A BRIEF GUIDE TO REPRESENTING NONCITIZEN CRIMINAL DEFENDANTS IN CONNECTICUT

(Revised May 2017)

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Disclaimer: This brief guide is intended as an introductory tool for criminal defense attorneys representing noncitizen defendants in Connecticut. This guide does not purport to provide legal advice or to give an opinion as to the immigration consequences that might result from a criminal disposition in a particular case. Defense practitioners are advised to consult an attorney who specializes in this area of law and to conduct their own research on the possible immigration consequences in particular cases. In addition, this is a rapidly changing area of law, so practitioners are cautioned to keep abreast of changes in federal and state law since this guide was last revised.

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[1] 2007 Revisions by Kate Desormeau and Nicole Hallett, Yale Law School graduates; 2010 Revisions by Estella Cisneros, Anuj Nadadur, and Rebecca Scholtz, Yale Law School graduates; 2014 Revisions by Ruth Swift and Grace Kao, Yale Law School graduates. Catherine Chen, Melissa Marichal and My Khanh Ngo are Yale Law School students. Jorge Barón, a graduate of Yale Law School and currently the executive director of the Northwest Immigrant Rights Project in Seattle, Washington, began this project as an attorney at New Haven Legal Assistance Association. It has been made possible by the Arthur Liman Public Interest Program at Yale Law School, New Haven Legal Assistance Association, the Office of the Public Defender of the State of Connecticut, the Worker and Immigrant Rights Advocacy Clinic at Yale Law School and the Defending Immigrants Partnership (a joint initiative of the National Legal Aid and Defender Association, the Immigrant Defense Project, the Immigrant Legal Resource Center, and the National Immigration Project of the National Lawyers Guild). We would like to thank Elisa Villa, from the Office of the Public Defender of Connecticut, and Muneer Ahmad, Nicole Hallett, Ruben Loyo, Marisol Orihuela, and Michael Wishnie from the Yale Law School Worker and Immigrant Rights Advocacy Clinic, who have contributed greatly to this project. We also note that substantial material for this guide has been drawn from the extensive volume *Representing Non-citizen Criminal Defendants in New York State* (3rd ed. 2003) by Manuel D. Vargas of the Immigrant Defense Project. We would welcome any comments, revisions or suggestions to this guide by email to elisa.villa@jud.ct.gov and CrimImm@mailman.yale.edu.

Introduction: What is Crimmigration? And What Can Defense Attorneys Do About It?

The criminal justice and immigration removal systems are two systems that work in similar ways to disrupt and constrain the lives of your clients. They work not only in parallel but also in increasingly intertwined ways. The federal government has been using the criminal system as an access point for immigration enforcement. State and local police, probation officers, the Department of Correction, prosecutors, and defense attorneys are now all actors in the federal system of enforcing immigration laws, whether willingly or not.

For defense attorneys, this means that advocating on behalf of their clients includes specific legal considerations for noncitizen clients. Because of the way immigration enforcement has become an inseparable part of the criminal justice system, representation of your noncitizen client must include a consideration of the potential immigration consequences of each charge, admission, or conviction. For these clients, defense attorneys are at the frontlines to protect them, not only from the carceral system, but also from the immigration detention and deportation machine. Defense attorneys can help their clients avoid the most drastic immigration consequences, but in order to do so must have an understanding of the landscape of immigration law.

The United States Supreme Court recognized this affirmative obligation on the part of criminal defense attorneys to determine their clients' immigration status and to explain the immigration consequences of various plea and sentencing alternatives in *Padilla v. Kentucky*, 559 U.S. 356 (2010): "Our longstanding Sixth Amendment precedents, the seriousness of deportation as a consequence of a criminal plea, and the concomitant impact of deportation on families living lawfully in this country demand no less." *Id*. at 374.[2]

The purpose of this guide is to help equip criminal defense attorneys in Connecticut in protecting their noncitizen clients. This guide seeks to act as a starting point to help defense attorneys understand how immigration law intersects with criminal law in Connecticut. What this guide does NOT intend to do is to replace the legal advice that only an attorney familiar with this area of immigration law can provide as to the specifics of a particular case. Competent advice about the best criminal disposition in an individual noncitizen defendant's case will depend on that individual's prior criminal record, his or her immigration status, the status of immediate relatives, and a number of other factors.

The law in this area is ever-changing and can be complicated, but gaining a basic understanding of it is critical to defending noncitizen clients. It is both a burden and an opportunity, as defense attorneys play a unique and powerful role in protecting their clients in the sphere of immigration enforcement.

[2] When immigration consequences are clear, a defense attorney must advise his/her client of the consequences. *Padilla*, 559 U.S. at 369. Even where the immigration consequences of a guilty plea are unclear, defense counsel has an obligation to advise his/her client that a plea *may* carry immigration consequences. *Id*. Under *Padilla*, the duty to investigate immigration consequences extends to *all* cases involving non-citizen defendants.

Section I – Background: Immigration Law

A. Important Definitions

1. BASIC TERMINOLOGY

Department of Homeland Security ("DHS")

DHS administers and enforces federal immigration laws. DHS was formerly known as the Immigration and Naturalization Service ("INS"), and it has since its formation in 2002 divided duties into three separate agencies under its control: U.S. Citizenship and Immigration Services ("USCIS"), Customs and Border Protection ("CBP"), and Immigration and Customs Enforcement ("ICE") (see below).

U.S. Citizenship and Immigration Services ("USCIS")

USCIS is a DHS agency responsible for administering applications for immigration benefits, including work authorization, visa applications, and naturalization.

Customs and Border Protection ("CBP")

CBP is a DHS agency responsible for enforcing various immigration and customs laws at ports of entry and areas within 100 air miles of any national border.

Immigration and Customs Enforcement ("ICE")

ICE is a DHS agency responsible for enforcing immigration laws by detecting and removing individuals living in the United States unlawfully or who, despite their legal status, are subject to removal proceedings, including making arrests and litigating on behalf of DHS in immigration court.

Executive Office of Immigration Review ("EOIR")

EOIR is an office within the Department of Justice responsible for the adjudication of removal proceedings, at the immigration court and Board of Immigration Appeals ("BIA") levels.

Immigration and Nationality Act ("INA")

The INA is the statute governing immigration law. While it has been amended many times since adopted in 1952, the INA has remained the basic body of law in this field. You may see it referred to either by INA citation or its U.S. code (e.g. Section 237 of the INA, dealing with classes of deportable "aliens,"[3] is also contained in 8 U.S.C. § 1227).

[3] The INA statute refers to noncitizens as "aliens," but this guide will not use that term unless it is being explicitly cited.

Deportation, Exclusion, and Removal

Prior to 1996, immigration law provided for two types of processes to remove noncitizens from the United States: "deportation" and "exclusion," although most lay people only knew about the former. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") ended this distinction and created a single process called "removal," so that an individual now is technically "removed" rather than "deported" or "excluded." Once removed, a noncitizen faces statutory bars to reentry and immigration relief.

Despite the change in terminology, immigration law retains many of the important distinctions between "removal" of a person already within the country (formerly "deportation") and "removal" of a person who has not entered (previously referred to as "exclusion" and now termed "inadmissibility"), and the INA includes separate substantive grounds of deportability and inadmissibility (see below). Because most people continue to understand the removal process as "deportation", this guide will use the terms "deportation", "exclusion", "inadmissibility", and "removal" interchangeably except where any distinction might be important.

Deportability and Inadmissibility

In general, individuals who have been inspected by an immigration official and given permission to enter the United States are subject to the grounds of "deportability," found under § 237 of the INA (see above), 8 U.S.C. § 1227 et seq., while people who have not been given such permission are subject to the grounds of "inadmissibility" (because they are seen as still seeking admission) under INA § 212, 8 U.S.C. § 1182 et seq.[4]

The grounds of "deportability" are most relevant to those individuals who have already become LPRs or who might have overstayed a visa. By contrast, "inadmissibility" grounds are most relevant to individuals who were never formally inspected and entered without any formal immigration documents, though in some circumstances they are also applicable or relevant to persons with status (or those who overstayed a visa), particularly when they are applying for a form of immigration relief or benefit. There may also be certain forms of relief for which grounds of "deportability" also matter.

Criminal Alien

The term criminal alien is not specifically defined in any federal laws or regulations; however, it is commonly used in federal policies and directives. At the broadest level, a "criminal alien" could be any noncitizen who has ever committed, been arrested for, or been convicted of a crime in the United States.

[4] The grounds of deportability are found in INA § 237(a). The grounds of inadmissibility are in INA § 212(a).

Forms of Relief

Once a noncitizen in removal proceedings is found to be removable, she may apply for one or more forms of relief, each with its own criteria. Practitioners should be aware that each form of relief has slightly different eligibility requirements, benefits, and restrictions. In addition to asylum (see *infra* "Asylum or Refugee Status" under "Types of Immigration Status" for more details), commonly requested forms of relief include: adjustment of status, cancellation of removal, withholding of removal, prosecutorial discretion, and voluntary departure.

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2. TYPES OF IMMIGRATION STATUS

U.S. Citizen

Generally, an individual born in the United States[5] or someone who has "naturalized"[6] is a citizen. Under certain circumstances it is possible for an individual born outside the U.S. to have "derived" or "acquired" U.S. citizenship by operation of law. For example, an individual *may* automatically be a citizen if a parent or grandparent was a U.S. citizen at the time of the individual's birth, or become one if a parent became a citizen when the individual was a minor and had custody of the individual. The rules for deriving or acquiring U.S. citizenship are complicated and have changed numerous times in the past decades – please consult with an expert.

Immigrants vs. Non-Immigrants

The term "immigrant" refers to an individual who has come to the United States to reside permanently. In contrast, the term "non-immigrant" refers to a temporary visitor who is allowed into the country for a limited period of time and generally for a limited or specific purpose. Thus, "non-immigrants" include people who enter on tourist visas, student visas, or temporary work visas.

While the government classification between immigrant and non-immigrant is pretty rigid, in practice, many of the latter end up becoming long-term residents with either permanent or temporary status. For instance, some clients may have a U-visa nonimmigrant status and then adjust to Lawful Permanent Resident (LPR) status (see below for details on both types of status). These details are important because admission on a valid visa puts an individual's immigration and criminal case in a different posture (see *supra*, "Deportability and Inadmissibility" under "Basic Terminology") and can lead to different options for your client.

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[5] For citizenship purposes, the United States includes Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa.

[6] To "naturalize" is to become a citizen through the statutory processes set by Congress. *See* 8 U.S.C. §§ 1421 – 1449.

Lawful Permanent Resident (LPR)

An individual who has been granted status as a "lawful permanent resident" of the United States is known as an "LPR" or "green card holder." An LPR will generally have one of the following: (1) a "green card" (which is NOT green) OR (2) a stamp on the individual's passport that indicates "temporary evidence of lawful admission for permanent residence" which will include an expiration date for that stamp. The "green card," generally entitled "Resident Alien" or "Permanent Resident Card," states that the person is entitled to reside permanently and work in the United States. It is formally known as a form I-551. LPR status is often referred to as "green card" status, even though the cards evidencing permanent resident status have not been green for some time. One is still an LPR even if they are not in possession of either the "green card" or the stamp, or if they have documents that have expired.

As a general matter, LPR status is the most secure status that a noncitizen can have. Most LPRs who have held that status for five years are eligible to become citizens, subject to certain criteria. All LPRs can work, although they may be barred from some types of employment. In addition, LPRs have more rights to obtain government benefits, although these rights were sharply cut back by laws passed in 1996. LPRs are also subject to selective service registration.

There are a number of avenues to become an LPR. Most individuals who obtain LPR status do so through one of five ways: a) a family petition; b) a permanent work visa petition; c) asylum or refugee status; d) the diversity visa program; or e) a humanitarian ground. All five of these avenues lead to the same place: LPR status (or "green card" status).

a) Family petitions: U.S. citizens can file a petition for their spouses, minor (under 21) children, and parents (if the citizen is over 21) to obtain LPR status. See "Family Petition" below for more details.

b) Permanent work visas: U.S. employers can also petition for a worker to be granted LPR status, and typically must show that there are no available U.S. workers to fill a particular position. However, the number of permanent work visas is very limited, so that, as a practical matter, this avenue is only available to people with substantial education (a master's degree or higher) or specialized skills.

c) Asylum or refugee status: This avenue is available to individuals who can show that they have a well-founded fear of persecution in their home country because of their race, religion, nationality, political opinion, or membership in a social group. See "Asylum or Refugee Status" below for more details.

d) Diversity visa program: Also known as the "green card lottery," this program provides visas to persons from countries with low rates of immigration to the United States. These visas are not available to those born in any territory that has

sent more than 50,000 immigrants to the United States in the past five years. In 2017, ineligible countries included Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Haiti, India, Jamaica, Mexico, Nigeria, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.[7] Individuals born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.[8]

e) Humanitarian Grounds: There are also some humanitarian grounds under which noncitizens can adjust their status and gain LPR status.

i) Special Immigrant Juvenile (SIJ) Status: The purpose of this program is to protect noncitizen youth in the United States who cannot be reunited with a parent because of abuse, abandonment, or neglect. See "Special Immigrant Juvenile (SIJ) Status" below for more details.

ii) U-Visa or T-Visa: U-visas are nonimmigrant visas that provide an immigration benefit for victims of certain crimes, and T-visas are nonimmigrant visas for victims of human trafficking. See "U-Visa" and "T-Visa" below for more details.

iii) Violence Against Women Act (VAWA): Individuals who have been abused by their U.S. citizen spouses, parents, or children, or who have been abused by their LPR parents or spouses may file an immigrant visa petition. See "Violence Against Women Act (VAWA) Petition" below for more details.

Again, these are the five main ways that people can obtain lawful permanent residence, but they are not the only ways.

Individuals who obtain LPR status are eligible to apply for citizenship after a certain period of residence in the United States (generally five years), but they are NOT required to become citizens at any particular point. Therefore, many individuals choose to remain LPRs even after living here for decades, because they can travel and work freely. As the rest of this guide makes clear, however, LPRs are not truly "permanent" residents, and they can be subject to mandatory detention and deportation for even minor criminal offenses (see more under "Types of Offenses").

Temporary Status

Individuals with temporary status do not possess a permanent immigration status. They may have a temporary visa or deferred action. These statuses allow individuals to live,

[7] Instructions for the 2017 Diversity Immigrant Visa Program (DV_2017), U.S. Department of State, https://travel.state.gov/content/dam/visas/Diversity-Visa/DV-Instructions-Translations/DV-2017-Instructions-Translations/DV-2017%20Instructions%20and%20FAQs.pdf.
[8] *Id.*

and in some cases to work, in the United States. However, they are particularly vulnerable to changes because they are not permanent immigration statuses.

An individual with temporary immigration status may be eligible to gain Lawful Permanent Resident status in a number of different ways, but the most likely are:

- the client entered lawfully and has a spouse, child, parent or sibling who is a U.S. citizen;
- the client entered lawfully and has a spouse or (in some cases) parent who is an LPR;
- the client fears persecution or some form of harm (other than general economic deprivation) if returned to his or her country of origin; or,
- the client is able to get Special Immigrant Juvenile status (see "Special Immigrant Juvenile (SIJ) Status").

See "Lawful Permanent Resident (LPR)" for more details.

One particular type of temporary status that may affect your client is Deferred Action for Childhood Arrivals (DACA). See below for more details.

Deferred Action for Childhood Arrivals (DACA)

Individuals who came to the United States before they turned 16 and were under the age of 31 as of June 15, 2012 may be eligible for DACA.[9] A grant of deferred action results in a two-year guarantee against deportation (unless new grounds for deportation arise), and two-year eligibility for work authorization upon demonstration of financial need.

Deferred action is a form of prosecutorial discretion and is considered a temporary status. According to current USCIS guidelines,[10] an applicant must meet the following criteria to be considered for deferred action:

- the applicant came to the United States before the age of sixteen;
- has continuously resided in the United States from June 15, 2007 to present;
- was physically present in the United States on June 15, 2012, and at the time of filing an application for deferred action;

[9] On June 15, 2012, then-DHS Secretary Janet Napolitano issued a memo creating a new procedure whereby undocumented immigrants who arrive as minors may come forward and apply for deferred action, even if they are not in removal proceedings. Memorandum from Janet Napolitano to David Aguilar, Alejandro Mayorkas and John Morton, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (Jun. 15, 2012). *See also* http://www.dhs.gov/deferred-action-childhood-arrivals.

[10] USCIS, Consideration of Deferred Action for Childhood Arrivals Process, Guidelines, http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca#filing%20process.

- is currently in school, has graduated from high school, has obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- had no lawful status on June 15, 2012;
- has not been convicted of a felony offense, a significant misdemeanor offense, three or more misdemeanor offenses, and does not otherwise pose a threat to national security or public safety; and,
- was under the age of 31 as of June 15, 2012.

Individuals with DACA status or those who may be eligible also have unique interests in maintaining their status as well as preserving eligibility for future permanent resident status. Because DACA is a form of prosecutorial discretion based on executive memos, clients with this status are vulnerable to changes in administration and new executive orders. It is possible that DACA will change or will even be eliminated under the policies of the current administration.

Asylum or Refugee Status

Some individuals may have asylum or refugee status but are not yet Lawful Permanent Residents. Refugee status is granted to a person outside of the United States who then enters the country with that status, *see* 8 U.S.C. § 1101(a)(43); asylum is granted to an individual who is already in the United States. Both are allowed to remain in the United States because they have a well-founded fear of persecution in their country of origin because of their race, religion, nationality, political opinion, or membership in a social group.

Refugees are generally able and required to apply to become LPRs after one year in the United States, and asylees are eligible one year after receiving asylum; however, the process often takes a long time, so individuals may have asylum or refugee status for a significant period of time. Note that refugees who have been in the United States for more than one year, have not adjusted their status, and have been convicted of or face prosecution for offenses that make them inadmissible face special concerns. A 212(h) waiver, which is a discretionary waiver of certain criminal grounds of inadmissibility, may be applicable in certain situations. In addition to the general 212(h) waiver, individuals with refugee or asylum status may be eligible for a special waiver of inadmissibility, and they may submit Form I-602, to apply for a waiver, along with their application to adjust status. 8 U.S.C. § 1159(c). The individual should consult an expert immigration attorney in this situation.

Refugees will have a document, such as a stamp in their passport or I-94 document, stating that the person has been "admitted as a refugee pursuant to section 207 of the INA." Asylees will generally have a letter or other document from USCIS or the Department of Justice stating they have been granted asylum, though they may also be in possession of an I-94. Note that if the individual has *applied* for asylum, but has not yet been approved, that individual does not have asylum status. That client is in the position of one who has either temporary or no status.

Special Immigrant Juvenile (SIJ) Status

Children under the age of 21 who have been abused, abandoned, or neglected and unable to be reunited with a parent may be able to get SIJ status (although, practically speaking, it may only be possible for the individual to obtain SIJ status up until the age of 18 in certain jurisdictions, like Connecticut, as explained further below). This program allows the individual to gain LPR status and does not depend on the individual's status before acceptance into the SIJ program. Individuals with SIJ status may never petition their parents for a green card.

Individuals must petition for SIJ in the state court, and in Connecticut, the application must be made to the Probate Courts. The state court must declare that: (i) the child is a dependent of the court or must place the child with a state or private agency or in the care or custody of a private person; (ii) it is not in the child's best interests to return to his or her country of origin; and (iii) the child cannot be reunited with a parent because of abuse, abandonment, neglect, or a similar reason. *See* 8 U.S.C. § 1101(a)(27)(J). Once the probate or family court makes the requisite findings, the child can then apply for LPR status through USCIS. Children who still have one parent but have been abandoned by the other may still apply.

Eligibility for SIJ requires the individual to be under the age of 21, inside the United States, and not married. However, this is complicated because SIJ requires predicate special findings by the state courts, and in Connecticut, a minor is defined to be under the age of 18, though the Connecticut Supreme Court may soon decide whether probate courts retain jurisdiction to make such findings for youth between 18-21. *See* Conn. Gen. Stat. Ann. § 1-1d. For the moment, the inconsistency with the federal law means that in practice, individuals between the ages of 18 and 21 may not be protected by SIJ status in Connecticut, though they may be in other states, such as New York, where family courts may issue guardianship orders up until the individual is 21.

Family Petition

United States citizens may petition for certain family members to receive either Lawful Permanent Resident status or a visa. The type of status for which the family member is eligible will depend on the familial relationship. A United States citizen may petition for Lawful Permanent Resident status (a "green card") for spouses, unmarried children under the age of 21, and, if the citizen is over the age of 21, for parents and siblings. A United States citizen may petition for a fiancé visa for a fiancé and children of the fiancé under the age of 21. Finally, a United States citizen may petition for K-3/K-4 nonimmigrant visas, which allow for admission into the United States and work authorization while they await adjudication of the form to establish the relationship between the citizen and their relative (I-130 Form).

Naturalization

Naturalization is the process of becoming a citizen for foreign citizens or nationals. Individuals qualify for naturalization if they have been Lawful Permanent Residents for 5 years or, if they are eligible to file as the spouse of a United States citizen, for 3 years. Individuals who have served in the U.S. armed forces and children of United States citizens also may qualify for naturalization. In addition, there are a number of eligibility requirements that individuals must prove to USCIS in order to naturalize, including good moral character.[11] Although in most cases the statute directs USCIS to look at the past five years for individuals to show good moral character, USCIS does have the discretion to look beyond the five-year statutory period. Individuals with any aggravated felonies on or after November 29, 1990, are barred from showing good moral character beyond the statutory period. 8 C.F.R. § 316.10.

U-Visas

U-visas are nonimmigrant visas that provide an immigration benefit for victims of certain crimes,[12] who are currently assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or who are likely to be helpful in the investigation or prosecution of criminal activity.[13] A crime victim's past criminal history does not make him or her ineligible for a U-visa with the exception of certain narrow grounds—although a waiver of criminal inadmissibility may be required, and USCIS has the discretion to waive criminal grounds of inadmissibility. Each U-visa petition is considered by USCIS on a case-by-case basis. If an individual is eligible for a U-visa and his or her petition is approved, there may still be a waiting period before receipt of a U-visa, because a limited number of visas are given out each year.[14] Once an individual receives a U-visa, they will receive a nonimmigrant status and work authorization for four years. An individual may apply to adjust their status to become a lawful permanent resident three years after receiving a U-visa if he or she has continuous presence in the United States.[15] A U-visa recipient may apply for derivate status for certain relatives.

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[11] 8 U.S.C. §1427. *See* USCIS, Guide to Naturalization (Nov. 2016), https://www.uscis.gov/sites/default/files/files/article/M-476.pdf.

[12] An individual may be eligible for a U-visa if they have been a victim of a serious crime, including: attempted murder, felonious assault (what qualifies as felonious assault can differ, but usually involves the use of a deadly weapon or serious injury, and can include statutory rape and other offenses), domestic violence, stalking, abduction, false imprisonment, rape, sexual assault, or fraud.

[13] This legislation was intended to help law enforcement officials in immigrant communities by providing an incentive for those undocumented immigrants who are crime victims to assist law enforcement authorities in the investigation or prosecution of crimes.

[14] Pub. L. No. 106-386, 114 Stat. 1464, 1535 (2000).

[15] *Id*.

V-Visas

V-visas are temporary, nonimmigrant visas for spouses and unmarried, minor children of Lawful Permanent Residents. The purpose of the V-visa is to allow families to stay together while waiting for the processing of immigrant visas. Individuals become eligible for V-visas after their relative petitions for them through a Form I-130, Petition of Alien Relative, and after they have been waiting for at least three years.

T-Visas

T-visas are nonimmigrant visas for victims of human trafficking. It allows victims to remain in the United States, with the goal of assisting in the investigation or prosecution of human trafficking. Federal law defines the victims of "severe forms of trafficking in persons" to include sex trafficking and labor trafficking. *See* 22 U.S.C. § 7102(9). Once an individual receives a T-visa, he or she will receive a nonimmigrant status and work authorization for three years. An individual may apply to adjust their status to become a lawful permanent resident three years after receiving a T-visa if he or she has continuous presence in the United States.

Violence Against Women Act (VAWA) Petition

Individuals who have been abused by their U.S. citizen spouses, parents, or children, or who have been abused by their LPR parents or spouses may file an immigrant visa petition, Form I-360.[16] The purpose of this statute is to provide noncitizens with an opportunity for safety and independence from abusers. Noncitizens of all genders are eligible to file a petition, and the abuser is not notified of the petition. Individuals with approved petitions receive work authorization and may be eligible to apply for LPR status. *See* 8 U.S.C. § 1229b.

Temporary Work Visas

Temporary worker visas are nonimmigrant visas for individuals who want to enter the United States for employment lasting a fixed period of time. Common types of temporary worker visas include H-1B Visas (for workers with specialty occupations) and H-2A Visas (for seasonal agricultural workers).

Work authorization

Work authorization gives noncitizens eligibility for employment in the United States, typically in conjunction with a particular form of status or application. Work authorization in and of itself is not a type of immigration status. In addition to the temporary work visas mentioned above, various statuses, such as U-visa status, asylee and refugee status, and DACA status, may provide for work authorization.

[16] 8 U.S.C. § 1154(a); 8 U.S.C. § 1255; 8 C.F.R. § 204.2.

Noncitizens may apply for an employment authorization document (EAD) in order to prove that they are allowed to work in the United States for a specified time. A noncitizen may also apply for EAD to apply for permission to work, if the noncitizen has a status that does not include work authorization, like a student visa.

Humanitarian or Significant Public Benefit Parole

In the immigration context, parole is a process through which a noncitizen that does not meet requirements for a visa or is inadmissible is allowed to enter the United States on humanitarian parole for a period of time. Parole is decided on a case-by-case basis on the discretion of the Immigration and Customs Enforcement (ICE). Generally, parole is requested by individuals outside the United States. Individuals who are already in the United States may request "parole in place."

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3. TYPES OF OFFENSES

It is important to note that any criminal conviction—indeed, any criminal *conduct*, even if it does not lead to a conviction—could have consequences for the immigration status of a noncitizen. That is because many decisions as to whether to grant a particular immigration benefit—including naturalization—are left to the discretion of federal immigration authorities. Criminal conduct or a criminal conviction of any kind can always be taken into account by immigration authorities in making discretionary determinations. For this reason, there is no criminal conviction that is completely "safe" for immigration purposes.

Certain classes of convictions, however, trigger automatic provisions of immigration law that render a noncitizen deportable (or "removable"). Many of those same classes of convictions will make a noncitizen ineligible for discretionary waivers or other forms of relief that may allow them to stay in the country even if they are considered deportable. Note that the law is constantly changing on what qualifies as these removable offenses, particularly as the categorical approach, the framework for determining whether a conviction is a removable offense, has evolved (see definition under "Categorical Approach" and Section IV).

Aggravated Felony ("AF"):

This is a term of art in immigration law used to describe offenses that will subject a noncitizen to the harshest immigration consequences: the individual will face mandatory immigration detention and almost certain deportation. Regardless of their immigration status, noncitizens convicted of an AF are prohibited from receiving most forms of relief that would spare them from deportation, including asylum, and from being readmitted into the United States at any time in the future. If the noncitizen deported based on an AF returns illegally to the United States, he or she may face criminal penalties of up to twenty years in federal prison. *See* 8 U.S.C. § 1326(b)(2).

To qualify as an AF, the offense does not need to be "aggravated" as that term might be commonly understood, nor does it need to be a felony. The following is a list of the offenses that qualify as AFs, as set out in the immigration statute:

- Murder;
- Rape;
- Sexual abuse of a minor;
- Slavery;
- Sabotage;
- Illicit trafficking in a controlled substance;
- A "crime of violence" if the term of imprisonment (even if suspended) is one year or more;
- A "theft offense" (including burglary and receipt of stolen property) if the term of imprisonment (even if suspended) is one year or more;
- An offense that "involves fraud or deceit in which the loss to the victim or victims exceeds $10,000";
- Failure to appear for service of sentence if underlying offense is punishable by a term of five years or more;
- Failure to appear before a court on a pending charge for which a sentence of two years or more may be imposed;
- An offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles with altered VINs, if the term of imprisonment (even if suspended) is one year or more;
- An offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, if the term of imprisonment (even if suspended) is one year or more;
- An offense relating to demand for or receipt of ransom;
- Illicit trafficking in firearms, destructive devices, or explosive materials;
- Certain money laundering offenses where amount of funds exceeds $10,000;
- Certain firearm or explosive materials offenses;
- Certain offenses relating to kidnapping and extortion;
- Certain child pornography offenses;
- RICO and certain gambling offenses;
- Certain offenses relating to prostitution and involuntary servitude;
- Certain offenses relating to treason, national defense and espionage;
- A tax evasion offense where the loss to the government exceeds $10,000;
- Certain alien smuggling offenses (except for a first offense in which the person smuggled was the parent, spouse or child);
- Improper entry or illegal reentry by an alien previously deported on the basis of an Aggravated Felony;
- Certain offenses involving false documents, such as falsely making or altering passports;
- An attempt or conspiracy to commit any of the above offenses.

See 8 U.S.C. § 1101(a)(43)).

Unless it is clearly established in the relevant jurisdiction that a particular offense is *not* an AF, **any risk** that an offense may be charged as such means that a defense attorney should accurately counsel the client regarding such risk and attempt to avoid a plea to the offense altogether.

For immigration practitioners, however, while an offense may appear on its face to be an AF, an analysis under the categorical approach may reveal that it is actually not categorically one. For an example, see discussion under "Controlled Substance Offenses" below in footnote 17. Thus for immigration practitioners, it is crucial to run through the categorical approach of the client's crime underlying the removal proceedings before conceding to removability.

Controlled Substance Offenses ("CSO"):

This is a category of convictions that will result in drastic immigration consequences for a noncitizen. This category encompasses offenses "relating to" a controlled substance as defined by federal law, and it therefore encompasses simple possession and distribution offenses involving substances covered by *federal* drug schedules. For the purposes of deportability, there is an exception made only for a single offense involving possession for one's own use of 30 grams or less of marijuana, though this exception is not available if you are assessing inadmissibility, an important inconsistency to be aware of. Like Aggravated Felony offenses, a conviction in this category renders a noncitizen ineligible for many forms of discretionary relief.

The question of whether state drug offenses are CSOs for immigration purposes is a heavily contested area of immigration law. Despite potential arguments that could be raised in immigration court against the classification of certain state drug offenses as CSOs,[17] defense attorneys are advised that immigration authorities tends to argue that most state drug offenses are CSOs and thus pleas to drug offenses should generally be avoided. Where that is not possible, it is important that the record of conviction (ROC) (see definition under "Miscellaneous Terms") be as "clean" as possible, meaning devoid of specific admission by the defendant or mention of the identity of the drug.

A noncitizen may be inadmissible under what is known as the "conducts ground" even absent a conviction if the noncitizen is a current drug addict or abuser, 8 U.S.C. § 1182(a)(1)(A)(iv), formally admits all the elements of a CSO, 8 U.S.C. § 1182(a)(2)(A)(i), or gives immigration authorities probative and substantial "reason to believe" that person ever participated in drug trafficking or was the spouse or child

[17] If the controlled substance is regulated only by the state, the offense *may not* qualify as a CSO for purposes of immigration law, according to the categorical approach. *See e.g.*, *Mellouli v. Lynch*, 135 S.Ct. 1980 (2015) (holding that a Kansas state conviction for a drug paraphernalia possession did not constitute a CSO because Kansas regulated controlled substances not found on the federal drug schedules). Immigration practitioners would also need to show that there is a "realistic probability" that the state will actually prosecute non-federally controlled substance offenses. *See Matter of Ferreira*, 26 I&N Dec. 415 (BIA 2014).

beneficiary of a trafficker. 8 U.S.C. § 1182(a)(2)(C). A discretionary waiver of inadmissibility is available to some persons, but only for a first conviction for simple possession of 30 grams or less of marijuana, 8 U.S.C. § 1182(h), but that waiver might not be granted. This exception means that lawful permanent residents may be rendered inadmissible but *not* deportable because of a drug conviction (as the deportability grounds contain a limited personal use exception for a single possession offense), unless he or she travels outside the United States.

Crime of Violence ("COV"):

The term "crime of violence" is used to describe certain offenses that qualify as grounds for removal under certain categories of immigration law (that is, Aggravated Felonies or crimes of domestic violence). If committed against a victim with whom the defendant shares a protected domestic relationship, a COV may also be a deportable Crime of Domestic Violence (see below). If a sentence of a year or more is imposed—including suspended jail time—a COV is an Aggravated Felony (see "Aggravated Felony" definition above), regardless of the type of victim.

The definition is found at 18 U.S.C. § 16:

> The term 'crime of violence' means—
> (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Note the distinction between 18 U.S.C. § 16(a), which requires that force[18] be an element of the offense, and 18 U.S.C. § 16(b), which is only applicable where the offense is a felony (the federal felony definition corresponds to Connecticut felonies) but which extends to offenses where the use of force is not an element but involves "a substantial risk" that force may be used. For example, courts have found that felony burglary (under the common law definition) would be a COV because there is a substantial risk that the

[18] The Supreme Court has held that the term "physical force" in this definition means mean "a higher degree of intent than negligent or merely accidental conduct" because "use requires active employment." *Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004). The Court has also held that the phrase requires "*violent* force—that is, force capable of causing physical pain or injury to another person" (emphasis in original). *Johnson v. United States*, 559 U. S. 133 (2010). Thus, for example, a DUI is not the type of "violent, active crime[]" suggested by the "crime of violence" definition. *Leocal*, 543 U.S. at 11. Likewise, a simple battery law that applies to any offensive touching, no matter how slight, does not qualify as a "crime of violence." *Johnson*, 559 U.S. at 144-145. The Board of Immigration Appeals has adopted the *Johnson* interpretation as applied to the term "physical force" in 8 U.S.C. § 16(a). *Matter of Velasquez*, 25 I. & N. Dec. 278, 282 (BIA 2010).

burglar would encounter the homeowner and use force against her in the commission of the crime. The "substantial risk" in § 16(b) refers not to a risk of injury, but to the risk that the perpetrator will use force. *Dalton v. Ashcroft*, 257 F.3d 200, 207 (2d Cir. 2001) ("There are many crimes that involve a substantial risk of injury but do not involve the use of force"). The controlling BIA precedent on § 16(b) is *Matter of Singh*, 25 I&N Dec. 670 (BIA 2012), which held that a stalking offense for harassing conduct was a crime of violence, because in the "ordinary case" there is a risk that the stalker will use force when confronted.

The law around COV is currently in flux, especially after the Supreme Court's case *Johnson v. United States*, 135 S.Ct. 2551 (2015), overruling *James v. United States*, 550 U.S. 192 (2007) and *Sykes v. United States*, 564 U.S. 1 (2011). In *Johnson*, the Supreme Court held that another federal definition of crime of violence using language similar to 18 U.S.C. § 16(b) was unconstitutionally vague. 135 S.Ct. 2551 (2015). *Johnson* opened up the door for a case currently pending before the Supreme Court, *Dimaya v. Lynch*, which would address the question of whether § 16(b) as incorporated into the INA is unconstitutionally vague. 803 F.3d 1110 (9th Cir. 2015), *cert granted sub nom. Lynch v. Dimaya*, 137 S. Ct. 31 (Sept. 29, 2016). Currently the circuits are split on that question.[19] The Supreme Court may likely resolve this split by the end of June 2017, at which point both defense attorneys and immigration practitioners should be aware of the implications of *Dimaya* on COV analysis.

Furthermore, *Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004), left open whether a reckless crime can be a COV. Many circuits have extended *Leocal*'s reasoning to conclude that recklessness offenses encompass conduct too accidental to constitute the "use of physical force" to make it a COV.[20] In contrast, a minority of circuits and the BIA will consider not the mens rea of the offense itself, but the likelihood that force will be intentionally put to use in the commission of the offense. *See Aguilar v. Att'y Gen. of U.S.*, 663 F.3d 692 (3d Cir. 2011) (holding that a sexual assault offense, though it can be committed recklessly, is still a crime of violence under § 16(b) because it raises a substantial risk that the perpetrator will intentionally use force to overcome the victim's lack of consent); *Matter of Singh*, 25 I&N Dec. 670, 676 (BIA 2012) ("the critical inquiry is not the mens rea required for conviction of a crime, but rather whether the offense, by its nature, involves a substantial risk that the perpetrator will [intentionally] use force in completing its commission."). The Second Circuit precedent is not clear as to how it aligns with the

[19] *Compare Dimaya v. Lynch*, 803 F.3d 1110 (9th Cir. 2015); *Shuti v. Lynch*, 828 F.3d 440 (6th Cir. 2016); *Golicov v. Lynch*, 837 1065 (10th Cir. 2016); *Baptiste v. Attorney General*, 841 F.3d 601 (3d Cir. 2016); *with United States v. Hill*, 832 F.3d 135, 149-50 (2d Cir. 2016) (en banc); *United States v. Gonzalez-Longoria*, 831 F.3d 670 (5th Cir. 2016).

[20] *See U.S. v. Fish*,--- F.3d ----, 2014 WL 715785 (1st Cir. Feb 26, 2014), *United States v. Palomino Garcia*, 606 F.3d 1317, 1335-36 (11th Cir. 2010), *United States v. Zuniga-Soto,* 527 F.3d 1110, 1124 (10th Cir.2008), *Jimenez-Gonzalez v. Mukasey*, 548 F.3d 557 (7th Cir. 2008); *United States v. Torres-Villalobos,* 487 F.3d 607, 616 (8th Cir. 2007), *United States v. Portela,* 469 F.3d 496, 499 (6th Cir. 2006), *Fernandez-Ruiz v. Gonzales,* 466 F.3d 1121, 1130 (9th Cir. 2006) (en banc), *Bejarano-Urrutia v. Gonzales,* 413 F.3d 444, 447 (4th Cir. 2005), *Oyebanji v. Gonzales,* 418 F.3d 260, 264 (3d Cir. 2005).

other circuits and BIA's interpretations. *Compare Jobson v. Ashcroft*, 326 F.3d 367, 375 (2d Cir. 2003) ("a defendant must be reckless not just about potential injury, but also about having to *intentionally* use force during the commission of a crime"); *with Blake v. Gonzales*, 481 F.3d 152 (2d Cir. 2007) (holding that assault on a police officer is a COV, despite the fact that the assault can be committed with only reckless mens rea, because the intent to obstruct a police officer in his or her duties raises a substantial risk of the use of force).

A recent Supreme Court decision provides further foundation that some reckless crimes can be COVs. *Voisine v. United States*, 136 S.Ct. 2272 (2016). The *Voisine* Court expressly provided that its ruling—finding a differently worded federal criminal law definition to reach reckless behavior—does *not* resolve whether the 18 U.S.C. § 16 definition includes such conduct. *Id*. at 2280, n. 4. However, in analyzing *Leocal*, the *Voisine* Court in dicta says that it is permissive for courts to reach different readings of the statute with regard to the required mental states. *Id*. The BIA appears to have interpreted *Voisine* to mean that some recklessness offenses could be deemed COVs, but it would continue applying the law governing each circuit in the absence of controlling Supreme Court precedent. *Compare Matter of Martin Chairez-Castrejon*, 26 I. & N. Dec. 819, 825 (BIA 2016) (holding that the respondent's conviction for discharge of a firearm was not categorically an aggravated felony as a COV because of Tenth Circuit case law); *with Matter of Kwan Ho Kim, Respondent*, 26 I. & N. Dec. 912, 921 (BIA 2017) (reaching different conclusion finding California crime of mayhem as categorically a COV because the Ninth Circuit recognized that *Voisine* may have undermined its prior holdings that reckless conduct could not constitute a COV).

For criminal attorneys in Connecticut, because the Second Circuit appears to interpret some recklessness offenses to be COVs, it is advisable to not only avoid pleas to offenses that involve an element of force, but also avoid ones that involve a substantial risk of force being used.

Crime of Domestic Violence ("CODV"):

This is a category of crimes that renders an individual legally residing in the United States (most frequently an LPR, but also visa overstays) deportable. It will also make an undocumented client ineligible for non-LPR cancellation of removal. A CODV is defined as a crime of violence (COV, defined above) against a defined class of protected persons. The definition is found at 8 U.S.C. § 1227(a)(2)(E)(i):

> [T]he term 'crime of domestic violence' means any crime of violence against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the

United States or any State, Indian tribal government, or unit of local government.

The categorical approach must be used to determine whether the offense is a COV under 18 U.S.C. § 16. *See Matter of H. Estrada*, 26 I&N Dec. 749 (BIA 2016). However, the circumstance-specific approach—not the categorical approach—can be used to determine whether the victim and defendant shared the required domestic relationship. *Id*. The identity of the victim need not be an element of the crime. *See United States v. Hayes*, 555 U.S. 415, 421 (2009) (so holding regarding a "misdemeanor crime of domestic violence" in the ACCA).

In order to determine whether the victim was a protected person, the fact finder will look to the record of conviction (ROC) (see definition under "Miscellaneous Terms"), as well as evidence outside the record of conviction such as police reports and hearing transcripts. *Matter of H. Estrada*, 26 I&N Dec. 749. Thus, it is important to keep the ROC clean as to the identity of the victim whenever possible, including by taking an *Alford* plea, though this is no guarantee that the conviction will not be found to be a CODV later on.

Avoiding a COV will avoid a CODV, even if it is clear that the client and victim had a domestic relationship. Pleas that involve domestic violence counseling, stay away orders or other related conditions of probation are not CODVs, although a finding by either civil or criminal court of violation of a stay away order will make a client deportable. *See* INA 237(a)(2)(E)(ii) (deportability triggered by violation of portion of a protection order that involves "protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued").

Note that unlike a COV Aggravated Felony, a crime is a CODV <u>regardless of the sentence imposed</u>.

Crime of Child Abuse ("CA"):

Offenses involving "child abuse, child neglect, or child abandonment" will render LPRs and those who have previously been admitted deportable and others ineligible for certain forms of discretionary relief. *See* 8 U.S.C. § 1227(a)(2)(E)(1). Because abuse, neglect, and abandonment are treated as a "unitary concept," this guide refers to all crimes triggering this deportability ground as "crimes of child abuse." *Matter of Soram*, 25 I. & N. Dec. 378, 381 (BIA 2010).

The INA does not define "child abuse," but the BIA has interpreted it broadly to include "any offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a child or that impairs a child's physical or mental well-being, including sexual abuse or exploitation." *Matter of Velazquez-Herrera*, 24 I. & N. Dec. 503, 512, 2008 WL 2152210 (BIA 2008). The Board expanded this definition in *Matter of Soram*, 25 I. & N. Dec. 378 (BIA 2010), clarifying that no proof of actual harm or injury to the child is required. The Tenth Circuit has rejected the

BIA's broad interpretation of this deportability ground, finding that the generic definition, based on state criminal laws in 1996 when Congress passes IIRIRA, does not encompass "criminally negligent conduct with no resulting injury to a child." *Ibarra v. Holder*, 736 F.3d 903, 915-16 (10th Cir. 2013). *See also Fregozo v. Holder*, 576 F.3d 1030 (9th Cir. 2009) (interpreting *Velasquez-Herrera* as requiring "some injury to a child," not "conduct that merely could place a child's health and safety at risk"). However, both the Second and Third Circuits have affirmed the BIA's broad interpretation of "crime of child abuse." *See Florez v. Holder*, 779 F.3d 207, 211 (2d Cir. 2015); *Hackshaw v. Attorney Gen. of U.S.*, 458 F. App'x 137, 140 (3d Cir. 2012) (not published). Moreover, the BIA recently held, relying on *Matter of Velazquez-Herrera* and *Matter of Soram*, that the New York offense of endangering the welfare of a child, which encompasses negligence, categorically constituted a CA, thereby broadening the interpretation of the provision. *Matter of Mendoza Osorio*, 26 I&N Dec. 703 (BIA 2016).

Because the definition of child abuse is disputed, immigration practitioners are encouraged to argue that offenses do not constitute a "crime of child abuse." Defense attorneys can help avoid such a classification by pleading to an age-neutral offense, allocuting to a negligent mental state, and keeping evidence of a victim's minor age and actual injury out of the record of conviction.

Firearm Offense ("FO"):

Virtually every offense with a firearm as an element is a deportable firearms offense. Conviction for certain firearms offenses makes a noncitizen who otherwise has status deportable. It also will result in mandatory detention during removal proceedings. The text of the statute is as follows:

> Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of Title 18) in violation of any law is deportable.

8 U.S.C. § 1227(a)(2)(C). Note that this ground for deportation is distinct from the more narrow set of firearm trafficking offenses in the Aggravated Felony definition. There is no automatic firearms ground of inadmissibility, so family immigration or other relief may still be possible. However, if the FO can be a crime involving moral turpitude (see definition below), that may cause inadmissibility under *that* separate ground.

Note that Connecticut's definition of "firearm" appears to encompass antique firearms, which are not covered by the federal definition of the term. *Compare* Conn. Gen. Stat. §53a-3(19) *with* 18 U.S.C. § 921(a)(3). *See also State v. Zapadka*, 873 A.2d 270 (Conn. Supp. Ct. 2004) (holding that defendant could be prosecuted for possession of a replica antique pistol). Thus under the categorical approach, any Connecticut firearms offense may not be a "firearm offense" for immigration purposes under the "minimum conduct"

test because Connecticut proscribes certain antique firearms. *See Matter of Chairez I*, 26 I. & N. Dec. 349 (BIA 2014). Thus, immigration practitioners may be able to argue that the offense is not an FO although the government would argue that they must show a "realistic probability" of actual prosecution of offenses involving antique firearms.

However, defense attorneys should avoid firearms pleas altogether and, if that is not possible, sanitize the ROC to be as "clean" as possible, avoiding specific admission by the defendant or mention of the presence, possession, or use of firearms.

Crimes Involving Moral Turpitude ("CIMT"):

This term has been present in immigration law for over a century, but continues to be a source of confusion for immigration practitioners. The BIA has stated that a CIMT is "an act which is per se morally reprehensible and intrinsically wrong, or *malum in se*, so it is the nature of the act itself and not the statutory prohibition of it, which renders a crime one of moral turpitude." *Matter of Ajami*, 22 I. & N. Dec. 949, 950 (BIA 1999). The BIA has also described CIMTs as those involving conduct which is "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between [persons or to] society in general." *Matter of Danesh*, 19 I. & N. Dec. 669, 670 (BIA 1988).

After multiple courts challenged an earlier BIA ruling, it was later clarified that the categorical and modified categorical approaches should apply to determine whether a particular criminal offense is a CIMT. *Matter of Silva-Trevino*, 26 I. & N. Dec. 826 (BIA 2016).

Although offenses must be analyzed on a case-by-case basis, generally, the following types of crimes are often found to be CIMTs:

- offenses involving theft or an intent to defraud, *see, e.g., Chiaramonte v. INS*, 626 F.2d 1093 (2d Cir.1980) (theft crimes presumed to be crimes of moral turpitude) *and Mendez v. Mukasey*, 547 F.3d 345 (2d Cir. 2008) (first degree larceny in the form of defrauding a public community is a CIMT);
- offenses involving intent to cause bodily harm or offenses involving recklessness that result in serious bodily harm or use of a weapon, *see, e.g., Mustafaj v. Holder*, 369 F. App'x 163 (2d Cir. 2010) (NY third degree assault is a CIMT)
- most offenses involving sexual conduct, particularly if a protected class of victims is involved, *see, e.g., Matter of Dingena,* 11 I. & N. Dec. 723 (BIA 1966) ("as long as sexual intercourse with a child constitutes a crime under the law of the state, we conclude on the basis of precedent administrative and judicial decisions, that moral turpitude is involved"); *Matter of Esquivel-Quintana*, 26 I. & N. Dec. 469, 477 (BIA 2015) (holding that sexual assault on a minor constitutes a CIMT);
- drug offenses involving sale or distribution*, see, e.g., Atl. Richfield Co. v. Guerami*, 820 F.2d 280, 282 (9th Cir. 1987) (noting that possession of heroin for sale is a CIMT); *Matter of Khourn*, 21 I. & N. Dec. 1041 (BIA 1997) (distribution of cocaine constitutes a CIMT). Note, however, that the BIA has held that simple

possession of a controlled substance does not involve moral turpitude. *Matter of Abreu-Semino*, 12 I. & N. Dec. 775 (BIA 1968).

Other offenses may also fall under this category depending on the particular elements of the crime. The chart of Connecticut offenses in Appendix G attempts to give informed predictions for whether a particular Connecticut offense will fall under this category.

Unlike Aggravated Felonies and Controlled Substance Offenses, CIMTs do not render a noncitizen removable in every case—the impact of a CIMT will depend on length of time since admission when the offense was committed, immigration status, prior criminal record, and actual and potential sentence for the offense.

Petty Offense Exception ("POE") for CIMT Inadmissibility:

Normally, a conviction for a CIMT triggers inadmissibility, but the INA provides an exception that is commonly referred to as the "petty offense exception." A CIMT conviction will not trigger inadmissibility if the defendant has not committed a prior CIMT and the maximum potential punishment for the specific offense does not exceed one year (which, in Connecticut, means it is a misdemeanor) AND the defendant was not actually sentenced to more than six months, including any suspended sentence. This exception is detailed at 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

Aside from the POE, for LPRs, one CIMT conviction will not trigger deportability if the defendant has no prior CIMTs and if the offense was *committed* more than five years after becoming an LPR OR if the maximum possible punishment for the offense is less than one year. In addition, two CIMT convictions do not trigger deportability if (but only if) they arise from a single scheme of criminal misconduct, a narrowly defined concept. This exception for LPRs is not part of the "petty offense exception" as that term is used, although it will be a means to avoid deportation for LPRs.

Youthful Offender Exception ("YOE") to CIMT Inadmissibility:

As long as the state juvenile adjudication procedure is co-extensive with the federal analogue, the YOE usually does not apply because a disposition in juvenile proceedings is not a conviction for federal immigration law purposes and has no relevance to criminal removability determinations. *Matter of Devison-Charles*, 22 I. & N. Dec. 1362, 1366 (BIA 2000). Similarly, in Connecticut, being adjudged a youthful offender is not a conviction, Conn. Gen. Stat. § 54-76k, so those adjudications should not have an impact on immigration status.

However, a person who is convicted as an adult for acts they committed while under the age of 18 can benefit from this exception. A noncitizen who committed only one CIMT ever, and while under the age of 18, ceases to be inadmissible as soon as five years have passed since the conviction or the release from resulting imprisonment.

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4. MISCELLANEOUS TERMS

Categorical Approach

The categorical approach is the legal framework typically used to determine whether or not a noncitizen's criminal conviction is a removable offense, with some notable exceptions. See Section IV, The Categorical Approach and the Record of Conviction for an in-depth explanation of this framework.

Conviction

"Conviction" is uniquely defined in immigration law and covers dispositions where: (1) a formal judgment of guilt was entered by a court, or (2) (a) a judge or jury has found the defendant guilty, the defendant has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt and (b) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed. This broad definition has been held to even include some dispositions not considered a "conviction" by state criminal courts, such as low-level violations and convictions that are vacated after successful completion of rehabilitation programs.

Record of Conviction ("ROC")

Typically discussed in connection with the categorical approach, this term refers to a limited class of documents that may be reviewed by immigration adjudicators: the charging document (to the extent that it is consistent with the final conviction), a written plea agreement, the transcript of a plea colloquy, sentencing minutes, and any factual finding by the trial court to which the defendant assented. The ROC will generally not include things like police reports, *unless* they are incorporated into the plea.

Detainer

A detainer serves as a request to a jail or prison to hold a noncitizen suspected of being subject to deportation for ICE to pick up or to notify ICE when the jail or prison intends to release the person (for example, after criminal bail is paid, the case is disposed of, or the criminal sentence has been served). Federal regulations provide that a jail or prison can hold someone for only 48 additional hours (not including week- ends or holidays) based on an ICE detainer. However, the constitutionality of detainers has been challenged in federal courts, and numerous courts have held they are unlawful. *See e.g., Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014); *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-CV-02317-ST, 2014 WL 1414305, at *2 (D. Or. Apr. 11, 2014). Connecticut has limited the circumstances in which detainers are honored. For more information, see Section III, An Overview of Detainers and Methods of Immigration Enforcement, and Appendix E, Summary of Existing Connecticut "Sanctuary" Policies.

Voluntary Departure

A discretionary form of relief that allows individuals to depart from the United States without an order of removal but at their own expense. This relief may prevent an individual from being subject to criminal liability for re-entering the country after her departure that would otherwise arise from their removal (see below). A noncitizen allowed to voluntarily depart concedes removability and may be subject to a three or ten-year bar to re-entering the country depending on the duration of their unlawful presence. Failure to depart within the time granted may also result in a fine and a ten-year bar to several forms of reentry and relief.

Illegal Reentry

A federal offense criminalizing anyone who enters, attempts to enter, or is found in the United States after having been deported or denied admission. Individuals who illegally reenter after having been ordered removed for an aggravated felony may face a criminal sentence of up to 20 years in federal prison.

B. Other FAQs

The following overview is meant to provide some very basic background about immigration law for those practitioners that are not familiar with the field. Readers should understand that this is a complex area of law and that many important topics and provisions are not covered here.

How does criminal activity affect immigration status?

A criminal conviction, an admission of criminal activity, or even a reasonable belief by the government that someone has engaged in certain criminal activity can lead to a number of problems with immigration officials. When individuals are seeking to enter the United States, to "adjust their status" to LPR when they are already here, or to change from one temporary immigration status to another, they are subject to the grounds of "inadmissibility" listed in the immigration statute (8 U.S.C. § 1182). In addition, noncitizens who are present in the United States without documents, either because they entered without inspection or because they overstayed a visa, are also subject to grounds of inadmissibility. A criminal conviction, or even criminal activity, can serve as a ground to refuse someone entry into the country, to deny permanent residence, and even to deport from the country.

Criminal activity can also lead to immigration consequences for people who have already been admitted, either on temporary visas or even as LPRs. Those who have been lawfully admitted to the United States (including LPRs) are subject to the grounds of deportability listed in 8 U.S.C. § 1227. Different types of criminal offenses can lead to deportation, even for LPRs.

Lastly, certain criminal convictions can bar immigrants from becoming U.S. citizens. The most important is the statutory requirement of "good moral character" for naturalization purposes. The INA precludes a noncitizen from being found to have good moral character if, for example, during the period for which character is required to be established, the immigrant commits certain prostitution crimes, knowingly assists or aids any other person to enter the United States in violation of law, commits a crime of moral turpitude, commits a controlled substance crime, commits two or more offenses for which the aggregate sentence imposed was at least five years, or has at any time been convicted of an Aggravated Felony. 8 U.S.C. § 1101(f).

See the definitions under "Types of Offenses" under "Important Definitions" for more information.

How do immigration authorities become aware of criminal convictions?

The main enforcement wing of the immigration system is the Immigration and Customs Enforcement ("ICE") unit of the Department of Homeland Security ("DHS"). ICE can learn that a particular noncitizen is subject to deportation because of a criminal conviction in three main ways.

First, ICE can find out during the individual's interaction with the criminal justice system, although there are limits that vary state by state. This can happen either at initial pre-trial detention, during any jail time that is imposed upon conviction, or as a result of probation. ICE, for example, can coordinate with state jails to determine who is a noncitizen and then transfer noncitizens directly from criminal custody into immigration custody. For limitations in Connecticut, see Appendix E, Summary of Existing Connecticut "Sanctuary" Policies.

Second, ICE can find out about the noncitizen's criminal conviction if the person files an application for an immigration benefit, such as a green card or naturalization or even a renewal of an expiring green card. In response to the application, a background check will be conducted.

Third, ICE can learn about a noncitizen's conviction when the individual returns to the United States from travel abroad, at which point the immigration authorities may run his or her name through a database that reveals the conviction. In addition, ICE devotes some resources to identifying and arresting certain narrow classes of criminal offenders in the community (principally sex offenders), apparently consulting offender registries or court records and occasionally apprehending such persons in their homes. See Section III, An Overview of Detainers and Methods of Enforcement for more information.

Can individuals who are here without documents become LPRs?

Individuals who are in the country without documents may be able to become LPRs, but this is often a difficult process. Initially, they must have an avenue to obtain LPR status, such as one of those discussed in "Lawful Permanent Resident (LPR)" in Section I-A-2, Important Definitions: Types of Immigration Status, including family petitions, work petitions, or asylum status. However, even if the individual has such an avenue available to him or her, a number of potential obstacles may stand in the way. For this reason, as a practical matter, most of the undocumented immigrants in the country currently are not able to obtain an immigration status.

For more information, see above under "Lawful Permanent Resident (LPR)" in Section I-A-2 for more information about LPR status and how to obtain it.

A Suggested Approach for Defense Attorneys Representing Non-Citizen Defendants in Connecticut

An Outline of the *Padilla* Process

I. DETERMINE YOUR CLIENT'S PLACE OF BIRTH AND IMMIGRATION STATUS.

- You may use an intake form, like the sample in Appendix B, to gather relevant information for determining your client's citizenship and immigration status.
- **Determine if your client is a U.S. citizen**: there are no immigration consequences of criminal convictions for U.S. citizens.
    - Generally, an individual born in the United States[21] or one who naturalized is a citizen.
    - Note: some clients may assume they naturalized when they actually have not. Thus, if your client was born abroad, make sure to ask all questions on the intake form before jumping to conclusions about your client's citizenship.
    - An individual *may* be a citizen if a parent or grandparent was a U.S. citizen at the time of the individual's birth, or if a parent became a citizen when the individual was a minor (these rules are complicated – contact an immigration attorney).
- **If your client is not a U.S. citizen**, he or she is most likely to fall into four broad categories of immigration "status":
    1. **Lawful Permanent Resident** ("LPR"): also known as a "green card holder."
    2. An individual with either **temporary immigration status for a fixed period of time or for a particular purpose** (for example, a visitor visa or a student visa). The individual may also have overstayed the expiration of the visa, at which point the individual will no longer have that status.
    3. An individual who has been ***granted*** **asylum or refugee status**, but has NOT yet become an LPR.[22]
    4. An individual with **no immigration status** (undocumented immigrant). Such individuals may include persons who entered without inspection (EWI) or those with a prior order of removal.
- For more information about the different types of immigration status, see Section I-A-3, Important Definitions: Types of Immigration Status.

II. ADVISE YOUR CLIENT OF HIS OR HER RIGHTS IN CASE OF CONTACT WITH IMMIGRATION AUTHORITIES.

For more resources see Appendix D, KYR Resources for Noncitizens and Their Families.

- Inform your client if you believe he or she may be at risk for enforcement targeting by Immigration and Customs Enforcement (ICE).[23]

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[21] For citizenship purposes, the United States includes Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa.

[22] Note: if the individual has merely *applied* for asylum, but has not yet been approved, he or she does not fall into this category (see category 2ii).

[23] Under the current administration's new enforcement priorities, even those with pending criminal cases may be considered an enforcement priority. For more details, see Section III, An Overview of Detainers and Methods of Immigration Enforcement.

- Inform your client of his or her rights if arrested by ICE.
    - Your client has the right to remain silent and the right to speak to an attorney.
- Warn your client that an ICE agent may be easily confused with police agents.
    - ICE agents often pretend to be police and say they want to talk to an individual about an ongoing investigation. Advise your client to be cautious when speaking to unknown individuals, particularly if they ask about immigration background.

III. IF POSSIBLE, AVOID A DISPOSITION THAT CONSTITUTES A "CONVICTION" FOR IMMIGRATION LAW PURPOSES.

For a more comprehensive explanation, see the next sub-section A.

- Obviously, a dismissal of charges is the best possible result. A *nolle prosequi* is the second best outcome, followed by AR, both of which should also have no immigration consequences (see Appendix A, Immigration Consequences of Certain Dispositions and Pre-Trial Diversion Programs).
- In certain circumstances, several of Connecticut's pre-trial diversion programs will result in dispositions that do not constitute a "conviction" for immigration purposes (so long as no upfront guilty plea or admission of facts warranting a finding of guilt is entered).
    - Counsel should examine other pre-trial diversion programs with caution because they either may require the defendant to enter a guilty plea or to admit being alcohol- or drug-dependent, which may have negative immigration consequences, even if the plea is later vacated. See Appendix A for a more detailed explanation of which programs will likely constitute a conviction.
    - **Note, however:** Even non-conviction dispositions may still have negative immigration consequences down the road because the U.S. Citizenship and Immigration Services ("USCIS") may consider them in making discretionary determinations for immigration benefits (for example, naturalization); you should advise your client to consult with an immigration attorney before applying for any immigration benefit.
- Entering a *nolo contendere* plea will **not** mitigate immigration consequences. See Appendix G for further explanation of the immigration consequences of certain dispositions.

IV. IF POSSIBLE, AVOID A CONVICTION THAT AUTOMATICALLY TRIGGERS INADMISSIBILITY OR DEPORTABILITY.

- Consult the following sub-section, Dispositions to Avoid And Other Immigration Consequences to Consider, to understand which categories of convictions will have the most serious immigration consequences for your client.
- Consult the Connecticut Chart of Immigration Consequences (Appendix G) to determine whether the charged offense fits these categories. This will help you determine the possible immigration consequences for the crime charged and for other offenses to which the client might plead because they have less risk of triggering a ground for removal.
- **Pay careful attention to potential and actual sentences imposed**.
    - Some offenses are Aggravated Felonies only if the defendant is sentenced to a term of imprisonment of one year or longer. Try to obtain a sentence of **less** than one year (and remember: this category considers the sentence imposed, including any portion of the sentence that is suspended).

- **Note, however:** that murder, drug trafficking, or sexual abuse of a minor are examples of offenses that immigration statutes treat as Aggravated Felonies regardless of the sentence imposed.[24]
- The potential sentence or actual sentence imposed may make a difference in other contexts.[25]
- **If *nolle*, AR or pre-trial diversion is unavailable, advise your client to take an *Alford* plea.** While an *Alford* plea still constitutes a "conviction" for immigration law purpose, it can significantly mitigate consequences when the noncitizen is charged under a divisible statute.[26]

V. IF NOT POSSIBLE TO AVOID CONVICTION, PLEAD TO ONE THAT PRESERVES POSSIBILITY OF IMMIGRATION RELIEF.

See also Appendix G, Chart of Connecticut Offenses.

- Plead to "safer" offenses for immigration purposes, and avoid the worst categories (especially avoid Aggravated Felonies and Controlled Substance Offenses).
  - The best place to start is by figuring out the potential plea dispositions and checking the chart in Appendix G to see the notes on the immigration consequences of those dispositions. The chart points out how the categorical approach might be used by immigration practitioners to argue against certain immigration consequences of conviction under a certain statute. See Section IV for more information about the categorical approach and how the record of conviction will be used in removal proceedings.
  - **Note, however, that for defense attorneys it is best to aim for the safest plea possible.** While there may be arguments under the categorical approach to defend an individual from removal, those would only by applied by immigration practitioners once the client is in removal proceedings.
- **Generally, keep the record of conviction (ROC)[27] "clean"**: in other words, avoid facts that may make a particular conviction worse for immigration purposes.
  - For example, keep out facts such as the identity of the controlled substance involved, that the defendant used a firearm, that the victim was a minor, or that the victim was a spouse or other person protected under domestic violence laws.
  - One important way to keep the record clean is to enter an *Alford* plea.
  - If necessary, consider waiving the reading of the facts.

[24] *See* 8 U.S.C. § 1101(a)(43) for a complete list.
[25] For instance, it can make a difference for individuals traveling abroad to qualify for the moral turpitude "petty offense exception." *See* Section I-A-3, Important Definitions: Types of Offenses.
[26] The chart in Appendix A notes where an *Alford* plea is most likely to benefit the client, but because of the difficulty for practitioners and courts to determine whether a statute is divisible, we recommend *Alford* pleas as a general practice.
[27] The ROC for purposes of immigration law includes the charging document (to the extent that it is consistent with the final conviction), the written plea agreement, the transcript of the plea colloquy, sentencing minutes, and any factual finding by the trial court to which the defendant assented. See Section IV for more information.

VI. WARN YOUR CLIENT OF OTHER POTENTIAL CONSEQUENCES AND OTHER CONSIDERATIONS.

- Warn the client of the immigration consequences of conviction, and that the individual may face mandatory detention in federal immigration custody when Connecticut releases her or him from state custody if the DHS believes that she/he is deportable for certain grounds. *See* 8 U.S.C. § 1226(c). DHS may also detain your client later when it becomes aware of the issue.
    - Note that the law around immigration detention authority is in flux so your client should verify whether he or she may qualify for a bond hearing at some point, depending on factors like length of detention and stage of the removal proceedings.
- If the client is an LPR, warn him or her to consult an immigration attorney before traveling abroad (or even to border areas within the United States), applying for naturalization, or requesting a replacement green card.
- Warn the client that he or she should consult an immigration attorney before filing for ANY benefit with USCIS, including adjustment of status, asylum, work permits, or naturalization.
- Warn the client that reentering the country illegally after being removed (deported) because of a criminal conviction could lead to federal criminal charges and significant prison time.

Elaboration on Step 4-6: Dispositions to Avoid And Other Immigration Consequences to Consider

Note: **The information below is not meant to be comprehensive**, and there may exist additional consequences or forms of relief available in particular situations. Practitioners should consult with immigration attorneys where necessary, and advise clients to consult with an experienced immigration practitioner where immigration consequences are unclear. The following information is only meant to give general guidelines of the types of convictions to be avoided for an individual with a particular immigration status.

The categorical approach may also affect the below convictions that you want to avoid. If there is uncertainty, it is best to approach the convictions conservatively. However, it is also important to counsel your client not to concede that a conviction is, for example, an aggravated felony, if that conviction cannot be avoided.

Avoid Deportability Grounds.

1. **Most importantly, avoid conviction for an Aggravated Felony**, *see* 8 U.S.C. § 1101(a)(43), which will trigger virtually mandatory deportation. See "Aggravated Felony" under Section I-A-3, Important Definitions: Types of Offenses.

2. **Avoid conviction for a Controlled Substance Offense** (drug crimes); *see* 8 U.S.C. § 1227(a)(2)(B). See "Controlled Substance Offense" under Section I-A-3, Important Definitions: Types of Offenses.
    a. Except*:* Single offense for simple possession of 30 grams (1.06 oz) or less of marijuana for one's own use does not trigger deportability, 8 U.S.C. § 1227(a)(2)(B)(i). This is a circumstance-specific inquiry, and it will be important to keep a clean record. Caution: a similar exception is not found in the inadmissibility grounds, discussed below. This may have important consequences for people who wish to travel or are applying for certain immigration benefits.

3. **Avoid conviction for Crime Involving Moral Turpitude** ("CIMT"), *see* 8 U.S.C. § 1227(a)(2)(A)(i). See "Crime Involving Moral Turpitude" under Section I-A-3, Important Definitions: Types of Offenses.
    a. Except: If no past CIMT convictions, then one conviction for CIMT does not trigger deportability IF:
        i. the offense was *committed* more than 5 years after admission (or more than ten years after admission if the individual gained LPR status through 8 U.S.C. § 1255(j) for being "in possession of critical reliable information concerning a criminal organization or enterprise")
        OR
        ii. if the maximum possible punishment for the offense is less than one year. In addition, two CIMT convictions do not trigger deportability if (but only if) they arise from a single scheme of criminal misconduct, a narrowly defined concept.

4. **For Lawful Permanent Residents, avoid convictions for the following[28]:**
    a. **Firearm Offense**, *see* 8 U.S.C. § 1227(a)(2)(C). See "Firearm Offense" under Section I-A-3, Important Definitions: Types of Offenses.
    b. **Crime of Domestic Violence**, **Crime of Stalking**, **Crime Against a Child**, or violation of domestic violence protection order, *see* 8 U.S.C. § 1227(a)(2)(E). See "Crime of Domestic Violence" and "Crime of Child Abuse" under Section I-A-3, Important Definitions: Types of Offenses.
    c. Avoid disposition or record that may give basis for finding that client is "drug abuser or addict," 8 U.S.C. § 1227(a)(2)(B)(ii).[29]
    d. Avoid other miscellaneous grounds of deportation.[30]

Avoid Inadmissibility[31] Grounds.

1. **Avoid convictions triggering deportability** (see above).

2. **Avoid conviction for a Controlled Substance Offense**, *see* 8 U.S.C. § 1182(a)(2)(a)(i)(II).[32] See "Controlled Substance Offense" under Section I-A-3, Important Definitions: Types of Offenses.
    a. Note that the exception for possession of 30g or less of marijuana for one's own use does not apply in the inadmissibility context. However, there is a discretionary waiver of inadmissibility available for certain individuals either applying for adjustment of status or seeking admission into the United States. *See* 8 U.S.C. § 1182(h). In any case, because this is a circumstance-specific inquiry, it will be important to keep a clean record.

3. **Avoid conviction for Crime Involving Moral Turpitude**, *see* 8 U.S.C. § 1182(a)(2)(A)(i)(I). See "Crime Involving Moral Turpitude" under Section I-A-3, Important Definitions: Types of Offenses.
    a. Except: Petty offense exception for a conviction for a CIMT that will NOT trigger inadmissibility IF
        i. the defendant has not committed a prior CIMT;
        ii. the maximum potential penalty for this CIMT does not exceed one year (in Connecticut, this means it is a misdemeanor); AND,
        iii. the defendant was not actually sentenced to more than six months (including any suspended sentence), *see* 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

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[28] Note also that these offenses also have an array of other immigration consequences for both LPRs and non-LPRs, for instance, the ability to qualify for non-LPR cancelation of removal.

[29] This ground requires a separate medical certification and, as a consequence, DHS does not charge it often. That, and the possible benefits to your client, make certain non-conviction dispositions that would trigger it (like a drug treatment pretrial diversion program) vastly preferable to other potentially harmful options, like taking a losing drug case to trial.

[30] The miscellaneous grounds are unlikely to be encountered by defense attorneys in Connecticut state court, but include: unlawful voting, certain federal crimes (such as espionage and, threats to the President), certain immigration violations, terrorist activities, and being a "public charge." *See generally* 8 U.S.C. § 1227.

[31] This can apply to an LPR with a conviction because traveling abroad would subject her to inadmissibility grounds upon return to the United States.

[32] A non-citizen will also become inadmissible if he or she "admits" having committed a Controlled Substance Offense or a crime involving moral turpitude; however, a conviction is clearly worse than an admission.

4. **Avoid a situation where the client will have been convicted of two or more offenses *of any type*** (other than purely political offenses) **if the aggregate sentences to confinement actually imposed an amount of five years or more**, *see* 8 U.S.C. § 1182(a)(2)(B).[33]
    a. Avoid convictions relating to prostitution, *see* 8 U.S.C. § 1182(a)(2)(D).
    b. Avoid dispositions and admissions that may result in client being considered a "drug abuser or addict," 8 U.S.C. 1182(a)(1)(A)(iv).[34]
    c. Avoid other miscellaneous grounds of inadmissibility.[35]

If Cannot Avoid All Deportability or Inadmissibility Grounds, Plead to Offenses that Preserve Immigration Relief.

1. **Prioritize seeking to preserve eligibility for immigration "waivers"** (like immigration pardons) **or Cancellation of Removal.**[36]
    a. Avoid conviction of an **Aggravated Felony** to preserve cancellation of removal, *see* 8 U.S.C.A. § 1229b, and to preserve a waiver, *see* 8 U.S.C. § 1182(h).
    b. Avoid conviction for a **Controlled Substance Offense** to preserve waiver of inadmissibility, *see* 8 U.S.C. § 1182(h).
        i. *Except:* Single offense for simple possession of 30 g (1.06 oz) or less of marijuana for one's own use may not preclude eligibility for waiver. This is a circumstance-specific inquiry, and it will be important to keep a clean record.
    c. If neither of the above is possible to avoid, try to at least preserve "withholding of removal" relief by avoiding convictions listed in the following sub-section.
    d. **For non-LPRs seeking cancellation of removal, they will also need to be aware of other requirements**[37] **and avoid the following:**
        i. **Aggravated Felony** (see above).
        ii. **Controlled Substance Offense** (see above).
        iii. **Crime Involving Moral Turpitude** if:
            1. Committed within five years and the crime could have received a sentence or one year or longer.

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[33] Note that the two or more offenses could arise from the same or different incidents and could have been distant in time, so long as the aggregate sentences actually imposed add up to five years or more.

[34] This may affect certain diversion programs like Connecticut's Suspension of Prosecution for Alcohol-Dependent or Drug-Dependent Persons, because it may involve a judicial finding of drug or alcohol dependence that may implicate someone as a "drug abuser or addict."

[35] Other grounds of inadmissibility that are less likely to be encountered by attorneys in Connecticut state court include: unlawful voting, money laundering, significant trafficking in persons, serious criminal activity by a non-citizen who has asserted immunity from prosecution, criminal activity which endangers public safety or national security, terrorist activity, international child abduction, and certain immigration violations. *See generally* 8 U.S.C. § 1182.

[36] Your client will not necessarily be eligible for a waiver or cancellation if s/he does not meet the other eligibility criteria for that waiver or cancellation (such as length of residency, certain family relationships). This guide does not go into detail about the requirements for either LPR or non-LPR cancellation of removal, only the criminal bars on eligibility.

[37] Individuals can be disqualified from non-LPR cancellation if they have: a history of habitual drinking; engaged in polygamy or prostitution; falsely claimed US citizenship or registered to vote; gave false testimony to obtain any immigration benefit; derived income from illegal gambling; smuggled (including sending money for family members to illegally enter the United States).

iv. **Firearm Offense**, *see* 8 U.S.C. § 1227(a)(2)(C). See "Firearm Offense" under Section I-A-3, Important Definitions: Types of Offenses.
v. **Crime of Domestic Violence**, **Crime of Stalking**, **Crime Against a Child**, or violation of domestic violence protection order, *see* 8 U.S.C. § 1227(a)(2)(E). See "Crime of Domestic Violence" and "Crime of Child Abuse" under Section I-A-3, Important Definitions: Types of Offenses.
vi. Avoid convictions of any type resulting in confinement to a penal institution for 180 days or more, *see* 8 U.S.C. § 1101(f)(7).

2. **If the client may seek Asylum or "Withholding of Removal,"** 8 U.S.C. § 1231(b)(3) (for example, because of fear of persecution):
   a. Avoid conviction for an **Aggravated Felony**, *see* 8 U.S.C. § 1101(a)(43).
   b. Avoid conviction for a crime that may be considered **"particularly serious" or "violent or dangerous,"** *see* 8 U.S.C. § 1158(b)(2)(A). There is no specific definition, but depending on the offense, courts may consider not only the elements of the offense, but also potentially the circumstances of the particular case.[38]
   c. If (a) and (b) cannot be avoided, try to at least preserve "withholding of removal" relief by avoiding:
      i. Conviction for an Aggravated Felony, or felonies with aggregate sentence of imprisonment of at least five years, *see* 8 C.F.R. § 208.16(d)(3).
      ii. Conviction for Aggravated Felony involving unlawful trafficking in a controlled substance, regardless of sentence—consult Appendix G.[39]
      iii. Conviction for crime that may be determined to be "particularly serious" as discussed above.

3. **For clients with temporary or no status, avoid convictions that will trigger permanent inadmissibility.**
   a. Avoid conviction for "**violent or dangerous crime**" in order to preserve eligibility for a 212(h) waiver of inadmissibility, *see* 8 C.F.R. § 212.7(d). The definition of the terms "violent or dangerous crime" is vague,[40] and the law is unclear as to whether or not the categorical approach applies to it.[41]

4. **For clients with temporary or no status, preserve eligibility for voluntary departure, 8 U.S.C. § 1229c.**
   a. Avoid conviction for an **Aggravated Felony**, *see* 8 U.S.C. § 1101(a)(43). See "Aggravated Felony" under Section I-A-3, Important Definitions: Types of Offenses.
   b. Avoid other convictions preventing a finding of good moral character:
      i. Avoid conviction for **Controlled Substance Offense** (other than single offense of simple possession of 30 grams or less of marijuana - this is a circumstance-specific inquiry, and it will be important to keep a clean

[38] *See Cisneros v. Lynch,* 834 F.3d 857 (7th Cir. 2016) (discussing determination of "violent or dangerous"). Some crimes are presumptively "particularly serious" crimes, like aggravated felonies, *see* 8 C.F.R. § 208.16(d)(3). *See Matter of Carballe*, 19 I. & N. Dec. 357, 357 (BIA 1986) (discussion of determination of "particularly serious" crimes).
[39] *See Matter of Y-L-*, 23 I. & N. Dec. 270 (A.G. 2002).
[40] *See In re Jean*, 23 I. & N. Dec. 373 (BIA 2002).
[41] *See Cisneros v. Lynch,* 834 F.3d 857 (7th Cir. 2016).

record). *See* 8 U.S.C. § 1227(a)(2)(B). See "Controlled Substance Offense" under Section I-A-3, Important Definitions: Types of Offenses.

ii. Avoid conviction for **Crime Involving Moral Turpitude**, *see* 8 U.S.C. § 1227(a)(2)(A)(i). See "Crime Involving Moral Turpitude" under Section I-A-3, Important Definitions: Types of Offenses.

iii. Avoid convictions of any type (other than purely political offenses) if aggregate sentences of imprisonment are five years or more, *see* 8 U.S.C. § 1182(a)(2)(B).

iv. Avoid convictions for two or more gambling offenses, *see* 8 U.S.C. § 1101(f)(5).

v. Avoid convictions of any type resulting in confinement to a penal institution for 180 days or more, *see* 8 U.S.C. § 1101(f)(7).

Other Criminal Grounds to Avoid for Certain Immigrants

1. If your client is a refugee or asylee who has not yet become an LPR, **reserve special waivers of inadmissibility for refugees/asylees, 8 U.S.C. § 1159(c).**

a. Avoid conviction for "violent or dangerous crime" in order to preserve eligibility for a 212(h) waiver of inadmissibility, *see* 8 C.F.R. § 212.7(d). The definition of the terms "violent or dangerous crime" is vague, and the law is unclear as to whether or not the categorical approach applies to it.[42]

b. Avoid disposition leading to a determination that client is illicit trafficker or assisted in trafficking of controlled substances, *see* 8 U.S.C. § 1159(c).

2. If your client is an asylee, **avoid conviction for a "particularly serious crime" that would lead to termination of asylum status.**[43]

a. Avoid a conviction for an Aggravated Felony, which is automatically presumptively a particularly serious crime, *see* 8 C.F.R. § 208.16(d)(3).

b. Avoid conviction for any other crime that may be considered "particularly serious." There is no specific definition of what is particularly serious, though crimes against persons, crimes involving drug sale, and other crimes that lead to an inference of dangerousness are likely to fall into this category. Further, the BIA has held that once the elements of an offense are found to potentially bring it within the ambit of a particularly serious crime, all reliable information may be considered in determining whether the offense constitutes a particularly serious crime, including but not limited to the record of conviction and sentencing information.[44]

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[42] *See Cisneros v. Lynch,* 834 F.3d 857 (7th Cir. 2016) and *In re Jean*, 23 I. & N. Dec. 373, 2002 WL 968631 (B.I.A. 2002) for both a discussion of "violent or dangerous crime" and the standard for special waivers of inadmissibility for refugees/asylees.

[43] A conviction for a "particularly serious crime," which includes a conviction for an aggravated felony, leads to termination of asylee status. *See* 8 U.S.C. § 1158(b)(2)(A)(ii) & (c)(2).

[44] *See Matter of N-A-M-*, 24 I & N. Dec. 336, 342 (BIA 2007); *Matter of Carballe*, 19 I. & N. Dec. 357, 357 (BIA 1986).

Other Considerations for Clients

1. **Avoid convictions that will result in mandatory detention by ICE.**
    a. Avoid convictions triggering inadmissibility (see section A(3) above);
    b. Avoid convictions triggering deportability (see sections A(1) and (2) above) because of conviction for Aggravated Felony (AF), Controlled Substance Offense, Firearm Offense, or Crime Involving Moral Turpitude ("CIMT"):
        i. *Except*: no mandatory detention if the individual has been lawfully admitted and is deportable only for a single conviction of CIMT and the sentence imposed is less than one year.

2. **Avoid grounds of inadmissibility, to maintain your client's eligibility to adjust to LPR status.**
    a. See Inadmissibility Grounds above.

3. **Avoid the following which may affect your client's ability to naturalize.**[45]
    a. Avoid convictions for two or more gambling offenses, *see* 8 C.F.R. 316.10(b)(1)(x).
    b. Avoid convictions that result in the client's confinement in a penal institution for an aggregate period of 180 days or more (include all time incarcerated during the past five years), *see* 8 C.F.R. 316.10(b)(1)(v).
    c. Be aware that periods of probation, parole, or suspended sentence for non-removable offenses may delay a client's ability to naturalize, *see* 8 C.F.R. 316.10(c)(1).

4. **Avoid convictions that will enhance the client's sentence if convicted of illegal reentry in the future.**
    a. Your client may be exposed to long periods of incarceration if he or she were deported and attempted to reenter the country illegally. If this is a concern for your client:
        i. Avoid conviction for an Aggravated Felony.[46]
        ii. Avoid conviction for a felony, or three or more misdemeanors involving drugs or crimes against the person.[47]
        iii. Avoid conviction for terrorist activities, as defined by 8 U.S.C. § 1182(a)(3)(B).[48]
        iv. Avoid conviction for a crime of violence, which has a 16-level sentencing enhancement, see USSG, § 2L1.2, 18 U.S.C. § 16.

[45] These convictions may affect the good moral character finding. Although the relevant statutory period is five years before the submission of the naturalization application, USCIS does have the discretion to look beyond the statutory period.
[46] Maximum sentence for illegal reentry after being deported for an Aggravated Felony is twenty years, *see* 8 U.S.C. § 1326(b)(2).
[47] Maximum sentence would be ten years, *see* 8 U.S.C. § 1326(b)(1).
[48] Maximum sentence would be ten years, *see* 8 U.S.C. § 1326(b)(3).

III. An Overview of Detainers and Methods of Immigration Enforcement

The Department of Homeland Security (DHS) is a massive law enforcement agency that has built a nationwide infrastructure to arrest, detain and deport noncitizens. Historically, enforcement actions are divided between those at the border, by Customs and Border Protection (CBP) and those in the interior, by Immigration and Customs Enforcement (ICE). However, given Connecticut's proximity to the maritime border and Bradley International Airport, enforcement actions may be taken by either CBP or ICE.[49]

Enforcement At the Border

When a person seeking admission into the country is arrested at the border, which again includes detention at an airport, DHS takes the position that detention is mandatory.[50] Even those who arrive seeking asylum based on a fear of return to their country are mandatorily detained unless and until they are granted parole, which usually requires a finding of credible fear of persecution.[51] A noncitizen classified as an arriving alien may be detained unless the examining officer determines that the person is clearly and beyond a doubt eligible to be admitted or DHS grants parole.[52] Thus, noncitizens who are detained at the border may be eligible for release, but only after requesting that release through parole by ICE.[53]

Current regulations provide that those arrested anywhere in the United States and within 2 years of arrival in the United States may be subject to a set of procedures distinct from regular removal proceedings known as expedited removal.[54] In expedited removal, an ICE officer can order the noncitizen removed "without further hearing or review," unless that individual clearly communicates an intention to apply for asylum or a fear of persecution.[55] Prior regulations had limited expedited removal to those arrested within 100 miles of the land or maritime border and within 14 days of arrival,[56] but the scope of expedited removal was expanded recently under the current administration.[57] **This means that undocumented clients may be at risk of being deported on an expedited basis and of mandatory detention depending on how long they have been in the United States.**

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[49] 8 C.F.R. 287(a)(3).
[50] 8 U.S.C. 1225.
[51] 8 U.S.C. § 1225(b)(1).
[52] 8 U.S.C. § 1225 (b)(2); *see Tabbaa v. Chertoff*, 509 F.3d 89 (2d Cir. 2007) (upholding hours-long detention of U.S. citizens at border).
[53] 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 212.5.
[54] 8 U.S.C. § 235.3.
[55] 8 U.S.C. § 1225(b)(1)(A)(I).
[56] 69 Fed. Reg. 48899 (2004).
[57] THE WHITE HOUSE, *Executive Order 13767: Border Security and Immigration Enforcement Improvements* (Jan. 25, 2017), https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements ("Border Enforcement EO").

Moreover, DHS also takes the position that it may detain returning lawful permanent residents with certain criminal convictions that potentially render them inadmissible since they are "seeking admission" into the United States. **If your client is a green card holder with a criminal history, you should make sure to assess whether the criminal offense at issue would render your client inadmissible, in addition to being deportable. Explain to your client that while a criminal conviction may not be grounds for deporting her, traveling abroad may subject her to immigration consequences upon return because there are different criminal grounds for inadmissibility than deportability.** For instance, if your client had pleaded to possession of less than 30 grams of marijuana, she would be safe from deportation *but* may be deemed inadmissible if she leaves the country and tries to return.[58]

In the Interior Enforcement

According to immigration statutes, ICE officers have broad powers to interrogate and arrest persons, even without a warrant.[5960] An immigration officer may "briefly detain" a person for questioning where the agent has a "reasonable suspicion, based on specific articulable facts" of an immigration violation,[61] the equivalent of an immigration *Terry* stop. Such an interrogation can occur so long as "the immigration officer does *not* restrain the freedom of an individual, not under arrest, to walk away."[62]

An immigration officer may initiate a warrantless arrest under immigration regulations when the officer has "reason to believe" a person is present in violation of immigration laws and that the person is likely to escape before a warrant can be obtained.[63] Before deciding whether to "charge" the individual and initiate removal proceedings, ICE may take up to 48 hours during which time they may detain and question the individual.[64] Statements obtained during this pre-charge period often supply the basis for the initiation of removal proceedings. Courts have concluded that because immigration proceedings are civil in nature, rather than criminal, *Miranda*-type warnings are not required during this questioning. *See United States v. Solano–Godines*, 120 F.3d 957 (9th Cir.1997); *U.S. v. Kadem*, 317 F. Supp. 2d 239, 243 (W.D.N.Y. 2004). Only after ICE decides to initiate proceedings by filing a Notice to Appear (NTA) do the regulations require agents to inform the arrestee of the reason for her arrest and of her rights to remain silent and to obtain counsel at no expense to the government.[65]

A noncitizen arrested in the interior and placed in removal proceedings through the issuance of a NTA receives a custody determination by ICE, which the person can seek

[58] *Compare* 8 U.S.C. § 1227(a)(2)(B) *with* 8 U.S.C. § 1182(a)(2)(A)(i)(II).
[59] 8 U.S.C. § 1357(a).
[60] However, attorneys should still assert their clients' fourth amendment rights, which could limit ICE officers' broad statutory authority.
[61] 8 C.F.R. § 287.8(b)(2).
[62] *Id*. at (b)(1).
[63] *Id*. § 287.8(c)(2).
[64] *U.S. v. Tejada*, 255 F.3d 1 (1st Cir. 2001).
[65] 8 C.F.R. § 287.3; *Matter of E-R-M-F- & A-S-M-*, 25 I. &. N. Dec. 580 (BIA 2011).

review of by an immigration judge,[66] unless the individual is subject to mandatory detention. Per an immigration statute, **detention is mandatory for certain individuals with criminal convictions.**[67] These include deportability based on a drug offense, an "aggravated felony," any two crimes involving moral turpitude, any firearm offense, or any moral turpitude offense committed within the first five years of residence for which the person served a term of imprisonment of at least one year.[68] The constitutionality of the prolonged, mandatory detention statute is currently under review by the Supreme Court, as is prolonged, mandatory detention of arriving noncitizens.[69]

Apart from due process challenges to mandatory detention, advocates have also pressed statutory interpretation arguments that would limit the scope of mandatory detention and the categories of noncitizens subject to such detention. The timing of detention is an important issue, as the federal government often mandatorily detains individuals with years-old convictions. Mandatory detention *does not* apply to persons who were released from criminal custody prior to October 8, 1998, the date on which mandatory detention rules went into effect.[70] Issues remain concerning whether mandatory detention applies if ICE does not act promptly to detain an individual "when released" from criminal custody. Circuits are currently divided, but Connecticut residents, who are usually detained by ICE in Massachusetts, are not considered mandatorily detained if ICE fails to take custody within a "reasonable time" after release from criminal custody, although the precise amount of time is still being litigated.[71] **Thus, your client could qualify for a bond hearing even if she has a conviction ordinarily subject to mandatory detention so long as she was not transferred directly from state to ICE custody.**

Enforcement Actions

DHS may and does take enforcement actions in communities for the purpose of apprehending individuals potentially subject to removal. The current administration has expanded the categories of individuals deemed enforcement priorities to include those who:

- Have been convicted of *any* criminal offense;
- Have been *charged* with *any* criminal offense, even where such charge has not been resolved;
- Have committed acts that constitute a chargeable offense;
- Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;
- Have abused any program related to receipt of public benefits;
- Are subject to a final order of removal; or,

[66] INA § 236(a), 8 U.S.C. § 1226(a), permits release on bond of at least $1,500 or conditional parole, and allows for a bond hearing before an immigration judge to review ICE's decision to detain a noncitizen.
[67] INA § 236(c), 8 U.S.C. § 1226(c).
[68] 8 U.S.C. § 1226(c).
[69] *Jennings v. Rodriguez*, 136 S.Ct. 2489 (Mem.) (2016).
[70] *Matter of Garcia-Arreola*, 25 I&N Dec. 267 (BIA 2010).
[71] *Gordon v. Lynch*, 842 F.3d 66 (1st Cir. 2016).

- Otherwise deemed to pose a risk to public safety or national security.[72]

Criminal defense attorneys with noncitizen clients, particularly those who are undocumented or have a prior order of removal, may wish to advise their clients of the risk of ICE arrest. See Appendix D for more information regarding KYR advice.

1. 287(g) Agreements, S-Comm and PEP

Following 9/11, the federal government has also sought to expand the role of state and local police in immigration enforcement. Beginning in 2002, the Department of Justice (DOJ) has entered into "287(g) agreements,"[73] with some states, counties, and cities to train and deputize state officials to carry out immigration enforcement, at jails and in the field through "street-level" enforcement. The DOJ continued to enter 287(g) agreements under the Obama Administration, but also reformed the agreement process to reflect two overarching objectives: 1) enforcement priorities that emphasize the identification, detention, and removal of noncitizens with serious criminal records who pose a threat to public safety or have already been ordered removed, and 2) greater federal control over the operations of jurisdictions where local or state police possess the authority to perform immigration functions. The current administration has directed the Secretary of DHS to enter into further 287(g) agreements to authorize state and local law enforcements officials to "perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States."[74] ICE currently does not have any 287(g) agreements with any jurisdictions within Connecticut.[75]

ICE also uses "detainers" to link civil immigration enforcement with local jurisdictions' criminal law enforcement efforts. Using programs like PEP and now S-Comm, DHS issues an immigration "detainer" requesting that the local agency hold an individual it believes may be subject to removal until ICE could assume custody. Under the Obama administration, ICE requested notification (of at least 48 hours in advance) of when an individual is to be released from state or local custody so that ICE could determine whether to send officers to arrest the individual and initiate removal proceedings through a program called the Priority Enforcement Program (PEP).[76] The current administration has since January 2017 decided to re-institute the Secure Communities Program (S-Comm),[77] the precursor to PEP that instituted the sharing of the fingerprint database

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[72] THE WHITE HOUSE, *Executive Order 13768: Executive Order: Enhancing Public Safety in the Interior of the United States* (Jan. 25, 2017), https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united ("Interior Enforcement EO").
[73] *See* 8 U.S.C. § 1357(g).
[74] *See supra,* Border Enforcement EO.
[75] U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, https://www.ice.gov/factsheets/287g (accessed March 1, 2017).
[76] U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *Priority Enforcement Program* (archived page), http://www.ice.gov/pep (accessed March 1, 2017).
[77] *See supra*, Interior Enforcement EO.

information between local law enforcement and ICE and more aggressive enforcement. The practical implications of its return are still unclear and may vary depending on the locality and its willingness to comply or resist with federal government demands.

2. "Sanctuary" Policies in Connecticut

Local law enforcement agencies receiving a detainer request are not required to hold an individual pursuant to a detainer. Although the regulation states that an "agency shall maintain custody of the alien for a period [generally] not to exceed 48 hours,"[78] DHS and others "have taken the position that the regulation's mandatory language applies only to the period of any detention pursuant to an immigration detainer, and *does not require detention* at DHS's request."[79] The state of Connecticut and various localities within it have relatively strong anti-detainer laws in place that limit the extent to which these jurisdictions honor ICE detainers. These exist at three levels: (1) city-specific measures in New Haven, Hartford, and East Haven; (2) a statewide settlement from *Brizuela v. Feliciano*,[80] limiting how local and state police departments cooperate with federal immigration enforcement; and (3) the statewide TRUST Act. The attached chart in Appendix E illustrates the pertinent differences. Note that the TRUST Act applies to all Connecticut law enforcement, including judicial marshals, but does *not* cover probation officers. Furthermore, while there is no longer a policy in place mandating them to affirmatively provide information to federal immigration officials, probation officers do respond to ICE inquiries so there is no policy in place restricting their communications.

3. *ICE Warrants*

In the course of its duties, ICE frequently uses what it refers to as "warrants" that appear as Form I-200 or Form I-205. These forms are not actual court-issued warrants. Rather, these are administrative "warrants," issued by ICE supervising officers without any review by a neutral magistrate or judge. These documents identify an individual suspected of being subject to deportation and authorize designated immigration agents to take the identified person into custody.[81]

Unlike an ICE detainer request, which serves to notify a state or local law enforcement agent of ICE's interest in a particular individual, an administrative warrant serves to authorize any ICE agent to take custody of an individual. Immigration laws and regulations do not authorize state or local law enforcement to issue, serve, or executive administrative warrants.[82] Similar to an ICE detainer request, the immigration statute and regulations for administrative warrants do not specify any probable cause requirement—or any other legal standard—that must be met in order to issue an administrative warrant.

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[78] 8 C.F.R. §287.7(d).
[79] Kate M. Manuel, R42690, *Immigration Detainers – Legal Issues*, CONG. RESEARCH SERV. at 12, May 7, 2015.
[80] No. 3:13–cv–226–JBA (D. Conn. filed Feb. 13, 2012).
[81] 8 U.S.C. § 1357; 8 C.F.R. § 287.5.
[82] 8 C.F.R. § 287.5(e) (authorizing only immigration officers to execute warrants); 8 C.F.R. § 241.2 (same for I-205); *Arizona v. United States* 132 S.Ct. 2492, 2505 (2012).

Hence, continued detention on the basis of an administrative warrant would constitute a warrantless arrest,[83] although at some point during the detention period, ICE may obtain evidence of removability through questioning. While the Fourth Amendment does apply in that context, the standard to getting the evidence suppressed is onerous and difficult to meet.[84] Administrative warrants also do not give ICE officials authority to enter a place where there is a reasonable expectation of privacy without valid consent.[85] **Criminal defense attorneys should be aware of the nature and limited authority carried by an ICE administrative warrant and be vigilant about law enforcement officers overstepping the boundaries of constitutional protection by relying on the I-200 or I-205 forms as if they were actual court-issued warrants.**

[83] *El Badrawi v. Dept. of Homeland Sec.*, 579 F.Supp.2d 249, 275-76 (D. Conn. 2008) ("In this case, El Badrawi's arrest warrant was signed by Agent Manack, an ICE Agent intimately involved in the investigation. No neutral magistrate (or even a neutral executive official) ever examined the warrant's validity. Under Connecticut tort law (and federal constitutional law), the arrest must therefore be treated as warrantless.").

[84] *See e.g., Maldonado v. Holder*, 763 F.3d 155 (2d Cir. 2014).

[85] *Cotzojay v. Holder*, 725 F.3d 172 (2d Cir. 2013) (holding that non-consensual warrantless entry by ICE into the petitioner's home violated the Fourth Amendment) *Camara v. Municipal Court*, 387 U.S. 523 (1967) (holding administrative warrant insufficient to permit entry into residence); *See v. City of Seattle*, 387 U.S. 541 (1967) (same for non-public parts of business).

IV: The Categorical Approach and Related Doctrine

Many convictions may result in immigration consequences. As described further in Section II: A Suggested Approach for Defense Attorneys Representing Non-Citizen Defendants in Connecticut and Section I-A-3, Types of Offenses, the federal immigration statute lays out certain types of convictions that render a noncitizen removable or inadmissible and preclude them from certain forms of relief or other immigration benefits. The immigration statute lists what are referred to as "generic offenses," but the elements of criminal offenses vary from state to state. The question is, then, does a particular criminal law conviction match up to one of the generic offenses listed in the immigration statute? The answer to that question has spawned a body of doctrine called the "categorical approach" and related methods.

The categorical approach is the primary tool to determine whether or not a noncitizen's criminal conviction does in fact trigger immigration consequences. It does not look at the specific facts of the case. Rather, it involves a comparison of the statutory elements of the offense of conviction with the elements of the generic offense listed in the immigration statute that is the grounds of the immigration consequence. If the elements of the offense of conviction do not match the generic offense, or are broader than the generic offense, then the conviction may ultimately not trigger the immigration consequence.

In some cases, the Supreme Court has sanctioned a limited review of certain conviction records, but only when the precise statute of conviction is "divisible," as explained below. This is called the modified categorical approach. Not every category of case is subject to the categorical approach, however. In some cases, the Supreme Court and BIA have allowed a wide-ranging inquiry into the facts underlying the conviction, including documents outside the record of conviction. This is called the circumstance-specific approach.

Note that the law surrounding the categorical approach is constantly in flux. It is important to know the Supreme Court's most recent decisions on the categorical approach and the modified categorical approach—and to know where the Supreme Court has carved out exceptions to these approaches. It is also important to know BIA caselaw to see how the immigration courts have implemented the constant flow of changes.

Overall, because of the flux and confusion in the law, it is still important to be conservative in dealing with the criminal convictions of noncitizens. However, precisely because of the flux and confusion in the law, a noncitizen client who receives a criminal conviction should also be aware that there may be opportunities to challenge that conviction's status as a removable offense once they get to immigration court. Defense attorneys should also be aware of how they can best mitigate these potential immigration consequences by "sanitizing" the record of conviction (ROC – see below for details) in removing certain facts or information that would prejudice their noncitizen clients in removal proceedings.

The Categorical Approach

What is it?

Under the categorical approach, the court looks only at the statute of conviction and does not go into the underlying facts of a client's particular case. The categorical approach asks whether a conviction under that statute is *by definition* a ground of deportability or inadmissibility under the immigration statute. This approach requires a court to determine whether the "elements" of a state criminal law under which the noncitizen was convicted match the "elements" of the "generic" definition of the crime that is a ground of deportability or inadmissibility under federal immigration law.

The "generic" definition is the commonly understood elements of a crime: most criminal grounds of removability correspond to such "generic" offenses, like rape, murder, or theft, for example, as the immigration statute themselves do not enumerate elements of each offense. The "generic" definition of an offense is determined by federal law. The "elements" of the crime refer to the constituent parts of a statute that the prosecution needs to prove beyond a reasonable doubt in order to convict an individual. These "elements" are determined by looking at the applicable state law.

If the elements of the state criminal statute are broader than the generic crime, or if the elements otherwise fail to match the generic crime, then the statute of conviction is not what is called a "categorical match" to the generic crime that is the ground of deportability or inadmissibility. Thus, the conviction under that criminal statute fails to trigger the immigration consequence.

Critical to the categorical approach is distinguishing elements from "means." Elements must be charged and proved unanimously to a jury. Elements are NOT "means," which are different factual ways of fulfilling a single element of a crime. For example, if a burglary statute prohibits unlawful entry into any building, structure, or land, water, or air vehicle, but the specific location need not be specified to the jury and decided unanimously by the jury, the locations are not elements, but rather alternative means of committing the crime.

When does it apply?

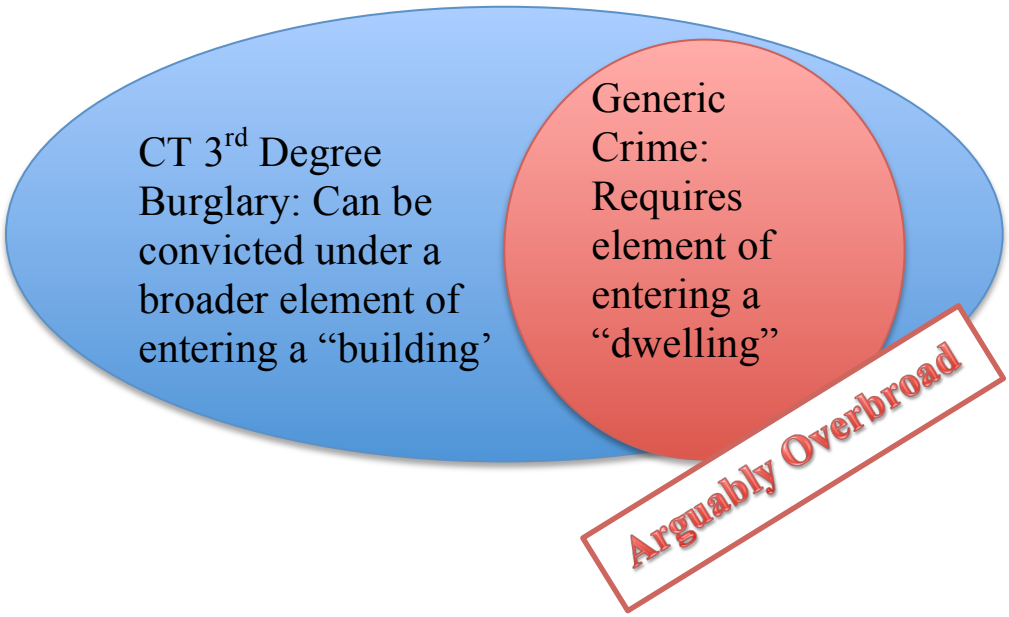
The categorical approach can be thought of as the doctrinal norm that is applied to statutes. However, the sets of cases for which the modified categorical approach and circumstance-specific approaches apply are large, and defense attorneys want to be very careful before assuming that the categorical approach applies. In general, the categorical approach applies to most aggravated felony definitions, the definition of controlled substance, and the definition of a crime involving moral turpitude.

What does it look like in practice?

The Connecticut 3rd Degree Burglary statute reads, "A person is guilty of burglary in the third degree when he enters or remains unlawfully in a building with intent to commit a crime therein." Conn. Gen. Stat. § 53a-103. The generic offense of burglary, under federal law, requires that the defendant enter a "dwelling," a more specific requirement. An immigration judge will use the categorical approach to determine if a conviction under this provision is a crime of moral turpitude (CIMT). An immigration practitioner could therefore argue that a conviction for 3rd Degree Burglary is overbroad because Connecticut broadly defines "building" to include locations that are not "dwellings." Thus, whether or not any particular client enters a dwelling or other kind of building, an offense under Connecticut 3rd Degree Burglary is categorically not a CIMT.

A few notes of caution. As a defense attorney, it is best to be conservative with convictions that may potentially trigger grounds of removability, even if there is an argument that the conviction categorically does not match those grounds. For this reason, this guide advises to avoid convictions where possible and to keep clean records of conviction. Finally, it's important to note that a single conviction may trigger multiple grounds for removability. Even if the immigration judge finds that Connecticut 3rd Degree burglary is NOT a CIMT, for example, she may still find that it is a burglary aggravated felony.

Categorical Approach Example: Is CT 3rd Degree Burglary a Crime of Moral Turpitude?



The Modified Categorical Approach

What is it?

Under the modified categorical approach, courts compare the state statute's individual subsections to the generic crime instead of comparing the statute as a whole. Part of the inquiry requires determining what exactly are the subsections of a criminal statute (and whether the statute can even properly be broken up into different subsections). Statutes differ, and some "may list elements in the alternative, and thereby define multiple crimes," while others "enumerate[] various factual means of committing a single element." *Mathis v. U.S.*, 136 S. Ct. 2243, 2249 (2016). In *Mathis*, the Supreme Court determined that crimes in this latter category are *not* subject to the modified categorical approach, and courts must *only analyze the elements of the crime* to determine if the state crime sweeps more broadly than the generic crime. *Id.* at 2251-2. As noted in the "Categorical Approach" section, "elements" are NOT "means." Thus, federal courts may only apply the modified categorical approach where a statute is "divisible" – that is, where the statute "comprises multiple, alternative versions of the crime." *Descamps v. U.S.*, 133 S.Ct. 2276, 2284 (2013).

When dealing with a divisible statute, courts look to the Record of Conviction (ROC) to determine under which part of the statute the defendant was convicted. If, after examining this narrow range of documents, the immigration judge is still unclear as to what portion of the criminal statute was involved, then the conviction will not be considered to fall within the applicable immigration category, and the defendant may be protected from deportation on that ground.

The Second Circuit has held that a Connecticut *Alford* plea, a plea of guilty in which the defendant does not make an admission of guilt, makes it impossible for the factfinder to identify a match between the offense of conviction and generic crime under the modified categorical approach. *United States v. Savage*, 542 F.3d 959 (2d Cir. 2008). Thus, an immigration judge may not be able to find a noncitizen removable if the court accepts an *Alford* plea to a divisible statute that reaches a crime that is not a removable offense.[86] See Appendix G: Immigration Consequences of Selected Connecticut Criminal Offenses for warnings about the kind of information that is important to keep out of the ROC during criminal proceedings, and when *Alford* pleas are likely to mitigate immigration consequences.

When applying the modified categorical approach, one first identifies the subsections of a statute that is divisible, and then compares each individual subsection of the statute against the generic crime in the same way as described under the Categorical Approach.

[86] Although the Second Circuit has not yet addressed this matter, other circuits have found that it is possible for the judge to find the noncitizen removable if the record specifies the subsection that matches the removable offense. *U.S. v. Vinton*, 631 F.3d 476, 486 (8th Cir. 2011). ("A precisely drawn charging document can indicate the basis for conviction whether or not the conviction was accompanied by an admission of guilt.")

Record of Conviction ("ROC"):
As used in this guide and in this area of immigration law, the phrase "record of conviction" has a narrow, specific meaning. The phrase is used to describe the documents that an immigration judge may examine in determining whether an individual's particular conviction falls within a category that renders a non-citizen removable when employing the modified categorical approach. Federal case law indicates that the only documents that may be examined when the conviction was the result of a guilty or nolo contendere plea are the: (1) charging document (to the extent that it is consistent with the final conviction); (2) the plea agreement; and, (3) the transcript of the colloquy between judge and defendant in which the factual basis was confirmed by the defendant, or a comparable judicial record of the information. *See Shepard v. United States*, 544 U.S. 13, 26 (2005). For a trial conviction, "findings of fact and conclusions of law from a bench trial, and jury instructions and verdict forms" may also be examined. *Johnson v. U.S.,* 559 U.S. 133, 144 (2010).

Note on burdens of proof: While the government bears the burden of showing that the conviction is a removable offense, the noncitizen bears the burden of establishing eligibility for relief from removal. In some jurisdictions (including the Second Circuit, *see Martinez v. Mukasey*, 551 F.3d 113 (2d Cir. 2008)), this burden is met by presenting an inconclusive ROC, but in others, an inconclusive record will disqualify the client from relief. Thus, while this guide will note that it is often important to keep the ROC clean, there are instances in which facts in the ROC may be helpful to the client. When the facts of the client's case does not constitute grounds for removal, but they are pleading to a statute that does encompass removable crimes, it is in the client's interest to make sure the ROC contains information showing that their conduct does not reach the removable offense.

When does it apply?

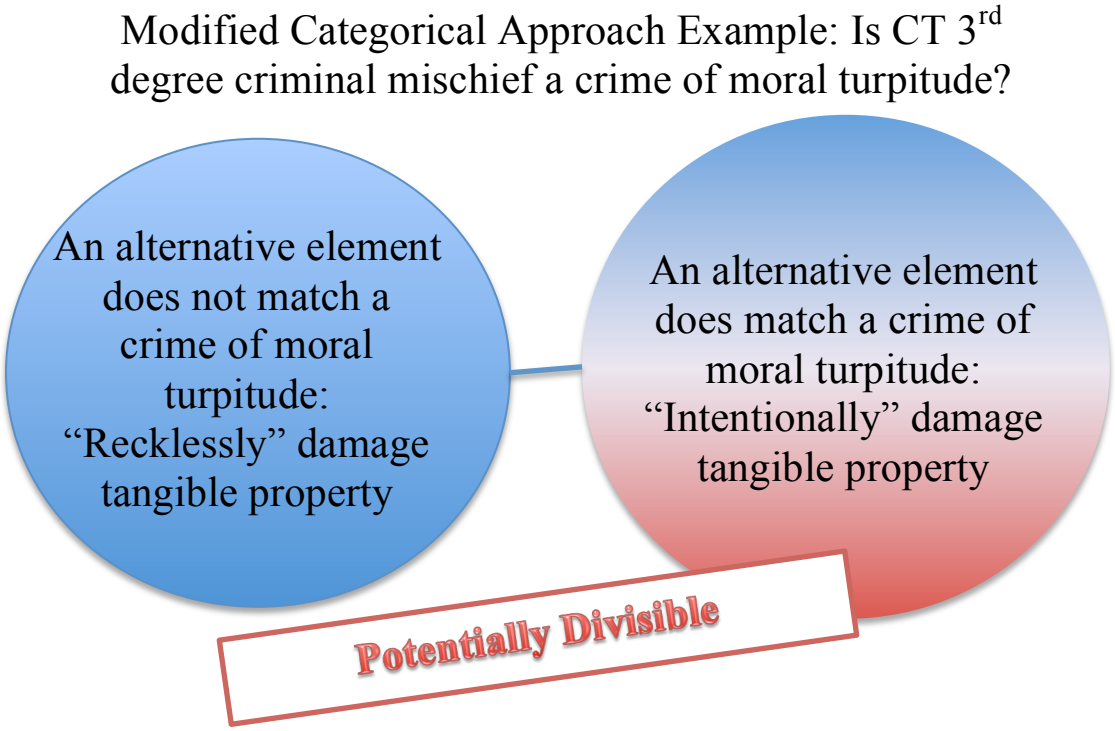
The modified categorical approach applies when a statute sets forth more than one offense, some of which match a ground of removeability and some of which don't. Such a statute is referred to as a "divisible" statute.

What does it look like in practice?

Connecticut's criminal mischief offense in the third degree contains four subsections. Conn. Gen. Stat. § 53a-117. Subsection (a)(1) involves damaging tangible property of another "intentionally or recklessly." Subsection (a)(2) involves damaging tangible property of another "by negligence." Subsection (a)(3) involves damaging tangible pubic property "intentionally or recklessly." Subsection (a)(4) involves damaging tangible pubic property "by negligence." A crime involving moral turpitude does not have a precise definition but is described as involving "conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between [persons or to] society in general." *Matter of Danesh*, 19 I. & N. Dec. 669 (BIA 1988).

The generic offense of a crime involving moral turpitude requires that conduct be intentional. Applying the categorical approach, an immigration judge would find that offense was categorically overbroad, as it includes conduct that is not intentional. If the statute is divisible as to the mens rea, however, then the court could employ the modified categorical approach and look at the record of conviction to determine whether the person was convicted of intentionally damaging tangible property of another or recklessly damaging tangible property of another.

For offenses such as this one, where the statute might be divisible, it is especially important to keep a clean record of conviction. That means avoiding listing the specific mens rea in the plea colloquy or other documents that constitute the record of conviction. However, as with criminal mischief, many statutes are open to argument as to whether or not they are divisible—especially as the doctrine continues to change. Thus, it is important to advise clients never to concede divisibility even as you conservatively guard against its possibility. Finally, it is important to note that a single conviction may trigger multiple grounds for removability or inadmissibility. Even if the immigration judge finds that Connecticut 3rd degree criminal mischief is NOT a CIMT, for example, they may still find that it is a crime of violence aggravated felony.



The "Circumstance-Specific" Approach

What is it?

Some INA provisions require a "circumstance-specific" inquiry. This means that the

immigration judge or tribunal can look beyond the statutory definition and even beyond the record of conviction. The judge looks at the facts of the client's particular case to determine the client's conduct. The immigration judge is not limited to the record of conviction in terms of the evidence she can consider in deciding whether the respondent's conviction constitutes an offense that triggers an immigration consequence.

While the circumstance-specific approach appears to sanction a broad inquiry, the Supreme Court identified some limits to the inquiry in *Nijhawan v. Holder*, 557 U.S. 29 (2009) (applying a "circumstance-specific" approach to the $10,000 loss requirement for a fraud aggravated felony). The inquiry can only go into the facts underlying a conviction to the extent that findings are "tied to the specific counts covered by the conviction" and are obtained under "fundamentally fair procedures" where the evidence that the government offers in the removal case must meet a "clear and convincing" standard. *Nijhawan*, 557 at 42. BIA case law has further clarified and expanded what is acceptable for a circumstance-specific inquiry, allowing, for example, evidence admissible in removal proceedings, like witness testimony and testimonial admissions from the removal hearing. *Matter of Garza-Olivares*, 26 I. & N. Dec. 736, 742 (BIA 2016).

It is particularly important to keep a clean record in the case of offenses to which the circumstance-specific approach has expanded.

When does it apply?

The offenses in which the circumstance-specific approach applies include:

1) crimes of domestic violence,[87]
2) failures to appear,[88]
3) the 30 grams or less of marijuana exception to the controlled substance violation,[89]
4) specified offense against a minor, as defined by the Adam Walsh Act, [90]
5) cases of fraud or deceit,[91]
6) and potentially others.

For some grounds of removability, portions of the INA ground are subject to the categorical approach while others are subject to the circumstance-specific approach, depending on the language of the INA ground.

What does it look like in practice?

Connecticut's offense for fraudulent use of an automated teller machine defines the crime as "with intent to deprive another of property or to appropriate the same to himself or

[87] *Matter of Estrada*, 26 I. & N. Dec. 749 (BIA 2016).
[88] *Matter of Garza-Olivares*, 26 I. & N. Dec. 736, 738 (BIA 2016).
[89] *Matter of Dominguez-Rodriguez*, 26 I. & N. Dec. 408 (BIA 2014).
[90] *Matter of Introcaso*, 26 I. & N. Dec. 304 (BIA 2014).
[91] *Nijhawan v. Holder*, 557 U.S. 29 (2009); *In Re: Ali Shire Ahmed*, 2015 WL 7074117 (BIA Nov. 2, 2015).

herself or a third person, such person knowingly uses in a fraudulent manner an automated teller machine for the purpose of obtaining property." Conn. Gen. Stat. § 53a-127b. An immigration judge may seek to determine if a conviction under this offense is a fraud aggravated felony, which is defined as an offense that "involves fraud or deceit in which the loss to the victim or victims exceeds $10,000." 8 U.S.C. § 1101(a)(43)(M)(i). Courts have held that the question of whether or not "the loss to the victim or victims exceeds $10,000" is a factual circumstance that requires the circumstance-specific approach. The immigration judge thus can delve beyond the record of conviction to determine these facts. As a defense attorney, you should allocute to loss to victim of $10,000 or less if possible to minimize the risk of the immigration judge finding a conviction under this offense to be a fraud aggravated felony.

The Realistic Probability Test

Courts apply the realistic probability test in the categorical and modified categorical approach when a state statute contains ambiguous language that renders it unclear whether or not the offense of conviction is a categorical match with the generic offense. *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 184 (2007) ("[T]o find that state law creates a crime outside the generic definition of a listed crime in a federal statute requires a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct falling outside the generic definition. To make that showing, an offender must at least point to his own case or other cases in which the state courts in fact did apply the statute in the special (nongeneric) manner for which he argues.").

BIA caselaw has applied the realistic probability doctrine much more broadly and has furthered restricted what can be considered a realistic probability. In *Matter of Mendoza Osorio*, 26 I. & N. Dec. 703 (BIA 2016), the BIA found that there was no realistic probability that the offense of conviction included conduct that was broader than the generic offense of child abuse, "since there was no conviction in any of these cases." *Id.* at 707. *See also Matter of Ferreira,* 26 I. & N. Dec. 415, 419 (BIA 2014) (finding in a controlled substance case that the noncitizen "must at least point to his own case or other cases in which the state courts in fact did apply the statute in the special (nongeneric) manner").

Important Recent Supreme Court Cases

Moncrieffe
First, in *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013), the Court applied the modified categorical approach in holding that a conviction under a Georgia drug statute was not a "drug trafficking" aggravated felony for purposes of removal. The Georgia statute made it unlawful to "possess, have under [one's] control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute marijuana." The Court therefore consulted the record of conviction (the plea agreement) and determined that that Mr. Moncrieffe was convicted under the "possess with intent to distribute" prong. Because the Georgia statute contained ambiguous statutory phrasing, applying the categorical approach meant that the Court needed to apply the minimum conduct test. *Id.*

at 1685 ("there must be "a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime."). This involves looking to state case law to see how the statute is applied, and not the particulars of Mr. Moncrieffe's conviction, *id.* at 1684. The Court found that this prong could be charged not only on the basis of an intent to transfer marijuana for remuneration, but also on the basis of an intent to share—without remuneration—a small amount of marijuana. The former conduct is an aggravated felony, but the latter is not. Because the Georgia statue is not further divisible as to the amount of marijuana or the existence of remuneration, the analysis stops there and the conviction is not an aggravated felony, regardless of whether Mr. Moncrieffe actually had more than a small amount of marijuana or actually received remuneration.

Descamps

The Supreme Court again addressed the categorical and modified categorical approaches in *Descamps v. U.S.*, 133 S.Ct. 2276 (2013), a sentencing case applying modified categorical analysis to a predicate crime in an Armed Career Criminal Act case. The Court held that reviewing courts cannot apply the modified categorical approach when the statute of conviction contains a single, indivisible set of elements. A court must first find a statute to be divisible – to provide for distinct elements in the alternative – before it can look beyond the statute to the record of conviction.

Mellouli

In *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015), the Supreme Court addressed whether a Kansas drug paraphernalia offense triggered removability as a violation of a law related to a controlled substance. INA removability for controlled substance offenses cross-references the 21 U.S.C. § 802 schedule. The Kansas statute, however, punishes a broader range of drugs than those on the federal schedule referenced in the INA ground. Therefore, the Court found that the element of controlled substance in the Kansas statute was broader than the federal offense of controlled substance. A conviction that renders a noncitizen removable requires a "direct link between an alien's crime of conviction and a particular federally controlled drug." *Id.* at 1990.

Mathis

In *Mathis v. United States*, 136 S. Ct. 2243 (2016), the Supreme Court clarified the use of the categorical and modified categorical approaches to a predicate crime in an Armed Career Criminal Act case. The Court illuminated when a statute should be considered divisible. While some statutes "may list elements in the alternative, and thereby define multiple crimes," others "enumerate[] various factual means of committing a single element." *Id.* at 2249. In *Mathis*, the Supreme Court determined that crimes in this latter category are *not* subject to the modified categorical approach – and courts must only analyze the elements of the statute – to determine if the state crime sweeps more broadly than the generic crime. *Id.* at 2251-2.

V. Summary of Suggested Approach to Representing Non-Citizen Defendants

As noted earlier, competent representation of non-citizen clients requires a comprehensive understanding of the client's past criminal history, his or her immigration status, and many other factors regarding his or her family circumstances and the specifics of the offense. Section II contains a suggested approach for addressing immigration consequences, and Appendix B provides a sample *Padilla* intake form to use upon learning that a client is a noncitizen to gather appropriate background information. While recognizing that each case will present its own circumstances and it may be necessary to consult an immigration attorney, criminal defense attorneys should keep in mind the following *general* guidance:

Five Key Things to AVOID:

Avoid a "conviction," as defined for immigration purposes, whenever possible. See Appendix A for more information on *nolle prosequi* and pretrial diversion programs.

Avoid an "Aggravated Felony." In most situations, and especially when a defendant is an LPR, a conviction for an Aggravated Felony will have the worst immigration consequences. Practitioners should be particularly careful with the subcategories of Aggravated Felony that hinge on the sentence or amount of loss: in such cases, simple changes to a plea agreement (for instance, keeping the sentence to under one year) can make huge differences.

Avoid a "Controlled Substance Offense." Virtually all drug offenses will result in harsh immigration consequences for most non-citizens. Try to keep the record of conviction as "clean" as possible, without identification of the identity of the controlled substance. The only exception is a first conviction for simple possession of thirty grams or less of marijuana (30g = 1.05 ounces) for one's own use, a circumstance-specific inquiry, which will not trigger deportability for an LPR and which may leave some avenues open for relief from deportation for other noncitizens. This exception does not exist in the inadmissibility context, meaning that LPRs and other noncitizens may be subject to immigration consequences if they travel outside the United States and attempt to return. Note that second and subsequent offenses involving *any* amount of marijuana may have very serious consequences. Seek pretrial diversion if possible, and ALWAYS take an *Alford* plea if possible.

If the defendant is an LPR, avoid "Crimes of Domestic Violence," "Crimes of Child Abuse," "Firearm Offenses," and others. These categories have particularly serious consequences for LPRs. Other kinds of convictions to be avoided in this area are: crimes of stalking and violations of protective orders. To avoid triggering these offenses, try to keep the record of conviction as "clean" as possible, without identification of the alleged victim or of the relationship between the alleged victim to the defendant.

Avoid a "Crime Involving Moral Turpitude" (CIMT). Depending on the individual's status, actual and potential length of sentence, and prior criminal history, this category may make the person removable. However, it may leave open more avenues for relief than would a conviction for an Aggravated Felony. If a CIMT cannot be avoided completely, but the defendant does not have any prior convictions for an offense that would be considered a CIMT, a defense attorney should consider the following options:

- *If the defendant is an LPR, but has had this status for less than five years and has no prior CIMT convictions*: avoid conviction for a CIMT for which a sentence of

one year or longer may be imposed (Class A misdemeanors or any felony);

- *Regardless of status:* avoid conviction for any CIMT that is a felony AND avoid conviction for CIMT that results in imposed sentence (even if suspended) that exceeds six months;

Five Key Things to DO:

- ✓ **Consult with an attorney familiar with this area of the law whenever possible.** This will give both you and your client the best understanding of the more favorable dispositions for immigration purposes given the defendant's particular situation. If you are in private practice, consider including immigration consultation in your retainer.

- ✓ **Urge your client to consider pre-trial diversion programs, if applicable.** In many situations, if an outright dismissal is not possible, a pre-trial diversion program that avoids a "conviction" for immigration purposes will be the best possible outcome for a defendant. However, note that some pre-trial diversion programs may still constitute a "conviction" under immigration law. See Appendix A for more information.

- ✓ **Pay careful attention to crafting a plea agreement.** In many situations, small changes to the plea agreement can have a huge impact on the consequences stemming from the conviction. For instance:
  - If the conviction could constitute an Aggravated Felony if a sentence of one year or more is imposed, a plea agreement with a sentence (whether suspended or to be served) of 364 days instead of one year may well make the difference between an essentially permanent deportation and possibly no immigration consequences at all.
  - Consider crafting pleas to charges that do not trigger immigration consequences, or that trigger less serious categories.

- ✓ **Pay careful attention to keeping the record as "clean" as possible of information that may carry immigration consequences.** In many situations, small changes to the record of conviction can have a huge impact on the consequences stemming from the conviction. For instance:
  - If the conviction was for a non-domestic violence offense, but plainly describes the alleged victim as a former or current partner of an LPR client, immigration authorities may be able to charge that individual as deportable for a "Crime of Domestic Violence."
  - Keeping out the identity of the controlled substance in a Connecticut drug offense could prevent immigration authorities from proving that it is a "Controlled Substance Offense," even under the modified categorical approach. See Section IV for more on the categorical approach and record of conviction.

- ✓ **Conduct independent research on the immigration consequences of a disposition.** The law on the immigration consequences of criminal convictions is in a constant state of flux, both because of different interpretations by federal and administrative tribunals, but also because of significant legislative and executive action in this area. Where possible, the chart of Connecticut offenses in Appendix G lists important precedents that can help facilitate additional research as to the current law.

Appendix A: Immigration Consequences of Certain Dispositions and Pre-Trial Diversion Programs

I. Introduction

The Immigration and Nationality Act defines "conviction" for purposes of immigration law as follows:

> a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-
>
> > (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
> >
> > (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

See 8 U.S.C. § 1101(a)(48)(A); INA § (a)(48)(A)

II. Nolle Prosequi

A nolle prosqui is NOT considered a conviction for immigration purposes.

Under Connecticut law, a prosecuting official may enter a "nolle prosequi" in a criminal case. The effect of a nolle is to terminate the prosecution and to require the release of the defendant from custody (unless other charges are pending). Connecticut Practice Book § 39-31. "If subsequently the prosecuting authority decides to proceed against the defendant, a new prosecution must be initiated." *Id*. In other words, "[t]he effect of a nolle prosequi is to end pending proceedings without an acquittal and without placing the defendant in jeopardy." *State v. Lloyd*, 440 A.2d 867, 868 (Conn. 1981). In addition, Connecticut law provides for automatic erasure of all police and court records regarding a charge that has been "nolled," but only after thirteen months have elapsed since the entry of the nolle. See Conn. Gen. Stat. § 54-142a(c).

The "nolle" disposition does not fit either requirement of the INA definition of "conviction": there is no formal judgment of guilt, and no punishment or restraint can be imposed on the defendant as a result of the nolle. *See* 8 U.S.C. §1101(a)(48)(A). For these reasons, a nolle prosequi resolution is not a conviction as a matter of federal immigration law.

Practitioners should note, however, that certain grounds of inadmissibility do not require a conviction for negative consequences, and therefore the entry of a nolle prosequi still carries potential negative immigration consequences for a non-citizen. For instance, certain grounds of inadmissibility only require that the Attorney General have "reason to believe" that a noncitizen engaged in specified conduct, such as drug trafficking. *See, e.g.*, 8 U.S.C. § 1182(a)(2)(C) (inadmissibility of "[a]ny alien who the consular officer or the Attorney General knows or has reason to believe-- (i) is or has been an illicit trafficker in any controlled substance"). Therefore, *any* record of an arrest or a criminal charge could lead DHS to uncover information that might trigger inadmissibility, even if no conviction was ever obtained. *See Matter of Rico*, 16 I. & N. Dec. 181, 185 (BIA 1977) (holding that noncitizen was excludable under "reason to believe"

provision even though criminal charges had been dismissed and that "[c]onviction of a particular offense or violation is not necessary to establish the ground of excludability").

Furthermore, even though a criminal charge was "nolled" in Connecticut state court, a noncitizen would still have to answer affirmatively if asked whether he or she has ever been arrested or charged with an offense (for instance, in part 3 of the I-485 Application for Adjustment of Status form). Relatedly, a slightly more complicated question arises when a noncitizen has charges that were recently nolled but the police and court records have not yet been erased, and that individual is asked to state charges that are "pending" in a USCIS application form. Nolled charges are automatically erased thirteen months after the nolle disposition date. *See* Conn. Gen. Stat. § 54-142a(c). As a matter of Connecticut law, it seems clear that a charge that is nolled is NOT pending. *See Lloyd*, 440 A.2d at 868 (stating that a nolle "end[s] pending proceedings"). Therefore, a noncitizen filing an application with USCIS should be able to state that no criminal charges are *pending* if a nolle prosequi has actually been entered in Connecticut state court, even if less than thirteen months have passed since the entry of the nolle and the records have therefore not yet been erased pursuant to Conn. Gen. Stat. § 54-142a(c).

III. Pleas

Nolo Contendere Pleas

Nolo contendere pleas are expressly included in the statutory definition of "conviction" in the INA. *See* 8 U.S.C. § 1101(a)(48)(A)(i). A nolo contendere plea is treated the same as a guilty plea for purposes of immigration consequences. *See, e.g., U.S. ex rel. Bruno v. Reimer*, 98 F.2d 92, 93 (2d Cir. 1938) (plea of nolo contendere for robberies constituted convictions).

Alford Pleas

While an *Alford* plea has been held to be a conviction for the purposes of immigration law, *Abimbola v. Ashcroft*, 378 F.3d 173, 181 (2d Cir. 2004) ("as the plain language indicates, "conviction" includes a guilty plea. An *Alford* plea *is* a guilty plea") (emphasis in original), this plea can still mitigate consequences when the statute of conviction is not overbroad to a ground of removability or inadmissibility, and the court is reviewing the record of conviction due to a statute being divisible. The Second Circuit has held that a Connecticut *Alford* plea makes it impossible for a factfinder to identify a specific factual basis for the plea when applying the modified categorical approach. *United States v. Savage*, 542 F.3d 959 (2d Cir. 2008). For more information, see Section IV: The Categorical Approach and the Record of Conviction.

IV. Pre-Trial Diversion Programs

Connecticut law provides a number of pre-trial diversion programs that do not require the defendant to plead guilty or to admit sufficient facts to warrant a finding of guilt, and that will therefore not count as a "conviction" for immigration purposes. Generally, obtaining a disposition under some of Connecticut's pre-trial diversion programs will be the best outcome (short of an outright dismissal) for most noncitizen clients. Defense attorneys should be aware, however, that certain grounds of inadmissibility do not require an actual conviction, but can be proven by admissions to criminal conduct or "reason to believe" such conduct has occurred.[92]

When a defendant is charged with an offense that might result in adverse immigration consequences, practitioners should counsel her about the potential advantages and disadvantages of these diversion programs, as well as how her immigration status may impact the success of her program application.[93] If the defendant chooses to pursue entrance into a pre-trial diversion program, defense counsel should (1) prevent the defendant from making any admissions on the record that could carry immigration consequences and (2) avoiding the entrance of any other information that might support a finding of inadmissibility based on the "reason to believe" that the defendant:

- Engaged in drug trafficking or aided a drug trafficker
- Committed a crime of moral turpitude
- Committed a controlled substance offense
- Cannot be regarded as a person of "good moral character" according to U.S.C. § 1101(f)

Below is a summary of Connecticut's current pre-trial diversion programs. Each summary includes (1) an individualized assessment of the likelihood that the program in question would be considered a conviction for immigration purposes, (2) advice on when and how to avoid a disposition under the program, and (3) the program's eligibility requirements.

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[92] A noncitizen may be held to be inadmissible if the Attorney General simply "has reason to believe" that the noncitizen is or has aided a drug trafficker, *see* 8 U.S.C. § 1182(a)(2)(C), or has engaged in the trafficking of persons, § 1182(a)(2)(H). Similarly, a noncitizen may be found to be inadmissible if he or she admits committing a crime involving moral turpitude or a controlled substances offense, even if he or she is not convicted of such a crime. *See* 8 U.S.C. § 1182(a)(2)(A). Therefore, defense counsel cannot assume that obtaining one of these pre-trial dispositions will ensure that their client will not face immigration consequences down the road.

[93] Connecticut law leaves the decision as to whether to grant a defendant's application for the pre-trial diversion programs to the discretion of the trial judge. Defense attorneys may therefore consider whether raising the potentially drastic immigration consequences of a criminal conviction to a noncitizen defendant may be a positive factor a trial judge may weigh in making the discretionary decision. In addition, certain kinds of offenses will not qualify for a particular pre-trial diversion program unless the defendant shows "good cause" (such as class C felonies when applying for Accelerated Pretrial Rehabilitation). Defense counsel may consider raising the potential immigration consequences of conviction on a noncitizen defendant as establishing "good cause" for that defendant's eligibility for the program (especially if the defendant is an LPR who has lived for many years in this country).

Accelerated Pre-Trial Rehabilitation Program ("AR")[94]

Like nolle prosequi, AR would NOT be considered a conviction for immigration purposes. Because most defendants can only enroll in AR once, an entry of nolle prosequi is preferable.

Statutory provision: Conn. Gen. Stat. § 54-56e.

Who is eligible?

If the defendant is a veteran,[95] a person is eligible if the court finds that she:

- Will probably not offend in the future;
- Has no previous record of conviction of a crime or certain serious motor vehicle violations;[96]
- Has stated under oath that she has not invoked the AR program in the past *more than once*.

If the defendant is not a veteran, a person is eligible if the court finds that she:

- Will probably not offend in the future;
- Has no previous record of conviction of a crime or certain serious motor vehicle violations;[97]
- Has stated under oath that he or she has not invoked the AR program in the past.

What kinds of offenses are eligible?

The statute provides that the AR program may be invoked by defendants accused of crimes or violations for which a sentence to a term of imprisonment may be imposed if the crimes or violations "are not of a serious nature." Specifically, the statute provides that the program is not available if the defendant is charged with any of the following:

- Class A or B felonies (except for larceny in first degree in certain circumstances);[98]
- Class C felony, unless the defendant shows good cause;
- Certain enumerated offenses:
    - Driving Under the Influence offenses (§ 14-227a)
    - Indecent, sexual contact with a minor under sixteen (§ 53-21(a)(2));

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[94] In AFSCME, Council 4, Local 1565 v. Dep't. of Corrections, 298 Conn. 824 (2010), the Connecticut Supreme Court held that an AR application, by itself, may not legitimately serve as a basis for third parties to infer that the AR applicant is factually 'guilty' of the underlying offense. The holding stated that "acceptance of accelerated rehabilitation is not evidence of guilt, …cannot be used as evidence of guilt, and… indeed, acceptance of accelerated rehabilitation has no probative value on the issue of guilt or innocence of the charged offense." Id. at 828.

[95] For the purposes of this section, "veteran" means any person who was discharged or released under conditions other than dishonorable from active service in the armed forces as defined in Conn. Gen. Stat. § 27-103.

[96] The violations listed in the statute are: fraudulent alteration of titles, driving with a suspended license, negligent homicide with a motor vehicle, failure to stop at the scene of a serious accident, and driving while under the influence.

[97] *Id.*

[98] The AR program is still available if the defendant is charged with larceny in the first degree but the offense did not involve the use, attempted use or threatened use of physical force against another person.

    - Manslaughter in the second degree with a motor vehicle (§ 53a-56b);
    - Assault in the second degree with a motor vehicle (§ 53a-60d);
    - Many sexual assault offenses (§ 53a-70, 70a, 70b, 71, 72a or 72b);
    - Enticing a minor (§ 53a-90a);
    - Possessing child pornography (§ 53a-196e or 196f);
- A crime or motor vehicle violation which has caused the death of another person;
- A domestic violence crime which makes the person eligible for the pre-trial family violence education program;
- A drug or drug paraphernalia possession crime which makes the person eligible for the pre-trial drug education program (but drug offenses not covered by DEP may still be eligible for AR);
- Unlawfully executing an absentee ballot or false statement in absentee balloting (class D felony; § 9-359 and § 9-359a).

Pre-Trial Family Violence Education Program ("FVEP")

FVEP should NOT be considered a conviction for immigration purposes.

Statutory provision: Conn. Gen. Stat. §46b-38c(h)(1)-(3)

Who is eligible?

A person is eligible if the court finds that she:

- Has not previously been convicted of a family violence crime which occurred on or after 10/1/86;
- Has not had a previous case assigned to the FVEP;
- Has not previously invoked or accepted AR under Conn. Gen. Stat. §54-56e for a family violence crime after 10/1/86;
- Is not charged with
    - a class A, B, or C felony;
    - an unclassified felony carrying a term of imprisonment of more than 10 years;
    - a class D felony unless good cause is shown; or
    - an unclassified offense carrying a term of imprisonment of more than five years unless good cause is shown.
    - an offense that involved the infliction of serious physical injury, as defined in §53a-3.

What kinds of offenses are eligible?

A defendant is eligible for FVEP if she is charged with a family violence crime[99] AND:

- The crime charged is a misdemeanor; or
- The crime charged is a class D felony or an unclassified felony carrying a term of imprisonment of more than five years AND the defendant can show good cause (for invoking FVEP).

[99] For a specific definition of "family violence crime," *see* Conn. Gen. Stat. § 46b-38a. Generally, however, a family violence crime is one that involves physical harm or threatened violence between members of a household.

Pre-Trial School Violence Prevention Program ("SVPP")

SVPP should NOT be considered a conviction for immigration purposes.

Statutory provision: Conn. Gen. Stat. § 54-56j.

Who is eligible?

A person is eligible if she is a student of a public or private secondary school AND:

- She states under oath that she has not invoked SVPP in the past and has not been convicted of the type of offenses that are eligible for the program, either in Connecticut or in another state for a similar offense.

What kinds of offenses are eligible?

SVPP is available if the defendant is charged with "an offense involving the use or threatened use of physical violence in or on the real property comprising a public or private elementary or secondary school or at a school-sponsored activity. . . ." Conn. Gen. Stat. § 54-56j(a).

Pre-Trial Alcohol Education Program ("AEP")

AEP should NOT be considered a conviction for immigration purposes.

Statutory provision: Conn. Gen. Stat. § 54-56g

Who is eligible?

A person is eligible if she states under oath that she:

- Has not benefited from AEP in the past ten years if the charge is DUI (§ 14-227a);
- Has never benefited from AEP if the charge is for DUI by a minor (§ 14-227g);
- Has not previously been convicted of an offense of manslaughter due to DUI (§53a-56b), or assault with a motor vehicle (§53a-60d), or DUI (§14-227a), either in CT or another state.

What kinds of offenses are eligible?

AEP is available to defendants charged with certain offenses relating to the operation of a motor vehicle or vessel while under the influence of alcohol or drugs (see Conn. Gen. Stat. §§ 14-227a, 14-227g, 15-132a, 15-133, 15-140*l*, 15-140n). Note, however, that the defendant will be ineligible for AEP if the alleged instance of DUI involving a motor vehicle caused serious physical injury to another person.

Pre-Trial Drug Education and Community Service Program ("DECSP")

DECSP by itself should NOT constitute a conviction for immigration purposes. However, defense counsel should try to avoid admissions or other information on the record that might lead to a finding of inadmissibility based on "reason to believe" that the defendant is a drug trafficker, or a determination that the defendant is a "drug abuser or addict."

Statutory provision: Conn. Gen. Stat. § 54-56i

Who is eligible?

A person is eligible if the court finds that she:

- Has not previously participated in DEP or the pretrial community service labor program;
- Has stated under oath that he or she has not invoked DEP on his or her behalf;

What kinds of offenses are eligible?

- DEP is available only if defendant is charged with a violation of:
  - § 21a-267: use, possession, or possession with intent to deliver drug paraphernalia;
  - § 21a-279: simple possession of controlled substances.

Community Service Labor Program ("CSLP")

CAUTION: THIS PROGRAM NO LONGER HAS A PRE-TRIAL DIVERSION PORTION. Before 2013, defendants applying for CSLP for the first time were eligible to have their prosecution suspended and charges ultimately dropped for successful completion of CLSP. However, the program has eliminated the pre-trial diversion option. Defendants can only participate in the program after a plea deal. Thus, if the defendant is required to plead guilty in order to participate in CSLP, then the disposition will most likely qualify as a conviction for immigration purposes, EVEN IF THE DEFENDANT SUCCESSFULLY COMPLETES THE PROGRAM AND HAS THE CHARGES ULTIMATELY DISMISSED. Therefore, defense counsel should not rely on a CSLP disposition, which involves a guilty plea, in order to mitigate the immigration consequences of criminal matters. In addition, defense counsel should try to avoid admissions or other information on the record that might lead to a finding of inadmissibility based on "reason to believe" that the defendant is a drug trafficker, 8 U.S.C. §1182(a)(2)(C), or a determination that the defendant is a "drug abuser or addict," 8 U.S.C. § 1182(a)(1)(A)(iv).

Statutory Provision: Conn. Gen. Stat. § 53a-39c

Who is eligible?

The court must find that the defendant:

- Has not previously been convicted of an enumerated drug offense (a drug sale crime, under Conn. Gen. Stat. § 21a-277 or Conn. Gen. Stat. § 21a-278); and,
- Has not previously been placed in CSLP.

What kind of offenses are eligible?

CSLP is available for individuals charged with drug possession offenses (either drug possession or drug paraphernalia offenses) under Conn. Gen. Stat. §§ 21a-267 or 21a-279.

Youthful Offender Status ("YO")

A "Youthful Offender" disposition should not be considered a conviction for immigration purposes, under the BIA's decision in *Matter of Devison-Charles*, 22 I. & N. Dec. 1362 (BIA 2000). In *Devison*, the BIA found a similar program in New York not to constitute a conviction for immigration purposes. Thus, even though Connecticut's "youthful offender" status involves a finding of the defendant's guilt (either through a plea or a bench trial), it should not be considered a "conviction." However, the BIA can still consider "Youthful Offender" status when determining discretionary relief. *See Wallace v. Gonzales*, 463 F.3d 135 (2d Cir. 2006) (finding that the BIA and IJ can consider "youthful offender" adjudication under the same New York program when evaluating an application for adjustment of status).

Statutory Provision: Conn. Gen. Stat. §§ 54-76b to 76p.

Who is eligible?

The court must find that the defendant:

- Is 16 or 17 years of age at the time of the alleged offense, or a child who has been transferred to the regular criminal docket, pursuant to § 46b-127;
- Has not previously been convicted of a felony in the regular criminal docket of the Superior Court;
- Has not previously been adjudged a serious juvenile offender or serious juvenile repeat offender; and,
- Has not taken part in the accelerated rehabilitation program (AR).

What offenses are eligible?

Most offenses are eligible, EXCEPT for:

- Class A Felonies;
- Certain enumerated motor vehicle offenses, including negligent homicide with a motor vehicle, § 14-222(a), failure to stop at the scene of a serious accident, § 14-224(a) and (b)(1), and driving while under the influence, § 14-227a, § 14-227g, § 14-227m, § 14-227n(a)(1) or (2); and,

- Certain enumerated sexual offenses,[100] including contact with the intimate parts of a child, §53-21(a)(2), sexual assault in the first degree, §53a-70, aggravated sexual assault in the first degree, §53a-70a, sexual assault in spousal or cohabiting relationship, §53a-70b, rape in the first degree, §53a-71, sexual assault in the third degree, §53a-72a, and sexual assault in the third degree with a firearm, §53a-72b.

Suspension of Prosecution for Unlawful Sale, Delivery, or Transfer of Pistols or Revolvers

For eligible defendants, a Court may grant a suspension of prosecution for no more than two years. After the successful completion of the period of probation, the charges may be dismissed. Suspension of prosecution under this provision should NOT be considered a conviction for immigration purposes, assuming the defendant makes no admission of guilt in exchange for participation in the program, even if the admission or guilty plea is later vacated.

Statutory Provision: Conn. Gen. Stat. § 29-33(h)

Who is Eligible?

The court must find that the defendant:

- Will probably not offend in the future;
- Has not previously been convicted of a similar violation of § 29-33; and,
- Has not previously had a prosecution suspended under this provision.

What offenses are eligible?

Only the offenses specified in § 29-33, which regulates the sale, delivery or transfer of pistols and revolvers. The statute also provides that suspension of prosecution is only available "if the court finds that a violation of this section is not of a serious nature . . . ."

Pre-Trial Supervised Diversionary Program for Persons with Psychiatric Disabilities and Veterans

Pre-trial Supervised Diversionary Program for Persons with Psychiatric Disabilities and Veterans should NOT be considered a conviction for immigration purposes. After the successful completion of the assigned program, the charges may be dismissed

Statutory Provision: Conn. Gen. Stat. § 54-56l

[100] Except violations that involve consensual sexual intercourse or sexual contact between the youth and another person who is thirteen years of age or older but under sixteen years of age. *See* Conn. Gen. Stat §54-76b.

Who is eligible?

- Must have a psychiatric disability, defined as "a mental or emotional condition, other than solely substance abuse, that (A) has substantial adverse effects on the defendant's ability to function and (B) requires care and treatment," OR
  Must be a veteran who is found to have a mental health condition that is amenable to treatment and who was discharged or released under conditions other than dishonorable from active service in the armed forces as defined in §27-103.

AND

- Must be eligible for pretrial accelerated rehabilitation (AR), as described in § 54-56e(c). See section on Accelerated Rehabilitation above. There is an exception if the ineligibility is based on the defendant being eligible for the pretrial family violence education program, § 46b-38c: the court allows participation in the supervised diversionary program "if it finds that the supervised diversionary program is the more appropriate program under the circumstances of the case."
- Must not have previously participated in such supervised diversionary program twice.

What offenses are eligible?

- Crimes, for which a sentence to a term of imprisonment may be imposed, that are "not of a serious nature;" or
- Motor vehicle violations, for which a sentence to a term of imprisonment may be imposed, that are "not of a serious nature."

Community Court Program (especially Hartford Community Court) 

CAUTION: The Community Court Program may require the defendant to plead guilty before becoming eligible for the program. This will be the case if the defendant is applying for the program for the second time, but the court may, in its discretion, require such a plea even when the defendant has never participated in the program. Participation in the Community Court Program, where the defendant is required to enter a conditional guilty plea and is then required to complete a certain activity (like community service or interviews with social workers) WILL STILL BE CONSIDERED A CONVICTION FOR IMMIGRATION PURPOSES, EVEN IF THE CHARGES ARE ULTIMATELY DISMISSED. Defense attorneys should be particularly concerned with any charge that involves drug activity, and which will require the defendant to plead guilty up front, with the charges later dismissed upon completion of community service or other activity. Such a disposition will still be considered a conviction for immigration purposes, and could have dramatic immigration consequences (even though it may appear to be a relatively minor offense as far as the state is concerned).

Statutory Provision: Conn. § 51-181c

Who is Eligible?

The court must find that the defendant:

- has not previously been placed in such program; OR
- if such person has previously been placed in such program, the court may, upon a plea of guilty without trial, suspend any sentence of imprisonment and make participation in such program a condition of probation or conditional discharge in accordance with §53a-30.

What offenses are eligible?

Criminal matters which are misdemeanor cases, misdemeanor cases transferred by the housing session of the Superior Court, and violations of municipal ordinances referred by municipalities.

Suspension of Prosecution for Alcohol-Dependent or Drug-Dependent Persons (often referred to as "CADAC")

For eligible defendants, a Court may grant a suspension of prosecution for no more than two years and order treatment for alcohol or drug dependency. After the successful completion of the program, the charges may be dismissed. **CAUTION:** Suspension of prosecution for alcohol-dependent or drug-dependent persons should be used cautiously to mitigate the potential immigration consequences of a conviction. While the suspension would not be treated as a "conviction" for immigration purposes, a judicial finding that the defendant is alcohol-dependent or drug-dependent could still lead to negative immigration consequences, depending on the immigration status of the individual. Under current immigration law, a person is both inadmissible and deportable if he or she is determined to be "a drug abuser or addict." 8 U.S.C. §§ 1182(a)(1)(A)(iv); 1227(a)(2)(B)(ii). These provisions do not appear to have been used frequently by immigration officials in the past, but practitioners should be aware that they exist and that circumstances can change. In addition, immigration law also provides that a person who is a "habitual drunkard" will not be able to show that he or she was a person of "good moral character" during a relevant period (such a showing is required for some discretionary benefits in the immigration context—for example, naturalization). 8 U.S.C. § 1101(f)(1). Defense attorneys are advised to generally use other, safer pre-trial diversion programs before resorting to this type of suspension to prevent a "conviction" for immigration purposes. As a last resort, however, a disposition under this program is probably better in most cases than a conviction for a crime that will trigger deportability or inadmissibility. Practitioners should ensure that the record is as "clean" as possible, meaning they should prevent the defendant from maintaining any admissions on the record.

Statutory Provisions: Conn. Gen. Stat. §§ 17a-692 to 698

Who is eligible?

The court must find that:

- The defendant has not twice previously been ordered treated under this particular program or one of its predecessors (however, the court may waive this ground of ineligibility);
- The defendant was an alcohol-dependent or drug-dependent person at the time of the crime;
- The defendant presently needs and is likely to benefit from treatment for dependency; and,
- Suspension of prosecution will advance the interests of justice.

What offenses are eligible?

The statute excludes from eligibility class A, B or C felonies, DUI offenses (§ 14-227a, § 14-227g, § 14-227m, or § 14-227n(a)(1) and (a)(2)), manslaughter in the second degree with a motor vehicle (§ 53a-60b), and assault in the second degree with a motor vehicle (§ 53a-60d). However, the statute also provides that the court may waive these ineligibility provisions for any person, except in the case of a DUI while the individual was operating a commercial vehicle or holding a commercial driver's license or permit.

Appendix B: Basic *Padilla* Immigration Questionnaire

Purpose: To obtain the facts necessary for an immigration lawyer to determine immigration consequences of a criminal conviction.

Documents: Copy any immigration documents, including passport, visa(s), green card, applications for status (adjustment of status, asylum, U visa, etc.), Notice to Appear, any prior removal orders or documents from prior removal proceedings, etc.

Criminal History: Criminal record and current plea-bargain offers

(1) Basic Information

Client's Full Name (including all names ever used):

_____

Where were you born?:

Date of Birth: _____ **Alien #**[101]: _____

Date of Interview: _____

Immigration Hold ("ICE Detainer"): YES □ NO □

Language(s) spoken: _____

Has an immigration attorney?: YES □ NO □

Immigration Lawyer Name and Contact:

_____

(2) Criminal Contacts History

Have you ever been criminally arrested (in CT or elsewhere)? YES □ NO □

(continued)►

[101] Usually a nine-digit number found of most immigration documents

If so, please list each arrest and disposition/sentence for <u>each</u> arrest.

Do you have any pending warrants or cases (including on appeal) anywhere? If so, please describe.

If you have a prior conviction from a plea deal, were you advised of the immigration consequences by your defense attorney? YES □ NO □

If so, explain circumstances below.

Current charges and plea bargain offer (if any):

(3) <u>Immigration History</u>

Date first entered U.S.: _____

Why and how did you come to the U.S.?

Immigration status when first entered U.S. (undocumented/entered without inspection, student, tourist or other temporary visa, green card, false passport, asylee/refugee, DACA, SIJS, Deferred Action, previously ordered deported, etc.):

_____

Total length of residence in the United States:

(continued)►

Do you have a green card (LPR): YES □ NO □

If yes, date received:

If no, have you ever had legal status in U.S.: YES □ NO □

If yes, type and date received:

Has anyone ever filed a visa petition or any other type of immigration application for you? YES □ NO □

Name and #:_____ **Date** _____.

Type of visa petition or immigration application? _____
Was it granted? YES □ NO □

Have you left U.S. since first entry? YES □ NO □ If yes, dates left and for how long?

How did you last enter the U.S.? (i.e. with or without inspection) [102]

Have you ever seen an immigration judge: YES □ NO □

Date: _____ Location: _____ Judge Name: _____

If yes, what happened:

Any upcoming immigration court dates or pending deadlines: YES □ NO □

Final Order of Removal received: YES □ NO □ Date and location:
_____

Have you filed any applications for immigration relief (e.g. U-Visa, cancellation of removal, voluntary departure, waiver of deportability, § 212(c) waiver, DACA, etc.) **and what happened to them? Are any of them still pending? If so, since when?**

(continued)►

[102] If the client is uncertain whether they entered with inspection, ask about the method of transportation and port of entry.

If detainee was arrested by ICE,[103] Date, City and State of arrest:

What were the circumstances of your arrest by ICE (traffic stop, workplace, home, street, other; was the person arresting you a police officer or ICE agent?):

Have you ever previously come into contact with U.S. immigration: Yes □ No □
Date(s), location, nature of contact, whether resulted in order of removal:

(4) Personal History

Family members in the United States[104] (please list relation to client, age, immigration status, and note if any family is dependent on detainee and/or has special medical needs, allergies, or other conditions):

Emergency Contact: Name and contact info for at least one family member or friend:

List any US Citizen parents or grandparents:

If your parent/s is/are a naturalized US citizen, were you under the age of 18 when a parent naturalized to U.S. citizenship?[105] YES □ NO □

(continued)►

[103] In certain circumstances, the manner in which a client was arrested may allow relief in the form of a motion to suppress evidence illegally obtained.
[104] The client may be eligible through a U.S. citizen or LPR relative to become an LPR through an I-130 family-based petition. Furthermore, some non-permanent residents who have a U.S. Citizen or LPR parent, child or spouse may be eligible for cancellation of removal.
[105] If either one of the parents of the client was a U.S. citizen, the client could have a claim to U.S. citizenship himself. Sometimes, if the parent is not able to pass on citizenship for some reason, the citizenship of a grandparent may be relevant as well. The rules around derivative citizenship are complicated. More resources about the various rules that govern derivative citizenship can be found here, https://www.ilrc.org/sites/default/files/resources/natz_chart-c-2016-11-16.pdf, but you should also advise your client to consult an immigration attorney.

Work History (including employer's name and contact information, and whether current employer would help you immigrate)[106]:

Education History (attended school in the United States?):

Military Service? If so, period of service:

Do you have any particular health problems? Have you ever had mental health issues? If so, are you receiving treatment now?

ARE YOU AFRAID TO RETURN TO YOUR HOME COUNTRY:[107] YES □ NO □

IF YES, PLEASE EXPLAIN:

(continued)►

[106] The client may be eligible to adjust to LPR status through an employer I-140 petition, if the employer is willing to sponsor him or her.

[107] If an individual has a fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group, she or he may be eligible for asylum or withholding of removal. If an individual fears torture, she or he might be eligible for asylum, withholding of removal, or relief under the Convention Against Torture. Separately, if the individual has a fear of returning to his or her country of origin based on a recent event in that country, such as a natural disaster, she or he may be eligible for temporary protective status (TPS). Check the most recent list of TPS countries here: https://www.uscis.gov/humanitarian/temporary-protected-status.

Have you ever been a victim of domestic violence or another crime, including workplace abuses?[108] YES □ NO □

Or, has any child or spouse ever been the victim of any such crime? YES □ NO □

If so, please indicate any cooperation with law enforcement on the case, including contact information for law enforcement personnel:

[108] Non-citizens who have been abused by LPR or U.S. citizen immediate relatives may be eligible for relief under the Violence Against Women Act (VAWA). Some victims of serious crimes may be eligible for a "U-Visa," or a "T-Visa" for those who are victims of trafficking.

Appendix C: Additional Resources for Attorneys

a. Information Regarding Detained Clients and Removal Cases

1) Immigration and Customs Enforcement Detainee Locator
https://locator.ice.gov/odls/homePage.do

This online locator system can be used to search for detainees by A-Number or biographical information.

2) Executive Office for Immigration Review Case Status
1-800-898-7180, https://www.justice.gov/eoir/customer-service-initiatives

By calling the above number and entering your client's A-Number you may obtain information regarding upcoming immigration court hearing dates, case processing, immigration judge decisions, and case appeals.

b. Advisories, Guides, Checklists, and Trainings from Leading Immigrant Rights Advocates

1) Defending Immigrants Partnership
www.defendingimmigrants.org

This site was developed by the Immigrant Legal Resource Center, Immigrant Defense Project, National Legal Aid and Defender Association and the National Immigration Project of the National Lawyers Guild to assist criminal defenders in representing noncitizens.

Resources include:

- A library of resources on the immigration consequences of crime.
    - http://defendingimmigrants.org/library/

- A news page with recent news and events related to immigration and crimes.

- Upcoming trainings on immigration and crimes.
    - http://defendingimmigrants.org/trainings/

2) Immigrant Defense Project
www.immigrantdefenseproject.org

The Immigrant Defense Project (IDP), formerly an initiative of the New York State Defenders Association, defends the legal, constitutional and human rights of immigrants facing criminal or deportation charges. IDP's website contains extensive resources for criminal defenders, immigration attorneys, and immigrant communities.

Resources available for purchase include:

- Fighting Aggravated Felony Charges Guide (Updated 2017): https://www.immigrantdefenseproject.org/fighting-aggravated-felony-charges/

Free Resources include:

- Frequently updated practice advisories
  - https://www.immigrantdefenseproject.org/practice-advisories-listed-chronologically/

- Immigration Consequences of Convictions Checklist (2016): https://www.immigrantdefenseproject.org/wp-content/uploads/2016/08/Imm-Consq-checklist-2016-FINAL-v5.pdf

- Aggravated Felony Practice Aids (2011): https://immigrantdefenseproject.org/wp-content/uploads/2011/10/Appendix-C-3_FINAL5THEd2011.pdf

- Advice on Advising immigrant clients after President Trump's January 25, 2017 Executive Orders: https://www.immigrantdefenseproject.org/wp-content/uploads/2017/01/IDP-Post-Trump-EOs-FAQs-for-defenders-1.27.17.pdf

- Protocol for the Development of a Public Defender Immigration Service Plan (2011): https://www.immigrantdefenseproject.org/wp-content/uploads/2011/03/Protocol.pdf

- How to Work With an Immigration Lawyer to Protect Your Noncitizen Client: https://www.immigrantdefenseproject.org/wp-content/uploads/2012/01/Tips-on-How-to-Work-with-an-Immig-Lawyer.pdf

3) Immigrant Advocates Network Nonprofit Resource Center
http://www.immigrationadvocates.org/nonprofit

The Immigration Advocates Network (IAN) Nonprofit Resource Center provides free web-based tools and resources for nonprofit immigration advocates and service providers.

Free resources include (open only to service providers that register for a free membership):

- Immigration news, alerts, and practice advisories
- A national trainings calendar
- An online library with over 5,500 resources that covers 12 areas of immigration law and policy and an online message board moderated by expert immigration attorneys
- Live and recorded webinars, podcasts and training videos on timely immigration law and policy topics

4) Immigrant Legal Resource Center
www.ilrc.org

The Immigrant Legal Resource Center (ILRC) seeks to improve immigration law and policy, expand the capacity of legal service providers, and advance immigrant rights. The ILRC trains attorneys, paralegals, and community-based advocates who work with immigrants around the country.

Resources available for purchase include:

- Live and Recorded Webinars (available for purchase)
    - Relevant webinars include: The Categorical Approach (Recorded 10/20/2016) and Clean Slate for Immigrants: How Immigrants Can Erase or Mitigate their Criminal Records (To air on 6/7/2017)
- A list of basic immigration law courses taught around the country
- Practice manuals on immigration law for both new and experienced practitioners

Appendix D: KYR Resources for Noncitizens and Their Families

a. Educational flyers, pamphlets, manuals, and toolkits

- **Immigration Defense Project Community Resources** (available in multiple languages)
  https://www.immigrantdefenseproject.org/category/resources-for-communities/

  This extensive set of resources includes the following:
  - Emergency Plan advice and resources for individuals at risk of deportation and their families
    - https://www.immigrantdefenseproject.org/emergency-preparedness/
  - Know Your Rights flyers and booklets
    - https://www.immigrantdefenseproject.org/ice-home-and-community-arrests/)
  - Criminal-Immigration Helpline
    - 212.725.6422, https://www.immigrantdefenseproject.org/criminal-immigration-helpline/
  - A frequently updated page of community responses to the deportation dragnet
    - https://www.immdefense.org/community-responses/
  - A detailed primer on the deportation system:
    - English version: https://immigrantdefenseproject.org/wp-content/uploads/2011/02/Deportation101-1-11HiRes.pdf
    - Spanish version: https://immigrantdefenseproject.org/wp-content/uploads/2011/03/Deportation101Spanish1-11HiRes.pdf

b. State and Local Community Organizations

- **Connecticut Immigrant Rights Alliance (CIRA)**
  https://www.facebook.com/CTImmigrantRightsAlliance/

  CIRA is a statewide coalition including immigrant, faith, labor, civil rights and human service organizations.

- **Make the Road Connecticut**
  http://www.maketheroadct.org/

  Make the Road Connecticut works to support immigrants to be active in their communities and to lift themselves out of poverty through legal and support services, civic engagement, transformative education and policy innovation**.**

- **Unidad Latina en Acción (ULA)**
  https://ulanewhaven.org/, https://www.facebook.com/ULANewHaven/

  ULA is a grassroots social justice organization made up of immigrants in the Greater New Haven area. ULA is a member of CIRA and the #Not1More Movement.

c. National Campaigns and Organizations

- **Families for Freedom**
  http://familiesforfreedom.org

  Families for Freedom is a New York-based multi-ethnic human rights organization by and for families facing and fighting deportation.

- **United We Dream (UWD)**
  https://unitedwedream.org/

  UWD, the largest immigrant youth-led organization in the nation, organizes and advocates for the dignity and fair treatment of immigrant youth and families, regardless of immigration status.

- **#Not1More Movement**
  http://www.notonemoredeportation.com/

  This collaboration between individuals, organizations, artists, and allies seeks to challenge unjust deportations and policies criminalizing immigration through organizing, art, legislation, and action.

APPENDIX E: SUMMARY OF EXISTING CONNECTICUT "SANCTUARY" POLICIES

	New Haven	Hartford	East Haven	*Brizuela* Settlement	Trust Act
Source of Policy	Police Order[1]	City Ordinance[2]	Police Directive/Court Order[3]	Court Order[4]	State Statute[5]
Coverage	New Haven Police Department	Hartford city employees, including police officers	East Haven Police Department	Connecticut Department of Corrections (DOC)	Connecticut law enforcement[6]
Arrest individuals based on ICE administrative warrant	• Prohibited from making arrest based on ICE admin. warrant for arrest or removal	• Prohibited from making arrest based on an ICE admin. warrant	• Prohibited from making arrest unless ICE obtains a warrant signed by judge	• N/A	• N/A

[1] NEW HAVEN DEP'T OF POLICE SERV., GENERAL ORDER 06-2, DISCLOSURE OF STATUS INFORMATION: POLICIES & PROCEDURES (2006), *available at* http://www.newhavenindependent.org/archives/upload/2006/12/NHPDGeneralOrder.doc.
[2] HARTFORD, CONN., MUN. CODE ch. 2, § 2-928 (2008), *available at* http://library.municode.com/HTML/10895/level3/PTIIMUCO_CH2AD_ARTXXICISEREIMST.html#TOPTITLE
[3] EAST HAVEN POLICE DEP'T., POLICIES & PROCEDURES NO. 428.2, SECURE COMMUNITIES PROGRAM (2014) *available at* http://www.easthavenpolice.com/files/2314/0244/5061/428.2_-_Secure_Communities_Program_Effective_07-01-2014.pdf.; *see* Settlement Agreement, *Chacón v. E. Haven Police Dep't*, No. 3:10-cv-01692-AWT (D. Conn. June 4, 2014) (No. 163-1); *see also Civil Rights Plaintiffs Settle with East Haven, Secure Groundbreaking Immigration Policy,* Yale Law School (June 9, 2014), https://www.law.yale.edu/yls-today/news/civil-rights-plaintiffs-settle-east-haven-secure-groundbreaking-immigration-policy.
[4] "Brizuela v. Feliciano," Yale Law School, https://www.law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/worker-and-immigrant-rights-advocacy-clinic/brizuela-v-feliciano.
[5] 2013 Conn. Legis. Serv. P.A. 13-155 (H.B. 6659), *available at:* https://www.cga.ct.gov/2013/act/pa/2013PA-00155-R00HB-06659-PA.htm.
[6] Includes members of the DOC, municipal PDs, the Division of State Police, judicial marshals, and state marshals.

	New Haven	Hartford	East Haven	*Brizuela* Settlement	Trust Act
Disclose confidential information about imm. status	• Only in limited circumstances	• Only in limited circumstances	• Only in limited circumstances	• N/A	• N/A
Inquire into imm. status	• Permitted to inquire in the course of a criminal investigation	• Permitted to inquire if necessary for a criminal investigation	• Permitted to inquire only if person is reasonably believed to be or have been involved in a felony	• N/A	• N/A
Honor ICE detainers	No	No	Will not detain or hold in custody based solely on civil detainer request	Only honors detainers for individuals with: - Past felony convictions - Pending CT charges where bond has not been posted - Outstanding CT warrants - Existing final order of deportation or removal - Individuals identified as known gang members or designated as a Security Risk group or Security Risk Safety Threat - Other public safety concerns	Only honors detainers for individuals with: - Past felony conviction - Pending CT criminal charges and no bail posted - Outstanding arrest warrant - Existing final order of deportation or removal - Match with gang member database, Security Risk group, Security Risk Safety Threat list, or terrorist screening database - Presents "unacceptable risk to public safety"[7]

[7] The current Administrative Directive narrows this list further, to include only those with prior violent felony convictions as well as criminal conspiracy, liability, or attempt for a listed felony, a match with a terrorist screening database and a positive response from the Terrorist Screening Center, or those subject to a final order of deportation or removal accompanied by a Judicial Warrant. *See* Connecticut Department of Correction Administrative Directive 9.3, "Inmate Admissions, Transfers and Discharges" (July 20, 2015), http://www.ct.gov/doc/LIB/doc/PDF/AD/ad0903.pdf.

Appendix F: Immigration Consequences of Selected Connecticut Criminal Offenses

IMPORTANT NOTE: This chart is meant as an overview of the potential immigration consequences of a conviction for a particular Connecticut offense. The assessments of whether a conviction will trigger a particular immigration provision are conservative: they tend to err on the side of finding that a particular conviction would fall under a particular category (for example, Aggravated Felony). In other words, the chart takes a "worst case scenario" approach. Immigration practitioners in particular are advised to continue challenging designations of particular offenses as Aggravated Felonies, Crimes Involving Moral Turpitude, etc., even if the chart lists them as "maybe" or even definitely falling into those categories. The purpose of this chart is to warn criminal defense attorneys of risky convictions, not to give a definitive assessment of whether a particular offense is certain to fall into a particular category. Thus, you will see that the guide uses language like "Maybe" to signal the risk when the law is not clearly one way or the other.

IMPORTANT NOTE TO CRIMINAL DEFENSE ATTORNEYS: Under federal immigration law, the "sentence imposed" includes any term of imprisonment handed down by the court, *even if that sentence is suspended*. *See* 8 U.S.C. § 1101(a)(48)(B). **Therefore, unless otherwise specified, any reference in the chart to "sentence imposed" includes any part of a sentence that is suspended by the trial court.**

OVERVIEW OF IMMIGRATION CONSEQUENCES OF PARTICULAR CATEGORIES OF OFFENSES

Offense Category	Summary of Immigration Consequences
AGGRAVATED FELONY ("AF")	▪ AF makes a non-citizen automatically deportable; ▪ AF conviction eliminates virtually all forms of discretionary relief from deportation; ▪ AF makes a non-citizen ineligible for asylum and, if sentenced to 5+ years for AF, ineligible for withholding of removal; ▪ AF makes non-citizen ineligible for voluntary departure from the United States; ▪ AF will generally trigger mandatory detention pending deportation ("removal"); ▪ AF will render a deported individual permanently barred from reentering the United States (unless the Attorney General grants a waiver); ▪ AF conviction will permanently bar a non-citizen from becoming a U.S. citizen; ▪ If deported individual reenters illegally, he or she will face enhanced penalties of up to 20 years in federal prison.
CONTROLLED SUBSTANCES OFFENSE ("CSO")	▪ CSO generally makes non-citizens deportable (unless simple possession of 30g or less of marijuana) and inadmissible; ▪ CSO will trigger mandatory detention pending deportation ("removal"); ▪ CSO will eliminate many avenues of discretionary relief from deportation, but may preserve a few (for example, for LPRs who have lived in the United States for 7 years before committing the offense); ▪ If deported individual reenters illegally, he or she will face enhanced penalties of up to 10 years in federal prison; ▪ Even if it does not result in deportation, CSO conviction will bar a non-citizen from becoming a U.S. citizen for 5 years.
CRIMES INVOLVING MORAL TURPITUDE	▪ A CIMT *may* render a non-citizen deportable or inadmissible depending on circumstances (see Appendix A); ▪ If the CIMT renders the non-citizen inadmissible or deportable, he or she *may* be detained mandatorily pending

("CIMT")	removal; ▪ However, even if removable, *certain* individuals *may* still be eligible for discretionary relief from deportation; ▪ Even if it does not result in deportation, CIMT conviction will bar a non-citizen from becoming a U.S. citizen for 5 years
CRIMES OF DOMESTIC VIOLENCE ("CODV") and CRIMES OF CHILD ABUSE ("CA")	▪ CODV and CA will render deportable non-citizens who have been lawfully admitted to the United States (especially LPRs); ▪ However, even if deportable, an individual may still be eligible for discretionary relief from deportation; ▪ Neither CODV nor CA will result in mandatory detention pending removal.
FIREARM OFFENSES ("FO")	▪ FO will render deportable non-citizens who have been lawfully admitted to the United States (especially LPRs); ▪ However, even if deportable, an individual may still be eligible for discretionary relief from deportation since there is no automatic FO ground of inadmissibility; ▪ FO will result in mandatory detention pending removal.

Abbreviations:

AF – Aggravated Felony
COV – Crime of Violence (AF if sentence of 1 yr. or more is imposed)
CSO – Controlled Substance Offense
CIMT – Crime Involving Moral Turpitude
CA – Crime of Child Abuse
CODV – Crime of Domestic Violence (and Stalking and Violation of Protection Order)
FO – Firearm Offense
(*POE*) – Offense *may* qualify for "petty offense exception" for inadmissibility purposes if no prior CIMTs and sentence imposed does not exceed 6 months.
Pros. – Prostitution Offense
ROC – Record of Conviction
2nd Cir. – U.S. Court of Appeals for the Second Circuit
AR – Accelerated Pretrial Rehabilitation (Conn. Gen. Stat. § 54-56e)
AEP – Pretrial Alcohol Education Program (Conn. Gen. Stat. § 54-56g)
CADAC – Suspension of Prosecution for Dependent Persons (§§ 17a-692 – 698)
CSLP – Community Service Labor Program (§ 53a-39c)
DEP – Pretrial Drug Education Program (Conn. Gen. Stat. § 54-56i)
FVEP – Pretrial Family Violence Education Prog. (§ 46b-38c(g))

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
HOMICIDE OFFENSES					
Murder, Capital Felony, Felony Murder, Arson Murder	53a-54a, 53a-54b, 53a-54c, 53a-54d	AF. *See* 8 U.S.C. 1101(a)(43)(A).	CIMT. *See Matter of Lopez-Amaro*, 20 I. & N. Dec. 668 (BIA 1993).	CODV – If the victim was a current or former spouse or similarly situated individual, conviction would probably be considered a CODV.	**DefAttys:** If possible, plead down to 2d degree manslaughter to avoid AF classification. **ImmPract:** Challenge murder AF charge arguing that statute is overbroad because it includes a suicide by force, duress or deception and indivisible under *Mathis*.
Manslaughter in the 1st Degree, Manslaughter in the 1st Degree with a Firearm [Class B Felony]	53a-55, 53a-55a	COV AF under 18 U.S.C. § 16(b) if sentence of 1 yr. or more is imposed in conviction under 53a-55(a)(1) or (2), *see Vargas-Sarmiento v. U.S. D.O.J.*, 448 F.3d 159 (2d Cir. 2006) (NY manslaughter conviction involving intentional conduct is COV AF)); *Benjamin v. Bureau of Customs*, 383 F. Supp. 2d 344 (D. Conn. 2005) (conviction under (a)(1) is a COV AF). Assume conviction under subsection (a)(3) is a COV AF under § 16(b), *see Spina v. Dep't of Homeland Sec.*, 470 F.3d 116, 120, n. 3 (2d Cir. 2006). Section 53a-55a with sentence of 1 yr. or more would be a COV AF.	CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, conviction under subsections (a)(1) or (2) would be considered a CODV. FO – Assume FO if ROC establishes a firearm covered under federal law. *See infra* fn. 11.	**DefAttys: 1)** If possible, plead down to criminally negligent homicide, or to 2d degree, to avoid AF classification. **2)** Otherwise, allocution to subsection (a)(3) reduces the risk that conviction will be considered AF. **3)** If charging document includes all subsections, and cannot plead to (a)(3), consider *Alford* plea. **4)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge COV AF charge for conviction under subsection (a)(3), under either 53a-55 or 53a-55a, arguing reckless mental state is insufficient for COV AF. *See Leocal v. Ashcroft*, 125 S. Ct. 377 (2004).[1] **2)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See generally* fn. 1. **3)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See infra* fn. 11.

[1] There are two major challenges to any COV based on 18 U.S.C. § 16(b). First, the Supreme Court will soon decide whether a charge that a conviction is a COV based on § 16(b) is unconstitutionally vague. *Dimaya v. Lynch*, 803 F.3d 1110 (9th Cir. 2015), *cert granted sub nom. Lynch v. Dimaya*, 137 S. Ct. 31 (Sept. 29, 2016). The decision may issue any time between the publication of this guide and the end of June 2017 so immigration practitioners should take care to preserve challenges to any § 16(b)-based COVs with *Dimaya* and its outcome in mind.
Second, *Leocal* left open whether a crime involving reckless mens rea can be a COV. Many, though not all, circuits have extended *Leocal*'s reasoning to reckless crimes. See Section I, Important Definitions, "Crime of Violence." The Second Circuit seems to find that some offenses committed with only reckless mens rea could still constitute a COV. *Compare Jobson v. Ashcroft*, 326 F.3d 367, 375 (2d Cir. 2003) ("a defendant must be reckless not just about potential injury, but also about having to intentionally use force during the commission of a crime"), *with Blake v. Gonzales*, 481 F.3d 152 (2d Cir. 2007) (holding that assault on a police officer is a COV because the intent to obstruct a police officer in his or her duties raises a substantial risk of the use of force).

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Manslaughter in the 2nd Degree [Class C Felony]	53a-56	Maybe COV AF under 18 U.S.C. § 16(b) if sentence of 1 yr. or more is imposed.	CIMT. *See Matter of Franklin*, 20 I. & N. Dec. 867 (BIA 1994) (interpreting Missouri 3rd degree involuntary manslaughter).	CODV – If the victim was a current or former spouse or similarly situated individual, would probably be considered a CODV.	**DefAttys: 1)** If possible, plead down to criminally negligent homicide to avoid AF and CIMT classification. **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge charge as COV AF or CODV arguing reckless mental state is insufficient under *Leocal* and *Jobson v. Ashcroft*, 326 F.3d 367 (2d Cir. 2003) (similar NY conviction for 2nd degree manslaughter not COV AF under 18 U.S.C. 16(b)). **2)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See generally* supra fn. 1.
Manslaughter in the 2nd Degree with a Firearm [Class C Felony]	53a-56a	Maybe COV AF under 18 U.S.C. 16(b), if sentence of 1 yr. or more is imposed.	CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, would probably be considered a CODV. FO – Assume FO if ROC establishes a firearm covered under federal law. *See infra* fn. 11.	**DefAttys: 1)** If possible, plead down to criminally negligent homicide to avoid AF and CIMT classification. **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge charge as COV AF or CODV arguing reckless mental state is insufficient under *Leocal* and *Jobson. See supra* fn. 1 regarding reckless crimes. **2)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See generally* supra fn. 1. **3)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See infra* fn. 11.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Manslaughter in the 2nd Degree with a Motor Vehicle [Class C Felony]	53a-56b	Not AF.	Maybe CIMT.	CSO – Might be considered a CSO if ROC establishes a controlled substance as defined in 21 U.S.C. § 802. *See infra* fn. 10.	**DefAttys**: **1)** Allocute in record that there was no scienter to avoid classification as AF or CIMT. **2)** Consider an *Alford* plea to ensure ROC does not establish controlled substance or keep ROC vague as to substance. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract**: **1)** Challenge charge as COV AF arguing reckless mental state is insufficient under *Leocal* and *Jobson*. *See supra* fn. 1 regarding reckless crimes; *see also United States v. Portela,* 469 F.3d 496, 499 (6th Cir. 2006) (reckless vehicular homicide not a COV), *Oyebanji v. Gonzales,* 418 F.3d 260, 264 (3d Cir. 2005) (same); *U.S. Gomez-Leon*, 545 F.3d 777 (9th Cir.) (vehicular manslaughter while intoxicated without gross negligence was not a COV). **2)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1. **3)** Challenge charge as CIMT. *See In the Matter of N--*, 1 I. & N. Dec. 181 (BIA, 1941) (Arizona conviction for vehicular manslaughter while intoxicated not a CIMT); *People v. Montilla*, 513 N.Y.S.2d 338, 340 (Sup. Ct. 1987) (same for NY statute). **4)** Challenge charge as CSO, arguing that statute is indivisible as to whether intoxicating liquor or drug was involved and court cannot look at the ROC.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Misconduct with a Motor Vehicle [Class D Felony]	53a-57	Not AF.	Maybe CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, would probably be considered a CODV.	**DefAttys**: **1)** Allocute in record that there was no scienter to avoid classification as CIMT. **2)** Consider an *Alford* plea. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract 1)**: Challenge charge as COV AF arguing reckless mental state is insufficient under *Leocal* and *Jobson*. *See supra* fn. 1 regarding reckless crimes. **2)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1. **3)** See note above under Manslaughter in the 2nd Degree with a Motor Vehicle regarding COV and CIMT charges.
Criminally Negligent Homicide [Class A Misdem.]	53a-58	Not AF.	Maybe CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, would probably be considered a CODV.	**DefAttys**: **1)** Consider an *Alford* plea. **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract**: **1)** Challenge charge as COV AF arguing reckless mental state is insufficient under *Leocal* and *Jobson*. *See supra* fn. 1 regarding reckless crimes; *see also In re Sweetser*, 22 I. & N. Dec. 709, 716 (BIA 1999) (holding that Colorado conviction for criminally negligent homicide is not a COV); *In Re: Hsin Lan Yen Tung A.K.A. Judy Tang*, : A42 108 203 - BEDF, 2003 WL 23508475, at *3 (DCBABR Nov. 18, 2003) (same for New York offense). **2)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See generally* supra fn. 1.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
ASSAULT AND RELATED OFFENSES					
Assault in 1st Degree [Class B Felony][2]	53a-59, 53a-59a, 53a-59b, 53a-59c	COV AF under 18 U.S.C. § 16(b) for convictions under subsections (a)(1), (2), (4) or (5) if sentence of 1 yr. or more is imposed. Maybe COV AF under 18 U.S.C. § 16(b) for conviction under subsection (a)(3) (recklessness) if sentence of 1 yr. or more is imposed.	CIMT. *See Matter of Wu*, 27 I&N Dec. 8 (BIA 2017) (assault with deadly weapon or force likely to produce great bodily injury is categorically a CIMT); *Nguyen v. Reno*, 211 F.3d 692 (1st Cir. 2000) (conviction under Conn. Gen. Stat. § 53a-60(a)(1), which involves lesser level of scienter than § 53a-59, is CIMT).	FO – Assume FO for conviction under subsection (a)(5) if the ROC establishes a firearm under federal law. But *see infra* fn. 11; subsection (a)(1) is not divisible as to type of weapon and thus should not be considered FO. CODV – If the victim was a current or former spouse or similarly situated individual: conviction under subsections (a)(1), (2), (4) or (5) would be considered a CODV.	**DefAttys: 1)** Try to plead down to Assault in 3d Degree without 1 yr. imposed sentence. **2)** If can't avoid Assault 1st Degree conviction, try to plead to subsection (a)(3) as least likely to be considered COV AF. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge COV AF charge for conviction under subsection (a)(3), arguing reckless mental state is insufficient under *Leocal* and *Jobson*. *See supra* fn. 1 regarding reckless crimes. **2)** Challenge COV AF charge for conviction under any subsection because *Dimaya* and *Johnson* suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1; *see also Villanueva v. United States*, 191 F. Supp. 3d 178, 196 (D. Conn. 2016) (discussing how conviction under subsection (a)(1) fell under ACCA residual clause). **3)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See infra* fn. 11.

[2] Section 53a-59a governs assault of an elderly, blind, disabled, or pregnant person, or a person with intellectual disability in the first degree (Class B felony); 53a-59b governs assault of an employee of the department of correction in the first degree (Class B felony); and 53a-59c governs assault of a pregnant woman resulting in termination of pregnancy (Class A felony). The information provided for assault in the 1st degree 53a-59 applies to each of these specific sections.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Assault in the 2nd Degree [Class D Felony]	53a-60	COV AF under 18 U.S.C. § 16(b) for conviction under subsections (a)(1), (2), (4) or (5) if sentence of 1 yr. or more is imposed. *See Morris v. Holder*, 676 F.3d 309, 316 (2d Cir. 2012) (risk of use of force is present whenever there is intent to cause physical injury); *Berroa-Soto v. Holder*, 316 Fed.Appx. 27 (2d Cir. 2009) (holding that § 53a-60(a) conviction was AF); *see also In Re Fuller*, 2005 WL 1766772 (BIA 2005) (convictions under § 53a-60(a)(1) and (a)(2) are COV AFs). Maybe COV AF under 18 U.S.C. § 16(b) for conviction under subsection (a)(3) (recklessness).	CIMT. *See Nguyen v. Reno*, 211 F.3d 692 (1st Cir. 2000) (conviction under § 53a-60(a)(1) is CIMT).	FO – Subsections (a)(2) or (3) are not divisible as to type of weapon and thus should not be considered FO. CODV – If the victim was a current or former spouse or similarly situated individual: conviction would be CODV if found to be COV.	**DefAttys: 1)** Try to plead down to Assault in 3rd Degree w/ less than 1 yr. imposed sentence. **2)** Consider AR or, if DV case, consider FVEP. **3)** If applicable, allocute to mens rea of recklessness rather than intent. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge COV AF charge for conviction under subsection (a)(3), arguing reckless mental state is insufficient under *Leocal* and *Jobson*. *See supra* fn. 1 regarding reckless crimes; *see also In Re: Manuel Ramiro Salinas*, : A97 167 423 – HART, 2008 WL 339644, at *1 (DCBABR Jan. 15, 2008) (remanded to IJ to determine under which subsection of § 53a-60 respondent was convicted and if it was negligent conduct, it would not be an AF). **2)** Challenge COV AF for conviction under any subsection because *Dimaya* and *Johnson* suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1.
Assault in the 2nd Degree with Firearm [Class D Felony][3]	53a-60a	COV AF under 18 U.S.C. § 16(b) if sentence of 1 yr. or more is imposed (if predicate under 53a-60(a)(3), then may be COV AF under § 16(b)).	Maybe CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, would be considered a CODV. FO – Assume FO if ROC establishes a firearm covered under federal law. *See* infra fn. 11.	**DefAttys**: See note above under Assault in the 2nd Degree. **ImmPract**: **1)** See note above under Assault in the 2nd Degree regarding COV AF. **2)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See* infra fn. 11.

[3] §53a-60c governs assault of an elderly, blind, disabled, or pregnant person, or a person with intellectual disability in the second degree with a firearm (Class D Felony). The information provided for assault in the 2nd degree with a firearm applies to this section.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Assault in the 2nd Degree of an elderly, blind, disabled, pregnant, or mentally retarded person [Class D Felony]	53a-60b	If the assault is committed by assault 2nd, then *see* § 53a-60 above. If assault is committed by larceny 2nd, then conviction is a "theft" AF. See § 53a-123 below.	CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, would be CODV if found to be COV.	**DefAttys: 1)** Allocute to mens rea of recklessness if possible. **2)** Otherwise, consider an *Alford* plea or keep the ROC clean as to larceny or intentional assault. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract**: See note in § 53a-60 above if assault 2nd or § 53a-123 below if conviction is a larceny.
Assault in 2nd Degree w/ Motor Vehicle [Class D Felony]	53a-60d	Not AF	Maybe CIMT.	CSO – Might be considered a CSO if ROC establishes a controlled substance as defined in 21 USC § 802. *See infra* fn. 10.	**DefAttys: 1)** Plead to influence of alcohol (not drugs), or make *Alford* plea. **2)** Allocute in record that there was no scienter to avoid classification as CIMT. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract**: **1)** See note in § 53a-60 above if assault 2nd. **2)** Challenge charge as CSO based on indivisibility of statute.
Assault in 3rd Degree [Class A Misdem.]	53a-61, 53a-61a	Not AF. *See Chrzanoski v. Ashcroft*, 327 F.3d 188, 197 (2d Cir. 2003) (holding that third degree assault was not a COV because force was not an element of the crime).	CIMT for conviction under subsection (a)(1) or (a)(2). *See Guevara v. Holder*, 533 F. App'x 23, 27 (2d Cir. 2013); *Keungne v. U.S. Atty. Gen.*, 561 F.3d 1281 (11 Cir. 2009) (holding conviction for criminal reckless conduct was CIMT). Not CIMT for conviction under subsection (a)(3).	NOT CODV – *See Chrzanoksi*. NOT FO – Subsection (a)(3) is not divisible as to type of weapon and thus should not be considered FO.	**DefAttys: 1)** Consider AR or FVEP if eligible. **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge charge as CIMT, as BIA case law states that "simple assault" is not CIMT, *see In Re Brieva-Perez*, 23 I. & N. Dec. 766, 772 (BIA 2005); *Matter of Fualaau*, 21 I. & N. Dec. 475 (BIA 1996). **2)** Challenge charge as COV AF or CODV. *See Chrzanoski* (not a COV). *But see Matter of Martin*, 23 I. & N. Dec. 491 (BIA 2002) (holding conviction under subsection (a)(1) is a COV) so this argument may not hold outside 2d Circuit. **3)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See infra* fn. 11. **4)** Potentially a POE.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Threatening in the 1st Degree [Class D Felony]	53a-61aa	COV AF under 18 U.S.C. § 16(b) for conviction under subsection (a)(1)(A) or (a)(2)(A) if sentence of 1 yr. or more is imposed. Maybe COV AF under 18 U.S.C. § 16(b) for conviction under subsection (a)(1)(B) or (a)(2)(B) if sentence of 1 yr. or more is imposed.	CIMT. *See Matter of Ajami*, 22 I&N Dec. 949, 952 (BIA 1999) (stating that "the intentional transmission of threats is evidence of a vicious motive or a corrupt mind"); *see also Javier v. Attorney General*, 826 F.3d 127 (3d Cir. 2016) (holding that Pennsylvania conviction for making terroristic threats with intent to terrorize another was categorically a CIMT); *Chanmouny v. Ashcroft*, 376 F.3d 810, 814-15 (8th Cir. 2004) (same for Minnesota offense).	Maybe "terrorist activity" triggering deportability or inadmissibility; *see* 8 U.S.C. § 1227(a)(4)(B); 8 U.S.C. § 1182(a)(3)(B). FO – Assume FO for conviction under subsection (a)(3) if ROC establishes a firearm under federal law. *But see infra* fn. 11.	**DefAttys**: **1)** Consider AR or FVEP if eligible. **2)** Allocute to "use of a hazardous substance" rather than threatening a crime of violence. **3)** Allocute to absence of intent to potentially avoid classification as COV AF or CIMT. **4)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge COV AF charge for conviction under subsection (a)(1)(B) or (a)(2)(B), arguing reckless mental state is insufficient under *Leocal* and *Jobson*. *See supra* fn. 1 for reckless crimes. **2)** Charge as a COV AF should be challenged under *Johnson v. United States*, 559 U. S. 133 (2010) (defining "physical force"). Argue that "threaten" may cover acts of intimidation, *see State v. Stockford*, 58 A. 769 (Conn. 1904), which is not "violent force" as required under *Johnson*. **3)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See infra* fn. 11.
Threatening in the 2nd Degree [Class A Misdem.]	53a-62	Not AF. *See Chrzanoski v. Ashcroft*, 327 F.3d 188, 197 (2d Cir. 2003) (holding that misdemeanor offense was not a COV because force was not an element of the crime).	Maybe CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, would probably be considered a CODV (even if sentence is less than 1 yr.).	**DefAttys: 1)** Consider AR or FVEP if eligible. **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **3**) Allocute to (a)(2)(B) recklessness to possibly prevent COV AF or CIMT classification. **4)** Keep ROC clean of relationship, identity and/or age of victim to avoid classification as CODV. **ImmPract**: **1)** See note under Threatening 1st Degree regarding challenges to COV AF charges. **2)** Potentially a POE.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Reckless Endangerment in the 1st Degree [Class A Misdem.]	53a-63	Not AF. *See Chrzanoski v. Ashcroft*, 327 F.3d 188, 197 (2d Cir. 2003) (holding that misdemeanor offense was not a COV because force was not an element of the crime).	Maybe CIMT. *See Knapik v. Ashcroft*, 384 F.3d 84 (3d Cir. 2004) (analyzing similar New York statute); *Matter of Leal*, 26 I&N Dec. 20 (BIA 2012) (Arizona offense of reckless endangerment was categorically a CIMT, even though the state law defines recklessness to encompass a subjective ignorance of risk resulting from voluntary intoxication).	CODV – If the victim was a current or former spouse or similarly situated individual, might be considered a CODV. See note accompanying aggravated felony analysis, left. CA – If the ROC establishes that the victim was a minor, might be considered a crime of child abuse. *See Matter of Mendoza Osorio*, 26 I&N Dec. 703 (BIA 2016) (New York offense of child endangerment categorically constituted a CA).	**DefAttys: 1)** Reckless endangerment in 2nd Degree is safer plea. **2)** Keep sentence imposed to 364 days or less to avoid possibility of AF. **3)** Keep ROC clean of relationship, identity and/or age of victim to avoid classification as CODV or CA. **4)** Consider AR or FVEP, if applicable. **ImmPract: 1)** Challenge COV AF charge because use of force is not an element. *See Chrzanoski*. **2)** Challenge CA because minor victim is not element of the statute and argue the statute is indivisible under *Mathis*.
Reckless Endangerment in the 2nd Degree [Class B Misdem.]	53a-64	Not AF. [Maximum sentence is 6 months].	Maybe CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, would be considered a CODV. CA – If the ROC establishes that the victim was a minor, might be considered a crime of child abuse.	**DefAttys:** Keep ROC sanitized of identity, relationship and/or age of victim to avoid classification as CODV or CA. **ImmPract: 1)** Challenge charge as CIMT. *See Mahn v. Att'y Gen. of U.S.*, 767 F.3d 170 (3d Cir. 2014) (Pennsylvania conviction for reckless endangerment was not a CIMT because did not contain requirement for depraved or extreme indifference to human life as the New York statute in *Knapik* did). **2)** Challenge CA because minor victim is not element of the statute and argue the statute is indivisible under *Mathis*.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Injury or Risk of Injury to, or Impairing Morals of Children [Class B or C Felony]	53-21	Not AF for conviction under subsection (a)(1). *See Santapaola v. Ashcroft*, 249 F. Supp. 2d 181 (D. Conn. 2003) (discussing how subsection (a)(1) covers different "situations" and "acts," some of which could be AF and others who cannot). "Sexual abuse of minor" AF for conviction under subsection (a)(2), and, if sentence of 1 yr. or more is imposed, would also be considered COV AF. *See Dos Santos v. Gonzales*, 440 F.3d 81 (2d Cir. 2006) (conviction under (a)(2) is COV AF); *Santos v. Gonzales*, 436 F.3d 323 (2d Cir. 2006) (conviction under (a)(2) is "sexual abuse of minor" AF); *MacTaggart v. Lynch*, 621 Fed.Appx. 690 (2d Cir. 2015). Not AF for conviction under subsection (a)(3).	Sections (2) is a CIMT. *See Matter of Jimenez-Cedillo*, 27 I&N Dec. 1 (BIA 2017) (finding sexual offense involving child victim can be a CIMT even if not culpable mental state is required as to the age of the child). Sections (1) and (3) are probably CIMTs.	CA – Conviction under any subsection would likely be considered a crime of child abuse, child neglect or child abandonment. *See Florez v. Holder*, 779 F.3d 207 (2d Cir. 2015) (giving *Chevron* deference to BIA's interpretation of "crime of child abuse" and affirming that CA is not limited to offenses requiring proof of injury to the child).	**DefAttys: 1)** Allocute to negligence or deliberate indifference mens rea ("situation" prong) so as to avoid COV under (a)(1), or make an *Alford* plea. **2)** Keep ROC clean of actual injury. **ImmPract:** Argue statute is indivisible and challenge COV AF charge for conviction under (a)(1) and (a)(2) because *Dimaya* and *Johnson* suggest that the residual clause is unconstitutionally vague. *See supra* fn. 1; *see also Mathis***.** Argue not a CIMT because section (a)(1) does not require actual harm and encompasses negligent acts, and negligence has historically not been treated as a CIMT. *See, e.g.*, *Hernandez-Cruz v. Attorney Gen.*, 764 F.3d 281 (3d Cir. 2014) (finding PA offense of child endangerment is not a CIMT because it punishes a wide range of conduct, including omissions and negligent acts that do not involve actual harm). *But see Matter of Soram*, 25 I&N Dec. 378 (BIA 2010) (rejecting similar arguments for purposes of determining whether a Colorado child abuse statute was a crime of "child abuse" under the INA).
Strangulation in the 1st Degree [Class C Felony]	53a-64aa	COV AF under 18 U.S.C. § 16(a) If sentence of 1 yr. or more is imposed.	CIMT. *See Matter of Medina*, 15 I. & N. Dec. 611, 614 (BIA 1976) ("assault with a deadly weapon is generally deemed to be a CIMT").	CODV – If the victim was a current or former spouse or similarly situated individual, would be considered a CODV.	**DefAttys: 1)** Consider AR or FVEP if eligible. **2)** Try to plead down to 3rd degree to minimize immigration consequences and risk of COV AF and CIMT classification. **3)** Keep ROC sanitized of relationship to the victim to avoid classification as CODV.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Strangulation in the 2nd Degree [Class D Felony]	53a-64bb	Maybe COV AF under 18 U.S.C. § 16(a) if sentence of 1 yr. or more is imposed.	Maybe CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, would be considered a CODV.	**DefAttys**: **1)** Consider AR or FVEP if eligible. **2)** Keep ROC sanitized of relationship to the victim to avoid classification as CODV. **3)** Allocute to minor or no injuries to avoid CIMT. **4)** Try to plead down to 3rd degree to minimize risk of COV AF and CIMT classification.
Strangulation in the 3rd Degree [Class A Misdem.]	53a-64cc	Not AF. *See Chrzanoski v. Ashcroft*, 327 F.3d 188, 197 (2d Cir. 2003) (holding that misdemeanor offense was not a COV because force was not an element of the crime).	Not CIMT unless serious bodily injury resulted. *See Matter of Fualaau*, 21 I. & N. Dec. 475, 478 (BIA 1996).	CODV – If the victim was a current or former spouse or similarly situated individual, would be considered a CODV.	**DefAttys: 1**) Allocute to minor or no injuries to avoid CIMT. **2)** Keep ROC sanitized of relationship to the victim to avoid classification as CODV. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract:** Challenge charge as COV AF because offense does not have force as an element of the crime. *See Chrzanoski*.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
SEXUAL ASSAULT AND PROSTITUTION OFFENSES					
Sexual Assault in 1st Degree [Class A or B Felony][4]	53a-70	COV AF for conviction under any subsection if sentence of 1 yr. or more is imposed. "Rape" AF for conviction under subsections (a)(1) and (a)(4) regardless of sentence. "Sexual abuse of minor" AF for conviction under subsection (a)(2).	CIMT. *Matter of Beato*, 10 I. & N. Dec. 730, 732 (BIA 1964) ("As the crimes of carnal abuse and rape clearly involve moral turpitude, an assault with intent to commit such crimes involves moral turpitude."); *Matter of S*, 2 I. & N. Dec. 553 (BIA 1946) (holding that statutory rape is CIMT).	CA – If ROC establishes that victim was a minor, conviction under subsection (a)(2) would probably be considered a crime of "child abuse." CODV – If the victim was a former spouse or similarly situated individual, conviction would probably be considered a CODV.[5]	**DefAttys: 1)** Plead to 2nd degree sexual assault if possible for stronger arguments again AF and CIMT. **2)** Keep ROC clean of relationship or age of victim to avoid classification as CODV or CA. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract**: **1)** Challenge COV AF charge for conviction under subsection (a)(2), (a)(3) or (a)(4) because *Dimaya* and *Johnson* suggest that the residual clause is unconstitutionally vague. *See supra* fn. 1. **2)** Challenge charge as "rape" AF because CT statute covers conduct more broad than "rape" under INA. *See*, *e.g.*, *In Re: Esau Rodriguez*: A73 692 631 - EL P, 2005 WL 698373, at *8 (DCBABR Feb. 14, 2005); *In Re Gutierrez-Martinez*, : A17 945 476 - SAN, 2004 WL 880256, at *8 (DCBABR Mar. 9, 2004).

[4] §53a-70a makes aggravated sexual assault in the first degree a Class A or B felony. The information provided for sexual assault applies to this section.
[5] §53a-70b makes sexual assault in a spousal or cohabiting relationship a Class B felony.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Sexual Assault in 2nd Degree [Class C or B Felony]	53a-71	COV AF under 18 U.S.C. § 16(b) for conviction under any subsection if sentence of 1 yr. or more is imposed. *See Costa v. Holder*, 611 F.3d 110 (2d Cir. 2010) (affirming that each circumstance covered under § 53a-71 involved an inherent risk of the use of force and was therefore categorically a COV). "Rape" AF for conviction under subsections (a)(2) or (3) regardless of sentence imposed. "Sexual abuse of minor" AF for conviction under subsections (a)(1), (4), (9A), (9B) or (10) regardless of sentence.	Maybe CIMT.	CA – If ROC establishes that victim was a minor, conviction under subsections (a)(1), (4), (9A), (9B) or (10) would probably be considered a crime of "child abuse." CODV – If the victim was a former spouse or similarly situated individual, conviction might be considered a CODV.	**DefAttys: 1)** Plead to 3rd degree, to potentially avoid characterization as COV AF. **2)** Keep ROC clean of relationship or age of victim to avoid classification as CODV or CA. **ImmPract**: **1)** Argue divisibility. **2)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1. **3)** Challenge charge as "sexual abuse of minor" AF because statute covers victims not only under age 16 but under age 18.[6] **4)** Challenge "rape" AF because statute covers conduct more broad than "rape" under INA. **5)** Challenge CA because the statute is indivisible under *Mathis* and minor victim is not element of the statute.
Sexual Assault in the 3rd Degree [Class D or C Felony]	53a-72a	COV AF under 18 U.S.C. § 16(b) for conviction under subsection (a)(1) if sentence of 1 yr. or more is imposed.	Maybe CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, conviction under subsection (a)(1) would be considered a CODV. CA – If ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys: 1)** Try to plead to 4th degree, to potentially avoid characterization as COV AF (if sentence imposed is less than a year) and to qualify for POE to CIMT. **2)** Keep ROC clean of relationship or age of victim to avoid classification as CODV or CA. **ImmPract: 1)** Challenge charge as COV AF because statute is indivisible and covers conduct, like incest, that is not categorically COV. **2)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1. **3)** Challenge CA because the statute is indivisible under *Mathis* and minor victim is not element of the statute.

[6] There is a pending case before the Supreme Court regarding the BIA's interpretation of the "sexual abuse of minor" aggravated felony to cover offenses involving victims under the age of 18. *Esquivel-Quintana v. Lynch*, 810 F.3d 1019, 1021 (6th Cir.), *cert. granted*, 137 S. Ct. 368, 196 L. Ed. 2d 283 (2016). If the Supreme Court agrees with Petitioner that the BIA's holding was incorrect, that means statutes criminalizing consensual sex between a twenty-one year old and an individual under the age of 18 are not categorically "sexual abuse of minor" aggravated felonies.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Sexual Assault in the 3rd Degree with a Firearm [Class C or B felony]	53a-72b	COV AF under §16(b) if sentence of 1 yr. or more is imposed.	CIMT.	FO – Assume FO if ROC establishes a firearm covered under federal law. *See infra* fn. 11. CODV – If the victim was a current or former spouse or similarly situated individual, conviction under subsection (a)(1) would be considered a CODV. CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys: 1)** Try to plead to 4th degree, to avoid characterization as COV AF (if sentence imposed is less than a year) and to qualify for POE to CIMT. **2)** Keep ROC clean of relationship or age of victim to avoid classification as CODV or CA. **ImmPract**: **1)** Challenge charge as COV AF because statute is indivisible and covers conduct, like incest, that is not categorically COV. **2)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1. **3)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See infra* fn. 11. **4)** Challenge CA because the statute is indivisible under *Mathis* and minor victim is not element of the statute.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Sexual Assault in the 4th Degree [Class A Misdem. or Class D Felony]	53a-73a	COV AF if prosecuted as a felony and sentence of 1 yr. or more is imposed. *See Hongsathirath v. Ashcroft*, 322 F. Supp. 2d 203 (D. Conn. 2004) (conviction under § 53a-73a(a)(1)(A) is COV AF under § 16(b)). "Sexual abuse of minor" AF for conviction under subsections (a)(1)(A), (B), or (E), (a)(7)(B), or (a)(8)(B) regardless of sentence.	Maybe CIMT.	CA – Conviction under subsection (a)(1)(A) would probably be considered a crime of "child abuse." Conviction under other subsections might be considered a CA if ROC shows that victim was a child. CODV – If the victim was a current or former spouse or similarly situated individual, conviction under subsections (a)(1), (2), or (4) through (8) might be considered a CODV.	**DefAttys: 1)** Clean ROC clean of age of victim to avoid classification as CA. **2)** Plead to misdem. if possible. **3)** Keep sentence imposed to 364 days or less to avoid possibility of COV AF. **4)** Consider AR. **ImmPract: 1)** Challenge charge as a COV AF arguing reckless mental state is insufficient under *Leocal* and *Jobson*. *See supra* fn. 1 for reckless crimes; *see also Efstathiadis v. Holder*, 119 A.3d 522, 531 (Conn. 2015) (*mens rea* applicable to element of consent is criminal negligence). **2)** Challenge charge as COV AF because statute is indivisible and *Dimaya* and *Johnson* suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1. **3)** Challenge charge as "sexual abuse of minor" AF because statute covers victims not only under age 16 but under age 18. *See supra* fn. 6. **4)** Challenge charge as CA because the statute is indivisible under *Mathis* and minor victim is not element of the statute. **5)** Potentially a POE.
Prostitution [Class A Misdem.]	53a-82	Not AF.	Maybe CIMT.	Pros. - Would probably trigger "prostitution" inadmissibility. *See* 8 U.S.C. § 1182(a)(2)(D).	**ImmPract: 1)** Challenge charge as "engaging in prostitution" ground of inadmissibility if client has only one or few convictions under this statute. *See*, *e.g., Matter of T-*, 6 I. & N. Dec. 474 (BIA 1955) and *Mirabal-Balon v. Esperdy*, 188 F.Supp. 317 (D.N.Y. 1960) ("engage in" means to carry on over a period of time and does not include a single isolated act); *see also Kepilino v. Gonzales*, 454 F.3d 1057 (9th Cir. 2006) (where ROC did not reveal regular pattern of prostitution, no basis for Pros.). **2)** Potentially a POE.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Patronizing a Prostitute [Class A Misdem.][7]	53a-83	Not AF.	Maybe CIMT.	Pros. – Might trigger "prostitution" inadmissibility. *See* 8 U.S.C. § 1182(a)(2)(D). CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys:** Keep ROC clean of age if prostitute was a minor to avoid classification as CA. **ImmPract**: **1)** Challenge charge as "sexual abuse of minor" AF because statute is indivisible and age of victim only considered as sentencing enhancer, not an element of the offense. **2)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not an element of the statute. **3)** Potentially a POE.

[7] §53-83a makes patronizing a prostitute from a motor vehicle a Class A misdemeanor. The information provided for §53-83 applies to this section.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Promoting Prostitution in the 1st Degree [Class B Felony]	53a-86	COV AF for conviction under (a)(1) if sentence of 1 yr. or more is imposed. "Prostitution business" AF, 8 U.S.C. § 1101(a)(43)(K)(i) and (ii), for conviction under subsection (a)(1). *See generally Gertsenshteyn v. United States DOJ*, 544 F.3d 137 (2d Cir. 2008). *But see Prus v. Holder,* note under below, § 53a-87. "Sexual abuse of minor" AF for conviction under subsection (a)(2) regardless of sentence imposed.	Maybe CIMT. See, *e.g., Cruz v. Attorney General of United States*, 452 F.3d 240 (3d Cir. 2006).	Pros. – Might trigger "prostitution" inadmissibility. *See* 8 U.S.C. § 1182(a)(2)(D). CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys**: **1)** Keep ROC clean of age if prostitute was a minor to avoid classification as CA. **2)** Avoid reference in ROC to "force or intimidation." **3)** Try to plead down to promoting prostitution in the second, or ideally third, degree or permitting prostitution under 53a-89. **ImmPract: 1)** Challenge charge as COV AF because subsection (a)(1) is indivisible as to element of "by means of force or coercion" and intimidation, undefined in state law, is not "violent force" as required under *Johnson v. United States*, 559 U. S. 133 (2010). **2)** Challenge charge as prostitution business AF because statute does not categorically include "owning, controlling, managing, or supervising of a prostitution business;" further, prostitution definition ("sexual conduct") is broader than INA definition ("sexual intercourse"). *See Prus v. Holder*, 660 F.3d 144 (2d Cir. 2011); Conn. Gen. § 53a-82 ("A person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee."). **3)** Challenge charge of "sexual abuse of minor" AF or CA for conviction under subsection (a)(2) because statute covers victims not only under age 16 but under age 18. *See supra* fn. 6. **4)** Challenge CA because the statute is indivisible under *Mathis* and minor victim is not element of the statute. **5)** Potentially a POE.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Promoting Prostitution in the 2nd Degree [Class C Felony]	53a-87	Maybe "prostitution business" AF.	Maybe CIMT. *See*, e.g., *Cruz v. Attorney General of United States*, 452 F.3d 240 (3d Cir. 2006).	Pros. – Might trigger "prostitution" inadmissibility. *See* 8 U.S.C. § 1182(a)(2)(D). CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys**: **1)** Keep ROC clean of age if prostitute was a minor to avoid classification as CA. **2)** Try to plead down to promoting prostitution in the third degree or permitting prostitution under 53a-89. **ImmPract**: **1)** Challenge charge as AF because state prostitution definition covers "sexual conduct," which is broader than "sexual intercourse." See *Prus v. Holder*, 660 F.3d 144 (2d Cir. 2011). **2)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute. **3)** Potentially a POE.
Promoting Prostitution in the 3rd Degree [Class D Felony]	53a-88	Not AF.	Maybe CIMT.	Pros. – Might trigger "prostitution" inadmissibility. *See* 8 U.S.C. § 1182(a)(2)(D). CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys**: Keep ROC clean of age if prostitute was a minor to avoid classification as CA. **ImmPract**: **1)** Challenge "prostitution business" AF because state prostitution definition ("sexual conduct") is broader than INA definition ("sexual intercourse"). *See Prus v. Holder*, 660 F.3d 144 (2d Cir. 2011) (holding that similar NY third-degree promoting prostitution does not fall within definition of prostitution business AF). **2)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute.
Permitting Prostitution [Class A Misdem.]	53a-89	Not AF.	Not CIMT.	CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**ImmPract**: Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Enticing a Minor [Class D Felony for 1st offense but a Class B Felony if minor is below 13 years of age][8]	53a-90a	"Sexual abuse of minor" AF. *See*, *e.g., Farhang v. Ashcroft*, 104 Fed.Appx. 696 (10th Cir. 2004).	CIMT.	Pros. – Might trigger "prostitution" inadmissibility. *See* 8 U.S.C. § 1182(a)(2)(D). CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys:** Try to plead to promoting prostitution in the second, or ideally third, degree or permitting prostitution under 53a-89. **ImmPract**: Challenge AF charge because statute punishes conduct involving a person the defendant believes to be a minor, which may be broader than conduct punished by 18 U.S.C. § 3509(a), which *Farhang* suggested was a guide for determining whether an offense is sexual abuse of a minor.
Intimidation Based on Bigotry or Bias in the 1st Degree [Class C Felony]	53a-181j	Maybe COV AF if sentence of 1 yr. or more is imposed. *See Matter of Singh*, 25 I. & N. Dec. 670 (BIA 2012) (stalking offense for harassing conduct was COV).	Maybe CIMT. *See In re Baczewski,* 2007 WL 275860 (BIA 2007) (suggesting, without holding, that hate crimes are CIMTs).		**DefAttys**: Plead down to Intimidation in the 3rd degree and 364-day sentence if possible. **ImmPract: 1)** Challenge charge as COV AF because the statute is indivisible and intimidation, undefined in state law, is not "violent force" under *Johnson v. United States*, 559 U. S. 133 (2010). **2)** Challenge charge as CIMT.
Intimidation Based on Bigotry or Bias in the 2nd Degree [Class D Felony]	53a-181k	Maybe COV AF if sentence of 1 yr. or more is imposed. *See Matter of Singh*, 25 I. & N. Dec. 670 (BIA 2012).	Maybe CIMT.		**DefAttys: 1)** Allocute to threatening to deface property, or make and *Alford* plea, to preserve possible argument against COV AF. **2)** Plead down to Intimidation in the 3rd degree and 364-day sentence if possible. **ImmPract: 1)** Challenge charge as COV AF because the statute is indivisible and intimidation, undefined in state law, is not "violent force" under *Johnson v. United States*, 559 U. S. 133 (2010). **2)** Challenge charge as CIMT.

[8] Section 53a-90b makes misrepresentation of age to entice a minor a Class C felony. The information provided in the table applies to this section.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Intimidation Based on Bigotry or Bias in the 3rd Degree [Class A Misdem.]	53a-181/	Not AF. *See Chrzanoski v. Ashcroft*, 327 F.3d 188, 197 (2d Cir. 2003) (holding that misdemeanor offense was not a COV because force was not an element of the crime).	Maybe CIMT.		**DefAttys:** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge charge as COV AF because offense not have force as an element of the crime. *See Chrzanoski*. **2)** Challenge classification as CIMT. **3)** Potentially a POE.
Abuse in the 1st Degree [Class C Felony]	53a-321	COV AF if sentence of 1 yr. or more is imposed.	Maybe CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, conviction under would probably be considered a CODV. CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys: 1**) If victim was a minor or current or former partner or similarly situated individual, avoid any reference to that fact in ROC to avoid CA or CODV. **2**) Plead down to Abuse in the 3rd degree to minimize immigration consequences. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge charge as COV AF because "abuse" includes acts of omission, which does not implicate "use of force." **2)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute.
Abuse in the 2nd Degree [Class D Felony]	53a-322	COV AF if sentence of 1 yr. or more is imposed.	Maybe CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, conviction under would probably be considered a CODV. CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys: 1**) If victim was a minor or current or former partner or similarly situated individual, avoid any reference to that fact in ROC to avoid CA or CODV. **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **3**) Plead down to Abuse in the 3rd degree to minimize immigration consequences. **ImmPract: 1)** Challenge charge as COV AF because "abuse" includes acts of omission, which does not implicate "use of force." **2)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Abuse in the 3rd Degree [Class A Misdem.]	53a-323	COV AF if sentence of 1 yr. or more is imposed.	Maybe CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, conviction might be considered a CODV. (Regardless of sentence imposed). CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys: 1**) Keep sentence imposed to 364 days or less to avoid possible AF. **2)** If victim was a minor or current or former partner or similarly situated individual, avoid any reference to that fact in ROC to avoid CA or CODV. **3**) Allocute to recklessness rather than knowledge if possible. **ImmPract: 1)** Challenge charge as COV AF because "abuse" includes acts of omission, which does not implicate "use of force." **2)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute. **3)** Potentially a POE.
KIDNAPPING AND RELATED OFFENSES					
Kidnapping in the 1st Degree [Class A Felony]	53a-92	COV AF if sentence of 1 yr. or more is imposed. *See U.S. v. Iniguez-Barba*, 485 F.3d 790 (5th Cir. 2007) (New York second-degree kidnapping was COV for sentencing enhancement purposes). "Ransom offense" AF for conviction under subsection (a)(1)(A).	CIMT. *See Matter of P--*, 5 I. & N. Dec. 444 (BIA 1953) (offense that had characteristics of true kidnapping was CIMT); *Matter of Nakoi*, 14 I. & N. Dec. 208, 209 (BIA 1972) (NY crime of kidnapping was CIMT).	CODV – If the victim was a current or former spouse or similarly situated individual, conviction might be considered a CODV. (Regardless of sentence imposed). CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse." Terrorism – Conviction under subsections (a)(1) or (a)(2)(C) or (a)(2)(D) might be deemed "terrorist activity" triggering deportability or inadmissibility.	**DefAttys: 1)** Plead to kidnapping in 2nd degree if possible. **2)** Keep ROC clean of identity of victim to avoid classification as CODV or CA. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract**: **1)** Challenge charge as COV AF because "abduct" element is not divisible and it covers wide range of conduct like secreting or holding a person in a place not likely to be found without use or threatened use of force. "Abduction" also covers intimidation, which is not "violence force" as required under *Johnson v. United States*, 559 U. S. 133 (2010). **2)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1. **3)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Kidnapping in the 1st Degree with a Firearm [Class A Felony]	53a-92a	COV AF if sentence of 1 yr. or more is imposed. "Ransom offense" AF for conviction under subsection (a)(1)(A) regardless of sentence.	CIMT. *See Matter of P--*, 5 I. & N. Dec. 444 (BIA 1953); *Matter of Nakoi*, 14 I. & N. Dec. 208, 209 (BIA 1972).	CODV – If the victim was a current or former spouse or similarly situated individual, conviction might be considered a CODV. (Regardless of sentence imposed). CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse." FO – Assume FO if ROC establishes a firearm covered under federal law. *See* fn. 11.	**DefAttys: 1)** Keep ROC clean of identity of victim to avoid classification as CODV or CA. **2)** Plead to 1st Degree Kidnapping if possible to avoid FO. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge charge as COV AF because "abduct" element is not divisible and it covers wide range of conduct like secreting or holding a person in a place not likely to be found without use or threatened use of force. "Abduction" also covers intimidation, which is not "violence force" as required under *Johnson v. United States*, 559 U. S. 133 (2010). **2)** Challenge FO charge as overbroad and indivisible after *Mathis. See infra* fn. 11. **3)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute.
Kidnapping in the 2nd Degree [Class B Felony]	53a-94	COV AF if sentence of 1 yr. or more is imposed. *See U.S. v. Iniguez-Barba*, 485 F.3d 790 (5th Cir. 2007) (New York second-degree kidnapping was COV for sentencing enhancement purposes).	Maybe CIMT. *But see Castrijon-Garcia v. Holder*, 704 F.3d 1205 (9th Cir. 2013) (holding that California simple kidnapping statute, i.e. without ransom involved, was not categorically a CIMT).	CODV – If the victim was a current or former spouse or similarly situated individual, conviction might be considered a CODV. (Regardless of sentence imposed). CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys: 1)** Plead down to Unlawful Restraint in the 2nd Degree, if possible. **2)** Keep ROC clean of identity of victim to avoid classification as CODV or CA. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract**: **1)** Challenge charge as COV AF because "abduct" element is not divisible and it covers wide range of conduct like secreting or holding a person in a place not likely to be found without use or threatened use of force. "Abduction" also covers intimidation, which is not "violence force" as required under *Johnson v. United States*, 559 U. S. 133 (2010). **2)** Challenge CIMT charge under *Castrijon-Garcia*. **3)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Kidnapping in the 2nd Degree with a Firearm [Class B Felony]	53a-94a	COV AF if sentence of 1 yr. or more is imposed.	CIMT, given the presence of the firearm as aggravating factor.	CODV – If the victim was a current or former spouse or similarly situated individual, conviction might be considered a CODV. (Regardless of sentence imposed). CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse." FO – Assume FO if ROC establishes a firearm covered under federal law. *See infra* fn. 11.	**DefAttys: 1)** Keep ROC clean of identity of victim to avoid classification as CODV or CA. **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract**: **1)** Challenge charge as COV AF because "abduct" element is not divisible and it covers wide range of conduct like secreting or holding a person in a place not likely to be found without use or threatened use of force. "Abduction" also covers intimidation, which is not "violence force" as required under *Johnson v. United States*, 559 U. S. 133 (2010). **2)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See infra* fn. 11. **3)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute.
Unlawful Restraint in the 1st Degree [Class D Felony]	53a-95	COV AF under 18 U.S.C. § 16(b) if sentence of 1 yr. or more is imposed. *See Harrington v. U.S.*, 689 F.3d 124 (2d Cir. 2012) (affirming that Connecticut 1st degree unlawful restraint could be COV under ACCA's residual clause).	Maybe CIMT. *See In Re: Mathenge Irungu Maina A.K.A. Maina Irungu Mathenge A.K.A. James Gichuki Maina,* : A29 729 323 - HART, 2006 WL 3485784, at *1 (DCBABR Oct. 31, 2006) (distinguishing § 53a-95 from 53a-96, which was not a CIMT because there was no substantial risk of injury).	CODV – If the victim was a current or former spouse or similarly situated individual, conviction might be considered a CODV. (Regardless of sentence imposed). CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys: 1)** Consider AR; **2)** Plead down to Unlawful Restraint in 2nd Degree, if possible; **3**) Keep ROC clean of identity of victim to avoid classification as CODV or CA. **4)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge charge as COV AF because element regarding "restraint" covers conduct that is not categorically a COV. **2)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1. **3)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Unlawful Restraint in the 2nd Degree [Class A Misdem.]	53a-96	Not AF.	Not CIMT. *See In Re: Mathenge Irungu Maina A.K.A. Maina Irungu Mathenge A.K.A. James Gichuki Maina,* : A29 729 323 - HART, 2006 WL 3485784, at *1 (DCBABR Oct. 31, 2006) (holding that conviction under § 53a-96 was not a CIMT).	CODV – If the victim was a current or former spouse or similarly situated individual, conviction might be considered a CODV. (Regardless of sentence imposed). CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys: 1**) Keep ROC clean of identity of victim to avoid classification as CODV or CA; **2**) Plead to sentence imposed of 364 days or less to avoid any possibility of COV AF. **ImmPract: 1)** Designation as COV, CA or CODV should be challenged because restraint may be committed without use of force, *see Chrzanoski*, and § 16(b) (risk of force) does not apply here. **2)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute. **3)** May be a POE.
Custodial Interference in the 1st Degree [Class D Felony]	53a-97	Maybe COV AF under 18 U.S.C. § 16(b) for conviction under (a)(1) if sentence of 1 yr. or more is imposed.	Maybe CIMT.	CA – If the ROC shows that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAttys:** If victim was a minor, avoid any reference to that fact in ROC. *Note that there is an absence of case law on this statute and the issue of whether it is a COV or CIMT is unclear. **ImmPract**: **1)** Challenge charge as COV AF based on unconstitutional vagueness of § 16(b). *Dimaya* and *Johnson* suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1. **2)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute. **3)** May be a POE.
Custodial Interference in the 2nd Degree [Class A Misdem.]	53a-98	Not AF.	Maybe CIMT.	CA – Conviction under subsections (a)(1) or (3) might be considered a crime of "child abuse."	**DefAttys:** If victim was a minor, avoid any reference to that fact in ROC. **ImmPract: 1)** Challenge CA charge because statute is indivisible under *Mathis* and minor victim is not element of the statute. **2)** Potentially a POE.
VEHICLE OR TRAFFIC OFFENSES					
Operation Without a License [Up to 30 days]	14-213	Not AF.	Not CIMT.		**ImmPract:** Since 1/1/2015, undocumented immigrants are able to apply for drivers' licenses. Conn. Gen. Stat. § 14-36 (2013).

Offense	**CT Gen. Stat. Sec.**	**(Remember: imposed "sentence" includes a suspended sentence!)** **Aggravated Felony (AF)?**	**Crime Involving Moral Turpitude (CIMT)?**	**Other grounds:** **CSO – Controlled Substances** **CA – Crime of Child Abuse** **CODV – Crime of Dom. Violence** **FO – Firearm Offense** **Pros.- Prostitution**	**Strategies/ Comments:** **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Operation with No or Insufficient Insurance [Fine or Class D Felony if Commercial Operator]	14-213b	Not AF.	Not CIMT.		
Operation While Registration or License is Refused, Suspended or Revoked [Up to 1 yr.]	14-215	Not AF.	Not CIMT.		
Reckless Driving [Up to 1 yr.]	14-222	Not AF.	Maybe not CIMT. *But see Supnet v. Holder*, Slip Copy, 2009 WL 4913592 (9th Cir. 2009) (unpublished) (reckless driving while evading police officer is CIMT).		**DefAttys*:*** Sanitize the record of any mention of willfulness to destroy or damage property to avoid risk of CIMT charge. **ImmPract**: Challenge CIMT charge because statute covers negligence. *See In the Matter of C*--, 2 I. & N. Dec. 716, 720 (BIA 1946) (suggesting that if conviction for damaging property while driving was so broad that it covers negligence, it could not be CIMT). Also maybe a POE.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Failure to Stop / Engaging in Police Pursuit [Fine / Class A Misdem. or Class C Felony]	14-223	Maybe COV AF under 18 U.S.C. § 16(b) for conviction under subsection (a). Maybe "obstruction of justice" AF or COV AF under § 16(b) for conviction under subsection (b) if sentence of 1 yr. or more is imposed. *See Idowu v. Att'y Gen. of U.S.,* 512 Fed.Appx. 222, 224 (3d Cir. 2013) (affirming BIA holding that New Jersey eluding in the 2nd degree conviction was categorically a COV AF and CIMT "because it involves a substantial risk of the use of force upon persons.").	Maybe CIMT. *See Mei v. Ashcroft,* 393 F.3d 737 (7th Cir. 2004) (aggravated fleeing from police officer is CIMT); *Matter of Armando Ruiz-Lopez*, 25 I. & N. 551 (BIA, 2011) (relying on reasoning in *Mei* to find that Washington conviction of attempt to elude a pursuing police vehicle was a CIMT). CIMT if convicted under subsection (b) and ROC establishes likelihood of death or serious injury. *See Knapik v. Ashcroft*, 384 F.3d 84 (3d Cir. 2004) (creating a grave risk of death is aggravating factor for DUI).		**DefAttys:** If charged as misdemeanor, keep sentence imposed to 364 days or less to avoid possibility of AF. **ImmPract**: Challenge COV AF charge under either subsection because *Dimaya* and *Johnson* suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1.
Striking an Officer with a Motor Vehicle [Fine or Imprisonment]	14-223a	Not AF.	Not CIMT.		

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Evading Responsibility [Leaving Scene of Accident) and Racing [Fine or Imprisonment]	14-224	Not AF.	Maybe CIMT for conviction under subsection (a). *See Garcia-Maldonado v. Gonzales*, 491 F.3d 284 (5th Cir. 2007) (knowingly leaving the scene of a fatal accident constituted a CIMT). Not CIMT for conviction under subsection (b).		**DefAttys: 1)** If charged as misdemeanor, keep sentence imposed to 364 days or less to avoid possibility of AF. **2)** Allocute to sub-section (b) to prevent AF and CIMT classifications. **ImmPract: 1)** Challenge COV AF charge under either subsection because *Dimaya* and *Johnson* suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1. **2)** Challenge charge as CIMT because conviction could result even without intent to avoid responsibility. *See Sanchez v. Holder*, 757 F.3d 712 (7th Cir. 2014) (holding that similar Indiana offense could cover negligent acts and therefore not have the scienter to qualify necessarily as CIMT). Statute may also be divisible as to racing provision.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Operation While Under the Influence of Liquor or Drug [Fine or Imprisonment]	14-227a	Not AF. *See Leocal v. Ashcroft*, 125 S. Ct. 377 (2004) (conviction for Florida DUI and causing serious bodily injury in an accident was not a COV AF); *Dalton v. Ashcroft*, 257 F.3d 200 (2d Cir. 2001) (same for New York felony conviction for driving while intoxicated).	Maybe CIMT if certain aggravating circumstance present. See *In Re Lopez-Meza*, 22 I. & N. Dec. 1188 (BIA 1999) (BIA has never held that a simple DUI offense is a CIMT but aggravated DUI—when driver knows he is prohibited from driving—is CIMT); *Knapik v. Ashcroft,* 384 F.3d 84 (3d Cir. 2004) (creating a grave risk of death is aggravating factor for DUI).	CSO – Might be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802. *See infra* fn. 10.	**DefAttys: 1)** Consider AEP. **2)** Try to keep ROC clean of aggravating circumstances for CIMT. **3)** Allocute to alcohol, make *Alford* plea to avoid CSO, or keep ROC vague as to substance to avoid CSO. **ImmPract: 1)** Challenge COV AF charge arguing reckless mental state is insufficient under *Leocal*, *Dalton*, and *Jobson*. *See supra* fn. 1 regarding reckless crimes. **2)** Challenge COV AF charge because *Dimaya* and *Johnson* suggest that the residual clause is unconstitutionally vague. *See generally supra* fn. 1. **3)** Challenge CIMT charge. *See Hernandez-Martinez*, 329 F.3d 1117 (9th Cir. 2003) (finding that Arizona DUI statute was not categorically CIMT because it covered conduct like sitting in one's car while holding a beer). **4)** Challenge CSO charge because statute is indivisible as to drug versus alcohol, and federal schedule does not cover alcohol.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
BURGLARY AND RELATED OFFENSES					
Home Invasion [Class A Felony]	53a-100aa	"Burglary" AF, if sentence of 1 yr. or more is imposed. *See Matter of Perez*, 22 I. & N. Dec. 1325 (BIA 2000) (incorporating definition of burglary from *Taylor v. U.S.*, 495 U.S. 575 (1990)). COV AF under 18 U.S.C. § 16(b) if sentence of 1 yr. or more is imposed.	CIMT. *See Matter of Louissaint*, 24 I. & N. Dec. 754 (BIA 2009).	FO – Assume FO for conviction under subsection (a)(2) if the ROC establishes a firearm under federal law. *See infra* fn. 11.	**DefAttys: 1)** If possible, plead to criminal trespassing, or alternative offense not requiring a dwelling; **2)** Keep sentence imposed to 364 days or less to avoid possibility of AF **3)** Keep ROC clean as to offense intended to be committed and the type of weapon used. **ImmPract: 1)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See* infra fn. 11. **2)** Challenge CIMT charge because specific underlying crime is not an element, but rather a means of committing the offense, and therefore underlying offense does not categorically involve moral turpitude. **3)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See supra* fn. 1.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Burglary in the 1st Degree [Class B Felony]	53a-101	"Burglary" AF, if sentence of 1 yr. or more is imposed. *See Matter of Perez*, 22 I. & N. Dec. 1325 (BIA 2000) (incorporating definition of burglary from *Taylor v. U.S.*, 495 U.S. 575 (1990)). COV AF under 18 U.S.C. § 16(b) if sentence of 1 yr. or more is imposed.	CIMT.	FO – Assume FO for conviction under subsection (a)(1) if the ROC establishes a firearm under federal law. *See infra* fn. 11.	**DefAttys: 1)** If possible, plead to criminal trespassing; **2)** Keep sentence imposed to 364 days or less to avoid possibility of AF; **3)** Keep ROC clean as to offense intended to be committed and type of building. **4)** Statute is likely divisible between the (a)(1), (a)(2), and (a)(3), so keep ROC as clean as possible and do not specific subsection of conviction. Keep ROC clean as to offense intended to be committed, type of building, and the type of weapon used. **ImmPract: 1)** See note for Burglary 3rd, below. Harder to challenge COV charge here, where defendant is armed (a)(1), but same arguments are available regarding the definition. **2)** Challenge CIMT charge because (a)(2) is not divisible between reckless and intentional. *See State v. Berthiaume*, 171 Conn. App. 436, 452 (Conn. App. 2017). **3)** Challenge CIMT charge for conviction under (a)(1) because it does not require weapon or instrument to actually be used, or any intent of injury or actual injury. **4)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See infra* fn. 11.
Burglary in the 2nd Degree [Class C Felony]	53a-102	"Burglary" AF, if sentence of 1 yr. or more is imposed, would be considered a "burglary" AF. *See In Re Perez*, 22 I. & N. Dec. 1325 (BIA 2000) (incorporating definition of burglary from *Taylor v. U.S.*, 495 U.S. 575 (1990)). COV AF under 18 U.S.C. § 16(b) if sentence of 1 yr. or more is imposed.	CIMT. *See Matter of Louissaint,* 24 I. & N. Dec. 754 (BIA 2009*); In re Carlos Marie Palafox-Reyes A.K.A. Carlos Mario Palafox A.K.A. Carles Mario Palafox*, 2009 WL 952426 (BIA Mar. 25, 2009).	No.	**DefAttys: 1)** If possible, plead to criminal trespassing; **2)** Keep sentence imposed to 364 days or less to avoid possibility of AF; **3)** Keep ROC clean as to offense intended to be committed. **ImmPract: 1)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See supra* fn. 1. **2)** Challenge CIMT charge because underlying crime is not an element of the offense and therefore does not categorically involve moral turpitude.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Burglary in the 2nd Degree with a Firearm [Class C Felony]	53a-102a	"Burglary" AF, if sentence of 1 yr. or more is imposed. *See Matter of Perez*, 22 I. & N. Dec. 1325 (BIA 2000) (incorporating definition of burglary from *Taylor v. U.S.*, 495 U.S. 575 (1990)). COV AF under 18 U.S.C. § 16(b) if sentence of 1 yr. or more is imposed.	CIMT. *See Matter of Louissaint,* 24 I. & N. Dec. 754 (BIA 2009*); In re Carlos Marie Palafox-Reyes A.K.A. Carlos Mario Palafox A.K.A. Carles Mario Palafox*, 2009 WL 952426 (BIA Mar. 25, 2009). *See Matter of Ajami,* 22 I. & N. Dec. 949, 952 (BIA 1999) ("threatening behavior can be an element of a crime involving moral turpitude").	FO – Assume FO if ROC establishes a firearm covered under federal law. *See infra* fn. 11.	**DefAttys: 1)** If possible, plead to criminal trespassing; **2)** Keep sentence imposed to 364 days or less to avoid possibility of AF; **3)** Keep ROC clean as to offense intended to be committed. **ImmPract: 1)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See supra* fn. 1. **2)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See infra* fn. 11.
Burglary in the 3rd Degree [Class D Felony]	53a-103	"Burglary" AF, if sentence of 1 yr. or more is imposed. COV AF under 18 U.S.C. § 16(b) if sentence of 1 yr. or more is imposed.	Maybe a CIMT, if record of conviction establishes that the underlying crime is a CIMT. *See Wala v. Mukasey,* 511 F.3d 102 (2d Cir. 2007).	No.	**DefAttys: 1)** If possible, plead to criminal trespassing; **2)** Keep sentence imposed to 364 days or less to avoid possibility of AF; **3)** Keep ROC clean as to offense intended to be committed; **4)** Avoid reference in ROC to unlawful *entry* into building and type of building. **ImmPract: 1)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See supra* fn. 1. **2)** Statute is likely not divisible as to "entry," type of "building," or underlying offense under *Descamps v. U.S.*, 133 S.Ct. 2276 and Mathis v. United States, 136 S. Ct. 2243 (2016). Designation as COV should be challenged because remaining in an unoccupied structure or entering an unlocked vehicle does not implicate a risk of the use of force. **3)** Challenge CIMT charge because statute does not categorically require a CIMT as the underlying crime.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Burglary in the 3rd Degree with a Firearm [Class D Felony]	53a-103a	"Burglary" AF, if sentence of 1 yr. or more is imposed. COV AF under 18 U.S.C. § 16(b) if sentence of 1 yr. or more is imposed.	Probably CIMT. *See Matter of Re Ajami,* 22 I. & N. Dec. 949, 952 (BIA 1999) ("threatening behavior can be an element of a crime involving moral turpitude"). May also be affected by whether record of conviction establishes that the underlying crime is a CIMT. *See Wala v. Mukasey,* 511 F.3d 102 (2d Cir. 2007).	FO – Assume FO if ROC establishes a firearm covered under federal law. *See infra* fn. 11.	**DefAttys:** See note under Burglary in the 3rd degree, 53a-103, above. **ImmPract: 1)** See note under Burglary in the 3rd degree, 53a-103, above. **2)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See infra* fn. 11. **3)** Challenge charge as a "burglary" AF because of broad definition of "building". *See U.S. v. Welch,* 641 Fed. Appx. 37, 40 (2d Cir. 2016)(unpublished) (finding similar NY burglary statute not a COV).
Manufacturing or Possession of Burglar's Tools [Class A Misdem.]	53a-106	No. Would probably NOT be considered an AF.	Maybe CIMT. *Matter of Serna*, 20 I. & N. Dec. 579, 584 (BIA 1992) ("possession of burglary tools is not a crime involving moral turpitude unless accompanied by an intent to commit a turpitudinous offense such as larceny")	No.	**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of AF to be safe; **2)** Avoid reference in ROC to exact tools and the particular offense for which tools were intended. **ImmPract:** Challenge CIMT charge because statute does not categorically require intent to commit an underlying CIMT. Potentially a POE.
Criminal Trespass in the 1st Degree [Class A Misdem.]	53a-107	No. Would probably NOT be considered an AF.	Probably not CIMT.	Probably proof of a violation of a protective order, if conviction is under subsections (a)(2) or (a)(3), which is an additional ground of deportability under 8 U.S.C. § 1227(a)(2)(E)(ii).	**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of AF to be safe; **3)** Allocute in ROC that there was no scienter to avoid classification as CIMT **ImmPract: 1)** Challenge CIMT charge because statute is not divisible, and no underlying CIMT is required. **2)** Challenge charge as proof of violation of protection order for convictions under (a)(2) or (a)(3) based on divisibility of the statute, though the case law is sparse. *See State v. Quint*, 904 A.2d 216 (Conn. App. 2006).
Criminal Trespass in the 2nd Degree [Class B Misdem.]	53a-108	No.	No.	No.	
Criminal Trespass in the 3rd Degree [Class C Misdem.]	53a-109	No.	No.	No.	

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Simple Trespass [Infraction]	53a-110a	No.	No.	No.	
DAMAGE TO PROPERTY OFFENSES					
Arson in the 1st Degree [Class A Felony]	53a-111	"Arson" AF under 8 U.S.C.A. §§ 1101(a)(43)(E)(i). *See Torres v. Lynch*, 136 S. Ct. 1619, 1621 (2016) (arson conviction under very similar NY statute is arson AF). COV AF if sentence of 1 yr. or more is imposed. *See Santana v. Holder*, 714 F.3d 140, (2d Cir. 2013) (NY arson conviction is COV AF, because fire is a "physical force").	CIMT. *See Matter of S-,* 3 I. & N. Dec. 617, 618 (BIA 1949)	Maybe CODV - If the victim for a conviction under subsection (a)(2) was one protected under domestic violence laws, like a current or former spouse, conviction would be considered a CODV.	**DefAttys: 1)** Avoid conviction under subsection (a)(1), or make *Alford* plea. **2)** Keep sentence imposed to 364 days or less to avoid possibility of COV AF **3)** To avoid a CODV for convictions under (a)(2), keep ROC clean of victim's identity. **ImmPract:** Challenge COV AF charge under *Johnson v. United States*, 559 U. S. 133 (2010) (defining "physical force").
Arson in the 2nd Degree [Class B Felony]	53a-112	"Arson" AF under 8 U.S.C.A. §§ 1101(a)(43)(E)(i). *See Torres v. Lynch*, 136 S. Ct. 1619, 1621 (2016) (arson conviction under very similar NY statute is arson AF). COV AF if sentence of 1 yr. or more is imposed. *See Santana v. Holder*, 714 F.3d 140, (2d Cir. 2013) (NY arson conviction is COV AF, because fire is a "physical force").	CIMT. *See Matter of S-,* 3 I. & N. Dec. 617, 618 (BIA 1949).	CODV – If conviction is under (a)(1)(A) and the victim was a current or former spouse or similarly situated individual, conviction might be considered a CODV.	**DefAttys:** See notes under Arson in 1st Degree. **ImmPract:** See notes under Arson in 1st Degree.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Arson in the 3rd Degree [Class C Felony]	53a-113	"Arson" AF under 8 U.S.C.A. §§ 1101(a)(43)(E)(i). *See Torres v. Lynch*, 136 S. Ct. 1619, 1621 (2016) (arson conviction under very similar NY statute is arson AF). COV AF if sentence of 1 yr. or more is imposed. *But see Tran v. Gonzalez*, 414 F.3d 464 (3d Cir. 2005) (PA reckless burning conviction NOT "COV" AF).	Maybe CIMT. *See Pretelt v. Atty. Gen. Of U.S.,* 370 Fed. Appx. 338 (3d Cir. 2010) (NJ reckless arson is a CIMT as it has the "requisite recklessness in relation to the risk of injury or death").	No.	**DefAttys: 1)** Plead to attempted recklessness to minimize immigration consequences. **2)** Keep sentence imposed to 364 days or less to avoid possibility of AF. **3)** Keep ROC clean as to amount of damage inflicted. **ImmPract: 1)** Challenge charge as COV AF arguing reckless mental state is insufficient under *Leocal* and *Jobson. See supra* fn. 1 regarding reckless crimes. **2)** Challenge CIMT charge because does not have the requisite recklessness in relation to risk of injury or death, as 3rd degree arson only requires damage to a building. *But* see *In re Fabrian Eduardo Chaparro-Ceballos*, 2004 WL 2374323 (BIA Sept. 14, 2004) (finding similar NY 4th degree arson statute a CIMT). Challenge on grounds that property damage is not enough to rise to level of CIMT. See *Louisaire v. Muller*, 758 F. Supp. 2d 229 (S.D.N.Y. 2010)*; In the Matter of C-----,* 2 I. & N. Dec. 716, 719 (BIA 1946). **3)** Challenge arson AF charge, as the "reckless" mens rea does not rise to the level of "maliciousness" required by federal statute. 18 U.S.C. § 844(i).

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Reckless Burning [Class D Felony]	53a-114	Maybe COV AF if sentence of 1 yr. or more is imposed. "Arson" AF under 8 U.S.C.A. §§ 1101(a)(43)(E)(i). *See Torres v. Lynch*, 136 S. Ct. 1619, 1621 (2016) (arson conviction under very similar NY statute is arson AF).	Maybe CIMT. *See Pretelt v. Atty. Gen. Of U.S.,* 370 Fed. Appx. 338, 339 (3d Cir. 2010) (NJ reckless arson is a CIMT as it has the "requisite recklessness in relation to the risk of injury or death").	No.	**DefAttys: 1)** Plead to attempted recklessness to minimize immigration consequences. **2)** Keep sentence imposed to 364 days or less to avoid possibility of AF. **3)** Keep ROC clean as to amount of damage inflicted. **ImmPract: 1)** Challenge charge as COV AF arguing reckless mental state is insufficient under *Leocal* and *Jobson. See supra* fn. 1 regarding reckless crimes; *see also Tran v. Gonzalez*, 414 F.3d 464 (3d Cir. 2005) (PA reckless burning conviction NOT "COV" AF). **2)** Challenge CIMT charge because does not have the requisite recklessness in relation to risk of injury or death, as it only requires damage to a building. Challenge on grounds that property damage is not enough to rise to level of CIMT. *See Louisaire v. Muller*, 758 F. Supp. 2d 229 (S.D.N.Y. 2010)*; In the Matter of C-----,* 2 I. & N. Dec. 716, 719 (BIA 1946). **3)** Challenge arson AF charge, as the "reckless" mens rea does not rise to the level of "maliciousness" required by federal statute. 18 U.S.C. § 844(i).

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Criminal Mischief in the 1st Degree [Class D Felony]	53a-115	Maybe COV AF if sentence of 1 yr. or more is imposed. *But see U.S. v. Landeros-Gonzales*, 262 F.3d 424 (5th Cir. 2001) (conviction for TX criminal mischief not a COV); *U.S. v. Damon*, 127 F.3d 139 (1st Cir. 1997) (conviction for MA criminal mischief not a COV).	Maybe CIMT. *See Da Silva Neto v. Holder*, 680 F.3d 25 (1st Cir. 2012). *But see Rodriguez-Herrera v. INS*, 52 F.3d 238 (9th Cir. 1995) (2nd degree malicious mischief not CIMT); *Matter of B-,* 2 I&N Dec. 867 (BIA 1947) (Canadian conviction for malicious mischief where intent may be negligent or reckless is not CIMT).	No.	**DefAttys: 1)** Plead to Criminal Mischief in the 2d degree or lower to minimize immigration consequences **2)** Keep sentence imposed to 364 days or less to avoid possibility of AF **3)** Keep ROC clean, particularly regarding whether the actions were violent or non-violent and the amount of damage inflicted. **ImmPract: 1)** Challenge COV AF charge under *Johnson v. United States*, 559 U. S. 133 (2010) because "causing damage" does not equal "use of force"; *but see Vargas-Sarmiento v. U.S. D.O.J.*, 448 F.3d 159 (2d Cir. 2006) (adopting broad reading of COV as to intentional offenses). **2)** Challenge CIMT charge. *See Rodriguez-Herrera v. INS*, 52 F.3d 238 (9th Cir. 1995) (similar statute not CIMT); *Matter of B-,* 2 I&N Dec. 867 (BIA 1947) (Canadian conviction for malicious mischief where intent may be negligent or reckless is not CIMT). Challenge the divisibility of mens rea of the statute, especially if convicted under subsections (2) or (4). Challenge on grounds that property damage is not enough to rise to level of CIMT. *See Louisaire v. Muller*, 758 F. Supp. 2d 229 (S.D.N.Y. 2010)*; In the Matter of C-----,* 2 I. & N. Dec. 716, 719 (BIA 1946).

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Criminal Mischief in the 2nd Degree [Class A Misdem.]	53a-116	Maybe COV AF If sentence of 1 yr. or more is imposed. *But see U.S. v. Landeros-Gonzales*, 262 F.3d 424 (5th Cir. 2001) (conviction for TX criminal mischief not a COV); *U.S. v. Damon*, 127 F.3d 139 (1st Cir. 1997) (conviction for MA criminal mischief not a COV).	Maybe CIMT. *But see Rodriguez-Herrera v. INS*, 52 F.3d 238 (9th Cir. 1995) (2nd degree malicious mischief not CIMT).	No.	**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of AF. **2)** Keep ROC clean, particularly regarding whether the actions were violent or non-violent and the amount of damage inflicted. **ImmPract: 1)** See note under 1st degree criminal mischief regarding COV AF and CIMT. **2)** Challenge the divisibility of mens rea of the statute, especially if convicted under subsections (2). **3)** Even more so than 1st degree criminal mischief, the 2nd degree criminal mischief statute on its face also does not require a high degree of damage, which would allow for a challenge to a CIMT charge. *See In the Matter of C----*, 2 I. & N. Dec. 716, 719 (BIA 1946). Also potentially a POE.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Criminal Mischief in the 3rd Degree [Class B Misdem.]	53a-117	No (max sentence is less than 1 yr.).	Maybe CIMT. If record indicates intentional act under subsection (a)(1), might be considered a CIMT, as it is possible that the statute is divisible. *See U.S. v. Landeros-Gonzales*, 262 F.3d 424 (5th Cir. 2001).	No.	**DefAttys: 1)** Plead to attempted recklessness or negligence to minimize immigration consequences. **2)** Allocution to (a)(2) or (a)(4) is least likely to be considered CIMT as it has a negligence scienter; thereafter allocution to mere reckless (not intentional) act. **3)** Avoid any reference in ROC to intentional act or amount of damage inflicted, or make an *Alford* plea. **ImmPract: 1)** Challenge COV AF charge under *Johnson v. United States*, 559 U. S. 133 (2010) because "causing damage" does not equal "use of force"; *but see Vargas-Sarmiento v. U.S. D.O.J.*, 448 F.3d 159 (2d Cir. 2006) (adopting broad reading of COV as to intentional offenses). **2)** Challenge CIMT charge. *See Rodriguez-Herrera v. INS*, 52 F.3d 238 (9th Cir. 1995) (similar statute not CIMT); *Matter of B-,* 2 I&N Dec. 867 (BIA 1947) (Canadian conviction for malicious mischief where intent may be negligent or reckless is not CIMT). **3)** For both COV AF and CIMT, challenge divisibility between intentionally or recklessly committing the offense. *See e.g., State v. Hoskins*, 401 A.2d 619 (Conn. Super. 1978). **4)** Even more so than 1st and 2nd degree criminal mischief, the 3rd degree criminal mischief statute on its face also does not require a high degree of damage, which would allow for a challenge to a CIMT charge. *See Louisaire v. Muller*, 758 F. Supp. 2d 229 (S.D.N.Y. 2010)*; In the Matter of C-----,* 2 I. & N. Dec. 716, 719 (BIA 1946). Also potentially a POE.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Criminal Mischief in the 4th Degree [Class C Misdem.]	53a-117a	No (because max sentence is less than 1 yr.).	Might be CIMT. If record indicates intentional act, might be considered a CIMT, as it is possible that the statute is divisible. *See U.S. v. Landeros-Gonzales*, 262 F.3d 424 (5th Cir. 2001).	No.	**DefAttys: 1)** Plead to attempted recklessness to minimize immigration consequences. **2)** Allocution to mere reckless (not intentional) act minimizes CIMT risk; avoid any reference in ROC to intentional act. **ImmPract:** See note under 3rd degree criminal mischief. In particular, should seek to challenge divisibility between intentionally or recklessly committing the offense. Also potentially a POE.
Criminal Damage of Landlord's Property in 1st Degree [Class D Felony]	53a-117e	Maybe COV AF if sentence of 1 yr. or more is imposed	Might be considered a CIMT.	No.	**DefAttys: 1)** Plead to Criminal Damage of Landlord's Property in the 2d or 3d degree to minimize immigration consequences; **2)** Keep sentence imposed to 364 days or less to avoid possibility of AF. **ImmPract:** See note under 1st degree criminal mischief.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Criminal Damage of Landlord's Property in 2nd Degree [Class A Misdem.]	53a-117f	COV AF if sentence of 1 yr. or more is imposed, especially if convicted under subsection (a)(1), the intentional provision. *See In re Jose Santos Mendoza-Alfaro A.K.A. Jose Mendoza Alfaro A.K.A. Santos Mendoza-Alfaro*, 2004 WL 1059685 (BIA Jan. 9, 2004) (a conviction of recklessly damaging property not a COV)	Maybe CIMT, especially if conviction is under subsection (a)(1).	No.	**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possible AF; avoid any reference in ROC to intentional act; **2)** allocution to subsection (a)(2) minimizes CIMT and AF risk because of reckless mens rea. Consider plea to attempted reckless damage to property if possible. **ImmPract: 1)** Designation as COV AF should be challenged under *Johnson v. United States*, 559 U. S. 133 (2010) because "causing damage" does not equal "use of force"; *but see Vargas-Sarmiento v. U.S. D.O.J.*, 448 F.3d 159 (2d Cir. 2006) (adopting broad reading of COV as to intentional offenses). Convictions under (a)(2), with a reckless mens rea, should especially be challenged under *Leocal*. *See supra* fn. 1 regarding reckless crimes. **2)** Challenge CIMT charge. *See Rodriguez-Herrera v. INS*, 52 F.3d 238 (9th Cir. 1995) (similar statute not CIMT); *Matter of B-,* 2 I&N Dec. 867 (BIA 1947) (Canadian conviction for malicious mischief where intent may be negligent or reckless is not CIMT). Convictions under (a)(2), with a reckless mens rea, should especially be challenged as not fulfilling a CIMT. Could also try to challenge on grounds that property damage is not enough to rise to level of CIMT. *See Louisaire v. Muller*, 758 F. Supp. 2d 229 (S.D.N.Y. 2010)*; In the Matter of C-----,* 2 I. & N. Dec. 716, 719 (BIA 1946). Also potentially a POE.
Criminal Damage of Landlord's Property 3rd Degree [Class B Misdem.]	53a-117g	No.	Probably NOT be considered a CIMT.	No.	**ImmPract:** See note under Criminal Damage of Landlord's Property in 2nd Degree. Also potentially a POE.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
LARCENY AND RELATED OFFENSES					
Using Motor Vehicle or Vessel w/o Owner's Permission / Interfering w/ Motor Vehicle [First Offense = Class A Misdem.; Subsequent Offense = Class D Felony]	53a-119b	"Theft" AF, if sentence of 1 yr. or more is imposed for conviction under any subsection. Maybe "fraud or deceit" AF, regardless of sentence, conviction under subsections (a)(2) or (b)(2), if loss to victim in excess of $10K. COV AF if charged as felony under subsection (c) and sentence imposed is for 1 yr. or more. *See Matter of Brieva-Perez*, 23 I. & N. Dec. 766, 767 (BIA 2005) (aff'd by *Brieva-Perez v. Gonzales*, 482 F.3d 356 (5th Cir. 2007)*).*	Maybe CIMT. Conviction under subsections (a)(1), (b)(1) or (c)(1) would be considered CIMT if the offense involves taking "either permanently or under such circumstances that the owner's property rights are substantially eroded." *Matter of Obeya*, 26 I. & N. Dec. 856, 861 (BIA 2016). *See also Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016) (literal permanent taking not required for finding of CIMT). Conviction under subsections (a)(2), (b)(2), (c)(2) would probably be considered CIMT. *See Jordan v. De George*, 341 U.S. 223, 227 (1951) ("a crime in which fraud is an ingredient involves moral turpitude").	No.	**DefAttys**: **1)** Allocute to a temporary taking, or make *Alford* plea; **2)** Avoid conviction under (a)(2) or (b)(2).**3)** If ROC indicates fraud, allocute to a sum less than $10K. **4)** Keep sentence to 364 days or less to avoid risk of "theft" or COV AF. **ImmPract**: **1)** Challenge CIMT charge because statute does not require intent to permanently deprive. *See Wala v. Mukasey,* 511 F.3d 102 (2d Cir. 2007); *Matter of M*, 2 I. & N. Dec. 686 (BIA 1946) (joyriding is not CIMT). *But see Matter of Obeya*, 26 I. & N. Dec. 856, 861 (BIA 2016). *See also Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016) (literal permanent taking not required for finding of CIMT). **2)** Challenge theft AF charge because statute does not require either temporary or permanent taking. *See Matter of V-Z-S-*, 22 I. & N. Dec. 1338 (BIA 2000). **3)** Designation as COV should be challenged under *Leocal v. Ashcroft*, 543 U.S. 1 (2004) and *Johnson v. U.S.*, 135 S.Ct. 2551 (2015), as causation of property damage does not necessarily require use of force. Also potentially a POE.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Larceny in the 1st Degree [Class B Felony]	53a-122	"Theft" AF, if sentence of 1 yr. or more is imposed.[9] Maybe "fraud or deceit" AF for conviction under subsection (a)(4), if loss to victim exceeding $10K. Maybe "fraud or deceit" AF for conviction under subsections (a)(2) or (a)(3), if ROC establishes conviction under any part of the CT "larceny" definition that includes larceny by fraud or deceit. May also be an "attempt" AF.	CIMT. *See Mendez v. Mukasey*, 547 F.3d 345 (2d Cir. 2008) (conviction under 53a-122(a)(4) for defrauding a public community is a CIMT). *See also Chiaramonte v. INS,* 626 F.2d 1093, 1097 (2d Cir.1980) (theft crimes presumed to be crimes of moral turpitude).	No.	**DefAttys: 1)** To avoid "fraud" and "attempt" AF, allocute to loss and intended loss to victim of a sum certain of $10K or less. **2)** For all larceny offenses consider pleading to false representation (consensual taking) if loss is low and prosecutor wants sentence of yr or more, or to nonconsensual taking with less than 1 yr sentence if loss or restitution would be over 10K. *See Matter of Garcia-Madruga*, 24 I&N Dec. 436 (BIA 2008) (differentiating between fraud and theft aggravated felonies). **3)** Keep sentence imposed to 364 days or less to avoid possibility of AF. **ImmPract: 1)** 2nd Circuit caselaw finds larceny categorically an AF. However, recent developments in other circuits have opened up an opportunity to argue that it is not because it sweeps more broadly than the generic offense. *See* fn. 9 below. **2)** Challenge CIMT charge under *Wala v. Mukasey*, 511 F.3d 102 (2d Cir. 2007), because intent to permanently deprive an owner of property is not categorically required. *But see Matter of Obeya*, 26 I. & N. Dec. 856, 861 (BIA 2016). *See also Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016) (literal permanent taking not required for finding of CIMT).

[9] Immigration attorneys should note that Connecticut law encompasses a broad range of conduct under the definition of "larceny." *See* Conn. Gen. Stat. § 53a-119. The statute describes several means by which one can commit larceny, including "theft of services, " which arguably exceeds the generic definition of "theft offense." Additionally, Connecticut larceny includes both when the taking is committed with "intent to deprive" and when it is committed with "intent to appropriate," whereas the BIA's definition of larceny requires "intent to deprive." Despite this, 2nd Circuit case law currently applies the categorical approach to Connecticut larceny, finding it not divisible, and finds larceny categorically an aggravated felony. *See Abimbola v. Ashcroft*, 378 F.3d 173 (2d Cir. 2004) (CT larceny is categorically theft offense notwithstanding inclusion of "theft of services"); *Almeida v. Holder*, 588 F.3d 778, 785-789 (2d Cir. 2009) (CT larceny is categorically a theft offense notwithstanding "deprive" and "appropriate" distinction in state definition). However, recent developments in other circuits have opened up an opportunity to argue that larceny is not categorically an aggravated felony because it sweeps more broadly than the generic offense in that it encompasses takings accomplished through fraudulently induced consent. In *Omargharib v. Holder*, 775 F.3d 192 (4th Cir. 2014), VA larceny was not an AF because it included both theft and fraud, which are separately defined under the INA. Like the VA statute, CT larceny allows for convictions even when the "without-consent" element of generic theft is not met. *See State v. Vars*, 224 A.2d 744 (Conn. 1966); *State v. Calonico*, 770 A.2d 454 (Conn. 2001); *State v. Torres*, 960 A.2d 573 (Conn. App. 2008). Thus, there is an argument that CT larceny sweeps too broadly because it encompasses fraud. *See also Vassell v. U.S. Attorney Gen.,* 839 F.3d 1352 (11th Cir. 2016); *Lopez-Valencia v. Lynch*, 798 F.3d 863 (9th Cir. 2015); *Bazuaye v. Mukasey*, 273 Fed. App'x. 77 (2d Cir. 2008) (unpublished opinion suggests that New York larceny statute that includes fraud cannot be an aggravated felony).

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Larceny in the 2nd Degree [Class C Felony]	53a-123	"Theft" AF, if sentence of 1 yr. or more is imposed. *See supra* fn. 9. Maybe COV AF for conviction under subsection (a)(3), if sentence imposed is 1 yr. or more Maybe "fraud" or deceit" AF for conviction under subsection (a)(5), if record establishes that loss to victim exceeds $10K.	CIMT. See note for 1st degree larceny, 53a-122, above.	No.	**DefAttys:** See note under 1st degree larceny **ImmPract:** See note under 1st degree larceny
Larceny in the 3rd Degree [Class D Felony]	53a-124	"Theft" AF, if sentence of 1 yr. or more is imposed. *See supra* fn. 9. Maybe risk of "fraud" AF if ROC establishes loss to victim exceeds $10K.	CIMT. See note for 1st degree larceny, 53a-122, above.	No.	**DefAttys:** See note under 1st degree larceny. **ImmPract:** See note under 1st degree larceny
Larceny in the 4th Degree [Class A Misdem.]	53a-125	"Theft" AF, if sentence of 1 yr. is imposed. *See supra* fn. 9. Maybe risk of "fraud" AF if ROC establishes loss to victim exceeds $10K.	CIMT. See note for 1st degree larceny, 53a-122, above.	No.	**DefAttys:** See note under 1st degree larceny. **ImmPract:** See note under 1st degree larceny
Larceny in the 5th Degree [Class B Misdem.]	53a-125a	Maybe "theft" AF, if sentencing enhancements (like for persistent offenders) lead to sentence for 1 yr. or more.	CIMT. See note for 1st degree larceny, 53a-122, above.	No.	**DefAttys:** See note under 1st degree larceny. **ImmPract:** See note under 1st degree larceny. Also potentially a POE.
Larceny in the 6th Degree [Class C Misdem.]	53a-125b	Maybe "theft" AF, if sentencing enhancements (like for persistent offenders) lead to sentence for 1 yr. or more.	CIMT. See note for 1st degree larceny, 53a-122, above.	No.	**DefAttys:** See note under 1st degree larceny. **ImmPract:** See note under 1st degree larceny. Also potentially a POE.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Criminal Trover in 1st Degree [Class C or D Felony]	53a-126a	COV AF if sentence of 1 yr. or more is imposed, due to "forcible" entry. *See U.S. v. Galvan-Rodriguez*, 169 F.3d 217 (5th Cir. 1999) (finding conviction of TX unauthorized use of motor vehicle statute a COV even without an element of force). *But see U.S. v. Perez-Gutierrez*, 303 Fed. Appx. 669 (10th Cir. 2008) (unpublished opinion finding same TX unauthorized use of motor vehicle statute NOT a COV).	Maybe CIMT. *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847 (BIA 2016) (finding a CIMT in "cases in which property is taken "temporarily" but returned damaged or after its value or usefulness to the owner has been vitiated"). May also be considered a theft offense. *See Chiaramonte v. INS,* 626 F.2d 1093, 1097 (2d Cir.1980) (theft crimes presumed to be crimes of moral turpitude)	No.	**DefAttys: 1)** To avoid classification as CIMT, allocute that there was no scienter; **2)** Avoid reference in ROC to permanent taking; **3)** Keep sentence imposed to 364 days or less to avoid possibility of AF **ImmPract: 1)** Challenge CIMT or COV AF charge. This statute can be likened to joyriding, which is generally not considered a CIMT. *Matter of M*, 2 I. & N. Dec. 686 (BIA 1946) (joyriding is not CIMT); *In the Matter of P-----*, 2 I. & N. Dec. 887 (BIA 1947) (joyriding is not CIMT). *But see Matter of Diaz-Lizarraga,* 26 I. & N. Dec. 847 (BIA 2016) (Conviction of Arizona shoplifting statute is a CIMT "despite the fact that it does not require the accused to intend a literally permanent taking," distinguishing between de minimis joyriding and "cases in which property is taken "temporarily" but returned damaged or after its value or usefulness to the owner has been vitiated"). **2)** Challenge theft CIMT charge because statute does not require intent to permanently deprive. *See See Wala v. Mukasey,* 511 F.3d 102 (2d Cir. 2007); *Matter of Grazley*, 14 I. & N. Dec. 330, 333 (BIA 1973) (" theft is considered to involve moral turpitude only when a permanent taking is intended").

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Criminal Trover in 2nd Degree [Class A Misdem.]	53a-126b	Maybe not AF. *But see U.S. v. Galvan-Rodriguez*, 169 F.3d 217 (5th Cir. 1999) (finding conviction of TX unauthorized use of motor vehicle statute a COV even without an element of force). *See also U.S. v. Perez-Gutierrez*, 303 Fed. Appx. 669 (10th Cir. 2008) (unpublished opinion finding same TX unauthorized use of motor vehicle statute NOT a COV).	Maybe CIMT. *See Chiaramonte v. INS,* 626 F.2d 1093, 1097 (2d Cir.1980) (theft crimes presumed to be crimes of moral turpitude); *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847 (BIA 2016) (finding a CIMT in "cases in which property is taken "temporarily" but returned damaged or after its value or usefulness to the owner has been vitiated")	No.	**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of AF. **ImmPract: 1)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See supra* fn. 1. **2)** Challenge CIMT as a theft offense because statute does not require intent to permanently deprive. *See Wala v. Mukasey,* 511 F.3d 102 (2d Cir. 2007); *Matter of Grazley*, 14 I. & N. Dec. 330, 333 (BIA 1973) (" theft is considered to involve moral turpitude only when a permanent taking is intended"). Can also seek to liken this statute to joyriding, which is generally not considered a CIMT. *Matter of M*, 2 I. & N. Dec. 686 (BIA 1946) (joyriding is not CIMT); *In the Matter of P----*, 2 I. & N. Dec. 887 (BIA 1947) (joyriding is not CIMT). *But see Matter of Diaz-Lizarraga,* 26 I. & N. Dec. 847 (BIA 2016) (Conviction of Arizona shoplifting statute is a CIMT "despite the fact that it does not require the accused to intend a literally permanent taking," distinguishing between de minimis joyriding and "cases in which property is taken "temporarily" but returned damaged or after its value or usefulness to the owner has been vitiated"). Also potentially a POE.
Unlawful entry into coin machine; possession of key to enter [Class A Misdem.]	53a-127a	Maybe "fraud or deceit" AF if ROC establishes loss to victim exceeds $10,000. "Theft" AF, if max. sentence of 1 yr. is imposed.	CIMT. *See Matter of Obeya*, 26 I. & N. Dec. 856, 861 (BIA 2016) (is a CIMT when taking "either permanently or under such circumstances that the owner's property rights are substantially eroded."). *See also Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016) (literal permanent taking not required for finding of CIMT).	No.	**DefAttys: 1)** To minimize risk of "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less. **2)** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF. **ImmPract:** Maybe a POE.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Fraudulent Use of an Automated Teller Machine [Class A Misdem.]	53a-127b	Maybe "fraud or deceit" AF if ROC establishes loss to victim exceeds $10,000. "Theft" AF if max. sentence of 1 yr. is imposed.	CIMT. *See Matter of Obeya*, 26 I. & N. Dec. 856, 861 (BIA 2016) (is a CIMT when taking "either permanently or under such circumstances that the owner's property rights are substantially eroded."). *See also Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016) (literal permanent taking not required for finding of CIMT).	No.	**DefAttys: 1)** To minimize risk of "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less. **2)** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF. **ImmPract:** May be a POE.
Theft of Electric, Gas, Water, Steam, Telecommunications, Wireless Radio Communications, or Community Antenna Television Service [Class D Felony]	53a-127c	"Theft" AF if sentence of 1 yr. or more is imposed. "Fraud or deceit" AF for conviction under subsection (a)(3) if ROC establishes loss to victim exceeds $10,000. *See In re Jose Miguel Minaya A.K.A. Miguel Minaya*, 2008 WL 1924629 (BIA Apr. 14, 2008) (conviction of federal wire fraud statute a "fraud or deceit" AF).	Maybe CIMT. *See Jordan v. De George*, 341 U.S. 223, 227 (1951) ("a crime in which fraud is an ingredient involves moral turpitude")	No.	**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid the possibility of a "theft" AF. **2)** Allocution to (a)(1) or (a)(2) is least likely to be considered CIMT **3)** To minimize risk of "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less.
Possession of a Shoplifting Device [Class A Misdem.]	53a-127f	No. Would only be considered a "theft" AF if coupled with another offense, such as larceny, and sentence of 1 yr. or more is imposed.	Probably CIMT.	No.	**DefAttys:** Consider pleading to this, 53a-127f, for charges of larceny, theft, or shoplifting.
Possession of a Personal Identifying Information Access Device [Class A Misdem.]	53a-127g	Maybe "fraud" AF if ROC establishes loss to victim exceeds $10,000.	CIMT. *See Jordan v. De George*, 341 U.S. 223, 227 (1951) ("a crime in which fraud is an ingredient involves moral turpitude")	No.	**DefAttys: 1)** Consider pleading to this, 53a-127g, for charges of larceny, theft, or shoplifting. **2)** To minimize risk of "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Issuing a Bad Check [Category depends on amount]	53a-128	Maybe "fraud" AF if ROC establishes loss to victim exceeds $10,000. *But see Mirat v. Atty. Gen. of U.S.*, 184 Fed. Appx. 153 (3d Cir. 2006) (PA conviction for issuing bad check not an AF because fraud was not an express element of offense)	Maybe CIMT. Statue does not explicitly require intent to defraud, but does require intent or belief that the check will not be honored, which may be implicitly requiring an intent to defraud, or at least guilty knowledge. *Matter of Bart*, 20 I. & N. Dec. 436 (BIA 1992) (conviction for issuing a bad check constitutes a CIMT when guilty knowledge, such as "intent to defraud," is required for conviction)	No.	**DefAttys:** To minimize risk of "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less. **ImmPract: 1)** Challenge "fraud" AF, arguing that fraud is not an express element of the offense. *See Mirat v. Atty. Gen. of U.S.*, 184 Fed. Appx. 153 (3d Cir. 2006). **2)** For similar reasons, argue not a CIMT. Also may be POE if a misdemeanor.
Credit Card Theft – Illegal Transfer [Class A Misdem. or Class D Felony]	53a-128c	"Theft" AF if sentence of 1 yr. or more is imposed. "Fraud or deceit" AF for conviction under subsections (d), (f) or (g) if ROC establishes loss to victim exceeds $10,000 "Forger" AF for conviction under section (f) if sentence of 1 yr. or more is imposed. *See In re Fernando Monje-Buitrago,* 2011 WL 7071053, at *2 (BIA Dec. 22, 2011) (VA credit card theft statute is a "theft" AG)	CIMT. For subsections (d), (f), or (g), *see, Mendez v. Mukasey*, 547 F.3d 345, 347 (2d Cir. 2008) (noting that crimes involving fraud are generally crimes involving moral turpitude).	No.	**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF; **2)** To avoid "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less. **3)** If ROC or other evidence will establish a loss in excess of $10,000, counsel can seek an alternate plea to larceny with sentence of 364 days or less. **ImmPract:** Challenge theft CIMT, arguing the statute does not necessarily reach conduct that includes the intent to deprive. *See In re Edwin Alexander Jandres-Aguiluz A.K.A. Edwin Handres*, 2014 WL 6883040, at *3 (BIA Nov. 13, 2014) (remanding for determination of whether MD conviction under similar credit card theft statute is AF and CIMT based on realistic probability test). *But see Matter of Chouinard,* 11 I. & N. Dec. 839, 841 (BIA 1966) (finding MI credit card use statute a CIMT, as intent to defraud is implied). Also may be POE if a misdemeanor.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Illegal Use of Credit Card [Class A Misdem. or Class D Felony]	53a-128d	"Fraud or deceit" AF if ROC establishes loss to victim exceeds $10,000 "Theft" AF if sentence imposed is 1 yr. or more Maybe "forgery" AF if convicted under that portion of the statute requiring knowledge that a credit card is forged and sentence imposed is 1 yr. or more.	CIMT. *See, e.g., Mendez v. Mukasey*, 547 F.3d 345, 347 (2d Cir. 2008) (noting that crimes involving fraud are generally crimes involving moral turpitude); *see Matter of Chouinard,* 11 I. & N. Dec. 839, 841 (BIA 1966) (finding MI credit card use statute a CIMT, as intent to defraud is implied).	No.	**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF; **2** To avoid "fraud" and "attempt" AF, allocute to loss and intended loss and intended loss to victim of $10,000 or less **3)** Consider pleading to Receipt of Money, Goods or Services, 53a-128g, to minimize immigration consequences. **ImmPract:** May be a POE if a misdemeanor.
Receipt of Money, Goods or Services obtained by illegal use of credit card [Class A Misdem.]	53a-128g	"Theft" AF if max. sentence of 1 yr. or more is imposed Maybe "fraud or deceit" AF if ROC establishes loss to victim exceeds $10,000.	Maybe CIMT. *See, e.g., Mendez v. Mukasey*, 547 F.3d 345, 347 (2d Cir. 2008) (noting that crimes involving fraud are generally crimes involving moral turpitude).	No.	**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF; **2)** To avoid "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less **ImmPract:** Challenge CIMT or "theft" AF charge because statute allows conviction based on presumption of knowledge that goods were stolen. *See* Matter of K-, 2 I & N Dec. 90 (BIA 1944) (receipt of stolen goods without intent to deprive owner of possession is not CIMT). Also potentially a POE.
Identity Theft in the First Degree [Class B Felony]	53a-129b	"Theft" AF, if sentence of 1 yr. or more imposed. "Fraud or deceit" AF for conviction under subsections (a)(1) and (a)(2) if ROC establishes loss to victim exceeds $10,000.	CIMT. *See Chiaramonte v. INS*, 626 F.2d 1093, 1097 (2d Cir. 1980) (theft crimes presumed to be crimes of moral turpitude); *In re Jose Luis Serrato-Soto*, 2008 WL 4065978 (BIA July 31, 2008) (MS conviction for identify theft a CIMT)	No.	**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF; **2)** To avoid "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less. **ImmPract:** Challenge CIMT charge by arguing that statute does not necessarily require proof of intent to defraud or harm the victim or actual loss to victim. *Linares-Gonzalez v. Lynch*, 823 F.3d 508 (9th Cir. 2016).

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Identity Theft in the Second Degree [Class C Felony]	53a-129c	"Theft" AF, if sentence of 1 yr. or more imposed. "Fraud or deceit" AF if ROC establishes loss or intended loss to victim exceeds $10,000.	CIMT. *See Chiaramonte v. INS*, 626 F.2d 1093, 1097 (2d Cir. 1980) (theft crimes presumed to be crimes of moral turpitude); *In re Jose Luis Serrato-Soto*, 2008 WL 4065978 (BIA July 31, 2008) (MS conviction for identify theft a CIMT)	No.	**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF **2)** To avoid "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less **ImmPract:** See Identity Theft 1st Degree above.
Identity Theft in the Third Degree [Class D Felony]	53a-129d	"Theft" AF if sentence of 1 yr. or more imposed. "Fraud or deceit" AF if ROC establishes loss to victim exceeds $10,000.	CIMT. *See Chiaramonte v. INS*, 626 F.2d 1093, 1097 (2d Cir. 1980) (theft crimes presumed to be crimes of moral turpitude); *In re Jose Luis Serrato-Soto*, 2008 WL 4065978 (BIA July 31, 2008) (MS conviction for identify theft a CIMT).	No.	**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF. **2)** To avoid "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less. **ImmPract:** See Identity Theft 1st Degree above.
Criminal Impersonation [Class A Misdem.]	53a-130	Maybe "fraud or deceit" AF if ROC establishes loss or intended loss to victim exceeds $10,000. Subsections (1), (3), and (5) explicitly mention intent to defraud. Subsection (5) explicitly mentions financial loss.	CIMT. *See, e.g., Mendez v. Mukasey*, 547 F.3d 345, 347 (2d Cir. 2008) (noting that crimes involving fraud are generally crimes involving moral turpitude); *In Matter of B-----*, 3 I. & N. Dec. 270, 270 (BIA 1948) (impersonating a federal officer is CIMT).	No.	**DefAttys: 1)** To avoid risk of "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less. **2)** Avoid subsection (1), (3), and (5), which explicitly mention intent to defraud, and especially avoid subsection (5) which explicitly mentions financial loss. **ImmPract:** Because subsections (2) and (4) do not explicitly mention fraud, there may be a categorical approach argument if the statute is not divisible. *But see In re Ivon Reyes Morales*, 2010 WL 4971017, (BIA Nov. 23, 2010) (similar argument for AZ criminal impersonation argument failed). Also potentially a POE.
Defrauding Immigrant Laborers [Class A Misdem.]	31-4	Maybe "fraud or deceit" AF if ROC establishes loss to victim exceeds $10,000.	CIMT. *See, e.g., Mendez v. Mukasey*, 547 F.3d 345, 347 (2d Cir. 2008) (noting that crimes involving fraud are generally crimes involving moral turpitude)	No.	**DefAttys:** To minimize risk of "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
ROBBERY OFFENSES					
Robbery in the 1st Degree [Class B Felony]	53a-134	"Theft" AF and COV AF if sentence of 1 yr. or more is imposed.	CIMT. *See Matter of Martin*, 18 I. & N. Dec. 226, 226 (BIA 1982).	FO – Assume conviction under subsection (a)(4) would be FO if ROC establishes a firearm covered under federal law. *See infra* fn. 11.	**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of "theft" and COV AF. Avoid identifying nature of weapon used in the ROC. **Imm Pract**: **1)** Although there is precedent to say that CT robbery is a COV, recent case law allows for the argument that it is not. *See Shabazz v. U.S.*, 3:16-CV-1083 (SRU), 2017 WL 27394, at *15 (D. Conn. Jan. 3, 2017) (finding that, as instructed by *Johnson v. U.S.*, 135 S.Ct. 2551 (2015), CT 1st and 2nd degree robbery does not necessarily require use of force). *But see Gomez v. Ashcroft*, 293 F. Supp. 2d 162 (D. Conn. 2003) (conviction under 3rd degree robbery is COV AF); *U.S. v. Wiggan*, 530 Fed. Appx. 51, 57 (2d Cir. 2013)(unpublished) ("first degree robbery under Connecticut law falls squarely within the first prong of the definition of violent felony"). **2)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See infra* fn. 11.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Robbery in the 2nd Degree [Class C Felony]	53a-135	"Theft" AF and COV AF if sentence of 1 yr. or more is imposed.	CIMT. *See Matter of Martin*, 18 I. & N. Dec. 226, 226 (BIA 1982).	No.	**DefAttys: 1)** If first-time offense, consider AR (must show good cause). **2)** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF and COV AF. **Imm Pract**: Although there is precedent to say that CT robbery is a COV, recent case law allows for the argument that it is not. *See Shabazz v. U.S.*, 3:16-CV-1083 (SRU), 2017 WL 27394, at *15 (D. Conn. Jan. 3, 2017) (finding that, as instructed by *Johnson v. U.S.*, 135 S.Ct. 2551 (2015), CT 1st and 2nd degree robbery does not necessarily require use of force). *But see Gomez v. Ashcroft*, 293 F. Supp. 2d 162 (D. Conn. 2003) (conviction under 3rd degree robbery is COV AF); *U.S. v. Wiggan*, 530 Fed. Appx. 51, 57 (2d Cir. 2013)(unpublished) ("first degree robbery under Connecticut law falls squarely within the first prong of the definition of violent felony.")
Robbery in the 3rd Degree [Class D Felony]	53a-136	"Theft" AF and COV AF if sentence of 1 yr. or more is imposed.	CIMT. *See Matter of Martin*, 18 I. & N. Dec. 226, 226 (BIA 1982).	No.	**DefAttys: 1)** If first-time offense, consider AR. **2)** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF. **Imm Pract**: Although there is precedent to say that CT robbery is a COV, recent case law allows for the argument that it is not. *See Shabazz v. U.S.*, 3:16-CV-1083 (SRU), 2017 WL 27394, at *15 (D. Conn. Jan. 3, 2017) (finding that, as instructed by *Johnson v. U.S.*, 135 S.Ct. 2551 (2015), CT 1st and 2nd degree robbery does not necessarily require use of force). *But see Gomez v. Ashcroft*, 293 F. Supp. 2d 162 (D. Conn. 2003) (conviction under 3rd degree robbery is COV AF); *U.S. v. Wiggan*, 530 Fed. Appx. 51, 57 (2d Cir. 2013)(unpublished) ("first degree robbery under Connecticut law falls squarely within the first prong of the definition of violent felony").

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
FORGERY OFFENSES					
Forgery in the 1st Degree [Class C Felony]	53a-138	"Forgery" AF if sentence of 1 yr. or more is imposed. *See Richards v. Ashcroft*, 400 F.3d 125 (2d Cir. 2005) (Conviction under §53a-139 is "forgery" AF). "Fraud AF" if ROC establishes loss to victim exceeds $10,000, especially if ROC shows element of intent to defraud or deceive (as opposed to intent to injure). *See Nijhawan v. Holder*, 129 S. Ct. 2294 (U.S. 2009) (finding that conspiring to commit mail fraud exceeding $10,000 is AF).	CIMT. *See, e.g.*, *United States ex rel. Jelic v. Dist. Director of Immigration and Naturalization,* 106 F.2d 14 (2d Cir. 1939).	No.	**DefAttys: 1)** To avoid "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less. **2)** If ROC or other evidence will establish a loss in excess of $10,000, counsel can seek an alternate plea to larceny with sentence of 364 days or less. **3)** In addition, establishing conviction with "intent to injure" (as opposed to intent to defraud or deceive) may minimize risk that conviction will be considered "fraud" AF. *See Valansi v. Ashcroft*, 278 F.3d 203 (3d Cir. 2002); **4)** Keep sentence imposed to 364 days or less to avoid possibility of "forgery" AF
Forgery in the 2nd Degree [Class D Felony]	53a-139	"Forgery" AF if sentence of 1 yr. or more is imposed. *Richards v. Ashcroft*, 400 F.3d 125, 128-130 (2d Cir. 2005). *See also In re Aldabesheh*, 22 I. & N. Dec. 983, (B.I.A. 1999) (NY forgery in the second degree with a one-year sentence imposed constitutes an AF). "Fraud" AF if ROC establishes loss to victim exceeds $10,000, especially if ROC shows element of intent to defraud or deceive (as opposed to injure). *See Nijhawan v. Holder*, 129 S. Ct. 2294 (U.S. 2009) (finding that conspiring to commit mail fraud exceeding $10,000 is AF).	CIMT. *See*, *e.g.*, *United States ex rel. Jelic v. Dist. Director of Immigration and Naturalization,* 106 F.2d 14 (2d Cir. 1939).	No.	**DefAttys: 1)** See note under Forgery in 1st Degree/ **2)** If first-time offense, consider AR. **3)** To avoid "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Forgery in the 3rd Degree [Class B Misdem.]	53a-140	Maybe "fraud or deceit" AF if ROC establishes loss to victim exceeds $10,000, especially if ROC shows element of intent to defraud or deceive (as opposed to injure). *See Nijhawan v. Holder*, 129 S. Ct. 2294 (U.S. 2009) (finding that conspiring to commit mail fraud exceeding $10,000 is AF).	CIMT. *See, e.g., United States ex rel. Jelic v. Dist. Director of Immigration and Naturalization,* 106 F.2d 14 (2d Cir. 1939).	No.	**DefAttys: 1)** See note under Forgery in 1st Degree; **2)** If first-time offense, consider AR. **3)** To avoid "fraud" and "attempt" AF, allocute to loss and intended loss to victim of $10,000 or less. **ImmPract**: Potentially a POE.
ROBBERY OFFENSES					
Robbery in the 1st Degree [Class B Felony]	53a-134	"Theft" AF and COV AF if sentence of 1 yr. or more is imposed.	CIMT. *See Matter of Martin*, 18 I. & N. Dec. 226, 226 (BIA 1982).	FO – Assume conviction under subsection (a)(4) would be a FO if ROC establishes a firearm covered under federal law. *See infra* fn. 11.	**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of "theft" and COV AF. Avoid identifying nature of weapon used in the ROC. **Imm Pract**: **1)** Although there is precedent to say that CT robbery is a COV, recent case law allows for the argument that it is not. *See Shabazz v. U.S.*, 3:16-CV-1083 (SRU), 2017 WL 27394, at *15 (D. Conn. Jan. 3, 2017) (finding that, as instructed by *Johnson v. U.S.*, 135 S.Ct. 2551 (2015), CT 1st and 2nd degree robbery does not necessarily require use of force). *But see Gomez v. Ashcroft*, 293 F. Supp. 2d 162 (D. Conn. 2003) (conviction under 3rd degree robbery is COV AF); *U.S. v. Wiggan*, 530 Fed. Appx. 51, 57 (2d Cir. 2013)(unpublished) ("first degree robbery under Connecticut law falls squarely within the first prong of the definition of violent felony"). **2)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See infra* fn. 11.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
ACCESSORY LIABILITY AND INCHOATE OFFENSES					
Accessory (Soliciting, Requesting, Commanding, Importuning or Aiding)	53a-8(a)	Solicitation: AF if underlying offense is AF. Aiding: AF if underlying offense is AF.	CIMT if underlying offense is CIMT.	Solicitation – CSO or FO if underlying offense is CSO or FO. Aiding – CSO or FO if underlying offense is CSO or FO. CODV or CA – Might be CODV or CA if underlying offense is CODV or CA.	**DefAttys:** If underlying offense involves fraud, deceit, larceny or theft and monetary loss to a victim, allocute to actual *and* intended loss under $10,000 to avoid fraud and attempt AF. **ImmPract**: **1)** If removability ground does not reference solicitation, argue not encompassed by such ground. *See Coronado-Durazo v. INS*, 123 F.3d 1322 (9th Cir. 1997) (solicitation to sell narcotics was not CSO); *but see Mizrahi v. Gonzales*, 492 F.3d 156 (2d Cir. 2007) (declining to follow Ninth Circuit approach and holding that NY conviction for solicitation of a drug sale rendered noncitizen admissible despite lack of reference to solicitation offenses in 8 U.S.C. § 1182(a)(2)(A)(i)(II)). **2)** If underlying crime is potentially a CODV, CA, crime of stalking or violation of a protective order, argue INA § 237(a)(2)(E)(i) & (ii) does not encompass inchoate offenses unlike other grounds of removability.

Offense	**CT Gen. Stat. Sec.**	**(Remember: imposed "sentence" includes a suspended sentence!)** **Aggravated Felony (AF)?**	**Crime Involving Moral Turpitude (CIMT)?**	**Other grounds:** **CSO – Controlled Substances** **CA – Crime of Child Abuse** **CODV – Crime of Dom. Violence** **FO – Firearm Offense** **Pros.- Prostitution**	**Strategies/ Comments:** **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Conspiracy	53a-48	"Attempt or conspiracy" AF if underlying offense is an AF. *See* 8 U.S.C. § 1101(a)(43)(U).	CIMT if convicted of a conspiracy to commit a CIMT.	CSO or FO – CSO or FO if underlying offense is a CSO or FO. CODV or CA – Might be CODV or CA if underlying offense is CODV or CA.	**DefAttys: 1)** If pleading to conspiracy, consider pleading to an underlying offense that encompasses negligent or reckless behavior, as such underlying offense would be legally incoherent and might not support AF or CIMT removal charges. *See Gill v. INS*, 420 F.3d 82 (2d Cir. 2005) (NY attempted reckless assault plea not a CIMT); *Dale v. Holder*, 610 F.3d 294 (5th Cir. 2010) (BIA erred in finding NY plea to attempted assault a COV AF where plea could have been to attempted reckless or strict liability assault). **2)** If underlying offense involves fraud, deceit, larceny or theft and monetary loss to a victim, allocute to actual *and* intended loss under $10,000 to avoid fraud and attempt AF. **ImmPract: 1)** Challenge CIMT or AF charge where the underlying offense encompasses negligence, recklessness, or strict liability since such an offense would be incoherent under CT law. *See State v. Beccia*, 199 Conn. 1 (1986) (conspiracy to commit reckless arson not a cognizable crime). **2)** If underlying crime is potentially a CODV, CA, crime of stalking or violation of a protective order, argue INA § 237(a)(2)(E)(i) & (ii) does not encompass inchoate offenses unlike other grounds of removability.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Attempt	53a-49	"Attempt or conspiracy" AF if underlying offense is an AF. *See* 8 U.S.C. § 1101(a)(43)(U).	CIMT if convicted of an attempt to commit a CIMT.	CSO or FO – CSO or FO if underlying offense is a CSO or FO. CODV or CA – Might be CODV or CA if underlying offense is CODV or CA .	**DefAttys: 1)** If pleading to conspiracy, consider pleading to an underlying offense that encompasses negligent or reckless behavior, as such offense would be legally incoherent and might not support AF or CIMT removal charges. *See Gill v. INS*, 420 F.3d 82 (2d Cir. 2005) (NY attempted reckless assault plea not a CIMT); *Dale v. Holder*, 610 F.3d 294 (5th Cir. 2010) (BIA erred in finding NY plea to attempted assault a COV AF where plea could have been to attempted reckless or strict liability assault). **2)** If underlying offense involves fraud, deceit, larceny or theft and monetary loss to a victim, allocute to actual *and* intended loss under $10,000. **ImmPract: 1)** Challenge CIMT or AF designation where the underlying offense encompasses negligence, recklessness, or strict liability since such an offense would be incoherent under CT law. *See State v. Beccia*, 199 Conn. 1 (1986). **2)** If underlying crime is potentially a CODV, CA, crime of stalking or violation of a protective order, argue INA § 237(a)(2)(E)(i) & (ii) does not encompass inchoate offenses unlike other grounds of removability.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
CONTROLLED SUBSTANCES OFFENSES[10]					
Illegally Obtaining Drugs, Forged Prescriptions [Up to 1 year]	21a-108	"Forgery" AF for conviction under subsections (1)(b), (1)(d), (4) or (5) if sentence of 1 yr. or more is imposed. "Fraud" AF for conviction under subsections (1), (3), (4) or (5) if ROC establishes drugs involved are worth more than $10,000.	Maybe CIMT for conviction under subsections (1), (3), (4) or (5).	Not CSO.	**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of AF. **2)** Allocute to specific sub-section if allocution will prevent AF and/or CIMT classifications. **3)** Keep ROC vague as to specific controlled substance and its value. **4)** Make *Alford* plea to avoid CSO determination. **ImmPract:** Challenge CSO charge, arguing that substances covered by statute of conviction do not meet the definition of 21 U.S.C. § 802 "controlled substance."
Failure to Keep Narcotic Drug in Original Container [Up to 2 or 10 years]	21a-257	Not AF.	Not CIMT.	CSO - Would be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802. *See* infra fn. 10.	**DefAttys: 1)** Keep ROC vague as to specific controlled substance. **2)** Make *Alford* plea to avoid CSO determination. **ImmPract: 1)** Challenge designation as a "drug trafficking" AF because offense is not punishable under federal Controlled Substances Act. **2)** Challenge CSO charge, argue statute overbroad due to drug schedule mismatch. *See* infra fn. 10.

[10] The definition of "controlled substances" in Connecticut includes least one substance that is not regulated by the federal Controlled Substances Act (CSA), chorionic gonadotropin. *See* Regs. Conn. St. Agencies § 21a-243-9(g) (2017), which has been regulated as a "controlled substance" since 2003. For this reason, CT convictions regulating a "controlled substance" on or after 2003 is not a categorical match to the federal definition of controlled substance offense. In addition, until September 17, 2013, Connecticut also regulated two substances not regulated by the CSA, thenylfentanyl and benzylfentanyl. *See* Regs. Conn. St. Agencies 21a-243-8 (2012), that also are "narcotics" under Connecticut law. Where applicable, immigration practitioners should contest charges of removability based on drug trafficking or controlled substance offense allegations based on the lack of categorical match. *See United States v. Savage,* 542 F.3d 959 (2d Cir. 2008) (CT drug offence is not categorically controlled substance offence under federal sentencing guidelines, and *Alford* plea precludes finding a specific factual basis).

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Possession or Delivery of Drug Paraphernalia [Class A or C Misdem.]	21a-267	Not "drug trafficking" AF for conviction under subsection (a). "Drug trafficking" AF for conviction under subsections (b) or (d). "Offer[ing] for sale drug paraphernalia" (as opposed to simple possession) is a federal felony, 21 U.S.C. § 863(a), so if there is a commercial aspect involved in the "deliver[y]" of paraphernalia under C.G.S.A. § 21a-267(b), then the crime might be considered "trafficking," and thus an AF. *See Lopez,* 127 S. Ct. at 630 ("ordinarily 'trafficking' means some sort of commercial dealing").	CIMT.	CSO - Would be considered a CSO if ROC establishes a controlled substance as defined in 21 U.S.C. § 802. *See Luu-Le v. INS*, 224 F.3d 911 (9th Cir. 2000) (possession of drug paraphernalia is CSO).	**DefAttys: 1)** If first-time offense, strongly consider DEP or CSLP (but avoid guilty plea). **2)** Allocute to no remuneration or commercial aspect to avoid AF. **3)** Keep ROC vague as to specific controlled substance paraphernalia meant for to avoid CSO and AF. **4)** Plead to subsection (a) or keep ROC vague as to conduct. **5)** Consider *Alford* plea. **ImmPract: 1)** Challenge charge as "drug trafficking" AF, arguing this offense is not punishable under federal CSA because no commercial element and not divisible. **2)** Challenge both "drug trafficking" AF charge and "CSO" charge because statute is overbroad due to drug schedule mismatch. *See supra* fn. 10.
Illegal Manufacture, Distribution, Sale, Possession w/ Intent to Distribute, etc. – Hallucinogenic or Narcotic [First Offense = up to 15 years]	21a-277(a)	"Drug trafficking" AF if ROC establishes a controlled substance as defined in 21 U.S.C. § 802 and conduct that constitutes trafficking. *See Savage v. United States*, 542 F.3d 959 (2d Cir. 2008) (holding that "sale" in Connecticut statutes includes a mere offer to sell).	CIMT. *See, e.g., Atl. Richfield Co. v. Guerami*, 820 F.2d 280, 282 (9th Cir.1987) (noting that possession of heroin for sale is a "crime of moral turpitude"); *In re Khourn*, 21 I & N. Dec. 1041 (BIA 1997) (distribution of cocaine constitutes a CIMT).	CSO – Would be considered a CSO if ROC establishes a controlled substance as defined in 21 U.S.C. § 802. *See supra* fn. 10.	**DefAttys: 1)** If first-time offense, strongly consider AR or CADAC. **2)** Leave ROC vague as to "conduct" and specific controlled substance. **3)** Make *Alford* plea. **ImmPract: 1)** Challenge charge as "drug trafficking" AF, arguing statute of conviction broader than federal generic offense and indivisible. **2)** Challenge both "drug trafficking" AF charge and "CSO" charge because statutes is overbroad due to drug schedule mismatch. *See supra* fn. 10.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Illegal Manufacture, Distribution, Sale, Possession w/ Intent to Distribute, etc. – NOT a Hallucinogenic or Narcotic [First Offense = up to 7 years]	21a-277(b)	Not categorically a "drug trafficking" AF because statute extends to possession with intent to distribute a small amount of marijuana for no remuneration. *See Moncrieffe v. Holder*, 133 S. Ct. 1678, (2013). Other than this exception, assume a "drug trafficking" AF. *See* note for 21a-277(a).	CIMT if "drug trafficking." See note for 21a-277(a).	CSO - Would be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802, other than 30g or less of marijuana. *See supra* fn. 10.	**DefAttys: 1)** If first-time offense, strongly consider AR or CADAC. **2)** Allocute to a small quantity of marijuana with no remuneration if possible. **3)** Keep ROC vague as to "conduct" and specific controlled substance. **4)** Make *Alford* plea. **ImmPract: 1)** If charged as "drug trafficking" AF, argue statute of conviction broader than federal generic offense and indivisible. **2)** Challenge both "drug trafficking" AF charge and "CSO" charge because statutes is overbroad due to drug schedule mismatch. *See supra* fn. 10.
Possession of Drug Paraphernalia in Drug Factory [First Offense = up to 2 y	21a-277(c)	Maybe not "drug trafficking" AF.	CIMT.	CSO - Would probably be considered a CSO if ROC establishes a controlled substance as defined in 21 U.S.C. § 802. *See supra* fn. 10. *See Luu-Le v. INS*, 224 F.3d 911 (9th Cir. 2000) (possession of drug paraphernalia is CSO).	**DefAttys: 1)** If first-time offense, strongly consider AR or CADAC. **2)** Keep ROC vague as to conduct and specific controlled substance. **3)** Make *Alford* plea. **ImmPract: 1)** If charged as "drug trafficking" AF, challenge whether this offense is punishable under federal CSA. **2)** Challenge CSO charge because statute is overbroad due to drug schedule mismatch. *See supra* fn. 10.
Illegal Manufacture, Distribution, Sale, Possession w/ Intent to Distribute, etc. – Certain Narcotics, Hallucinogenics (by non-dependent person) [5 years min. to life imprisonment max.]	21a-278(a)	"Drug trafficking" AF if ROC establishes conduct that constitutes trafficking.	CIMT. *See* note for 21a-277(a).	CSO – Yes.	**DefAttys: 1)** If first-time offense, strongly consider AR or CADAC. **2)** Leave ROC vague as to "conduct." 3) Make *Alford* plea. **ImmPract: 1)** If charged as "drug trafficking" AF, argue statute of conviction broader than federal generic offense and indivisible.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Illegal Manufacture, Distribution, Sale, Possession w/ Intent to Distribute, etc. – Specified Substances (by non-dependent person) [First Offense = 5 yrs. min to 20 yrs. max.]	21a-278(b)	"Drug trafficking" AF if ROC establishes a controlled substance as defined in 21 U.S.C. § 802 and conduct that constitutes trafficking.	Yes. See note for 21a-277(a).	CSO – Would be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802. *See supra* fn. 10.	**DefAttys: 1)** If first-time offense, strongly consider AR or CADAC. **2)** Leave ROC vague as to "conduct" and specific controlled substance. **3)** Make *Alford* plea. **ImmPract: 1)** Challenge charge as "drug trafficking" AF, arguing statute of conviction broader than federal generic offense and indivisible. **2)** Challenge both "drug trafficking" AF charge and "CSO" charge because statutes is overbroad due to drug schedule mismatch. *See supra* fn. 10.
Illegal Manufacture, Sale or Distribution to Minor by Non-drug Dependent Person [2 years]	21a-278a(a)	Maybe. Not categorically a "drug trafficking" AF because statute extends to possession with intent to giving a small amount of marijuana. *See Moncrieffe v. Holder*, 133 S. Ct. 1678, (2013) Other than this exception, assume a "drug trafficking" AF. See note for 21a-277(a).	CIMT. See note for 21a-277(a).	CSO – Would be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802, other than 30g or less of marijuana. *See supra* fn. 10.	**DefAttys: 1)** If first-time offense, strongly consider AR. **2)** Allocute to a small quantity of marijuana with no remuneration if possible. **3)** Leave ROC vague as to "conduct" and specific controlled substance. **4)** Make *Alford* plea. **ImmPract: 1)** Challenge charge as "drug trafficking" AF, arguing statute of conviction broader than federal generic offense and indivisible. **2)** Challenge both "drug trafficking" AF charge and "CSO" charge because statutes is overbroad due to drug schedule mismatch and indivisible. *See supra* fn. 10.
Illegal Manufacture, Sale or Distribution in or near School, Project, Day Care [3 years[	21a-278a(b)	Maybe. Not categorically a "drug trafficking" AF because statute extends to possession with intent to giving a small amount of marijuana. *See Moncrieffe v. Holder*, 133 S. Ct. 1678, (2013). Other than this exception, likely a "drug trafficking" AF.	CIMT. See note for 21a-277(a).	CSO – Would be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802, other than 30g or less of marijuana. *See supra* fn. 10.	**DefAttys: 1)** If first-time offense, strongly consider AR. **2)** Allocute to a small quantity of marijuana with no remuneration if possible. **3)** Keep ROC clean as to conduct and specific controlled substance. **4)** Make *Alford* plea. **ImmPract: 1)** Challenge charge as "drug trafficking" AF, arguing statute of conviction broader than federal generic offense and indivisible. **2)** Challenge both "drug trafficking" AF charge and "CSO" charge because statutes is overbroad due to drug schedule mismatch and indivisible. *See supra* fn. 10.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Illegal Possession – Narcotic Substance [First Offense = up to 7 yrs.]	21a-279	Maybe. Not a "drug trafficking" AF. *See Moncrieffe v. Holder*, 133 S. Ct. 1678, (2013). A recidivist offense may be a "drug trafficking" AF, but under *Carachuri-Rosendo v. Holder,* 130 S. Ct 2577 (2010) a person convicted of a second or subsequent simple possession of a controlled substance has not been convicted of an AF, at least where the ROC does not establish the fact of prior conviction.	Not CIMT. *See Matter of Abreu-Semino*, 12 I. & N. Dec. 775, 1968 WL 14106 (BIA 1968) (simple possession of a controlled substance does not involve moral turpitude).	CSO – Would be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802. *See supra* fn. 10.	**DefAttys: 1)** If first-time offense, strongly consider DEP or CSLP (but avoid guilty plea). **2)** Avoid reference in ROC as to specific controlled substance involved. **3)** Keep ROC clean of a mention of a prior drug offense conviction (per *Carachuri-Rosendo*). **Imm Pract: 1)** Challenge "drug trafficking" AF charge even if ROC does establish prior conviction. **2)** Challenge both "drug trafficking" AF charge and "CSO" charge because statutes is overbroad due to drug schedule mismatch and indivisible. *See supra* fn. 10.
OFFENSES RELATING TO FIREARMS[11]					
Unlawful Discharge of a Firearm [up to 3 months]	53-203	Not AF.	CIMT if ROC establishes intentional (as opposed to negligent or careless) discharge. *See Recio-Prado v. Gonzalez*, 456 F.3d 819 (8th Cir. 2006).	FO – Assume FO if ROC establishes a firearm covered under federal law. *See supra* fn. 11.	**DefAttys**: **1)** Allocute to negligent or careless discharge to avoid CIMT. **2)** Keep ROC clean of specific weapon involved to avoid FO determination. **3)** Consider an *Alford* plea. **ImmPract: 1)** Challenge CIMT charge arguing statute of conviction overbroad and indivisible as to mens rea. **2)** Challenge FO charge as overbroad and indivisible after *Mathis. See supra* fn. 11.
Carrying of Pistol or Revolver w/o Permit [1-5 yrs. sentence]	29-35	Not AF.	Not CIMT.	FO – Assume FO if ROC establishes a firearm covered under federal law. *See supra* fn. 11.	**DefAttys: 1)** Keep ROC clean of specific weapon involved to avoid FO determination. **2)** Consider an *Alford* plea. **ImmPract:** Challenge FO charge as overbroad and indivisible after *Mathis. See supra* fn. 11.

[11] Connecticut's definition of "firearm" appears to encompass antique firearms, which are not covered by the federal definition of the term. *Compare* Conn. Gen. Stat. §53a-3(19) *with* 18 U.S.C. § 921(a)(3). *See also United States v. Thorpe*, 2016 WL 676395 (E.D.N.Y. 2016) (CT definition of "firearm" broader than federal definition and ROC did not establish a FO). Defense attorneys should therefore strive to leave the record of conviction "clean" of any references to the particular type of "firearm" used in an offense listed as a possible FO in the chart. Immigration practitioners are advised to challenge any designation of a Connecticut "firearm" offense as a "firearm offense" for immigration purposes based on the different definitions in state and federal law. The BIA rejected this argument in *In Re Mendez Orellana,* 25 I & N. Dec. 254 (BIA 2010), however, the Second Circuit has yet to rule on this issue and *Mendez-Orellana* is arguably inconsistent with the Supreme Court's reasoning in *Moncrieffe* and *Descamps*. Furthermore, immigration practitioners are advised to challenge the divisibility of any "firearm" offense in light of the Supreme Court's holding in *Mathis*.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Carrying a Dangerous Weapon [up to 3 yrs. Sentence]	53-206	Not AF.	Not CIMT.	FO – Assume FO if ROC establishes a firearm covered under federal law. *See supra* fn. 11.	**DefAttys: 1)** Keep ROC clean of specific weapon involved to avoid FO determination. **2)** Consider an *Alford* plea. **ImmPract:** Challenge FO charge as overbroad and indivisible after *Mathis*. *See supra* fn. 11.
Stealing a Firearm [Class C Felony]	53a-212	"Firearm" AF if ROC establishes a firearm covered under federal law. *See* 18 U.S.C. 922(j). "Theft" AF if sentence of 1 yr. or more is imposed and ROC establishes that firearm was obtained "without consent." *See Lopez-Valencia v. Lynch*, 798 F.3d 863 (9th Cir. 2015).	Maybe CIMT.	FO – Assume FO if ROC establishes a firearm covered under federal law. *See supra* fn. 11.	**DefAttys: 1)** Keep ROC clean of specific weapon involved to avoid FO determination. **2)** Keep ROC clean of manner of obtaining firearm in order to avoid theft AF determination. **3)** Keep ROC clean of intent in order to avoid CIMT determination. **4)** Keep sentence imposed to 364 days or less to avoid possible "theft" AF. **5)** Consider an *Alford* plea. **ImmPract: 1)** Challenge classification as 'theft' AF arguing that statute overbroad as to manner of obtaining firearm and argue that statue not divisible. **2)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See supra* fn. 11. **3)** Challenge CIMT charge. *See Wala v. Mukasey,* 511 F.3d 102 (2d Cir. 2007) (3rd degree burglary is not a CIMT due to underlying larceny statute's lack of distinction between temporary and permanent taking).
Possession of a Sawed-off Shotgun or Silencer [Class D Felony]	53a-211	"Firearm" AF. *See* 8 U.S.C. § 1101(a)(43)(E)(iii); 26 U.S.C. § 5861(d). COV AF if sentence of 1 yr. or more is imposed. *See U.S. v. Dillard*, 214 F.3d 88 (2d Cir. 2000) (felon in possession was a crime of violence); but see *Henry v. Ice*, 493 F.3d 303 (3d Cir. 2007) (possession alone does not permit the inference that there is a substantial risk of the use of force).	Not CIMT. *See Matter of Granados*, 16 I. & N. Dec. 726, 1979 WL 44438 (B.I.A. 1979) (possession of sawed-off shotgun not CIMT).	FO – Assume FO.	**DefAttys: 1)** Keep ROC clean of specific weapon involved to preserve argument on FO and FO AF determination. **2)** Consider an *Alford* plea. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract:** Challenge COV AF charge, arguing that possession-only offenses cannot satisfy COV definition under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See supra* fn. 1.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Possession of a Weapon on School Grounds [Class D Felony]	53a-217b	Maybe COV AF if sentence of 1 yr. or more is imposed. See note under 53a-211.	Might be considered CIMT due to 'protected status' (children). *See Nunez v. Holder*, 594 F.3d 1124 (9th Cir. 2010) (where protected class of victim is involved both the BIA and 9th Cir. have been flexible about the 'evil intent' requirement of CIMT)	FO – Assume FO if ROC establishes a firearm covered under federal law. *See supra* fn. 11. CA – Conviction could be considered a crime of "child abuse" if the record of conviction shows presence of a victim who was a child.	**DefAttys: 1)** Keep ROC clean of specific weapon involved to avoid FO determination. **2)** Consider an *Alford* plea. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge COV AF charge, arguing that possession-only offenses cannot satisfy COV definition under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See supra* fn. 1. **2)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See supra* fn. 11.
Criminal Possession of Firearm or Electronic Defense Weapon [Class C Felony]	53a-217	"Firearm" AF if convicted under subsections (a)(3), (a)(4), (5), or (7) and ROC establishes a firearm covered under federal law. *See supra* fn. 11. "Firearm" AF if convicted under subsection (a)(1) if ROC establishes prior is a felony or controlled substance abuser and a firearm under federal law; otherwise, if sentence of 1 yr. or more is imposed, might be considered a COV AF. See note under 53a-211.	CIMT if convicted under subsections (a)(4) or (6).	FO – Assume FO if ROC establishes a firearm covered under federal law. *See supra* fn. 11.	**DefAttys: 1)** Allocute to specific sub-section if allocution will prevent AF and CIMT classifications. **2)** Keep ROC clean as to specific firearm involved to avoid FO determination. **3)** Consider an *Alford* plea. **4)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge firearm AF and FO charge as overbroad and argue indivisible after *Mathis*. *See supra* fn. 11. **2)** Challenge COV charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See supra* fn. 1.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Criminal Possession of a Pistol or Revolver [Class C Felony]	53a-217c	"Firearm" AF for conviction under subsections (a), (3), (4), (5), or (7) if ROC establishes a firearm under federal law. *See supra* fn. 11. "Firearm" AF for conviction under subsection (a)(1) if ROC establishes prior is a felony or controlled substance abuser; otherwise, if sentence of 1 yr. or more is imposed, might be considered a COV AF. See note for 53a-211 above.	CIMT if convicted under subsections (a)(5) or (6).	FO – Assume FO if ROC establishes a firearm covered under federal law. *See supra* fn. 11.	**DefAttys: 1)** Allocute to specific sub-section if allocution will prevent AF and CIMT classifications. **2)** Keep ROC clean of specific weapon involved to avoid FO determination. **3)** Consider an *Alford* plea. **4)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Challenge firearm AF and FO charges as overbroad and argue indivisible after *Mathis*. *See supra* fn. 11. **2)** Challenge charge as COV under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See supra* fn. 1.
Gun Trafficking [Class B or C Felony]	53-202aa	"Firearm trafficking" AF.	Maybe CIMT. *Cf. Matter of Khourn*, 21 I&N Dec. 1041 (BIA 1997) (finding distribution of a controlled substance involves moral turpitude).	FO – Yes (antique firearms are not criminalized in this statute)	**DefAttys: 1)** Try to reach plea resolution to a statute that criminalizes all firearms in CT, including antique firearms. **2**) Keep ROC clean of any commercial dealing of firearms to assist with AF challenge **ImmPract:** Challenge trafficking "AF" as overbroad because does not require commercial dealing and indivisible under *Mathis*. *See Kuhali v. Reno,* 266 F.3d 93 (2d Cir. 2001) ("trafficking" requires commercial or business nature); *Lopez v. Gonzalez*, 549 U.S. 47 (2005) ("trafficking" usually requires commercial dealing).
False Information or Statement Connected with Purchase of a Pistol or Revolver [Class C Felony]	29-34(a)	No.	CIMT. *See Matter of Acosta*, 14 I&N Dec. 338 (1973) (conviction of making a false statement in acquisition of a firearm is a CIMT; fraud and materiality are essential elements of the crime).	FO – Would probably not be considered a FO.	**ImmPract:** Challenge designation as FO since unlawful possession or use is not an element.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Aiding Person Under 21 Years to Obtain a Pistol or Revolver [Class C Felony]	29-34(b)	"Firearm trafficking" AF if ROC demonstrates commercial dealing and a firearm under federal law. *See Kuhali v. Reno*, 266 F.3d 93 (2d Cir. 2001) ("trafficking" requires commercial or business nature).	Maybe CIMT.	FO - Assume FO if ROC establishes a firearm covered under federal law. *See supra* fn. 11.	**DefAttys: 1)** Allocute to "lending" or "giving," or keep ROC clean of remuneration or commercial dealing. **2)** Keep ROC clean of specific weapon. **3)** Consider an *Alford* plea. **ImmPract: 1)** Challenge "trafficking" AF charge as overbroad and argue indivisible under *Mathis*. *See Kuhali v. Reno,* 266 F.3d 93 (2d Cir. 2001) ("trafficking" requires commercial or business nature); *Lopez v. Gonzalez*, 549 U.S. 47 (2005) ("trafficking" usually requires commercial dealing). **2)** Challenge firearm AF and FO charges as overbroad and indivisible after *Mathis*. *See supra* fn. 11.
Removing or Defacing Maker's Mark on Any Firearm [Class C Felony]	29-36	"Firearm" AF if ROC establishes a firearm under federal law. 8 U.S.C. § 1101(a)(43)(E)(iii); 26 U.S.C. 5861(g). *See supra* fn. 11.	Maybe CIMT.	FO - Assume FO if ROC establishes a firearm covered under federal law. *See supra* fn. 11.	**DefAttys: 1)** Keep ROC clean of specific weapon involved to avoid FO determination. **2)** Consider an *Alford* plea. **ImmPract: 1)** Challenge firearm AF and FO charges as overbroad and indivisible after *Mathis*. *See supra* fn. 11. **2)** Challenge COV AF charge under *Dimaya* and *Johnson*, which suggest that the residual clause is unconstitutionally vague. *See generally* supra fn. 1.
Purchasing a Firearm with Intent to Transfer or Soliciting Persons to Do So [Class B, C or D Felony]	29-37j	Maybe not firearm trafficking AF.	Maybe CIMT. *Cf. Matter of Khourn*, 21 I&N Dec. 1041 (BIA 1997) (finding distribution of a controlled substance involves moral turpitude).	FO – Assume FO if ROC establishes a firearm covered under federal law. *See supra* fn. 11.	**DefAttys: 1)** Keep ROC clean of specific weapon involved to avoid FO determination. **2)** Keep ROC clean of any commercial dealing. **3)** Consider an *Alford* plea. **ImmPract: 1)** Challenge "trafficking" AF charge as overbroad and argue indivisible under *Mathis*. *See Kuhali v. Reno,* 266 F.3d 93 (2d Cir. 2001) ("trafficking" requires commercial or business nature); *Lopez v. Gonzalez*, 549 U.S. 47 (2005) ("trafficking" usually requires commercial dealing). **2)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See supra* fn. 11.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Criminally Negligent Storage of a Firearm [Class D Felony]	53a-217a	Maybe not COV AF.	Not CIMT. Crimes that require only criminal negligence often do not constitute a CIMT.	FO – Assume FO if ROC establishes a firearm covered under federal law. *See supra* fn. 11.	**DefAttys:** Keep sentence imposed under 1 yr to avoid risk of COV AF. **ImmPract: 1)** Challenge charge as COV under *Dimaya* and *Leocal*. *See supra* fn. 1 for two major challenges to 16(b) COV AFs.. **2)** Challenge FO designation because negligent storage does not implicate knowing possession. **3)** Challenge FO charge as overbroad and indivisible after *Mathis*. *See supra* fn. 11.
MISCELLANEOUS OFFENSES					
Tampering with a Witness [Class C Felony]	53a-151	"Obstruction of justice" AF if sentence of 1 yr. or more is imposed. *Higgins v. Holder*, 677 F.3d 97 (2d Cir. 2012)	Maybe CIMT.		**DefAttys**: Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract:** Challenge CIMT charge because statute does not require intent to injure, actual injury to a person, a protected class of victims, nor fraud or intent to deceive. *See Escobar v. Lynch*, 846 F.3d 1019 (9th Cir. 2017) (finding CA witness tampering statute not a CIMT).
Intimidating a Witness [Class C Felony]	53a-151a	"Obstruction of justice" AF if sentence of 1 yr. or more is imposed. *See Lara-Duran v. Gonzalez*,198 F.App'x 621 (9th Cir. 2006). Maybe 'COV' AF.	Maybe CIMT.		**DefAttys**: Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract:** See note under 53a-151.
Tampering with or Fabricating Physical Evidence [Class D Felony]	53a-155	"Obstruction of justice" AF if sentence of 1 yr. or more is imposed. "Forgery" AF for conviction under subsection (a)(2).	Maybe CIMT for conviction under subsection (a)(1). Maybe CIMT for conviction under subsection (a)(2). *See, e.g. Villatoro v. Holder*, 760 F.3d 872 (8th Cir. 2014) (finding IA records tampering conviction a CIMT); *see also Matter of Jurado-Delgado*, 24 I&N Dec. 29 (BIA 2006).		**DefAttys**: Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Argue statute is not divisible. **2)** Challenge CIMT charge because statute does not categorically require intent to deceive or injure anyone.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Perjury [Class D Felony]	53a-156	"Obstruction of justice" AF if sentence of 1 yr. or more is imposed. *See U.S. v. Martinez*, 172 F. App'x 367 (2d Cir. 2006) (obstruction of justice was appropriate sentence increase for perjury)	Maybe CIMT. *See U.S. ex. Rel. Karpay v. Uhl* ,70 F.2d 792 (2d Cir. 1934); *see also Matter of Jurado-Delgado*, 24 I&N Dec. 29 (BIA 2006) ("impairing and obstructing a function of a department of government by defeating its efficiency or destroying the value of its lawful operations by deceit, graft, trickery, or dishonest means is a crime involving moral turpitude")		**DefAttys**: Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract:** Challenge CIMT charge because statute is broader than perjury at common law and extends to statements where no oral oath was required. *See Rivera v. Lynch*, 816 F.3d 1064 (9th Cir. 2016).
False Statement in 2nd Degree [Class A Misdem.]	53a-157b	"Fraud or deceit" AF if loss to victim exceeds $10,000.	Maybe CIMT.		**DefAttys**: Keep ROC clean of amount of loss to victim.
Hindering Prosecution in 1st Degree [Class C Felony]	53a-165aa	"Obstruction of justice" AF if sentence of 1 yr. or more is imposed.	CIMT.		**DefAttys: 1)** Try to avoid language in ROC that indicates obstruction of justice to avoid possibility of AF. **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract:** Argue that definition of "renders criminal assistance" is not divisible and extends to conduct beyond "obstruction of justice." *See In re Espinoza-Gonzalez*, 22 I. & N. Dec. 889 (BIA 1999) (discussing at length the definition of "obstruction of justice").
Hindering Prosecution in the 2nd Degree [Class C Felony]	53a-166	"Obstruction of justice" AF if sentence of 1 yr. or more is imposed and ROC shows element of obstruction of justice.	CIMT.		**DefAttys: 1)** Try to avoid language in ROC that indicates obstruction of justice to avoid possibility of AF. **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract**: *See* note under 53a-165aa above.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Hindering Prosecution in the 3rd Degree [Class D Felony]	53a-167	"Obstruction of justice" AF if sentence of 1 yr. or more is imposed and ROC shows element of obstruction of justice.	CIMT.		**DefAttys: 1)** Try to avoid language in ROC that indicates obstruction of justice to avoid possibility of AF. **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract:** See note under 53a-165aa above.
Interfering with an Officer [Class A Misdem.]	53a-167a	"Obstruction of justice" AF if sentence of 1 yr. or more is imposed.	Maybe not CIMT, though subsection (b) might be considered a CIMT.		**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of AF. **ImmPract**: **1)** Challenge CIMT charge. *Zaranska v. United States Dep't of Homeland Sec.*, 400 F. Supp. 2d 500 (E.D.N.Y. 2005) ("Intentionally interfering with a police officer's lawful duty is simply not an inherently immoral act"). **2)** Challenge charge as CIMT if conviction is under subsection (b) because the offense is a strict liability offense as to causation of death or serious physical injury. *See, e.g. Sotnikau v. Lynch*, 846 F.3d 731 (4th Cir, 2017) (finding VA involuntary manslaughter offense was not a CIMT because it encompasses negligence).

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Assault of a Public Safety or Emergency Medical Personnel [Class C Felony]	53a-167c	COV AF if sentence of 1 yr. or more is imposed. *See Canada v. Gonzales*, 448 F.3d 560, 568 (2d Cir. 2006) (conviction under § 53a-167c(a)(1) is COV AF).	Maybe CIMT. *See Matter of Danesh*, 19 I. & N. Dec. 669 (BIA 1988) (finding knowing and intentional assault of officer a CIMT).		**DefAttys: 1)** Consider an *Alford* plea in order to preserve argument that it is not COV AF. **2)** Plea to an attempted violation of the statute. May be a legally impossible crime as the statute is a strict liability offense as to injury. *See People v. Campbell*, 532 N.E.2d 86 (NY 1988) (finding NY attempted assault of officer a legal impossibility); *see also Gill v. INS*, 420 F.3d 82 (2d Cir. 2005) (finding that a guilty plea to a legally impossible offense is not a CIMT, and discussing why state courts might accept such pleas). **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** Argue statute is not divisible. **2)** Challenge CIMT charge because statute is a strict liability offense as to causation of injury and does not require an intent to injure or harm an officer. *See People v. Campbell*, 532 N.E.2d 86 (NY 1988) (finding similar NY assault of officer statute is a strict liability offense); *see also Zaranska v. United States Dep't of Homeland Sec.*, 400 F. Supp. 2d 500 (E.D.N.Y. 2005) (finding NY assault of officer offense was not a CIMT because requisite intent is only intent to interfere in officer's duties and not intent to injure officer). **3)** Challenge designation as COV AF under 18 U.S.C. § 16(b). *See Canada v. Gonzales*, 448 F.2d 560, 567 (2d Cir. 2006) (suggesting statute may be divisible and that offenses against some public safety personnel may not create the same risk of use of force as when committed against a police officer.). *See also supra* fn.1 for two challenges to § 16(b) COV AFs.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Escape in the 1st Degree [Class C Felony]	53a-169	COV AF if sentence of 1 yr. or more is imposed. *See Canada v. Gonzales*, 448 F.3d 560, 570 (2d Cir. 2006) (in dicta, stating that escape offense is COV AF).	Not CIMT. *See In Re J*--, 4 I. & N. Dec. 512, 513 (BIA 1951).		**DefAttys: 1)** Allocate to "failure to return" or make an *Alford* plea. **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract:** Challenge COV AF charge for convictions under subsections (a)(40, (5), and (7). *See Chambers v. United States*, 129 S. Ct. 687 (U.S. 2009) (finding that failure to report is not a violent felony).
Escape in the 2nd Degree [Class D Felony]	53a-170	COV AF if sentence of 1 yr. or more is imposed. See note under 53a-169.	See note under 53a-169.		See practitioner notes under 53a-169.
Escape from Custody [Class C Felony or A Misdem.]	53a-171	COV AF for conviction under subsection (a)(1) or (a)(2) if charged as felony and sentence of 1 yr. or more is imposed.	Not CIMT. *See United States ex rel. Manzella v. Zimmerman*, 71 F. Supp. 534 (D. Pa. 1947)		**DefAttys:** Keep sentence imposed to 364 days or less to avoid possible AF.
Failure to Appear in 1st Degree [Class D Felony]	53a-172	"Failure to appear" AF if charge on which defendant failed to appear is punishable by a sentence of 2 yrs. or more.	Maybe not CIMT.		**DefAttys: 1)** Avoid any reference in ROC that failure to appear was pursuant to court order. **2)** Plead down to 2d degree Failure to Appear to minimize immigration consequences. **ImmPract**: **1)** Challenge failure to appear. *See Barnaby v. Reno*, 142 F. Supp. 2d 277 (D. Conn. 2001) (conviction under §53a-172 NOT an AF). *See also Chambers v. United States*, 129 S. Ct. 687 (U.S. 2009) (finding that failure to report is not a violent felony). **2)** Challenge CIMT charge because statute does not require intent to injure, actual injury to a person, a protected class of victims, nor fraud or intent to deceive.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Failure to Appear in 2nd Degree [Class A Misdem.]	53a-173	Maybe not AF (avoid 1 yr. max. sentence to be safe).	Not CIMT.		**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of AF. **ImmPract**: Challenge CIMT charge because statute does not require intent to injure, actual injury to a person, a protected class of victims, nor fraud or intent to deceive.
Breach of the Peace in the 2nd Degree [Class B Misdem.]	53a-181	No.	Not CIMT. *See Chaunt v. U.S*, 364 U.S. 350 (1960) (general breach of peace not CIMT).		**DefAttys:** Consider as a plea down from Breach of Peace or Disorderly Conduct.
Creating a Public Disturbance [Infraction]	53a-181a	No.	Not CIMT.		**DefAttys:** Consider as a plea down from Breach of Peace or Disorderly Conduct.
Stalking in the 1st Degree [Class D Felony]	53a-181c	COV AF if sentence of 1 yr. or more is imposed. *Matter of Singh*, 25 I&N Dec. 670 (BIA 2012) (holding that stalking is COV under 18 U.S.C. § 16(b))*; But see Malta-Espinoza v. Gonzalez*, 478 F.3d 1080 (9th Cir. 2007) (California stalking statute is not COV).	Would probably be considered a CIMT. *See Matter of Ajami*, 22 I&N Dec. 949 (BIA 1999) (finding Michigan aggravated stalking offense a CIMT).	CODV – A conviction would probably trigger deportability as a "crime of stalking." *See Arriaga v. Mukasey*, 521 F.3d 219, 228 (2d Cir. 2008). Conviction under sub (2) might be deemed "violation of a protective order" under INA § 237(a)(2)(E). Conviction under sub (3) might be deemed a crime of child abuse under INA § 237(a)(2)(E).	**DefAttys: 1)** Consider AR or FVEP, if applicable. **2)** Stalking 2nd is safer plea, even if the full year sentence is imposed. **3)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract**: **1)** Argue statute is not divisible. **2)** Challenge COV AF charge under *Dimaya* and *Leocal*. *See supra* fn. 1 for challenges to § 16(b) COV AFs.

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Stalking in the 2nd Degree [Class A Misdem.]	53a-181d	COV AF if sentence of 1 yr. is imposed.	Maybe CIMT.	CODV – A conviction would probably trigger deportability as a "crime of stalking."	**DefAttys: 1)** Consider AR or FVEP, if applicable. **2)** Keep sentence to 364 days to avoid possible AF. **ImmPract: 1)** *Singh* held that stalking is a COV under § 16(b). Argue that threatening use of force is not an element here. Challenge COV AF charge under *Dimaya* and *Leocal*. *See supra* fn. 1 for challenges to § 16(b) COV AFs. **2)** Challenge CIMT charge because statute does not require intent to injure/harm or actual physical injury.
Stalking in the 3rd Degree [Class B Misdem.]	53a-181e	No.	Maybe CIMT.	CODV - A conviction would probably trigger deportability as a "crime of stalking."	**DefAttys:** Consider AR or FVEP, if applicable. **ImmPract**: Challenge CIMT charge because recklessness offenses are generally only CIMTs where the statute contains aggravating factors like serious physical injury, creation of risk of death or substantial physical harm, or requirement of use of deadly weapon. *See Matter of Sanudo*, 23 I&N Dec. 968 (BIA 2006); *Matter of Wu*, 27 I&N Dec. 8 (BIA 2017).
Disorderly Conduct [Class C Misdem.]	53a-182	No.	Maybe CIMT.		**ImmPract:** Potentially a POE.
Harassment in the 1st Degree [Class D Felony]	53a-182b	Maybe COV AF under § 16(b) if sentence of 1 yr. or more is imposed.	Maybe CIMT. *See Manzar v. Mukasey,* 266 F.App'x 656 (9th Cir. 2008)(unpublished) (felony harassment is CIMT); *Matter of Ajami*, 22 I&N Dec. 949 (BIA 1999).	CODV – If victim was current or former spouse or similarly situated individual, conviction would probably be considered a CODV. Conviction might also trigger deportability as "crime of stalking," though unlikely.	**DefAtty:** Keep sentence imposed to 364 days or less to avoid possible AF **ImmPract: 1)** Argue that threats to physically injure do not necessarily constitute the threatened use of physical force. *See supra* fn. 1 for two major challenges to 16(b) COV AFs. **2)** Argue not a crime of stalking because statute does not comport with common definition of "stalking" which requires a course of conduct beyond a single occasion. *See Arriaga v. Mukasey*, 521 F.3d 219 (2d Cir. 2008).

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Public Indecency [Class B Misdem.]	53a-186	Maybe "sexual abuse of a minor" AF if ROC establishes that victim was a minor.	Maybe CIMT. *See Matter of Medina*, 26 I&N Dec. 79 (BIA 2013) (finding CA indecent exposure offense to be a CIMT because of requirement of lewdness).		**DefAttys: 1)** If the offense involved a minor, keep out of ROC any reference to age of that other person to minimize risk of "sexual abuse of minor" AF. *See Singh v. Gonzales*, 233 Fed. Appx. 634 (9th Cir. 2007). **2)** Allocute to specific behavior since statute contains conduct likely to be classified as CIMT and behavior likely to NOT be classified as CIMT. **ImmPract: 1)** Argue statute not divisible. **2)** Challenge CIMT charge because statute encompasses de *minimus* touching in public. *See Cisneros-Guerrero v. Holder*, 774 F.3d 1056 (5th Cir. 2014) (finding TX public lewdness offense is not categorically a CIMT). **3)** Challenge any "sexual abuse of minor" AF charge because statute is not divisible. *See also Singh v. Ashcroft*, 383 F.3d 144 (3d Cir. 2004) (Delaware conviction held not "sex abuse of minor" where elements of offense did not require that victim be a minor).
Tampering with Private Communications: [Class A Misdem.]	53a-188	No.	Maybe CIMT. *See Matter of Cortes-Medina*, 26 I&N Dec. 79 (BIA 2013) (CIMTs generally contain two essential elements – a culpable mental state and reprehensible conduct).		**ImmPract:** Challenge CIMT charge because statute does not categorically require intent to deceive or defraud, nor intent to injure or actual injury.
Eavesdropping [Class D Felony]	53a-189	No.	Maybe CIMT.		**ImmPract:** Challenge CIMT charge because statute does not categorically require intent to deceive or defraud, nor intent to injure or actual injury. *See also Matter of Danesh,* 19 I. & N. Dec. 669 (BIA 1988) ("Moral turpitude […] refers general to conduct that shocks the public conscious as being inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between [persons or to] society in general.")

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CA – Crime of Child Abuse CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: **DefAttys:** Notes to Criminal Defense Attorneys **ImmPract:** Notes to Immigration Practitioners
Voyeurism [Class D Felony]	53a-189a	No.	Maybe CIMT.	CA – If the ROC establishes that victim was a minor, conviction could be considered a crime of "child abuse."	**DefAtty:** Keep ROC clean of identity or age of victim to avoid CA. **ImmPract: 1)** If a class C felony, argue statute is not divisible as to crime of child abuse. **2)** Argue not a CIMT because statutes does not require conduct that shocks the conscience. *See also Matter of Danesh*, 19 I. & N. Dec. 669 (BIA 1988) ("Moral turpitude […] refers general to conduct that shocks the public conscious as being inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between [persons or to] society in general.")
Disseminating Voyeuristic Material [Class D Felony]	53a-189b	No.	Maybe CIMT.		I**mmPract**: Challenge CIMT charge because statute does not require malice or sexual intent.
Bigamy [Class D Felony]	53a-190	No.	CIMT. *See*, *e.g.*, *Matter of E—*, 2 I. & N. Dec. 328 (BIA 1945) (finding NV bigamy offense to be a crime involving moral turpitude)		
Incest [Class D Felony]	53a-191	Not AF.	Maybe CIMT. *See, e.g.*, *Matter of Y—*, 3 I. & N. Dec. 544 (B.I.A. 1949)	CA – If the ROC establishes that the victim was a minor, conviction could be considered a crime of "child abuse."	**ImmPract:** Challenge CIMT charge. *See U. S. v. Francioso*, 164 F.2d 163 (2d Cir. 1947) (holding on particular facts of case that incest was not CIMT).
Coercion [Class A Misdem. or Class D Felony]	53a-192	Not AF.	Maybe not CIMT.		**ImmPract:** Challenge CIMT charge because statute does not involve criminal threat of harm or actual harm or injury. *See Latter-Singh v. Holder*, 668 F.3d 1156 (9th Cir. 2012) (finding CA offense of making threats with intent to terrorize is a CIMT).

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Trafficking in Persons [Class B Felony]	53a-192a	Trafficking AF.	CIMT.	CA – Conviction under subsection (2) would probably be considered a crime of child abuse.	**DefAttys: 1)** Avoid plea to specification and ask for an *Alford* plea. **2)** Keep ROC clean of identity or age of victim(s) to avoid CA. **ImmPract:** Challenge CA charge because statute is not divisible between (1) and (2).
Obscenity [Class B Misdem.]	53a-194	Not AF.	Not CIMT.		**ImmPract:** Challenge CIMT charge. *See Matter of D—*, 1 I. & N. Dec. 190 (BIA 1942) (mailing an obscene letter not a crime of moral turpitude). Statute does not require a lewd intent. *See Matter of Medina*, 26 I&N Dec. 79 (BIA 2013) (finding lewdness requirement critical to CIMT analysis).
Obscenity as to Minors [Class D Felony]	53a-196	Not AF.	CIMT.	CA. *See Matter of Velazquez-Herrera*, 24 I. & N. Dec. 503, 512 (BIA 2008) (defining crime of child abuse as, *inter* alia, any act that involves the use or exploitation of a child as an object of sexual gratification)	**DefAtty**: Plead to age-neutral obscenity statute to avoid possible CA.
Employing a Minor in an Obscene Performance [Class A Felony]	53a-196a	Maybe child pornography AF.	CIMT.	CA.	**DefAtty**: Plead to age-neutral obscenity statute to avoid possible CA.
Promoting a Minor in an Obscene Performance [Class B Felony]	53a-196b	Maybe child pornography AF.	CIMT.	CA.	**DefAttys: 1)** Consider *Alford* plea to keep ROC clean as to specific conduct constituting "promotion." Avoid "receives" or "distributes." **2)** Plead to age-neutral statute. **ImmPract:** Challenge AF charge because statue is not divisible under *Descamps* and definition of "promotion" is very broad**.**
Importing Child Pornography [Class B Felony]	53a-196c	Maybe child pornography AF.	CIMT.	CA. *See Matter of Olquin-Rufino*, 23 I&N Dec. 896, 897 (BIA 2006).	

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Possessing Child Pornography in the 1st Degree [Class B Felony]	53a-196d	Maybe child pornography AF.	CIMT. *See U.S. v. Santacruz*, 563 F.3d 894 (9th Cir. 2009) (possession of child pornography is CIMT); *Matter of Olquin-Rufino*, 23 I. & N. Dec. 896 (BIA 2006) (same).	CA.	
Possessing Child Pornography in the 2nd Degree [Class C Felony]	53a-196e	Maybe child pornography AF.	CIMT.	CA.	
Possessing Child Pornography in the 3rd Degree [Class D Felony]	53a-196f	Maybe child pornography AF.	CIMT.	CA.	
Commercial Sexual Exploitation of a Minor [Class C Felony]	53a-196i	Maybe child pornography AF.	Not CIMT.	CA.	**ImmPract: 1)** Challenge AF charge arguing this conduct is not covered by federal child pornography statutes. **2)** Challenge CIMT charge because the statute does not require a culpable mental state as to the age of the child. *But see Matter of Jimenez-Cedillo*, 27 I&N Dec. 1 (BIA 2017) (holding offense that does not require a culpable mental state as to the age of the victim may still be a CIMT if the victim is particularly young or is under 16 and the age differential is significant).
Violation of Conditions of Release in the 1st Degree [Class D Felony]	53a-222	Not AF. But see practitioner note.	Not CIMT.		**DefAttys**: Keep aggregate sentence (for underlying crime and violation of probation) to less than one year, as the time served after parole violation will be included within "sentence imposed" for purposes of AF classification. *See U.S. v. Hidalgo-Macias*, 300 F.3d 281 (2d Cir. 2002).
Violation of Conditions of Release in the 2nd Degree [Class A Misdem.]	53a-222a	Not AF. But see practitioner note.	Not CIMT.		**DefAttys**: See note above under 53a-222.

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Criminal Violation of a Protective Order [Class D Felony]	53a-223	Maybe COV AF if sentence of 1 yr. or more is imposed and ROC establishes force element in protective order or in the violation of it.	CIMT, particularly if convicted of class C felony for offense involving conduct under (c)(1) or (c)(2).	CODV – Would probably be considered a CODV under INA § 237(a)(2)(E)(i) if conviction is for class C felony under (c)(1) or (c)(2) and ROC establishes victim is protected under domestic violence laws. Would probably trigger deportability under INA § 237(a)(2)(E)(ii) for violation of protective order	**DefAttys 1)** If possible, allocute to violation that does not involve the protection of a person against "credible threats of violence, repeated harassment, or bodily injury." *See* INA § 237(a)(2)(E). **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract:** Challenge charge as COV AF or CIMT, arguing that statue is not divisible under *Descamps* and covers conduct that is not a COV or CIMT.
Criminal Violation of a Standing Crim. Protective Order [Class D Felony]	53a-223a	Maybe COV AF if sentence of 1 yr. or more is imposed and ROC establishes force element in protective order or in the violation of it.	CIMT.	CODV – Would probably be considered a CODV under INA § 237(a)(2)(E)(i) if conviction is for class C felony under (a)(2)(C) or (a)(2)(D) and ROC establishes victim is protected under domestic violence laws. Would probably trigger deportability under INA § 237(a)(2)(E)(ii) for violation of protective order	**DefAttys**: **1)** Follow practitioner note above under 53a-223. **2)** Allocute circumstances if protective order or violation of it do NOT have force element for COV AF.
Criminal Violation of a Restraining Order [Class D Felony]	53a-223b	COV AF if sentence of 1 yr. or more is imposed and ROC establishes force element in protective order or in the violation of it.	CIMT.	CODV – Would probably be considered a CODV under INA § 237(a)(2)(E)(i) if conviction is for class C felony under (a)(2)(C) or (a)(2)(D) and ROC establishes victim is protected under domestic violence laws. Would probably trigger deportability under INA § 237(a)(2)(E)(ii) for violation of protective order	**DefAttys**: **1)** See note above under 53a-223. **2)** Allocute circumstances if protective order or violation of it do NOT have force element for COV AF.