Appendix A
Selected Immigration Consequences of North Carolina Offenses

The chart analyzes the potential likelihood of removal based on conviction of selected North Carolina offenses. Additional immigration consequences not listed here may arise from these offenses, such as the denial of naturalization or denial of discretionary relief. Because the immigration consequences of crime are a complex and constantly changing area of law, practitioners should use this chart as a starting point; it is not a substitute for individualized legal research. Additionally, the actual impact of an offense will vary depending on the client's immigration status and criminal history.

The chart is organized by subject area of offense—e.g,, homicides, assaults, etc. Within each subject area, the chart is organized numerically by statute. Following each offense is the applicable state statute and then whether the offense constitutes an aggravated felony (AF) or crime involving moral turpitude (CMT). If the offense may trigger other grounds of removal, that possibility is noted in the next column, Other Grounds of Removal. The last column includes additional information relevant to the offense, including information about related offenses that would not constitute grounds for removal. The chart is intended for criminal defense attorneys and thus takes a conservative approach to assessing the immigration consequences of selected offenses.

Key Immigration Concepts

Aggravated Felony Conviction. A noncitizen should avoid an aggravated felony (AF) conviction if at all possible. A noncitizen with an AF conviction, even a long time lawful permanent resident, will be held in mandatory detention, has virtually no relief or defense to deportation, and will be barred from returning to the U.S. for life. Crimes of violence, theft offenses, and certain other categories of offenses require a conviction *and* a sentence of imprisonment (active or suspended) of one year or more to constitute an AF. If a defendant receives a PJC or fine only in this category of offenses, the person would not have a sentence of one year or more and that possibility is noted in the chart. Other categories of offenses, such as "drug trafficking," murder, rape, and sexual abuse of a minor require only a conviction to constitute an AF, regardless of sentence length. For a detailed definition and discussion of AFs, see *supra* § 3.4A, Aggravated Felonies Generally and §3.4B, Specific Types of Aggravated Felonies.

Crime Involving Moral Turpitude (CMT). This category has no statutory definition and covers a broad category of criminal offenses, including offenses containing an element to steal or defraud, sex offenses, and certain assault offenses. CMT offenses are both a ground of deportability and inadmissibility, but there are technical rules governing each ground. Thus, an offense may by a CMT but still not be a removable offense if the offense is a misdemeanor and the client has no prior CMT convictions. For a detailed discussion of CMTs, see *supra* § 3.4C, Conviction of a Crime Involving Moral Turpitude.

Conviction. The definition of a "conviction" for immigration purposes is determined by federal law. State law does not determine whether a state disposition will be considered a conviction for immigration law purposes. For a discussion of state court dispositions that constitute a conviction for immigration law purposes, see Chapter 4, Conviction and Sentence for Immigration Purposes.

Sentence. Under federal immigration law, a "sentence" includes any period of incarceration ordered by the court, whether active or suspended. Therefore, any references in the chart to "a one-year sentence or longer" means an active or suspended sentence of imprisonment of one year or more. Also, a sentence is considered to be a sentence for the maximum term imposed even if the defendant was released before serving the maximum term. Thus, a defendant who is sentenced to 3 months minimum and 13 months maximum in a felony case will be treated as having been sentenced to 13 months in jail for immigration purposes, even if he or she ultimately serves only 3 months in jail and nine months on post-release supervision. The term of probation does not count towards the sentence. For a discussion of the impact of sentence length, see *supra* § 4.3, Sentence to a Term of Imprisonment.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Homicide Offenses					
Murder - 1st & 2d degree	14-17 Class A or B1 felony	Yes	Yes		
Manslaughter (voluntary)	14-18 Class D felony	Probably, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F)	Yes		Involuntary manslaughter may not be considered an AF
Manslaughter (involuntary)	14-18 Class F felony	Possibly, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F)[1]	Possibly[2]		Felony death by vehicle is not a removable offense There is an argument that involuntary manslaughter through culpable negligence should not qualify as an aggravated felony or CMT
Felony death by vehicle	20-141.4(a1) Class D felony	No	No		
Misdemeanor death by vehicle	20-141.4(a2) Misdemeanor	No	No		

1. The elements of involuntary manslaughter are: (1) unintentional killing; (2) proximately caused by either (a) an unlawful act not amounting to a felony and not ordinarily dangerous to human life, or (b) culpable negligence. *State v. Hudson*, 345 N.C. 729 (1997). If 2(a) and 2(b) are alternative elements there is a strong argument that a killing by culpable negligence should not qualify as a crime of violence (COV). *See Leocal v. Ashcroft*, 543 U.S. 1 (2004) (holding that an offense requiring proof of negligent conduct, even when involving death, is not purposeful enough to qualify as an aggravated felony crime of violence); *United States v. Vinson*, 805 F.3d 120, 126 (4th Cir. 2015) (culpable negligence as defined in North Carolina is a lesser standard of culpability than recklessness, which requires at least "a conscious disregard of risk"). If the two are means, then no conviction of involuntary manslaughter should qualify as a COV. *See* § 3.3A, Categorical Approach and Variations.

2. There is an argument that a conviction based on culpable negligence does not rise to a CMT. *See* § 3.4C, Conviction of a Crime Involving Moral Turpitude.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Rape and Other Sex Offenses (*see also infra* Prostitution)					
Rape – 1st degree	14-27.21 Class B1 felony	Yes, as a rape offense under 8 U.S.C. § 1101(a)(43)(A)	Yes		Crime against nature may not qualify as an AF (where there is no finding of lack of consent). *See infra* n.3.
Rape – 2d degree	14-27.22 Class C felony	(a)(1) as a rape offense and (a)(2) probably as a rape offense under 8 U.S.C. § 1101(a)(43)(A)	Yes		Crime against nature may not qualify as an AF (where there is no finding of lack of consent). *See infra* n.3.
Sexual offense - 1st & 2d degree	14-27.26, 14-27.27 Class B1, C felony	Probably, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F)	Yes		Crime against nature may not qualify as an AF (where there is no finding of lack of consent). *See infra* n.3.
Sexual battery	14-27.33 Misdemeanor	Should not be sexual abuse of a minor under 8 U.S.C. § 1101(a)(43)(A)	Yes	May fall within the domestic violence ground of deportability if the evidence establishes that the victim is a protected family member	Sexual battery should not constitute sexual abuse of a minor under the categorical approach because the minor age of the complainant is not an element of the offense
Statutory rape/sex offense of a person 15 years old or younger/1st degree statutory rape	14-27.25, 14-27.30, 14-27.24 Class B1 or C felony	Yes, as sexual abuse of a minor under 8 U.S.C. § 1101(a)(43)(A)	Yes	Yes, under child abuse ground of deportability	Sexual battery should not qualify as an AF
Statutory rape of a child by an adult	14-27.23 Class B1 felony	Yes, as sexual abuse of a minor under 8 U.S.C. § 1101(a)(43)(A)	Yes	Yes, under child abuse ground of deportability	Sexual battery should not qualify as an AF

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Crime against nature[3]	14-177 Class I felony	Should not be sexual abuse of a minor under 8 U.S.C. § 1101(a)(43)(A)[4] Possibly, as crime of violence under 8 U.S.C. § 1101(a)(43)(F) if the sentence is one year or more. *See* n.3.	Possibly. *See* n.3.		There is an argument that a conviction of a crime against nature based on an *Alford* plea is not a deportable offense. *See* § 6.1C, Categorical Approach and Record of Conviction. A PJC or fine-only-sentence would be a sentence of less than one year
Indecent liberties with a child	14-202.1 Class F felony	Probably,[5] as sexual abuse of a minor	Probably	Yes, under child abuse ground of deportability	Sexual battery should not qualify as an AF

3. Although North Carolina courts have upheld the crime against nature statute on its face (*see, e.g., State v. Pope*, 168 N.C. App. 592 (2005)), there is an argument that prosecution under this statute is unconstitutional under Fourth Circuit law. *See MacDonald v. Moose*, 710 F.3d 154 (4th Cir. 2013) (finding similar Virginia crime against nature statute unconstitutional as applied to minors, prostitution, public places, or non-consent). If constitutional, the offense may not be an aggravated felony depending on how courts interpret the elements of the offense. North Carolina courts have narrowed the offense to acts that are non-consensual, with minors, commercial, or public. *See, e.g., State v. Pope*. It is unclear what the elements are under the narrowed statute. It may be that the statute now defines four different offenses (non-consensual sex acts, sex acts with minors, sex acts for payment, and public sex acts), which would allow the immigration court to look to the record of conviction, as non-consensual acts might be an aggravated felony crime of violence. Or, it may be that these four acts are alternative means and do not have to be found unanimously by a jury. In that case the minimum conduct is a public sex act, which should not qualify as an aggravated felony or CMT.

4. In the context of a sex offense that criminalizes sexual conduct based solely on the ages of the participants, the state statute must contain an element that the victim be less than age 16 for the offense to qualify as "sexual abuse of a minor." *See Esquivel-Quintana v. Sessions*, ___ U.S.___, 137 S. Ct. 1562 (2017). Even if acting with a minor is a possible element of the offense, crime against nature should not constitute sexual abuse of a minor because it appears to cover consensual sex acts committed against a 16- or 17-year old. *See State v. Hunt*, 221 N.C. App. 489, 496–97 n.3 (2012). It is possible the Department of Homeland Security (DHS) would still charge the offense as a deportable one.

5. *See United States v. Perez-Perez,* 737 F.3d 950 (4th Cir. 2013) (finding that North Carolina offense of indecent liberties was sexual abuse of a minor as defined by the U.S. Sentencing Guidelines).

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Violation of sex-offender registration requirements	14-208.11(a)(1)-(3) Class F felony	No	Possibly[6]		
Assaults, Threats, and Related Offenses					
Assault with deadly weapon with intent to kill, inflicting serious injury	14-32(a) Class C felony	Probably, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F)	Yes	Probably, under the domestic violence ground of deportability if the evidence establishes that the victim is a protected family member	There is an argument that assault with deadly weapon, inflicting serious injury under G.S. 14-32(b) is not a deportable offense
Assault with deadly weapon, inflicting serious injury	14-32(b) Class E felony	Possibly, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F)[7]	Possibly[8]	May fall within the domestic violence ground of deportability if the evidence establishes that the	

6. DHS may charge this offense as a CMT. While the Fourth Circuit has held a failure to register as a sex offender statute is not a CMT because it is a regulatory provision, *see Mohamed v. Holder*, 769 F.3d 885 (4th Cir. 2014), the Board of Immigration Appeals (BIA) has held that failure to register is a CMT. *Matter of Tobar-Lobo*, 24 I&N Dec. 143 (BIA 2007). This is the law that applies in other circuits including the Eleventh Circuit, where many North Carolina immigrants are detained and have their removal hearings.

7. There is a strong argument that this offense does not qualify as a crime of violence. The U.S. Supreme Court has held that an offense requiring only proof of negligent conduct, even when involving serious physical injury or death, is not purposeful enough to qualify as an aggravated felony crime of violence. *Leocal v. Ashcroft*, 543 U.S. 1 (2004). Because this offense, at its minimum, can be committed through culpable negligence, it arguably does not qualify as a crime of violence. *See State v. Jones*, 353 N.C. 159 (2000) (upholding conviction for assault with a deadly weapon inflicting serious injury for DWI-related deaths where defendant operated his automobile in a culpably or criminally negligent manner); *United States v. Vinson*, 805 F.3d 120, 126 (4th Cir. 2015) (culpable negligence as defined in North Carolina is a lesser standard of culpability than recklessness, which requires at least "a conscious disregard of risk").

8. Because the minimum conduct under this statute involves culpable negligence, there is an argument that it should not rise to a CMT. *See* § 3.4C, Conviction of a Crime Involving Moral Turpitude.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
				victim is a protected family member[9]	
Assault with deadly weapon with intent to kill	14-32(c) Class E felony	Probably, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F)	Yes	Probably, under the domestic violence ground of deportability if the evidence establishes that the victim is a protected family member	There is an argument that assault with deadly weapon, inflicting serious injury under G.S. 14-32(b) is not a deportable offense
Assault inflicting serious bodily injury	14-32.4(a) Class F felony	Possibly, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F) if sentence is one year or more	Possibly	Possibly, under the domestic violence ground of deportability if the evidence establishes that the victim is a protected family member	A PJC would be a sentence of less than one year
Simple assault	14-33(a) Misdemeanor	No	No		
Assault inflicting serious injury	14-33(c)(1) Misdemeanor	No	Possibly[10]	Possibly, within the domestic violence ground of deportability if the evidence establishes that the victim is a protected family member	Simple assault is not a CMT

9. The same argument in n.7, *supra*, applies here.

10. Because the minimum conduct under this statute involves culpable negligence, there is an argument that it should not rise to a CMT. *See* § 3.4C, Conviction of a Crime Involving Moral Turpitude.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Assault with a deadly weapon	14-33(c)(1) Misdemeanor	No	Possibly[11]	Possibly, under the domestic violence ground of deportability if the evidence establishes that the victim is a protected family member	Simple assault is not a CMT
Assault on a female	14-33(c)(2) Misdemeanor	No	Should not[12]	Should not fall within the domestic violence ground of deportability[13]	Simple assault is not a CMT
Assault on a child under 12	14-33(c)(3) Misdemeanor	No	Possibly[14]	Probably, under the child abuse ground of deportability	Simple assault is not a CMT

11. Because the minimum conduct under this statute involves culpable negligence, there is an argument that it should not rise to a CMT. *See State v. Jones*, 353 N.C. 159 (2000) (upholding conviction for assault with a deadly weapon for DWI-related deaths where defendant operated his automobile in a culpably or criminally negligent manner); *see also* § 3.4C, Conviction of a Crime Involving Moral Turpitude.

12. Because the minimum conduct under this statute involves culpable negligence, the BIA has found in an unpublished decision that it does not rise to a CMT. *See* § 3.4C, Conviction of a Crime Involving Moral Turpitude. DHS may still charge the noncitizen with a CMT.

13. Under Fourth Circuit law, assault on a female does not satisfy the "crime of violence" definition. The BIA in an unpublished case has also found that assault on a female is not a crime of domestic violence for immigration purposes. *See* § 3.4F, Conviction of a Crime of Domestic Violence, Stalking, Child Abuse, Child Neglect, or Child Abandonment, or a Violation of a Protective Order.

14. Because the minimum conduct under this statute involves culpable negligence, there is an argument that it should not rise to a CMT. *See supra* § 3.4C, Conviction of a Crime Involving Moral Turpitude.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Assault on a government official	14-33(c)(4) Misdemeanor	No	Possibly[15]		Simple assault is not a CMT Disorderly conduct is not a removable offense
Assault in presence of minor on a personal relation	14-33(d) Misdemeanor	No	Possibly	Possibly, under the domestic violence ground of deportability	Simple assault is not a CMT Assault on a female should not be a CMT
Assault by pointing a gun	14-34 Misdemeanor	No	Probably[16]	Probably, under the firearm ground of deportability[17]	Simple assault is not a CMT
Discharging a barreled weapon or firearm into occupied property	14-34.1 Class E felony	Possibly, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F)	Possibly	Should not, under the firearm ground of deportability for a conviction of a barreled weapon Possibly, under the firearm ground of deportability for a	A discharge of a barreled-weapon under the statute should not come within the firearm ground There is an argument that a conviction of this offense based on an *Alford* plea is not a firearms offense. *See* § 6.1C, Categorical

15. Because the minimum conduct under this statute involves spitting, there is a good argument that it should not rise to a CMT. *See* § 3.4C, Conviction of a Crime Involving Moral Turpitude.

16. *See supra* n.14, though DHS will charge it as a CMT.

17. Neither the statute nor the pattern jury instructions define "gun" for the purposes of this statute. The North Carolina Court of Appeals has found that the definition of "gun" for the purposes of the statute is synonymous with "firearm," a weapon that uses "explosive force." *In re N.T.*, 214 N.C. App. 136 (2011). Because there is no stated exception here for an antique firearm as under federal law, there is an argument that this state offense is broader than the federal firearm ground of removal. *See Moncrieffe v. Holder*, 569 U.S. 184, 133 S. Ct. 1678, 1693 (2013); *see also* § 3.4E, Conviction of a Firearm or Destructive Device Offense.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
				conviction of a firearm[18]	Approach and Record of Conviction.
Domestic criminal trespass	14-134.3(a) Misdemeanor	No	No	Possibly, as a violation of protective order ground of deportability under 8 U.S.C. § 1227(a)(2)(E) if a protective order was violated in the course of the domestic trespass	
Communicating threats	14-277.1 Misdemeanor	No	Possibly	May fall within the domestic violence ground of deportability if directed against a protected family member[19]	A conviction for a threat to damage property would not come within the domestic violence ground
Stalking	14-277.3A Misdemeanor	No	Probably	Probably, under the stalking ground of deportability	Assault on a female should not be a deportable offense

18. A person can be convicted for discharging a firearm or barreled weapon, which includes pellet guns. The statute may be divisible and define two different crimes. A conviction for a barreled gun should *not* qualify as a firearm offense because it does not expel a projectile by action of an explosion as required under federal law. There is also an argument that a conviction for a firearm does not qualify as a firearms offense. Neither the statute nor the pattern jury instructions define "firearm" for the purposes of this statute. Because there is no stated exception here for an antique firearm as under federal law, there is an argument that this state offense is broader than the federal firearm ground of removal. *See Moncrieffe v. Holder*, 569 U.S. 184, 133 S. Ct. 1678, 1693 (2013); *State v. Thomas*, 132 N.C. App. 515 (1999) (upholding discharging conviction for a black powder muzzle loader shotgun, which would appear to come within federal antique exception); *see also* § 3.4E, Conviction of a Firearm or Destructive Device.

19. This offense (or at least the portion of the statute punishing a threat to damage *property*, assuming that is a separate element) should not qualify as a crime of domestic violence, which requires a threat of use of force to a protected *person*.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Misdemeanor child abuse	14-318.2 Misdemeanor	No	Possibly	Probably, under the child abuse ground of deportability	Simple assault is not a deportable offense
Felony child abuse	14-318.4(a) Class D felony	Probably, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F)	Probably	Yes, under the child abuse ground of deportability	There is an argument that conviction under subsection (a4) or (a5) should not qualify as an aggravated felony or CMT. *See infra* nn. 20–21.
Felony child abuse - serious bodily injury or impairment	14-318.4(a5) Class G felony	Possibly, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F) if the sentence is one year or more[20]	Possibly[21]	Yes, under the child abuse ground of deportability	Where applicable, ensure that the record reflects that the defendant was convicted for a grossly negligent act There is an argument that a conviction of this offense based on an *Alford* plea is not a deportable AF or CMT. *See* § 6.1C, Categorical

20. There is an argument that this offense (or at least the portion of the statute punishing grossly negligent act or omission, assuming that is a separate element) should not qualify as a crime of violence because it covers grossly negligent conduct. *See infra* n.21; *Leocal v. Ashcroft*, 543 U.S. 1 (2004) (holding that an offense requiring only proof of negligent conduct, even when involving serious physical injury or death, is not purposeful enough to qualify as an aggravated felony "crime of violence," as defined in 18 U.S.C. § 16).

21. Because the statute covers grossly negligent conduct (defined as a "reckless disregard for the rights and safety of others," *see* N.C.P.I.—CRIM. 239.55C), there is an argument that it does not constitute a CMT. The BIA generally requires a scienter of at least recklessness for an offense to qualify as a CMT, which the BIA defines as a "conscious[] disregard[] [of] a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation." *See Matter of Franklin*, 20 I&N Dec. 867 (BIA 1994).

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
					Approach and Record of Conviction. A PJC would be a sentence of less than one year
Violation of valid protective order	50B-4.1(a) Misdemeanor	No	Possibly	Yes, as a violation of protective order ground of deportability under 8 U.S.C. § 1227(a)(2)(E), if finding of violation of portion of order that involves protection against credible threats of violence, repeated harassment, or bodily injury in domestic violence context[22]	Simple assault is not a deportable offense
Kidnapping and Abduction Offenses					
Kidnapping - 1st & 2d degree	14-39 Class C, E felony	Probably, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F)	Probably		False imprisonment is not an AF
False imprisonment	Common law Misdemeanor	No	Possibly		

22. Thus, a violation of the child visitation portion (and certain other portions) of a protective order should not render a noncitizen deportable under this ground.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Abduction of minor	14-41 Class F felony	Possibly, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F) if the sentence is one year or more	Possibly	Possibly, under the child abuse ground of deportability	False imprisonment is not an AF A PJC would be a sentence of less than one year
Felonious restraint	14-43.3 Class F felony	Possibly, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F) if the sentence is one year or more	Possibly	May fall within the domestic violence ground of deportability if the evidence establishes that the victim is a protected family member	False imprisonment is not an AF A PJC would be a sentence of less than one year
Robbery Offenses					
Common-law robbery	14-87.1 Class G felony	Yes, as a theft offense under 8 U.S.C. § 1101(a)(43)(G) if the sentence is one year or more	Yes		A PJC would be a sentence of less than one year
Armed robbery	14-87 Class D felony	Yes, as theft or attempted theft offense under 8 U.S.C. § 1101(a)(43)(G)	Yes	Probably, under the firearm ground of deportability if the defendant was convicted under firearm element[23]	Common-law robbery will not constitute an AF if the sentence is less than 1 year through a PJC

23. Neither the statute nor the pattern jury instructions define "firearm" for the purposes of this statute. Other North Carolina statutes have defined "firearm" as a weapon that "expels a projectile by action of an explosion." Because there is no stated exception here for an antique firearm as under federal law, there is an argument that this state offense is broader than the federal firearm ground of removal. *See Moncrieffe v. Holder*, 569 U.S. 184, 133 S. Ct. 1678, 1693 (2013); *see also* § 3.4E, Conviction of a Firearm or Destructive Device Offense.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Burglary, Trespass, and Related Offenses					
Burglary - 1st & 2d degree	14-51 Class D, G felony	Yes, as a burglary offense under 8 U.S.C. § 1101(a)(43)(G) if the sentence is 1 year or more	Yes[24]		Burglary in the second degree will not constitute an AF if the sentence is less than 1 year through a PJC Misdemeanor breaking or entering is not a removable offense
Felony breaking or entering building	14-54(a) Class H felony	Yes, as a burglary offense under 8 U.S.C. § 1101(a)(43)(G) if the sentence is 1 year or more[25]	Probably, if the record of conviction reveals an intent to commit a larceny or other offense that is a CMT[26]		Felony breaking or entering will not constitute an AF if the sentence is less than 1 year through a PJC or fine only Misdemeanor breaking or entering is not a removable offense

24. *See, e.g., Uribe v. Sessions*, 855 F.3d 622 (4th Cir. 2017).

25. *See United States v. Mungro*, 754 F.3d 267 (4th Cir. 2014) **(**holding that "breaking or entering" under G.S. 14–54(a) is categorically a burglary offense because state law makes clear that state statute, despite its ambiguous language, requires a breaking or entry without consent, which corresponds to the "unlawful" entry requirements of the generic definition of burglary).

26. In North Carolina, at common law the State was required to allege the specific intended crime (whether a felony or any larceny) and the jury had to unanimously find that the defendant intended to commit that specific crime after breaking and entering. *State v. Silas*, 360 N.C. 377 (2006). However, the enactment of G.S. 15A-924(a)(5) liberalized the common law rule so burglary and felony breaking and entering indictments no longer have to specify the specific intended felony. *Id*. A jury now is not required to unanimously decide between "larceny" versus "any felony" or to unanimously agree as to the "felony." Thus, the statute is not divisible with regard to the intended offense, and the immigration court should not be able to look to the record of conviction to identify the intended offense. As the minimum conduct to commit burglary in North Carolina does not involve an intent to commit a larceny or other CMT, it arguably should not qualify as a CMT. See § 3.3A, Categorical Approach and Variations.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Misdemeanor breaking or entering building	14-54(b) Misdemeanor	No	No		
Breaking or entering a car with intent to commit felony or larceny	14-56 Class I felony	Possibly, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F) if the sentence is 1 year or more Probably, as an attempted theft offense under 8 U.S.C. § 1101(a)(43)(U) if the sentence is 1 year or more	Probably		Breaking or entering a car will not constitute an AF if the sentence is less than 1 year through a PJC or fine only Misdemeanor breaking or entering is not a removable offense
Breaking into coin/currency-operated machine	14-56.1 Misdemeanor	No	Yes		
Injury to real property	14-127 Misdemeanor	No	Possibly		Disorderly conduct in a public building is not a removable offense
Trespass - 1st degree	14-159.12(a)-(c) Misdemeanor	No	No		
Trespass - 2nd degree	14-159.13 Misdemeanor	No	No		
Domestic criminal trespass	14-134.3(a) Misdemeanor	No	No	Possibly, under the domestic violence ground of deportability if a protective order was violated in the	

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
				course of the domestic trespass	
Injury to personal property	14-160 Misdemeanor	No	Possibly		
Arson and Burning Offenses					
Arson - 1st & 2d degree	14-58 Class D, G felony	Probably, as an arson offense under 8 U.S.C. § 1101(a)(43)(E)(i)	Probably		Injury to real or personal property is not an AF
Burning building under construction	14-62.1 Class H felony	Possibly, as an arson offense under 8 U.S.C. § 1101(a)(43)(E)(i)	Probably		Injury to real or personal property is not an AF
Burning personal property	14-66 Class H felony	Probably, as an arson offense under 8 U.S.C. § 1101(a)(43)(E)(i)	Probably		Injury to personal property is not an AF
Larceny, Embezzlement, and Related Offenses					
Misdemeanor larceny	14-72(a) Misdemeanor	No	Yes		
Felonious larceny	14-72 Class H felony	Possibly as a theft offense under 8 U.S.C. § 1101(a)(43)(G)[27] if the sentence is 1 year or more	Yes		Felonious possession/receiving of stolen goods may not constitute an AF Larceny will not constitute an AF if the sentence is less

27. There is an argument that a conviction under the North Carolina larceny statute should not come within the theft aggravated felony ground because it appears to cover larceny by trick. *See* § 6.2B, Theft Aggravated Felony.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
					than 1 year through a PJC or fine only
Misdemeanor possession/receiving of stolen goods	14-72(a) Misdemeanor	No	Possibly[28]		
Felonious possession/receiving of stolen goods	14-71, 14-71.1, 14-72 Class H felony	Should not,[29] as a theft offense under 8 U.S.C. § 1101(a)(43)(G) even if the sentence is 1 year or more	Possibly[30]		
Unauthorized use of a motor-propelled conveyance	14-72.2 Misdemeanor	No	No		
Concealment of merchandise	14-72.1(a) Misdemeanor	No	Possibly not, because there is no intent to deprive or even a taking of property as under the larceny statute, though DHS may still charge as such		

28. The BIA has held that the crime of receiving stolen property is a CMT where the offense includes an element of knowing that the property is stolen. *See Matter of Salvail,* 17 I&N Dec. 19 (BIA 1979); *Matter of Patel,* 15 I&N Dec. 212, 213 (BIA 1975). The North Carolina statute appears to be broader than such statutes because a conviction can be obtained for knowingly receiving/possessing property *or* having reasonable grounds to believe it is stolen. Because knowing or having reasonable grounds to believe appear to be alternate means to satisfy the knowledge element, there is an argument that no conviction under the statute is a CMT. *See* § 3.3A, Categorical Approach and Variations.

29. *Matter of Deang*, 27 I&N Dec. 57 (BIA 2017) holds that a receiving/possession offense does not satisfy the aggravated felony theft definition where it only requires a mental state of "reasonable grounds to believe" that the property was stolen. Because knowing or having reasonable grounds to believe appear to be alternate means to satisfy the knowledge element under the North Carolina statute, no conviction under the statute should qualify as an AF. *See* § 3.3A, Categorical Approach and Variations. It is possible that DHS will still charge this as a deportable offense.

30. *See supra* n.28.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Embezzlement	14-90 Class C, H felony	Probably, as a fraud offense under 8 U.S.C. § 1101(a)(43)(M)(i) if the loss to the victim exceeds $10,000	Possibly		Embezzlement will not constitute an AF if record indicates that the loss is $10,000 or less
Offenses Involving Fraud					
Obtaining property by false pretenses	14-100 Class C, H felony	Yes, as a fraud offense under 8 U.S.C. § 1101(a)(43)(M)(i) if the loss to the victim exceeds $10,000	Yes		Obtaining property by false pretenses will not constitute an AF if the record indicates that the loss is $10,000 or less
Obtaining property by worthless check	14-106 Misdemeanor	Yes, as a fraud offense under 8 U.S.C. § 1101(a)(43)(M)(i) if the loss to the victim exceeds $10,000	Yes		Obtaining property by worthless check will not constitute an AF if the record indicates that the loss is $10,000 or less Writing a worthless check may not be a removable offense
Writing worthless check	14-107 Misdemeanor	Possibly, if the loss to the victim exceeds $10,000	Probably not[31]		

31. The Board has held that, absent an intent to defraud, convictions for drawing worthless checks are not crimes involving moral turpitude. *Matter of Balao*, 20 I&N Dec. 440, 443 (BIA 1992) (finding that knowing issuance of bad checks where there is no intent to defraud is not a CMT); *Matter of Zangwill*, 18 I&N Dec. 22 (BIA 1981); *Matter of Colbourne*, 13 I&N Dec. 319 (BIA 1969); *Matter of Stasinski*, 11 I&N Dec. 202 (BIA 1965). There is no intent to defraud explicit in G.S. 14-107 or added through case law. *See State v. Levy*, 220 N.C. 812 (1942) (gravamen of offense is putting worthless commercial paper into circulation); *Nunn v. Smith*, 270 N.C. 374 (1967) (same)**.** Though a number of immigration judges have found this offense not to be a CMT, DHS has initiated removal proceedings based on a conviction for this offense.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Financial transaction card forgery	14-113.11 Class I felony	Yes, as a fraud offense under 8 U.S.C. § 1101(a)(43)(M)(i) if the loss to the victim exceeds $10,000 Probably, as a forgery offense under 8 U.S.C. § 1101(a)(43)(R)[32] if the sentence is 1 year or more	Probably		Financial transaction card forgery will not constitute an AF fraud offense if the record indicates that the loss is $10,000 or less Financial transaction card forgery will not constitute an AF forgery if the sentence is less than 1 year through a PJC or fine only
Financial transaction card fraud	14-113.13 Misdemeanor, Class I felony	Yes, as a fraud offense under 8 U.S.C. § 1101(a)(43)(M)(i) if the loss to the victim exceeds $10,000 under subsections (a), (b), (c1), or (d) Possibly, as a fraud offense under 8 U.S.C. § 1101(a)(43)(M)(i) if the loss to the victim exceeds $10,000 under subsection (c)	Yes, under subsections (a), (b), (c1), or (d) Possibly, under subsection (c)		Financial transaction card fraud will not constitute an AF if the record indicates that the loss is $10,000 or less
Identity theft	14-113.20 Class F, G felony	Yes, as a fraud offense under 8 U.S.C. § 1101(a)(43)(M)(i) if the	Probably		Identity theft will not constitute an AF if record

32. *See infra* n.34.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
		loss to the victim exceeds $10,000			indicates that the loss is $10,000 or less
Extortion	14-118.4 Class F felony	Possibly, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F) if the sentence is 1 year or more Possibly as theft offense under 8 U.S.C. § 1101(a)(43)(G) if the sentence is one year or more [33]	Possibly		A PJC or fine-only-sentence would be a sentence of less than one year
Common law forgery	Common law Misdemeanor	Possibly, as a fraud offense under 8 U.S.C. § 1101(a)(43)(M)(i) if the loss to the victim exceeds $10,000	Yes		

33. There is an argument that this offense is not a theft aggravated felony because it covers a threat to obtain anything of value or any acquittance, advantage, or immunity, Because the minimum conduct does not require a taking of property, there is an argument that it is not a theft aggravated felony. *State v. Wright*, 240 N.C. App. 270 (2015).

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Forgery of bank notes, checks, and securities Uttering forged instrument or forging endorsement	14-119, 14-120 Class I felony	Possibly,[34] as a forgery offense under 8 U.S.C. § 1101(a)(43)(R) if the sentence is 1 year or more Possibly, as a counterfeiting offense under 8 U.S.C. § 1101(a)(43)(R) if the sentence is 1 year or more Probably, as a fraud offense under 8 U.S.C. § 1101(a)(43)(M)(i) if the loss to the victim exceeds $10,000[35]	Probably		A plea to misdemeanor common law forgery is not an AF if the loss to the victim is $10,000 or less Forgery of bank notes will not constitute an AF if the sentence is less than 1 year through a PJC or fine
Prostitution and Related Offenses					
Prostitution	14-204 Misdemeanor	No	Yes	Possibly triggers the prostitution ground of inadmissibility	Disorderly conduct in a public building is not a removable offense

34. There is an argument that North Carolina forgery of banknotes is broader than the generic definition of forgery. Generic forgery lies where document is falsely executed, rather than a document that is genuinely executed but merely contains false information, *see Alvarez v. Lynch*, 828 F.3d 288 (4th Cir. 2016), but the North Carolina offenses appears to cover a document that has been falsely copied, reproduced, forged, manufactured, embossed, encoded, duplicated, or altered. *See* N.C.P.I.—CRIM. 221.10. It is unclear whether G.S. 14-119 is divisible into separate crimes or defines only one offense.

35. There may be an argument that forgery or uttering is not a fraud offense because it can be committed with an intent to injure. *See e.g., Akinsade v. Holder*, 678 F.3d 138 (2d Cir. 2012) (finding that offense of embezzlement committed with an intent to injure, as opposed to defraud, may not be a fraud aggravated felony offense).

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Solicitation of prostitution Patronizing prostitution	14-205.1, 14-205.2 Misdemeanor	No	Yes	May trigger the prostitution ground of inadmissibility	
Weapons Offenses					
Carrying a concealed weapon other than a pistol or gun	14-269(a) Misdemeanor	No	No		
Carrying a concealed pistol or gun	14-269(a1) Misdemeanor	No	No	Probably, under the firearm/destructive device ground of deportability[36]	Carrying a concealed weapon other than a pistol or gun under 14-269(a) is not a removable offense
Manufacture, sale, possession, etc. of weapon of mass death and destruction	14-288.8 Class F felony	Possibly, under 8 U.S.C. 1101(a)(43)(C) if the conviction is for selling/offering to sell[37] a weapon	Possibly[38]	Yes, under the firearm/destructive device ground of deportability	Where appropriate, the record should reflect that the conviction was for possession, which is not an AF There is an argument that a conviction of this offense

36. Neither the statute nor the pattern jury instructions define "pistol" or "gun" for the purposes of this statute. Case law suggests that a gun or pistol must be a "firearm," *see, e.g., State v. Best*, 214 N.C. App. 39 (2011), which other North Carolina statutes have defined as a weapon that "expels a projectile by action of an explosion." *See* G.S. 14-415.1(a) (possession of firearm by felon). Because there is no stated exception here for an antique firearm as under federal law (and under G.S. 14-415.1), there is an argument that this state offense is broader than the federal firearm ground of removal. *See Moncrieffe v. Holder*, 569 U.S. 184, 133 S. Ct. 1678, 1693 (2013). *See* § 3.4E, Conviction of a Firearm or Destructive Device Offense.

37. This assumes that sale of such a weapon is a distinct crime from possessing, etc. such a weapon. If they are alternative means, then a conviction under the statute would not come within 8 U.S.C. 1101(a)(43)(C), which covers the trafficking of weapons.

38. If the statute is divisible by the actus reus (sell vs. possess, etc.), it may be a CMT to sell, manufacture, deliver, or offer to sell.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
					based on an *Alford* plea is not a deportable AF or CMT. *See* § 6.1C, Categorical Approach and Record of Conviction.
Possession of a firearm or weapon of mass death and destruction by felon	14-415.1 Class G felony	Yes, under 8 U.S.C. 1101(a)(43)(E)(ii)	No	Yes, under the firearm/destructive device ground of deportability	Carrying a concealed pistol or gun is not an AF
Obstruction of Justice, Disorderly Conduct, and Related Offenses					
Disorderly conduct in a public building	14-132 Misdemeanor	No	No		
Resisting, delaying, or obstructing officer	14-223 Misdemeanor	No	Possibly[39]		Simple assault is not a CMT Disorderly conduct is not a CMT
Making false report to law enforcement agency or officer	14-225 Misdemeanor	No	Possibly		
Disorderly conduct	14-288.4 Misdemeanor	No	No		

39. There is an argument that this offense should not qualify as a CMT because the BIA has previously found that an element of actual injury is required for an assault-type crime to be a CMT. *See Matter of Danesh,* 19 I&N Dec. 669 (BIA 1988) (finding that an aggravated assault against a peace officer, which results in bodily harm to the victim and which involves knowledge by the offender that his force is directed to an officer who is performing an official duty, constitutes a CMT); *see also Matter of Solon,* 24 I&N Dec. 239, 245 (BIA 2007) (finding that the offense of assault in the third degree in violation of section 120.00(1) of the New York Penal Law is a CMT, as such an offense requires both a specific intent to cause injury and physical injury to the victim); *see also Cano v. U.S. Atty. Gen*., 709 F.3d 1052 (11th Cir. 2013) (holding that Florida resisting arrest is a CMT because the statute "requires intentional violence against an officer"). No such element is present in G.S. 14-223.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Drunk and disruptive in public	14-444 Misdemeanor	No	No		
Motor Vehicle Offenses					
Driving while license suspended or revoked	20-28(a) Misdemeanor	No	No		
Receiving, transferring, or possessing stolen vehicle	20-106 Misdemeanor	Should not, as a theft offense[40]	Possibly[41]		Unauthorized use of a motor-propelled conveyance is not an AF or CMT
Impaired Driving	20-138.1 Misdemeanor	No	Possibly; a simple DWI with no aggravating factors is not a CMT, but a DWI with an aggravating factor of driving with revoked license is possibly a CMT	Probably, under the controlled substance ground of deportability or inadmissibility for a violation under (a)(3)[42]	A simple DWI (no aggravating factors) is not a CMT
Habitual Impaired Driving	20-138.5 Misdemeanor	No	Probably not	Probably, under the controlled substance ground of deportability or inadmissibility for a violation under (a)(3)[43]	

40. *See supra* n.29.

41. *See supra* n.28.

42. But, there may be an argument that G.S. 20-138.1 defines only one crime and that the various subsections are all alternative means (theories). *See State v. Oliver*, 343 N.C. 202, 215 (1996). If that is so, the offense would not qualify as a controlled substance offense, as the minimum conduct involved is impairment based on alcohol. *See* § 3.3A, Categorical Approach and Variations.

43. *See supra* n.42.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Reckless driving	20-140 Misdemeanor	No	Probably not		
Felony speeding to elude arrest	20-141.5(b) Class H felony	Possibly, as a crime of violence under 8 U.S.C. § 1101(a)(43)(F) if the sentence is 1 year or more	Possibly		Felony speeding to elude arrest is not an AF if the sentence is less than 1 year through a PJC or fine only Reckless driving may not be a removable offense
Misdemeanor speeding to elude arrest	20-141.5(a) Misdemeanor	No	Possibly		Reckless driving may not be a removable offense
Failure to stop or remain at scene when personal injury or death occurs	20-166(a) Class F felony	Probably not	Possibly		
Failure to give information or assistance when injury or death occurs	20-166(b) Misdemeanor	No	Possibly		
Failure to stop or give information when injury not apparent or property damage occurs	20-166(c) Misdemeanor	No	Possibly		
Drug Offenses					
Sale, manufacture, delivery, or possession	90-95(a)(1)	Yes, as a drug trafficking offense under 8 U.S.C. §	Yes	Yes, under the controlled substance	Simple possession of a controlled substance (other

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
with intent to manufacture, sell, or deliver any controlled substance	Felony (various)	1101(a)(43)(B), except for a conviction for delivery of marijuana or possession of marijuana with intent to deliver, or for a conviction of chorionic gonadotropin[44]		ground of deportability and the controlled substance ground of inadmissibility, except involving chorionic gonadotropin[45]	than any amount of flunitrazepam) is not an AF if no prior drug convictions There is an argument that a conviction for a Schedule III drug where the record of conviction does not reveal the specific drug does not make a person deportable for a drug trafficking aggravated felony. *See* § 6.3A, Manufacture, Sale, or Delivery of a Schedule III Controlled Substance
Sale or delivery of counterfeit controlled substance	90-95(a)(2) Class I felony	Yes, under 8 U.S.C. § 1101(a)(43)(B) for a substance defined in G.S. 90-87(6)a. (actual controlled substance)[46] Probably not, under 8 U.S.C. § 1101(a)(43)(B) for	Possibly	Yes, under the controlled substance ground of deportability and the controlled substance ground of inadmissibility for a substance defined in	There is an argument that conviction for a substance defined in G.S. 90-87(6)b. (not a controlled substance) is not a drug trafficking AF or controlled substance offense

44. *See* § 3.4B, Drug Trafficking Aggravated Felony; § 6.3A, Manufacture, Sale, or Delivery of a Schedule III Controlled Substance.

45. *See* § 3.4D, Conviction of any Controlled Substance Offense.

46. It is unclear whether the definition of "counterfeit controlled substance" is divisible, setting forth two alternative elements that a jury would have to unanimously find. If it is divisible, conviction under G.S. 90-87(6)a. for an actual controlled substance comes within the drug trafficking AF. *See Matter of Sanchez-Cornejo*, 25 I&N Dec. 273, 274–75 (BIA 2010). But conviction under G.S. 90-87(6)b. should not. *Id*. If the definitional provision contains alternate means, not elements, then there is an argument that no conviction qualifies as an AF.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
		a substance defined in G.S. 90-87(6)b. (not a controlled substance)		G.S. 90-87(6)a. (actual controlled substance) Possibly, under the controlled substance ground of deportability and inadmissibility for a substance defined in G.S. 90-87(6)b. (not a controlled substance)[47]	
Possession of controlled substance	90-95(a)(3) Misdemeanor, Felony	No, if first offense Possibly, under 8 U.S.C. § 1101(a)(43)(B) if prosecuted as a recidivist offense	No	Yes, under the controlled substance ground of deportability and the controlled substance ground of inadmissibility, except involving chorionic gonadotropin[48] There is an exception to deportability for a single conviction of possession of 30 grams or less of marijuana if	Class 3 or Class 1 misdemeanor possession of marijuana (if 30 grams or less of marijuana) is not a deportable offense if no prior drug convictions. Such a conviction will make a noncitizen inadmissible, but can be waived by an immigration judge under certain circumstances. If less than 30 grams of marijuana involved, counsel

47. There is an argument that an offense that does not contain an element of an actual controlled substance cannot trigger the controlled substance ground of removal. *See Mellouli v. Lynch*, 135 S. Ct. 1980, 1991 (2015) (holding that an offense cannot trigger the controlled substance ground of removability where"[no] controlled substance (as defined in [§ 802]) figures as an element of the offense"). *But see Matter of Sanchez-Cornejo*, 25 I&N Dec. 273 (BIA 2010). For how the analysis is affected by whether the definition of "counterfeit controlled substance" contains alternate means vs. elements, see *supra* n.46.

48. See § 6.3A, Manufacture, Sale, or Delivery of a Schedule III Controlled Substance.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
				no prior drug convictions	should ensure the record reflects that There is an argument that a conviction for a Schedule III drug where the record of conviction does not reveal the specific drug does not make a person deportable for a controlled substance offense
Trafficking in any controlled substance	90-95(h) Felony (various)	Yes under 8 U.S.C. § 1101(a)(43)(B), except involving chorionic gonadotropin[49] Also, trafficking by possession may not be an AF[50]	Yes	Yes, under the controlled substance ground of deportability and the controlled substance ground of inadmissibility, except involving chorionic gonadotropin[51]	Simple possession of a controlled substance (other than any amount of flunitrazepam) is not an AF if no prior drug convictions
Maintaining store, dwelling, boat, or other place for use,	90-108(a)(7) Misdemeanor, Class I felony	Possibly, under 8 U.S.C. § 1101(a)(43)(B)[52]	Possibly	Possibly, under the controlled substance ground of deportability and the controlled	

49. *See* § 6.3A, Manufacture, Sale, or Delivery of a Schedule III Controlled Substance.

50. *See* "Drug Trafficking Aggravated Felony" in § 3.4B, Specific Types of Aggravated Felonies.

51. *See* § 3.4D, Conviction of any Controlled Substance Offense.

52. In an unpublished case, the BIA found that the misdemeanor version was not an aggravated felony because it was broader than the analogous federal offense (as the minimum conduct punished under the state offense requires only the knowing conduct of keeping a controlled substance). *See In re of Sanchez-Vazquez,* 2013 WL 4925089 (BIA Aug. 30, 2013) (unpublished).

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
storage, or sale of controlled substance				substance ground of inadmissibility	
Possession of drug paraphernalia	90-113.22 Misdemeanor	No	No	Possibly, under the controlled substance ground of deportability and the controlled substance ground of inadmissibility[53]	
Possession of marijuana drug paraphernalia	90-113.22A Misdemeanor	No	No	Yes, under the controlled substance ground of deportability or inadmissibility There is an exception to deportability for a single conviction of paraphernalia related to 30 grams or less of marijuana if no prior drug convictions. Such a conviction will make a noncitizen inadmissible, but can be waived by an immigration judge under certain circumstances.	If less than 30 grams of marijuana involved, counsel should ensure the record reflects that Class 3 misdemeanor possession of marijuana is not a deportable offense if no prior drug convictions. Such a conviction will make a noncitizen inadmissible, but can be waived by an immigration judge under certain circumstances.

53. There is a strong argument that such a conviction is not a controlled substance conviction. *See* § 3.4D, Conviction of any Controlled Substance Offense, § 6.3D, Drug Paraphernalia.

Offense	*Statute*	*Aggravated Felony (AF)?*	*Crime Involving Moral Turpitude (CMT)?*	*Other Grounds of Removal?*	*Comments and Related Offenses*
Inchoate Offenses					
Attempt	Common-law	Probably, if the underlying offense is an AF	Probably, if the underlying offense is a CMT	Probably, if the underlying offense is a removable offense	
Solicitation	Common-law	Possibly, if the underlying offense is an AF	Probably, if the underlying offense is a CMT	Possibly, if the underlying offense is a controlled substance or firearm offense	
Conspiracy	Common-law	Probably, if the underlying offense is an AF[54]	Probably, if the underlying offense is a CMT	Probably, if the underlying offense is a removable offense	
Accessory after the fact	14-7	Probably, as an obstruction of justice offense under 8 U.S.C. § 1101(a)(43)(S) if the sentence is 1 year or more	Probably, if the underlying offense is a CMT	Accessory after the fact to a controlled substance or firearm offense is probably not a removable offense under the controlled substance or firearm ground of deportability or inadmissibility	

54. There is an argument that conspiracy as defined in North Carolina, which does not require an overt act (*State v. Gallimore,* 272 N.C. 528, 532 (1968)), is broader than and not a categorical match to the federal generic definition of conspiracy, which the Ninth Circuit has held requires an overt act. *See United States v. Garcia-Santana*, 774 F.3d 528, 535 & n.4 (9th Cir. 2014). *But see Matter of Richardson*, 25 I&N Dec. 226, 228 (BIA 2010) (adopting common law definition of conspiracy as generic definition, which does not require an overt act).