uses the same definition, qualifies as a CIMT).

[70] Md CR §3-605 is not a crime of violence because it does not require a use or threat of force and can be violated through simple neglect.

[71] Md CR §3-604(a) defines neglect for these purposes as the *intentional* failure to provide necessary assistance. This is likely sufficient *mens rea* for this offense to be considered a CIMT. *See, Shakirat Modupe Baruwa v. Caterisano*, 2010 U.S. Dist. LEXIS 60185, 2010 WL 2509967 (D. Md. June 17, 2010) (holding that this offense qualifies as a CIMT).

[72] *Matter of Ajami*, 22 I. & N. Dec. 949 (BIA 1999) (holding a Mich. aggravated stalking statute was CIMT). §3-802(a) defines stalking as a malicious course of conduct, which likely is enough to make it a CIMT.

[73] This section does not apply to carrying a handgun. Md. CR §4-101(a)(5)(ii).

[74] *US v. Medina-Anicacio*, 325 F.3d 638, (5th Cir. 2003) (holding that carrying a concealed weapon is not a crime of violence and therefore not an aggravated felony).

[75] Subsection 4-101(c)(1) is not a CIMT. *Matter of Granados*, 16 I. & N. Dec. 726, 728 (BIA 1979) ("Conviction for possession of a concealed sawed-off shotgun is not . . . a crime involving moral turpitude . . . ."), *overruled on other grounds Matter of Hernandez-Casillas*, 20 I. & N. Dec. 262 (BIA 1990). However, subsection (c)(2), prohibiting carrying with intent to use the weapon to inflict harm, would likely be a CIMT. *See Matter of S-*, 8 I. & N. Dec. 344 (BIA 1959) (carrying concealed weapon with intent to use on another person held to be CIMT). Avoiding the CIMT could be important in the case of an individual who can adjust to permanent resident status, as a CIMT will make her ineligible to obtain lawful permanent residence. In such cases, a firearms offense could even be a preferable option, as it would not disqualify someone from obtaining permanent residence. Consult with an immigration attorney.

[76] Though the provision is divisible with regard to the intent to harm another (see preceding note), it is not divisible but rather simply overbroad as to its inclusion of non-firearms as dangerous weapons.

[77] *US v. Sandoval-Barajas*, 206 F.3d 853 (9th Cir. 2000) (holding that the offense of possession of handgun by alien was not an aggravated felony because the state offense was broader than enumerated federal statutes). There is no analogous federal statute outlawing simple possession of a handgun.

[78] This is a divisible statute for CIMT purposes (though it will still be a removable firearms offense in any case). Subsections (a)(1)(i) and (ii) are not CIMTs, while (iv) is definitely a CIMT and (iii) may be. In order to avoid the CIMT, plead to subsection (a)(1)(i) or (a)(1)(ii) specifically, or plead generally and make sure the record of conviction is free of any reference to intent to injure or kill another. Avoiding the CIMT could be important in the case of an individual who can adjust to permanent resident status, as a firearms offense will not disqualify her from obtaining permanent residence, but a CIMT will. Consult with an immigration attorney.

[79] This offense is not a crime of violence under 18 USC §16 because it does not include an element of the use of force, as would be required to meet the definition of 18 USC §16(a). 18 USC §16(b) has been struck down as void for vagueness. *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018). Furthermore, the underlying required crime can be any felony (overbroad as to crimes of violence) or a "crime of violence" as defined by Maryland law at PS §5-101 to include, among other things, second degree assault, which is also broader than the federal definition of a crime of violence. It is not divisible because the identity of the underlying crime is not a required element of the offense.

[80] *See Gordon v. Barr*, 965 F.3d 252 (4th Cir. 2020), holding VA firearm statute overbroad because it included antique firearms. Further support for the argument that the inclusion of antique firearms was deliberate by the Md. General Assembly in §4-204 can be found in the contrast between this section's provisions and Md. Code Ann., Public Safety, Title 5, which regulates firearms and in several places specifically exempts antique firearms as defined in CR § 4-101.

[81] Where a state list of controlled dangerous substances is broader than the federal schedule at 21 U.S.C. §802 (used to define a controlled substance offense for immigration purposes), a violation of the state statute is not categorically a removable offense. *Mellouli v. Lynch*, 135 S.Ct. 1980 (2015); *Matter of Paulus*, 11 I. & N. Dec. 274, 276 (BIA 1965) ("Since the conviction here could have been for an offer to sell a substance which though a narcotic under California law is not a narcotic drug under federal laws, we cannot say that the Service has borne its burden of establishing that respondent has been convicted of a violation of a law relating to narcotic drugs."). Maryland's list of controlled substances may be broader than the federal list, as Maryland controls "bath salts" which are not controlled under federal law. *See*, COMAR 10.19.03.13 (D, E, F) (Schedule of "Additional Controlled Dangerous Substances" listing 4-Fluoromethcathinone, 3-Fluoromethcathinone, and 4-Methoxymethcathinone as CDS). *Cf.* 21 U.S.C. §802. Nonetheless, Maryland law requires the specific controlled substance to be identified and proven, essentially making it an element of the offense, which eliminates the argument that the offense is overbroad. However, prosecution for any substance not on the federal schedule will not be a controlled substance offense under the INA.

[82] *Mellouli v. Lynch*, 135 S.Ct. 1980 (2015) (conviction record for possession of paraphernalia that did not identify a substance controlled under the federal schedule of controlled substances could not support removal proceedings under the controlled substances ground of removal).

[83]INA § 237(a)(2)(B)(i).

[84] Maryland law defines distribution to include simple transfer or delivery from one person to another, whether or not any remuneration is paid and regardless of quantity. Md. Code Ann., Crim. Law § 5-101(h) and (l) (West). Under the Supreme Court's decision in *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1686-87 (2013), an offense that includes non-remunerative sharing of small quantities of marijuana is not a drug trafficking offense because it is not punishable as a felony under the federal Controlled Substances Act. Maryland's distribution offense is overly broad and is not a categorical match for the federal offense, at least with regard to marijuana. It is therefore not an aggravated felony. The BIA has held that possession of marijuana with intent to distribute under Md. Code Ann., Crim. Law 5-602 is not an aggravated felony in an unpublished decision. J-F-B, AXX XXX 977 (BIA Sept. 13, 2018).

[85] Counterfeit substances are controlled dangerous substances as defined by the Maryland Code. *See* Md. Code, Crim. Law, § 5-604(a). A violation of § 5-604 is a felony under the Maryland Code and punishable under the Controlled Substances Act. *See* 21 U.S.C. §§ 841(a)(2) & 843(a)(5). Therefore, § 5-604 is a drug trafficking crime under INA § 101(a)(43)(B) and an aggravated felony. Immigration attorneys may want to make an argument that the definition of "counterfeit substances" in this provision includes labeling and labeling equipment, which may bring it outside of the definition of "drug trafficking" and controlled substances. This strategy is untested.

[86] "Where fraud or forgery is involved, it is clear that a finding of moral turpitude is required." *Matter of A*--, 5 I. & N. Dec. 52, 53 (BIA 1953) (citing *Jordan v. George*, 341 U.S. 223 (1951) (holding where fraud is a component of the crime, the crime involves moral turpitude)).

[87] There is no *mens rea* required by the statute, and it appears that the the common law crime of nuisance could be committed through negligence alone. *Baltimore & Y. Tpk. Rd. v. State*, 63 Md. 573, 581-82, 1 A. 285, 287 (1885) (describing offender's "neglect of duty" that created nuisance).

[88] *See, Mellouli v. Lynch*, 135 S.Ct. 1980 (2015) (conviction record for possession of paraphernalia that did not identify a substance controlled under the federal schedule of controlled substances could not support removal proceedings under the controlled substances ground of removal). *See also,* fn 81.

[89] A violation of this section would not be a drug trafficking crime because it does not involve controlled dangerous substances and is not punishable under the relevant federal drug trafficking statutes. The relevant language of § 5-617 states that "[a] person may not distribute, attempt to distribute, or possess with intent to distribute a *noncontrolled substance*...." (emphasis added). *Matter of Sanchez-Cornejo*, 25 I. & N. Dec. 273 (BIA 2010) (holding that TX statute prohibiting delivery of a simulated controlled substance is not punishable under the Controlled Substances Act and therefore not a drug trafficking aggravated felony).
However, it could be interpreted as a crime involving fraud or deceit. *See* INA § 101(a)(43)(M) (a crime involving fraud and losses greater than $10,000 is an aggravated felony); *See also Nijhawan v. Holder*, 129 S.Ct. 2294, 2298 (2009) (the $10,000 threshold "applies to the specific circumstances surrounding an offender's commission of a fraud and deceit crime on a specific occasion" and thus the provision requires a "circumstance-specific" interpretation that looks at the facts of the case, not simply at the elements of the statutory offense).

[90] "Where fraud or forgery is involved, it is clear that a finding of moral turpitude is required." *Matter of A--*, 5 I. & N. Dec. 52, 53 (BIA 1953) (citing *Jordan v. George*, 341 U.S. 223 (1951) (holding where fraud is a component of the crime, the crime involves moral turpitude)).

[91] The controlled substances ground of removability applies to any offense "relating to a controlled substance." 8 U.S.C. §1227(a)(2)(B). This has been interpreted very broadly and has been found to apply to delivery of a controlled simulated or "look-alike" substance. *Matter of Sanchez-Cornejo*, 25 I. & N. Dec. 273 (BIA 2010); *Desai v. Mukasey*, 520 F.3d 762, 765 (7th Cir. 2008).

[92] Although by definition this provision involves non-controlled substances, the broad language of the INA making crimes "relating to a controlled substance" grounds for removal and inadmissibility has been read to include delivery of "look-alike" substances, and the same logic could be applied to this offense. *Matter of Sanchez-Cornejo*, 25 I. & N. Dec. 273 (BIA 2010); *Desai v. Mukasey*, 520 F.3d 762, 765 (7th Cir. 2008).

[93] *See, Mellouli v. Lynch*, 135 S.Ct. 1980 (2015) (conviction record for possession of paraphernalia that did not identify a substance controlled under the federal schedule of controlled substances could not support removal proceedings under the controlled substances ground of removal). *See also,* fn 81.

[94] The statute punishes possession, use, or intent to use, but *not* distribution of paraphernalia. Since the three federal drug statutes that define drug trafficking punish only distribution of paraphernalia, this offense is not classified as a drug-trafficking crime nor does it come within the common meaning of drug-trafficking, since possession of paraphernalia has nothing to do with distribution. Because this offense neither involves the common meaning of drug-trafficking nor is punishable under the three relevant federal drug laws, felony possession of paraphernalia does not qualify as an aggravated felony under either test, even if it is a felony. *Lopez v. Gonzalez*, 549 U.S. 47 (2006).

[95] *See, Mellouli v. Lynch*, 135 S.Ct. 1980 (2015) (conviction record for possession of paraphernalia that did not identify a substance controlled under the federal schedule of controlled substances could not support removal proceedings under the controlled substances ground of removal). *See also,* fn 81.

[96] INA § 237(a)(2)(B)(i).

[97] This section is arguably overbroad with regard to the drug trafficking aggravated felony because it defines "drug trafficking crime" more broadly than the INA definition of drug trafficking (to include distribution of marijuana under §5-602, which is not a drug trafficking aggravated felony under *Moncrieffe v. Holder*). Immigration lawyers should argue this section is not an aggravated felony, but criminal defense attorneys should not rely on it.

[98] This section does not explicitly define "firearm". Depending on the definition found to apply and whether that definition explicitly includes (or excludes) antique firearms, it may be overbroad and therefore not a firearms offense. *See Gordon v. Barr*, 965 F.3d 252 (4th Cir. 2020), holding VA firearm statute overbroad because it included antique firearms.

[99] This provision has no intent requirement and furthermore could be applied to a person convicted in a different jurisdiction of an underlying offense that might not be a felony in that jurisdiction and where there might be no such restriction on the right to carry a gun.

[100] The definition of firearm in this section explicitly includes antique firearms, which are excluded from the federal definition of a firearms offense, making it overbroad and thus not a firearms offense. *See Gordon v. Barr*, 965 F.3d 252 (4th Cir. 2020), holding VA firearm statute overbroad because it included antique firearms. Further support for the argument that the inclusion of antique firearms was deliberate by the Md. General Assembly can be found in the contrast between this section's provisions and Md. Code Ann., Public Safety, Title 5, which regulates firearms and in several places specifically exempts antique firearms as defined in CR § 4-101.

[101] *Espinal-Andrades v. Holder*, 777 F.3d 163 (4th Cir. 2015).

[102] *Matter of S-*, 3 I. & N. Dec. 617, 618 (BIA 1949) ("…[A]rson or attempt to commit arson involves an act committed purposely with an evil intention and constitutes an offense involving moral turpitude."). Cf. *Jorge Hernandez-Hernandez*, A045 582 968 (BIA unpub. May 20, 2014) (fourth degree arson under N.Y.P.L. 150.05 not a CIMT because perpetrators need not have malicious intent or specific intent to damage property)

[103] This offense is not an aggravated felony burglary offense because it falls outside the federal generic definition of burglary in that it involves breaking and entering a "dwelling" which Maryland courts have construed to include non-buildings like recreational vehicles. *U.S. v. Henriquez*, 757 F.3d 144 (4th Cir. 2014). The offense was historically considered a crime of violence aggravated felony under 18 USC §16(b), as a crime likely to result in the deliberate use of force (because it involved breaking into a dwelling). However, 18 USC §16(b) was held void for vagueness in Sessions v. Dimaya, 138 S.Ct. 1204 (2018), so burglary is no longer a crime of violence.

[104] Under recent BIA and 4th Cir caselaw, burglary of a dwelling, even if unoccupied and regardless of the intended crime, is a CIMT. *Uribe v. Sessions*, 855 F.3d 622 (4th Cir. 2017) (stating that principles that render breaking and entering into a traditional house contrary to moral norms apply equally to breaking and entering a boat or motor vehicle that serves as a dwelling under MD law). The court held that the offense of third-degree burglary in violation of Maryland law qualified as a CIMT. In an unpublished decision, the BIA followed *Uribe* to find §6-204 a CIMT. In Re: Abayneh Arficho Hegana, 2017 WL 6555145 (October 6, 2017, BIA unpub.). *See also Matter of Louissaint*, 24 I&N Dec. 754, 756 (BIA 2009) ("We therefore find that our holding in Matter of M- . . . is distinguishable because the offense at issue here . . . involves the burglary of an occupied dwelling."); *Matter of J-G-D-F-*, I & N Dec, 27, (BIA 2017) ("We conclude that it is appropriate to extend our holding in *Matter of Louissaint* to the offense of first degree burglary of a dwelling …. We therefore hold that burglary of a regularly or intermittently occupied dwelling under Oregon law is morally turpitudinous, regardless of whether a person was actually present at the time of the offense."). Immigration attorneys should note that this line of case law contradicts the previously longstanding precedent that held that turpitude depended on the crime the defendant intended to commit after the illegal entry. *Matter of G-*, 1 I. & N. Dec. 403 (1943) (finding entry must be made with the intent to commit a crime involving moral turpitude).

[105] Second degree burglary under Md. CR § 6-203 should not constitute the aggravated felony of burglary because it does not meet the "generic" federal definition of burglary under *Taylor v. U.S.*, 495 U.S. 575 (1990). *Taylor* requires unlawful entry into a building or "structure," which does not include a vehicle, *Matter of Perez*, 22 I&N Dec. 1325 (BIA 2000). Section 6-203, however, includes entry into a "storehouse," which in turn includes vessels, railroad cars, trailers and aircraft (Md. CR § 6-201), none of which would qualify as a structure under *Taylor* and *Perez*. Since there is conduct prohibited by § 6-203 that is not encompassed within the federal definition of the aggravated felony of burglary, § 6-203 cannot be the basis for an aggravated felony burglary offense. *See U.S. v. Henriquez*, 757 F.3d 144 (4th Cir. 2014) (holding that first-degree burglary under §6-202 does not constitute a federal burglary offense because it can involve breaking into a recreational vehicle). The offense might historically have been considered a crime of violence under 18 USC §16(b), as a crime likely to result in the deliberate use of force (because it involved breaking into a building). However, 18 USC §16(b) was held void for vagueness in *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018), so second-degree burglary should no longer be a crime of violence.

[106] An offense that includes as an element the intent to commit a CIMT is itself a CIMT. *Matter of G-*, 1 I. & N. Dec. 403 (1943) (finding entry must be made with the intent to commit a crime involving moral turpitude). Because §6-203 does not involve entering a dwelling, the reasoning of *Matter of Louissaint*, 24 I&N Dec. 754, 756 (BIA 2009) and *Matter of J-G-D-F-*, I & N Dec, 27, (BIA 2017) should not apply to it, CIMT will depend on the intended crime. *See* note 104.

[107] *Martinez v. Sessions*, 892 F.3d 655 (4th Cir. 2018), holding that theft under Md. CR §7-104 is not a CIMT.

[108] The definition of firearm in this section explicitly includes antique firearms, which are excluded from the federal definition of a firearms offense, making it overbroad and thus not a firearms offense. §6-201, defining "firearm" for this section. *See also Gordon v. Barr*, 965 F.3d 252 (4th Cir. 2020), holding VA firearm statute overbroad because it included antique firearms. Further support for the argument that the inclusion of antique firearms was deliberate by the Md. General Assembly can be found in the contrast between this section's provisions and Md. Code Ann., Public Safety, Title 5, which regulates firearms and in several places specifically exempts antique firearms as defined in CR § 4-101.

[109] This offense is not an aggravated felony for the same reasons that first-degree burglary under §6-202 is not. *See U.S. v. Henriquez*, 757 F.3d 144 (4th Cir. 2014) (finding §6-202 not to be a generic burglary offense). It might historically have been considered a crime of violence under 18 USC §16(b), as a crime likely to result in the deliberate use of force (because it involved breaking ino a dwelling); however, 18 USC §16(b) was held void for vagueness in *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018), so burglary is no longer a crime of violence.

[110] Under recent BIA and 4th Cir caselaw, burglary of a dwelling, even if unoccupied and regardless of the intended crime, is a CIMT. *Uribe v. Sessions*, 855 F.3d 622 (4th Cir. 2017) (stating that principles that render breaking and entering into a traditional house contrary to moral norms apply equally to breaking and entering an unoccupied dwelling or a boat or motor vehicle that serves as a dwelling under MD law). The court held that the offense of third-degree burglary in violation of Maryland law qualified as a CIMT. In an unpublished decision, the BIA followed *Uribe* to find §6-204 a CIMT. In Re: Abayneh Arficho Hegana, 2017 WL 6555145 (October 6, 2017, BIA unpub.). *See also Matter of Louissaint*, 24 I&N Dec. 754, 756 (BIA 2009) ("We therefore find that our holding in Matter of M- . . . is distinguishable because the offense at issue here . . . involves the burglary of an occupied dwelling."); *Matter of J-G-D-F-*, I & N Dec, 27, (BIA 2017) ("We conclude that it is appropriate to extend our holding in *Matter of Louissaint* to the offense of first degree burglary of a dwelling …. We therefore hold that burglary of a regularly or intermittently occupied dwelling under Oregon law is morally turpitudinous, regardless of whether a person was actually present at the time of the offense."). Immigration attorneys should note that this line of case law contradicts the previously longstanding precedent that held that turpitude depended on the crime the defendant intended to commit after the illegal entry. *Matter of G-*, 1 I. & N. Dec. 403 (1943) (finding entry must be made with the intent to commit a crime involving moral turpitude).

[111] This offense does not meet the generic definition of burglary because it does not include an unlawful entry with the intent to commit a crime. *See Taylor v. US*, 495 US 575 (1990).

[112] Subsection (a) could be held to be a CIMT under recent BIA and 4th Cir precedent, because it involves breaking and entering a dwelling. *See* note 104. Offenses involving breaking and/or entering non-dwelling structures or places should depend on whether the intended crime is a CIMT. *Matter of G-*, 1 I. & N. Dec. 403 (BIA 1943); *Matter of M-*, 2 I. & N. Dec. 721 (BIA 1946)(no moral turpitude where there was no evidence of intent to commit a CIMT in the record of conviction); *see also, US v. Martin*, 753 F.3d 485 (4th Cir. 2014) (finding this offense can be committed with a negligent *mens rea*). Simple breaking and entering – as in subsection (b) – is not a CIMT. A conviction under subsection (c) is not a CIMT because theft under Maryland law in not a CIMT. *Martinez v. Sessions*, 892 F.3d 655 (4th Cir. 2018), holding that theft under Md. CR §7-104 is not a CIMT. Possession of burglary tools – as in subsection (d) – has been held not to be a CIMT where intent to commit a CIMT is not an element of the offense or evident in the record of conviction. *Matter of S-*, 6 I. & N. Dec. 769 (BIA 1955).

[113] Possession of burglary tools has been held not to be a CIMT where intent to commit a CIMT is not an element of the offense or evident in the record of conviction. *Matter of S-*, 6 I. & N. Dec. 769 (BIA 1955). Because theft under Md CR §7-104 is not a CIMT and because there is no requirement that the car contemplated in this

offense be a dwelling, subsection (b) is likewise not a CIMT. *See Martinez v. Sessions*, 892 F.3d 655 (4th Cir. 2018) (holding that theft under Md. CR §7-104 is not a CIMT).

[114] There is no precedential decision on point. The BIA held recently in an unpublished decision that §6-301 was nondivisible and categorically not a CIMT, as it can punish simple vandalism with no aggravating factors. In Re: S-S-G-W-, AXXX-XXX-447 (BIA April 17, 2019). *See also* Juan Benito Aguilar-Trejo, A209 215 828 (BIA Oct. 31, 2019) (Fla. malicious destruction is not a CIMT because no aggravating factors). However, there is an earlier (also unpublished) BIA decision holding that §6-301 *is* a CIMT, so criminal defense counsel should proceed with caution. In re: Bilal Shaikh, A90 646 350 (BIA March 22, 2006). Immigration attorneys should argue that §6-301 is not a CIMT.

[115] Simple trespass does not involve moral turpitude and is not a CIMT. *See Matter of M-*, 2 I. & N. Dec. 721, 723 (BIA 1946) (finding that breaking and entering another's property without the intent to commit a CIMT on the premises is not itself a CIMT). *See also Matter of L-V-C-*, 22 I. & N. Dec. 594 (BIA 1999) (holding that the language of a statute must require an evil intent to constitute a CIMT); *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1018 (9th Cir. 2005) (acknowledging the BIA's finding that "trespass may be deemed to involve moral turpitude only if accompanied by the intent to commit a morally turpitudinous act after entry"). Sections 6-402 and -403 do not require intent to commit a morally turpitudinous act.

[116] Both the BIA (in unpublished decisions) and the 4th Circuit have held that §7-104, the consolidated theft statute, is nondivisible and sweeps more broadly than the generic federal definition of theft. *Martinez v. Sessions*, 892 F.3d 655 (4th Cir. 2018) (in the context of a CIMT challenge); *In re: Clayton Hugh Anthony Stewart*, A043-399-408 (BIA, Feb. 11, 2015); In re: Vera Sama (BIA March 22, 2017) (reaffirms prior decision following remand from Attorney General that Md. CR §7-104 is not divisible and thus never an aggravated felony theft offense). Both BIA decisions found that the nondivisible offense is not an aggravated felony. *See also, US v. Lopez-Collado*, CR-ELH-14-00486, at 41 (D.Md. May 11, 2015) (finding no aggravated felony in the context of an illegal reentry prosecution).

[117] *Martinez v. Sessions*, 892 F.3d 655 (4th Cir. 2018), holding that theft under Md. CR §7-104 is not a CIMT. The BIA has held in an unpublished decision that theft under Md. CR §7- 104 is not a CIMT under *Martinez. Ali Mohamed Salekh*, A089 166 921 (BIA Oct. 10, 2018).

[118] There is no case law directly on this offense, but it should be found to not be an aggravated felony, for the same reasons that §7-104 is not. Furthermore, it does not punishes the withholding of property that deprives the owner of any part of the value, therefore does not meet the federal generic definition of theft, which requires at least a temporary taking that deprives the owner of substantial value. *See Martinez v. Sessions*, 892 F.3d 655 (4th Cir. 2018). Its *de minimis* deprivations of property are analogous to the VA statute found by the 4th Circuit to categorically *not* be a theft offense. *Castillo v. Holder*, 776 F.3d 262 (4th Cir. 2015) (finding VA §18.2-102, unauthorized use of a motor vehicle, not to be an aggravated felony theft offense).

[119] There is no case law directly on this offense, but it should be found to not be a CIMT, for the same reasons that §7-104 is not. *Martinez v. Sessions*, 892 F.3d 655 (4th Cir. 2018), holding §7-104 to not be a CIMT because it punishes *de minimis* takings that do not substantially erode the value of the property, not meeting the BIA's test for turpitude in *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016).

[120] This statute is unlikely to be an aggravated felony in the 4th Circuit because it includes *de minimis* deprivations of property, requires no intent to deprive, and is analogous to the VA statute found by the 4th Circuit to categorically *not* be a theft offense. *Castillo v. Holder*, 776 F.3d 262 (4th Cir. 2015) (finding VA §18.2-102, unauthorized use of a motor vehicle, not to be an aggravated felony theft offense). *See also Martinez v. Sessions*, 892 F.3d 655 (4th Cir. 2018).

[121] This offense requires no intent to deprive the owner of property nor does it require a taking that appropriates any of the value of the property, required elements of a CIMT theft offense, per the BIA's *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016). *In re Lakeysha P.*, 106 Md. App. 401, 415, 665 A.2d 264, 271 (1995) (The "Unauthorized Use Statute" [has] *no element of "an intent permanently to deprive the possessor of the item taken.*").

[122] This offense has been held by the Md. Court of Appeals to involve misrepresentation. *Attorney Grievance Comm'n of Maryland v. Shaffer*, 305 Md. 190, 195-96, 502 A.2d 502, 505 (1986). It is therefore a crime involving deceit, and if the record of conviction reveals that the loss to the victim exceeds $10,000, it will be an aggravated felony. It is clear from the statute that §8-103 is *not* a theft offense. Md. CR §7-107(a) provides for additional false representation and deception elements that are required before passing a bad check under §8-103 will be considered theft. *Murphy v. State*, 100 Md. App. 131, 135, 640 A.2d 230, 232 (1994).

[123] In order to find a CIMT for a bad check offense, the BIA requires that a specific intent to defraud be an element of the offense. *Matter of Balao*, 20 I. & N. Dec. 440, 444 (BIA 1992)(" with regard to worthless check convictions, moral turpitude is not involved if a conviction can be obtained without prior proof that the convicted person acted with intent to defraud."); *Matter of Zangwill*, 18 I. & N. Dec. 22 (BIA 1981)(no CIMT without intent to defraud despite element of "knowing" issuance of worthless checks); *Matter of Stasinski*, 11 I. & N. Dec. 202 (BIA 1965)(no CIMT where statute included no intent to defraud and provided that "intent not to pay" element could be inferred from insufficient funds at the time the check was presented). Md. CR §8-103 does not include a specific intent to defraud. *Attorney Grievance Comm'n of Maryland v. Shaffer*, 305 Md. 190, 196, 502 A.2d 502, 505 (1986). In fact, an intent to defraud element was *removed* from a predecessor statute. *Id.* Furthermore, the Md. statute, like the statute in *Stasinski, supra*, also provides for an inference of intent not to pay from insufficient funds when check presented within 30 days. CR §8-104(b)(2).

[124] Subsection (a)(1)(i) does not require any intent to deprive the owner of property or any deprivation or loss of value, so it should not be a theft offense. Subsections (a)(1)(ii) thru (d) include an intent to deprive or misuse the card and so could be charged as offenses of theft or fraud. There should be arguments against these interpretations.

[125] Subsection (a)(1)(i) does not require any intent to deprive the owner of property or any deprivation or loss of value, so it should not be a CIMT theft offense. Subsections (a)(1)(ii) thru (d) include an intent to misuse a card with knowledge that it is stolen or circumstances in which there should be knowledge and so are likely to be CIMTs.

[126] INA § 101(a)(43)(S), 8 USC § 1101(a)(43)(S) includes offenses of perjury and subornation of perjury as aggravated felonies where a sentence of a year or more is imposed.

[127] *Matter of Martinez-Recinos*, 23 I. & N, Dec. 175 (BIA 2001) (finding that perjury is a CIMT).

[128] INA § 101(a)(43)(S), 8 USC § 1101(a)(43)(S) includes offenses of obstruction of justice as aggravated felonies where a sentence of a year or more is imposed.

[129] *United States v. Aparicio-Soria*, 740 F.3d 152 (4th Cir. 2014) (en banc) (holding that resisting arrest under Md CR § 9-408 and Maryland common law are categorically not crimes of violence).

[130] *See* INA § 101(a)(43)(M) , 8 USC § 1101(a)(43)(M) (stating that crimes involving fraud for which the loss is greater than $10,000 are aggravated felonies). *See also Nijhawan v. Holder*, 129 S.Ct. 2294, 2298 (2009) (the $10,000 threshold "applies to the specific circumstances surrounding an offender's commission of a fraud and deceit crime on a specific occasion" and thus the provision requires a "circumstance-specific" interpretation).

[131] It is unclear whether the various offenses of false statements to law enforcement will be held to be CIMTs. Section 9-503 is likely the safest plea because it does not require any intent to deceive. Sections 9-501 and 9-502 include an "intent to deceive," which would normally indicate turpitude. *See*, e.g., *Padilla v. Gonzales*, 397 F.3d 1016 (7th Cir. 2005).

At any rate, where an individual has no other CIMTs on her record, these false statement offenses fall within the "petty crime" exceptions to the CIMT provisions because their maximum penalty is 6 months imprisonment. 8 U.S.C. §1227(a)(2)(A)(i)(I) (exception for inadmissibility). 8 U.S.C. §1182(a)(2)(ii)(II) (exception for removability). The petty crime exception applies only if the individual has no prior CIMTs.

[132] 8 U.S.C. §1182(a)(2)(ii)(II) (petty offense exception to CIMT ground of inadmissibility); and 8 U.S.C. §1227(a)(2)(A)(i)(I) (petty offense exception to removability).

[133] Disorderly conduct is a regulatory offense and not a crime involving moral turpitude. 9 U.S. Dep't of State, *Foreign Affairs Manual (FAM)*, § 40.21(a) N.2.3-2(b); *Lewis v. Frick*, 189 F. 146 (D. Mich. 1911), rev'd on other grounds, 195 F. 693 (6th Cir. 1911), aff'd, 233 U.S. 291, 58 L.Ed. 967 (1914) (disorderly conduct not CIMT where non-sexual offense of housebreaking).

[134] In order to be a CIMT, indecent exposure must require a lewd or lascivious intent. *Matter of Cortes Medina*, 26 I&N Dec. 79, 82-83 (BIA 2013). The elements of Maryland's offense of indecent exposure are established by common law. It is a general intent crime that requires only that a person expose him- or herself at such a time and place that a reasonable person should know the act would be observable by others. *Ricketts v. State*, 291 Md. 701, 709, 436 A.2d 906, 910-11 (1981). Intent in the Md offense can range from specific intent to negligence. *Id.*

[135] In *In re Lopez-Meza*, the BIA defined the act of an "aggravated DUI," which involved driving on a suspended license while committing a DUI, as a crime of moral turpitude. However, the violation is not a CIMT if it does include the DUI. *In re Lopez-Meza*, 22 I. & N. Dec. 1188, 1194 (1999).

[136] In *Leocal v. Ashcroft*, the Supreme Court held that the violation of driving while under the influence and causing serious bodily injury lacks the *mens rea* requirement necessary to qualify as a crime of violence (triggering 8 U.S.C. § 16 (a) or (b)). *Leocal v. Ashcroft*, 543 U.S. 1, 125 (2004).

[137] In *Matter of Torres-Varela*, the BIA found that aggravated "driving under the influence of alcohol" lacks the *mes rea* requirement, even when it is the individual's third conviction of a DUI. *Matter of Torres-Varela*, 21 I. & N. Dec. 78 (BIA 2001). (*en banc*). The BIA distinguished this case from *Matter of Lopez-Meza*, in which it held that driving under the influence with the *knowledge* that one's license is suspended provides the *mens rea* for this violation to be a CMT. *Matter of Lopez-Meza*, 21 I. & N. Dec. 1188 (BIA 1999).

[138] *Matter of Castillo Perez*, 27 I&N Dec. 664 (A.G. 2019) (2) Evidence of two or more convictions for driving under the influence during the relevant period establishes a presumption that an alien lacks good moral character under INA § 101(f), 8 U.S.C. § 1101(f). *See also Matter of SINIAUSKAS*, 27 I&N Dec. 207 (BIA 2018). DUI/DWI is a significant adverse consideration in determining whether an alien is a danger to the community in bond proceedings. Attorneys should reference current ICE prosecutorial discretion guidance to determine likely priority for people with DUI/DWI convictions. Given the possibility that this guidance can change, defense counsel should avoid these offenses when possible.

[139] *Supra* Note 89.

[140] *Supra* Note 90.