ABBREVIATED CHART
FOR CRIMINAL DEFENSE PRACTITIONERS
OF THE IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS
UNDER MARYLAND STATE LAW[1]

2/4/11 Revision

Introduction and a Disclaimer to Users:

This chart explains the immigration consequences that arise from criminal convictions under Maryland law. It is intended for use by criminal practitioners representing immigrant clients, and therefore does not encompass every possible argument for avoiding a particular immigration consequence that an immigration attorney would make before an immigration official. The chart is organized numerically by section of the Maryland Code.

Immigration consequences of crimes are complex. The 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. This chart is not to be used as a final authority on whether a given conviction would render any individual deportable, but rather as an introduction to the categories of consequences that are likely to arise under the Maryland Code. Consult an immigration practitioner for case-specific advice on representing your immigrant client in criminal proceedings.

The information contained in this chart is intended to be a resource tool only, and is not meant to replace original research.

Please see important warnings on page 2.

For the most up-to-date version of the chart, please go to:
http://www.law.umaryland.edu/faculty/Msweeney/ImmigrationConsequencesChart.pdf.

With comments or charges you would like to see added to the chart, please contact Maureen Sweeney at msweeney@law.umaryland.edu.

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. The following *non-exclusive* list of warnings is especially noteworthy for criminal defenders in Maryland.

PROBATION BEFORE JUDGMENT IS A CONVICTION

A probation before judgment in Maryland is a conviction for immigration purposes according to the federal statutory definition of a conviction. 8 U.S.C. §1101 (a)(48)(A).

TEMPORARY PROTECTED STATUS

Temporary Protected Status is unavailable to anyone with one felony or two misdemeanor convictions. 8 C.F.R. §244.4(a). For purposes of TPS, a felony is defined as a crime any crime committed in the United States punishable by imprisonment for more than one year, regardless of the term actually served, except when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less. Under this exception, and only for purposes of TPS, the crime will be treated as a misdemeanor. 8 C.F.R.§ 244.1. Additionally, a misdemeanor is any crime with a maximum possible penalty of one year or less. *Id.* Salvadoran and Haitians among other groups are eligible for TPS in the United States. For a complete list of TPS eligible please visit the TPS page on the U.S. Citizenship and Immigration Service website.

ATTEMPTS AND CONSPIRACIES ARE AGGRAVATED FELONIES

Attempts and conspiracies to commit crimes aggravated felonies are themselves aggravated felonies under INA 101(a)(43)(U).

CRIMES INVOLVING MORAL TURPITUDE

Practitioners should note that the Attorney General's opinion in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008) significantly changed the categorical approach to determining Crimes Involving Moral Turpitude. In certain circumstances, an immigration judge may now be permitted to look beyond the statute and into the record of conviction to determine if moral turpitude was present in the commission of a crime. Practitioners should work to keep the record clear of references to moral turpitude to avoid immigration consequences. For more information please see the nationally relevant discussion of *Silva-Trevino* in *The Quick Reference Guide to California Convictions* at N.64-69, available at http://www.ilrc.org/immigration_law/criminal_and_immigration_law.php.

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL §1-301 Common Law Crime: Accessory After the Fact	Yes, if sentence ≥ 1 year. (S) (Obstruction of Justice).	Possibly[2]	Not a controlled substance offense; likely not a firearms offense.	F 5 yrs; or max. poss. sentence of underlying F, whichever is less.	Keep sentence < one year to avoid AF. This is a good alternative plea to CL §4-204, CL§ 5-601(a)(2), CL§ 5-602, CL§ 5-604. In some circumstances, accessory after the fact could be a good alternate plea, even if CIMT. Consult an immigration atty.
Common Law Resisting Arrest	No	Possibly[3]		M	To make sure to avoid aggravated felony, record of conviction should reflect a refusal to submit to arrest rather than active resistance. Keep record of conviction free of mention of any use of a weapon.[4]
CL § 2-201 Murder – First degree	Yes *Under subsection (A) (murder, rape or sexual abuse of minor)	Yes			
CL § 2-204 Murder – Second degree	Yes *Under subsection (A) (murder, rape or sexual abuse of minor)	Yes			

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL § 2-205 Murder – Attempt – First Degree	Yes *Under subsection (A) (murder, rape or sexual abuse of minor)	Yes			
CL § 2-206 Murder – Attempt – Second Degree	Yes. *Under subsection (A) (murder, rape or sexual abuse of minor)	Yes.			
CL § 2-207 Manslaughter	Possibly. Voluntary manslaughter would likely be a crime of violence (and thus an aggravated felony if sentence ≥ 1 year).[5] *Under subsection (F) (crime of violence) Involuntary manslaughter is not an aggravated felony.[6]	Yes.[7]			Where possible, plead specifically to involuntary manslaughter to avoid an aggravated felony.
CL § 2-209 Manslaughter – by vehicle or vessel	No[8]	Yes[9]		F	

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)? See warning: this law is in flux.	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
CL § 3-202 Assault – First degree	Yes, if sentence imposed ≥ 1 year[10] *Under subsection (F) (crime of violence)	Yes[11]	Possible firearms ground[12]		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. CL § 3-203) with a sentence < 1 year.
CL § 3-203 Assault – Second degree	Likely, if the record shows use of violent force and if sentence imposed is ≥ 1 year [13] * Under subsection (F) (crime of violence)	Possibly.[14]	Possible ground of domestic violence or crime against a child.	M 10Y	Keep sentence < 1 year. If possible, keep the record free of reference to the use of violence force that cause injury to the victim, and also reference to moral turpitude. Avoid mention of the victim's identity if s/he is a child or family member to try to avoid deportability for domestic violence or crime against a child.[15]

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL § 3-204 Reckless Endangerment	No[16]	Yes			Alternate plea: Second degree assault (Md. CL § 3-203) with a sentence < 1 year. Alternate plea where vehicle is involved: Life-threatening injury by motor vehicle or vessel while under the influence/impaired (CL § 3 –211(c)).
CL § 3 –211(c) Life-threatening injury by motor vehicle or vessel while under the influence of alcohol	No[17]	No[18]		M 3Y	
CL § 3 –211(d) Life-threatening injury by motor vehicle or vessel while impaired by alcohol	No[19]	No[20]		M 2Y	
CL § 3-211(e) Life-threatening injury by motor vehicle or vessel while impaired by drugs	No[21]	No[22]	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.

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL § 3-211(f) Life-threatening injury by motor vehicle or vessel while impaired by a controlled dangerous substance	No[23]	No[24]	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.
CL § 3-303 Rape – First degree	Yes *Under subsection (A) (murder, rape or sexual abuse of minor)	Yes		F	
CL § 3-304 Rape – Second degree	Yes[25] *Under subsection (A) (murder, rape or sexual abuse of minor)	Yes		F	Alternate plea: Second degree assault (Md. CL § 3-203) with a sentence < 1 year.
CL § 3-305 Sexual Offense – First degree	Yes if sentence ≥ 1 year * Under subsection (F) (crime of violence)	Yes		F	Alternate plea: Second degree assault (Md. CL § 3-203) with a sentence < 1 year.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)? See warning: this law is in flux.	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
CL § 3-306 Sexual Offense – Second degree – sexual act by force or threat or with disabled person or child under 14	Yes[26] if victim is a child or if the sentence is ≥ 1 year * Under subsection (A) (murder, rape or sexual abuse of minor) or under subsection (F) (crime of violence) Note: Convictions for sexual abuse of a minor are aggravated felonies regardless of length of sentence.	Yes	Possible crime against a child or crime of domestic violence.	F 20Y	Alternate plea: Second degree assault (Md. CL § 3-203) with a sentence < 1 year. If trying to substitute a second degree assault charge, keep record of conviction clear of reference to victim's age or capacity.[27]

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)? See warning: this law is in flux.	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
CL § 3-307 Sexual Offense – Third degree – sexual contact (1) without consent and with dangerous weapon, injury, threats, assistance, or (2)-(5) with disabled or child victim	Yes[28] if victim is a child or if the sentence is ≥ 1 year. * Under subsection (A) (murder, rape or sexual abuse of minor) or (F) (crime of violence if sentence ≥ 1 year) Note: Convictions for sexual abuse of a minor are aggravated felonies regardless of length of sentence.	Yes	Possible firearms, crime against a child or crime of domestic violence.	F	Alternate plea: Second degree assault (Md. CL § 3-203) with a sentence < 1 year. Keep sentence < 1 year.

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)? See warning: this law is in flux.**	**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**
CL § 3-308 Sexual Offense – Fourth degree	Yes if victim is a child. Likely if sentence ≥ 1 year.[29] *Under subsection (A) (murder, rape or sexual abuse of minor), (F) (crime of violence) Note: Sexual abuse of a minor is an aggravated felony regardless of length of sentence	Yes	Possible crime against a child or crime of domestic violence	M	Keep sentence < 1 year.
CL § 3-309 Rape – Attempt – First degree	Yes[30] *Under subsection (A) (murder, rape or sexual abuse of minor), (U) (attempt)	Yes		F	

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL § 3-310 Rape – Attempt– Second Degree	Yes[31] *Under subsection (F) (crime of violence) or under subsection (A) (murder, rape or sexual abuse of minor) – follows § 3-304, (U) (attempt)	Yes		F	Alternate plea: Second degree assault or attempt (Md. CL § 3-203) with a sentence < 1 year. If trying to substitute a second degree assault charge, keep record of conviction clear of reference to victim's age or capacity.[32]
CL § 3-311 Sexual Offense – Attempt – First Degree	Yes, if sentence ≥ 1 year *Under subsection (F) (crime of violence), (U) (attempt)	Yes		F	Alternate plea: Second degree assault (Md. CL § 3-203) with a sentence < 1 year.
CL § 3-312 Sexual Offense – Attempt – Second Degree	Yes, if sentence ≥ 1 year *Under subsection (F) (crime of violence), (U) (attempt)	Yes	Possible crime against a child or crime of domestic violence	F	Alternate plea: Second degree assault (Md. CL § 3-203) with a sentence < 1 year. Keep record of conviction clear of reference to victim's age or capacity.[33]

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL § 3-314 Sexual conduct between correctional or Div of Juv Justice employee and inmate	Very likely,[34] if an adult victim if sentence ≥ 1 year *Under subsection (F) (crime of violence); Yes, if victim is a minor regardless of sentence *Under subsection (A) (murder, rape or sexual abuse of a minor)	Yes	Possible crime against a child	M 3Y	Alternate plea: Second degree assault (Md. CL § 3-203) with a sentence < 1 year. If possible, keep record of conviction free of reference to victim's age.[35]
CL § 3-315 Continuing course of conduct with child	Yes *Under subsection (A) (murder, rape or sexual abuse of a minor)	Yes	Crime against a child	F 30 Y	
CL § 3-323 Incest	No	Possibly[36]	Could be crime against a child	F 10Y	Alternate plea: Second degree assault (Md. CL § 3-203) with a sentence < 1 year. Keep record of conviction free of reference to family relationship or age of child victim.[37]

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL § 3-402 Robbery	Yes, if sentence ≥ 1 year *Under subsection (G) (theft or burglary); (F) (crime of violence)	Yes		F	Keep sentence < 1 year.
CL § 3-402 Robbery – Attempt	Yes, if sentence ≥ 1 year *Under subsection (G) (theft or burglary), (U) (attempt)	Yes		F	Keep sentence < 1 year.
CL § 3-403 Robbery with a dangerous weapon	Yes, if sentence ≥ 1 year *Under subsection (G) (theft or burglary); (F) (crime of violence)	Yes	No firearms offense[38]	F	Keep sentence < 1 year. Keep record free of mention of a firearm, to be certain to avoid firearms offense.
CL §3-403 Robbery with a dangerous weapon – Attempt	Yes, if sentence ≥ 1 year *Under subsection (G) (theft or burglary); (F) (crime of violence), (U) (attempt)	Yes	No firearms offense[39]	F	Keep sentence < 1 year. 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)?** **See warning: this law is in flux.**	**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**
CL §3-601 Child Abuse	No	Yes	Crime against a child and possible crime of domestic violence.	F 25Y	Alternate plea: Second degree assault (Md. CL § 3-203) with a sentence < 1 year and keeping record of conviction free of reference to family relationship or age of victim.[40]
CL §3-602 Sexual abuse of a minor	Yes *Under subsection (A (murder, rape or sexual abuse of a minor)	Yes	Crime against a child; possible crime of domestic violence	F	
CL §3-604 Abuse or Neglect of a Vulnerable Adult in the first degree	Yes, if sentence ≥ 1 year, and the offense involved the use of force* Under subsection (F) (crime of violence)	Yes[41]	Possible crime of domestic violence	F 10 yrs, $10,000, or both	Second degree assault could be a safe, alternative plea in two situations: (1) If the sentence imposed is under a year and the record is completely clear of information regarding special relationship, or (2) there is no proof in the record that there was use of violent force (regardless of the sentence imposed)

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)? See warning: this law is in flux.	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
CL §3-605 Abuse or Neglect of a Vulnerable Adult in the Second Degree	Yes, if sentence ≥ 1 year, and the offense involved the use of force* Under subsection (F) (crime of violence)	Yes[42]	Possible crime of domestic violence	F 5 yrs, $5,000, or both	Second degree assault could be a safe, alternative plea in two situations: (1) If the sentence imposed is under a year and the record is completely clear of information regarding special relationship, or (2) there is no proof in the record that there was use of violent force (regardless of the sentence imposed)
CL § 3-802 Stalking	Possibly, if sentence ≥ 1 year[43] *Under subsection (F) (crime of violence)	Likely[44]	Crime of stalking (INA § 237(a(2)(E))	M	Keep sentence < 1 year. Alternate plea: Harassment (Md. CL § 3-803).
CL § 3-803 Harassment	No	Yes, but defendant may qualify for petty crimes exception. (See suggestion)		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. §1227(a)(2)(A)(i)(I). It also has a maximum possible sentence of less than one year and will not be a CIMT for purposes of removability if defendant has no prior CIMT. 8 U.S.C. §1182(a)(2)(ii)(II).

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL § 4-101 Carrying a dangerous weapon – concealed or with intent to use[45]	No[46]	Possibly. Divisible statute.[47]		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.[48]
CL § 4-203 Wearing, carrying or transporting a handgun	No[49]	Possibly[50]	Firearms offense	M 10Y	
CL § 4-204 Use of handgun or antique gun in crime of violence	Yes *Under subsection, (F) (crime of violence)	Yes	Divisible offense: firearms offense if plea to use of handgun		Not necessarily a firearms offense because antique guns are not included in the analogous federal statute. Consider plea to MD §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

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL § 5-601(a)(1) Controlled dangerous substance – Not marijuana -- Possessing or administering	Administering: No Possessing: First offense, No; Subsequent offense, Yes if based on recidivist sentencing[51] *Under subsection (B) (illicit trafficking in a controlled substance)	No[52]	YES! Controlled substances offense	M 4Y	Plead to administering or leave the record of conviction unclear as to whether conviction is for possession or administering. Alternate plea: Possession of drug paraphernalia (Md. CL § 5-619)(still a controlled substances offense, but not an aggravated felony).
CL § 5-601(a)(1) Controlled dangerous substance – Marijuana -- Possessing or administering	Administering: No Possessing: First offense, No; Subsequent offense, Yes if based on recidivist sentencing	No[53]	YES! Controlled substances offense, unless it is a single offense for personal use involving less than 30 grams[54]	M 1Y	Keep amount of marijuana out of the record or specify that it was under 30 grams and for personal use.

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL § 5-601(a)(2) Controlled dangerous substance -- Obtaining by fraud or deceit	Yes *Under subsection (B) (illicit trafficking in a controlled substance)	Yes	Controlled substances offense	M 4Y	Consider plea to MD §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.
CL § 5-602 Controlled dangerous substance – manufacture, distribute, dispense or possession with intent	Yes *Under subsection (B) (illicit trafficking in a controlled substance)	Yes	Controlled substances offense	F up to 20Y	Consider plea to MD §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.[55]
CL § 5-604 Counterfeit Substance	Yes[56] *Under subsection (B) (illicit trafficking in a controlled substance)	Yes[57]	Controlled Substances Offense	F up to 5 Y for 1st offense	Consider plea to MD §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

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)? See warning: this law is in flux.	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
CL § 5-617 Distributing faked controlled dangerous substance	Possibly, if construed as a fraud offense with losses that exceed $10,000[58] *Under subsection (M)(i) (fraud or deceit with loss to victim that exceeds $10,000)	Yes[59]		F 5Y	Alternate plea: Possession or purchase of non-controlled substance (Md. CL § 5-618). Keep the record clear of the value of loss (or potential loss) greater than $10,000.
CL § 5-618 Possession or purchase of non-controlled substance	No	No[60]			
CL § 5-619 Drug paraphernalia	No[61]	No[62]	Controlled substances offense	M 2Y for 2nd or later conviction	
CL § 5-621 Use or possession of a firearm in a drug trafficking crime	Yes *Under subsection (B) (illicit trafficking in a controlled substance), (E) (firearms offense)	Yes	Firearms offense	F 20Y	Alternate plea: Possession of handgun (Md. CL § 4-203).
CL § 5-622 Felon in possession of firearm	Yes *Under subsection (E) (firearms offense)	Yes	Firearms offense	F 5Y	Alternate plea: Possession of handgun (Md. CL § 4-203).

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL §§ 6-102 to -105 Arson/Malicious Burning	Yes[63] *Under subsection (F) (crime of violence)	Yes[64]			
CL § 6-202 Burglary – First degree – breaking and entering a dwelling with intent to commit theft or a crime of violence.	Yes, if sentence is ≥ 1 year *Under subsection (G) (theft or burglary), F (crime of violence)	Possibly. Divisible statute.[65]		F 20Y	Keep sentence < 1 year. To avoid CIMT have the record reflect an intent to commit a crime that is not a crime involving moral turpitude. Alternate pleas: Third degree burglary (Md. CL § 6-204) with sentence of < 1 year, or fourth degree burglary (Md. CL § 6-205).
CL § 6-203(a) Burglary – Second degree – breaking and entering storehouse with intent to commit theft, violence, or arson or to steal a firearm	Likely, if sentence is ≥ 1 year[66] *Under subsection (G) (theft or burglary), (F) (crime of violence)	Likely[67]	Possible firearms offense if convicted under § 6-203(b)	F 15Y	Keep sentence < 1 year. Have the record affirmatively reflect an intended crime that is not a CIMT (will be difficult given the elements of this sub-section). Avoid mention of firearm. Alternate pleas: Third degree burglary (Md. CL § 6-204) with sentence of < 1 year, or fourth degree burglary (Md. CL § 6-205).

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)? See warning: this law is in flux.	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
CL § 6-204 Burglary – Third degree – breaking and entering a dwelling with intent to commit a crime	Yes, if sentence is ≥ 1 year *Under subsection (G) (theft or burglary), (F) (crime of violence)	Possibly[68]		F 10 Y	Keep sentence < 1 year. Have the record affirmatively reflect an intent to commit a crime that is not a CIMT (for example, trespass will most likely not be a CIMT and would be a safe intended crime).
CL § 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	Possibly, if sentence ≥ 1 year. Divisible statute.[69] *Under subsection (G) theft or burglary), (F) (crime of violence)	Possibly – divisible statute.[70]		M 3Y	Plead to § 6-205 generally, not to subsection (c). Keep sentence < 1 year if plea is to subsection (c). Have the record affirmatively reflect facts that do *not* involve moral turpitude and no intent to commit a CIMT. (Simple trespass will most likely not be a CIMT and would be a safe intended crime.)

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)? **See warning: this law is in flux.**	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
CL § 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	Possibly, if sentence ≥ 1 year – divisible statute[71] *Under subsection (G) theft or burglary)	Possibly – divisible statute. [72]		3Y	Do not plead to subsection (b); rather plead to the section generally or to subsection (a); and create a record of conviction that shows no intent to commit theft or other CIMT.[73] Keep sentence < 1 year.
CL §6-301 Malicious Destruction of Property	Yes, if sentence ≥ 1 year and record of conviction shows a use or threat of physical force *Under subsection (F) (crime of violence)	Yes		F if >$500-3 YRS. M. if < $500-60 D.	Plead specifically to damage > $500 or keep the record free of evidence that shows the threat or use of physical force and damage > $500.

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL § 6-402 to -403 Trespass	No	Unlikely (see suggestions and footnote)[74]		M 90D &/or $500 fine	If possible, have record of conviction affirmatively reflect facts that show no moral turpitude and the lack of intent to commit a CIMT once on the premises.[75] 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. §1227(a)(2)(A)(i)(I). It also has a maximum possible sentence of less than one year and will not be a CIMT for purposes of removability if defendant has no prior CIMT. 8 U.S.C. §1182(a)(2)(ii)(II).

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)? **See warning: this law is in flux.**	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
CL § 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	Possibly, if sentence is ≥ 1 year – divisible statute[76] *Under subsection (G) theft or burglary)	Possibly – divisible statute. Moral turpitude if record of conviction shows intent to permanently deprive owner of property or deception. (see suggestions). [77]		<$100 – 9 Mo. <$1000 – 18 Mo. <$10,000 – 10 Y <$100K – 15 Y And/or fines of $500 -- $25,000	Keep sentence < 1 year. Include fines as part of penalty and waive credit for time served, and/or stack separate counts. Keep record free of reference to whether property or services were stolen to avoid aggravated felony. Pleading to <$100 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. §1227(a)(2)(A)(i)(I). It also has a maximum possible sentence of less than one year and will not be a CIMT for purposes of removability if defendant has no prior CIMT. 8 U.S.C. §1182(a)(2)(ii)(II). Have record show affirmatively a lack of intent to permanently deprive victim of property and lack of deception in order to avoid crime of moral turpitude.[78]

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?** **See warning: this law is in flux.**	**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**
CL § 7-105 Theft or unauthorized use of a motor vehicle	Yes, if sentence if sentence ≥ 1 year[79] *Under subsection (G) theft or burglary)	Possibly – divisible statute. Moral turpitude if record or evidence shows intent to permanently deprive owner of property[80]		F 5Y	
CL §§ 9-101 to -102 Perjury/ Subornation of Perjury	Yes, if sentence ≥ 1 year[81] *Under subsection (S) (obstruction of justice)	Yes[82]		M 10Y	Keep sentence < 1 year.
CL § 9-306 Obstructing Justice	Yes, if sentence ≥ 1 year[83] *Under subsection (S) (obstruction of justice)	Yes		M 5Y	Keep sentence < 1 year.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)? See warning: this law is in flux.	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
CL §§ 9-501 to -503 False Statement to law enforcement	No, unless the misrepresentation results in a loss (or attempted loss) of > $10,000.[84] * Under subsection (M)(i) (fraud or deceit with loss to victim that exceeds $10,000)	Possibly (see suggestions).[85]		M: 6 Mo. or $500 fine	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. §1227(a)(2)(A)(i)(I). It also has a maximum possible sentence of less than one year and will not be a CIMT for purposes of removability if defendant has no prior CIMT. 8 U.S.C. §1182(a)(2)(ii)(II).
CL § 10-201 Disorderly conduct/ disturbing the peace	No	Possibly.[86]		M: 60D	Have record reflect lack of facts involving moral turpitude.

NOTE on TRAFFIC OFFENSES: IF A TRAFFIC OFFENSE DOES NOT CARRY JAIL TIME, IT WILL MOST LIKELY NOT HAVE A RESULTING IMMIGRATION CONSEQUENCE. THEREFORE, IT IS NOT LISTED IN THIS CHART.

Immigration Consequences of **Maryland Transportation Citations**

OFFENSE (MD. Transp. Code)	IS IT AN AGGRAVATED FELONY?	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)? See Warning: This law is in flux	ARE THERE OTHER GROUNDS OF REMOVEABILITY? (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[87]	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[88]	No[89]	No	2 years; 2nd + offense: 3 years; 3rd + offense: 4 years.	Safe plea
§ 21-902 (d) - Drive or attempt to drive any vehicle while impaired by any controlled substance; or while transporting a minor.	No[90]	No[91]	Controlled Substances Offense	2 years; 2nd + offense: 3 years; 3rd + offense: 4 years.	

[1] © 2005 Maryland Office of the Public Defender and University of Maryland School of Law Clinical Law Office. This chart has been a cooperative effort begun with the help of the Maryland Office of the Public Defender and researched and written by the University of Maryland School of Law Clinical Law Office, represented by Maureen A. Sweeney, with the assistance of Fernando A. Nuñez and many talented law student researchers, including, most recently, Margot, Kniffin, Hillary Scholten, Adam Crandell, and Maureen Contreni. Our work was initially aided by the assistance of the National Legal Aid and Defender Association Defending Immigrants Partnership, the National Immigration Project of the National Lawyers Guild, and funding from the Open Society Institute.

[2] 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 avoid apprehension or punishment).

[3] *Matter of Logan*, 17 I & N Dec. 367 (BIA 1980) (finding interference with a police officer by use of a deadly weapon is a CIMT). *See also Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above. Courts can now look at the facts of an individual case to determine possible moral turpitude, and many factual situations involving charges of resisting arrest won't involve egregious facts, so this may be a favorable disposition.

[4] *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[5] Manslaughter is defined in Maryland by the common law and can be either voluntary or involuntary.

Voluntary manslaughter will likely be found 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 because it could encompass actions, such as poisoning, which would not involve the use of force. However, since many courts would likely find voluntary manslaughter to be a *crime of violence*, it is prudent to avoid a conviction if possible.

Involuntary manslaughter is not a *crime of violence*. *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005). *See infra* note 3.

Because the general crime of manslaughter could be either an aggravated felony (if voluntary) or not (if involuntary), it is said to be a divisible offense. Where a statute is divisible, the court must look to the record of conviction to discover the exact nature of the offense for which the respondent is convicted. *Leocal v. Ashcroft*, 125 S. Ct. 337 (2004); *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966). If it is unclear under which part of the statute a respondent was convicted, the categorical analysis precludes the court from finding an aggravated felony (or a CIMT, where that is the question). *Id*.

However, even though manslaughter is a divisible offense, the record of conviction is likely to indicate whether the manslaughter was voluntary or involuntary, and it is safest for the criminal defense attorney to consider any voluntary manslaughter a likely *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 "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).

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

[9] This statute 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 is a CIMT. *See supra* note 4.

[10] First degree assault involves an assault with a deadly weapon or with specific intent to seriously injure the victim. A crime involving the intentional infliction of bodily harm is a *crime of violence*. *Matter of Martin*, 23 I. & N. Dec. 491 (BIA 2002).

[11] 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).

[12] The "firearms" included within Md. CL § 3-202 include antique firearms (defined at Md. CL § 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 a divisible statute. An argument can be made that in order for a defendant to be found deportable based on a conviction under this section, the record of conviction must (1) specify that a firearm was used *and* (2) identify the type of firearm. To avoid the firearms ground of deportability, 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.

[13] A crime whose elements include the use or threatened use of physical force constitutes a crime of violence under 18 U.S.C. § 16 (a). The Supreme Court held in *Johnson v. United* States, 130 S.Ct 1265 (2010) that "intentional touching" does not rise to the level of "violent force" and therefore the statute at issue in the case was not categorically an aggravated felony. The Court reasoned that the phrase "physical force means *violent* force-that is, force capable of causing physical pain or injury to another person." *Johnson v. United States*, 130 S. Ct. 1265 (2010). CL § 3-203 includes the former common law crimes of assault, battery, and assault and battery and all the judicially ascribed meanings. Battery has been judicially defined as "*any* unlawful force used against the person of another, *no matter how slight.*" *State v. Duckett*, 510 A.2d 253 (1986) (emphasis in the original)(abrogated on other grounds by *Robinson v. State*, 728 A.2d 698 (1999). Therefore, because CL § 3-203 can include force that does not rise to the level of causing physical pain or injury to another person, it is not categorically a crime of violence. The immigration judge will, however, be permitted to review the record of conviction for evidence that the actual crime committed was done with physical force, and in most cases, second degree assault will be found to be a crime of violence.

[14] Under the strict categorical approach, it used to be clear that simple assault was not a CIMT. *Matter of Short*, 20 I&N Dec. 136 (BIA 1989). However, under the former Attorney General's decision in *Matter of Silva-Trevino*, this is no longer the case. 24 I&N Dec. 687 (A.G. 2008).

For a general warning and further information about *Silva-Trevino*, please see the Warning on page 2. *Silva-Trevino* purports to change the CIMT analysis by creating a three-step analysis. The first step requires the court to apply the traditional categorical approach approved by the Supreme Court in *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007). If the elements of an offense *never* or *always* constitute a CIMT, that ends the inquiry. However, if application of the categorical approach does not resolve the issue (that is, the elements of an offense might *sometimes* constitute a CIMT), the court may then proceed to an examination of the record of conviction to see if these particular facts support a CIMT finding. If the record of conviction is inconclusive, the court may then "be permitted to consider evidence beyond that record if doing so is necessary and appropriate to ensure proper application of the Act's moral turpitude provisions." *Matter of Silva-Trevino*, 24 I&N Dec. at 699. The opinion suggests that such an inquiry may even include the immigration judge asking the respondent directly about details of the commission of the crime for which he or she was convicted. *Id*. at 709.

Under *Silva-Trevino*, an immigration court will almost certainly look at the record of conviction to see if a second degree assault included such aggravating factors as a family relationship between the victim and defendant, a child victim, or an intent to harm. The Fourth Circuit, even before *Silva-Trevino*, had shown a willingness to look to the record of conviction to determine whether an assault involved domestic violence. *See*, *Medina v. US*, 259 F3d 220 (4th Cir. 2001) (involving a conviction for simple assault where the victim was the defendant's fiancée). Counsel should try to build a record to show affirmatively that the offense did NOT involve moral turpitude.

[15] *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

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

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

[18] This offense requires a *mens rea* of negligence, and for this reason should be found *not* to be a CIMT, but the law is unsettled. *See Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

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

[20] This offense requires a *mens rea* of negligence, and for this reason should be found *not* to be a CIMT, but the law is unsettled. *See Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

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

[22] This offense requires a *mens rea* of negligence, and for this reason should be found *not* to be a CIMT, but the law is unsettled. *See Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

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

[24] This offense requires a *mens rea* of negligence, and for this reason should be found *not* to be a CIMT, but the law is unsettled. *See Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[25] *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). Immigration lawyers could argue that subsection (a)(2) (prohibiting vaginal intercourse with disabled person) does not necessarily involve the use of force and therefore, is not a *crime of violence* aggravated felony (an issue not addressed in *Wireko*), making the statute divisible. However, given BIA precedent and the likelihood that courts may find conduct under subsection (a)(2) to be a *crime of violence* or the equivalent of rape, criminal defense attorneys should avoid a conviction under this section.

[26] *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). Immigration lawyers could argue that subsection (a)(2) (prohibiting vaginal intercourse with disabled person) does not necessarily involve the use of force and therefore, is not a *crime of violence* aggravated felony (an issue not addressed in *Wireko*), making the statute divisible. However, given BIA precedent and the likelihood that courts may find conduct under subsection (a)(2) to be a *crime of violence* or the equivalent of rape, criminal defense attorneys should avoid a conviction under this section.

[27] *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[28] Immigration lawyers could argue that subsections 3-307(a)(1)(ii)(4) (prohibiting sexual contact without consent and aided or abetted by another) and (a)(2) (prohibiting non-consensual sexual contact with a disabled person) do not involve the use of force and are therefore not *crimes of violence* aggravated felonies (an issue not addressed in *Wireko*) making the statute divisible. However, given the likelihood that courts may nonetheless find a use of force, criminal defense attorneys should avoid any conviction under this section.

[29] This section may be found to be divisible. Subsections 3-308(a)(2) and (a)(3) are sexual abuse of a minor, but subsection (a)(1) (non-consensual sexual contact) may not be a *crime of violence* (and thus, not an aggravated felony). However, many courts find sexual offenses to be *crimes of violence* under 18 U.S.C. § 16(b), as crimes likely to result in the use of force, so it is best to avoid conviction under this section.

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

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

[32] *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[33] *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[34] *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); *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 as a crime likely to result in the use of force). Immigration lawyers could argue that subsection (b) (prohibiting correctional employee from having sex with inmate) does not necessarily involve the use of force and therefore is neither a *crime of violence* aggravated felony (an issue not addressed in *Wireko*) nor rape, making the statute divisible. However, given BIA precedent and the likelihood that courts may find a conviction under this subsection to be a crime of violence, it is advisable for criminal defense attorney to avoid a conviction under this section.

[35] *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[36] If victim is a minor or the incest is committed by a parent on a child , a conviction under this section is almost certainly a CIMT. *See Matter of Y-*, 3 I. & N. Dec. 544 (BIA 1949); *Matter of G-*, 7 I. & N. Dec. 171 (BIA 1956); *Gonzalez-Alvarado v. INS*, 39 F. 3d 245 (9th Cir. 1994). If, however, the crime arises out of a forbidden marital status between adults, such crime is not necessarily a CIMT. *Matter of B-*, 2 I. & N. Dec. 617 (BIA 1946).

[37] *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[38] 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).

[39] 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).

[40] *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[41] *Shakirat Modupe Baruwa v. Caterisano*, 2010 U.S. Dist. LEXIS 60185 (D. Md. June 17, 2010) (holding that this offense qualifies as a CIMT).

[42] *Id.*

[43] *Matter of Hernandez-Sandoval*, A090 062 193 (unpublished BIA dec. Nov. 21, 2001) (finding Cal. stalking statute was not a *crime of violence* and thus, not an aggravated felony, despite language of threat to place victim in reasonable fear of safety since the statute contained no element of the use or threat of force). Note, however, that *Hernandez-Sandoval* is a non-published and therefore a non-precedential decision, and that courts may find the elements of stalking to constitute a threat of violence and therefore a crime of violence aggravated felony if a sentence of a year or more is imposed.

[44] *Matter of Ajami*, 22 I. & N. Dec. 949 (BIA 1999) (holding a Mich. aggravated stalking statute was CIMT).

[45] This section does not apply to carrying a handgun.

[46] *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).

[47] Subsection 4-101(c)(1) is not a CIMT; 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). *See also Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[48] *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[49] *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.

[50] This is a divisible statute. For treatment of divisible statutes that are potential CIMTs, *see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[51] The Fourth Circuit has held that possession of cocaine under Md. CL 5-601(a)(1) is not an aggravated felony. *U.S. v. Amaya-Portillo*, 423 F.3d 427 (4th Cir. 2005). The court held that, because the violation is characterized as a misdemeanor under both Maryland and the referenced federal statutes, it cannot be considered a drug trafficking crime for purposes of the definition of aggravated felony. However, the court did not directly address the question of second and subsequent convictions, which may be treated as felonies under federal law. 21 U.S.C. 844(a). The Supreme Court of the United States addressed the issue of second and subsequent offenses in *Carachuri-Rosendo v. Holder*, 560 U.S. ____ (2010). The Court held that "second or subsequent simple possession offenses are not aggravated felonies under [8U.S.C] §1101(a)(43) when the state conviction is not based on the fact of a prior conviction." However, when a subsequent possession conviction is charged and proven as a recidivist offense Md. Code Ann., Crim. Law § 5-905 (West), an aggravated felony may occur.

Likewise, "administering a controlled substance to another" is also a misdemeanor under Md. CL § 5-601(a)(1). Such conduct does not appear to be prohibited at all under the federal statutes at issue. Therefore, a conviction under Md. CL § 5-601(a)(1) for administering is also not an aggravated felony. Where the record of conviction is unclear as to whether the offense was possession or administering, the conviction should be held not to be an aggravated felony.

[52] Possession of CDS (Controlled Dangerous Substances) has been held not to be a CIMT unless intent to distribute is present. *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[53] *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[54]INA § 237(a)(2)(B)(i).

[55]The BIA has held that the federal accessory after the fact offense (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, however, 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).

[56] Counterfeit substances are controlled dangerous substances as defined by the Maryland Code and the federal Controlled Substances Act. *See* Md. Code, Crim. Law, § 5-604(a) and 21 U.S.C. § 802(7). 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.

[57] "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)).

[58] *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).

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).

[59] "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)).

[60] *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[61] The statute punishes possession, use, or intent to use, but *not* distribution. 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).

[62] *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[63] *See Matter of Palacios-Pinera*, 22 I. & N. Dec. 424 (BIA 1998) (finding arson to be a crime of violence and therefore an aggravated felony under INA § 101(a)(43)(F), 8 USC § 1101(a)(43)(F)). *See also U.S. v. Lee*, 726 F.2d 128 (4th Cir. 1984) (finding arson to be a *crime of violence* under 18 U.S.C. 1952(a)(2)).

[64] *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.").

[65] Where burglary is committed with the intent to commit a CIMT (including theft), then burglary itself has been held to be a CIMT. However, not all *crimes of violence* are CIMTs. For example, simple assault is not a CIMT, but is a *crime of violence*. Accordingly, if the defendant committed first degree burglary with intent to

commit simple assault under this section, the crime would not necessarily be a CIMT. Thus, a defense attorney can assist a client by assuring that the record of conviction contains no reference establishing the crime which the defendant intended to commit upon entry involved moral turpitude or by establishing affirmatively that the intended crime was not one involving moral turpitude. For example, burglary with intent to trespass is generally not a CIMT. *See also Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[66] Second degree burglary under Md. CL § 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. CL § 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.
However, a court may find second degree burglary to be an aggravated felony if it involves an attempted theft or crime of violence. *See*, *U.S. v. Martinez-Garcia*, 268 F.3d 460 (7th Cir. 2001). Courts may also find that second degree burglary is a *crime of violence* under 18 USC § 16(b) as a crime likely to result in the use of force. *See Leocal v. Ashcroft*, 125 S. Ct. 337 (2004). Section 6-203 can be distinguished from the crime of burglary referred to by the *Leocal* court, however, because this section does not involve unlawful entry into a dwelling and thus does not involve the same degree of risk of encounter with an occupant and, therefore, likelihood of the use of force.
In sum, given the uncertainty of the law in this area and the significant possibility that a violation could be held to be an aggravated felony, defense attorneys should avoid a conviction under this section.

[67] An offense that includes as an element the intent to commit a CIMT (including any theft or arson) is itself a CIMT. It is likely that an immigration court would either find that any of the intended crimes in this subsection are CIMTs or that the court is justified under *Silva-Trevino* to inquire into the record and/or facts to determine whether the actual offense involved turpitude. It is very likely that a conviction under this subsection would be found to be a CIMT. *See Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[68] Burglary is a CIMT if the crime the defendant intended to commit after the illegal entry (such as theft) is 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). Courts may also find that burglary with intent to commit a certain crime constitutes an attempt to commit that crime (which would also be a CIMT if the underlying crime is a CIMT). Under *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), a court may inquire into the record of conviction to find moral turpitude, so counsel in these cases should affirmatively create a record that the intended crime was *not* a CIMT.

[69] Subsections (a), (b) and (d) are not aggravated felonies because they do not meet the *Taylor* definition of burglary (495 U.S. 575 (1990)). Likewise, these are not *crimes of violence* and do not constitute an *attempted crime of violence* because they include no intent to commit a crime. Subsection (c) could be found to be an aggravated felony as an attempted theft. *But see*, *Lopez-Elias v. Reno*, 209 F.3d 788 (5th Cir. 2000) (holding that mere intent to commit a theft was insufficient to constitute an attempt and offense was therefore not an aggravated felony).

[70] Subsections (a), (b) and (d) would not historically have been CIMTs. *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). 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). *But see Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above. In addition, a conviction under subsection (c) would likely be a CIMT because the offense includes intent to commit theft, which is a CIMT.

[71] A conviction under subsection (a) is not an aggravated felony, but a conviction under subsection (b) could be an aggravated felony due to the element of intent to commit theft. See above footnotes regarding burglary (§6-202 – 6-205).

[72] Under pre-*Silva-Trevino* law, subsection (a) was not a crime of moral turpitude; subsection (b) was. Under *Matter of Silva-Trevino*, a court can look at the facts of the case to assess moral turpitude. I&N Dec. 687 (A.G. 2008), note 11 above.

[73] *See Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[74] Under pre-*Matter of Silva-Trevino* law, simple trespass was held not to involve moral turpitude. *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. However, under *Matter of Silva-Trevino*, a court could inquire into the record of conviction and other evidence to assess whether the facts of a particular offense involved moral turpitude. *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above. Defense counsel should therefore make the record clear that there was no intent to commit a CIMT while trespassing and no other aggravating facts.

However, Trespass will, in almost all cases, fall within the "petty crime" exceptions to the CIMT provisions and even where it might not, it is unlikely to be found to involve moral turpitude. Additionally, Trespass is not subject to the grounds of removability because of the minimal maximum.

[75] *See Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[76] Some courts have held that where a state statute includes both traditional theft offenses and offenses not in the "generic" definition of theft, the statute is overbroad and divisible for purposes of determining whether it constitutes an aggravated felony. *See US v. Corona-Sanchez*, 291 F.3d 1201 (9th Cir. 2002) (holding Cal. theft statute divisible as overbroad for including, *inter alia*, provisions outlawing theft of services). Like the California statute in *Corona-Sanchez*, Maryland CL § 7-104(e) criminalizes theft of services available only for compensation. In such cases, the court must then look to the record of conviction to determine whether it can identify the section of the statute under which defendant was convicted and determine whether that section would be an aggravated felony.

There is also an argument for immigration lawyers to make that § 7-104 should not be an aggravated felony because it does not include as an element of the crime an intent to permanently deprive the owner of property. However, current BIA precedent holds that a theft offense can constitute an aggravated felony theft offense even where it does not require permanent deprivation of property. *Matter of V-Z-S-*, 22 I. & N. Dec. 1338 (BIA 2000) (conviction for joyriding constituted aggravated felony offense of theft). Criminal defense attorneys should thus protect their clients by avoiding a conviction under § 7-104 where possible or keeping the sentence to less than one year to avoid an aggravated felony.

[77] Under *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above, a court may also look to other evidence to find intent to permanently deprive owner of property.

[78] *See Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[79] There is an argument for immigration lawyers to make that § 7-105 should not be an aggravated felony because it does not include as an element of the crime an intent to permanently deprive the owner of property. However, current BIA precedent holds that a theft offense can constitute an aggravated felony theft offense even where it does not require permanent deprivation of property. *Matter of V-Z-S-*, 22 I. & N. Dec. 1338 (BIA 2000) (conviction for joyriding constituted aggravated felony offense of theft). Criminal defense attorneys should thus protect their clients by avoiding a conviction under § 7-105 where possible or keeping the sentence to less than one year to avoid an aggravated felony.

[80] *See Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above.

[81] INA § 101(a)(43)(S), 8 USC § 1101(a)(43)(S).

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

[83] INA § 101(a)(43)(S), 8 USC § 1101(a)(43)(S).

[84] *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 alsoNijhawan 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).

[85] The various offenses of false statements to law enforcement will, in almost all cases, fall within the "petty crime" exceptions to the CIMT provisions because their maximum penalty is 6 months imprisonment. They will never make an individual removable, because the maximum penalty is less than one year. 8 U.S.C. §1227(a)(2)(A)(i)(I). Where an individual has no other CIMTs on her record, a charge of false statement will also fall within the petty crime exception for purposes of admissibility (eligibility to get a green card or reenter the country after traveling abroad). 8 U.S.C. §1182(a)(2)(ii)(II). However, the petty crime exception to inadmissibility applies only if the individual has no prior CIMTs, so a false statement to law enforcement could count as a CIMT for an individual who has a prior CIMT on her record.

[86] Before *Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), note 11 above, disorderly conduct had generally been held to be 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). However, under *Silva-Trevino*, courts could look to the record of conviction and other evidence to see if the facts of the actual offense involved moral turpitude.

[87] 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).

[88] 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).

[89] 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).

[90] *Supra* Note 89.

[91] *Supra* Note 90.