A BRIEF GUIDE TO REPRESENTING NON-CITIZEN CRIMINAL DEFENDANTS IN CONNECTICUT

(Revised May 2014)

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Disclaimer: This brief guide is intended as an introductory tool for criminal defense attorneys representing non-citizen 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, and when necessary, 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. Ruth Swift and Grace Kao 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, 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.

Introduction: Representing Non-citizen Defendants in Connecticut

An illustration of the problem:

> *John is a 31-year-old lawful permanent resident of the United States (a "green card holder"). He came to this country when he was a 2-year-old but never bothered to naturalize. He is charged with attempted larceny for trying to shoplift a video camera. John does not have any prior convictions. His defense attorney gets him to plead guilty to a class A misdemeanor with a one-year suspended sentence and no time served. John never spent any time in jail for this offense. A few months later, John decides to become a citizen. After filing his application, John is detained by officials of Immigration and Customs Enforcement ("ICE"), who inform him that his conviction is considered an "Aggravated Felony" for purposes of immigration law. John is placed in mandatory detention pending deportation, and is ineligible for virtually all relief from removal.*

On March 31, 2010, the United States Supreme Court decided *Padilla v. Kentucky*, 559 U.S. 356 (2010), recognizing that under prevailing professional norms, criminal defense attorneys have a duty to advise their non-U.S. citizen clients of the immigration consequences of contemplated dispositions of their criminal case: "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." *Padilla*, 559 U.S. at 374. Accordingly, criminal defense attorneys now have the affirmative obligation to determine their clients' immigration status and to explain the immigration consequences of various plea and sentencing alternatives.

The purpose of this guide is to better equip criminal defense attorneys in Connecticut to meet this obligation. This guide approaches the issue by raising "red flags" about particular dispositions that will most likely result in the harshest immigration consequences, while suggesting often simple things that defense attorneys can do to prevent any immigration consequences or at least improve a defendant's chances if or when he or she is later facing deportation proceedings.[2] 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 non-citizen 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.

Nevertheless, in all cases involving a non-citizen defendant, defense counsel should pay close attention to the potential immigration consequences of a criminal conviction under the Immigration and Nationality Act ("INA"). When immigration consequences are clear under the INA, a defense attorney must advise his/her client of the consequences. *Padilla*, 559 U.S. at 369. Failure to do so is deficient performance under the *Strickland v. Washington*, 466 U.S. 668 (1984), ineffective assistance of counsel standard. 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. *Padilla*, *id*. Under *Padilla*, however, the duty to investigate immigration consequences extends to *all* cases involving non-citizen defendants. While the level of specificity of the advice may change with the degree of uncertainty under immigration law, only by understanding the client's immigration status and investigating the applicable law can defense counsel determine whether the consequences are "clear" or "unclear."

Ultimately, as the Court's decision in *Padilla* recognizes, a defense attorney has a legal and ethical obligation to inform his/her client about the possible immigration consequences of criminal convictions. This guide seeks to assist criminal defense attorneys to comply with these obligations.

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[2] Prior to 1996, immigration law provided for two types of processes to eject non-citizens from the United States: "deportation" and "exclusion," although most lay people only knew about the former. Laws passed in 1996 ended the distinction and created a single process called "removal" (so that an individual now is technically "removed" rather than "deported"). However, because most people continue to understand this process as "deportation," this guide will use the terms interchangeably except where any distinctions might be important.

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

Part 1: An Outline of the Process

A. Determine your client's citizenship:

a. If your client is a U.S. citizen, STOP: there are no immigration consequences for U.S. citizens because of a criminal conviction;
   i. Generally, an individual born in the United States[3] or naturalized is a citizen;
   ii. 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 expert).

b. If your client is not a U.S. citizen, he or she is most likely to fall into three broad categories of immigration "status" [For specifics, see Part 2, below]:
   i. Lawful Permanent Resident ("LPR"): also known as a "green card holder";
   ii. An individual with either temporary immigration status (for example, a visitor visa or a student visa) or no immigration status (undocumented immigrant), but who wants to preserve the possibility of eventually obtaining permanent status;
   iii. An individual who has been *granted* asylum or refugee status, but has NOT yet become an LPR;[4]

B. Avoid a disposition that constitutes a "conviction" for immigration law purposes.

a. Obviously, a dismissal of charges is the best possible result; a *nolle prosequi* or AR should also have no immigration consequences (see Appendix C).

b. 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 guilty plea or admission of facts warranting a finding of guilt is entered).
   i. 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. See Appendix C for a more detailed explanation of which programs will likely constitute conviction.
   ii. **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.

c. **If 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 non-citizen is charged under a divisible statute.[5]

d. Note that entering a *nolo contendere* plea, will **not** mitigate immigration consequences.

C. Based on the client's immigration status, determine possible immigration consequences of conviction:

a. After determining your client's status, consult Part 2,"Dispositions to Avoid," to determine what categories of convictions will have the most serious immigration consequence for your client;

b. Consult the Connecticut Chart of Immigration Consequences (Appendix B) to determine whether the

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[3] For citizenship purposes, the United States includes Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa.
[4] 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 ii).
[5] The chart in Appendix B 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.

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.

D. Working with your client, mitigate the possible immigration consequences of conviction:

a. Plead to "safer" offenses for immigration purposes, and avoid the worst categories (especially Aggravated Felonies and Controlled Substance Offenses);

b. Pay careful attention to potential and actual sentences imposed:

   i. For offenses that 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 (<u>and remember: this category considers the sentence imposed, including any portion of the sentence that is suspended</u>). **Note, however:** that murder, drug trafficking, or sexual abuse of a minor are examples that immigration statutes treat as Aggravated Felonies regardless of the sentence imposed, *see* 8 U.S.C. § 1101(a)(43) for a complete list;

   ii. The potential sentence or actual sentence imposed may make a difference in other contexts (for instance, for non-LPRs and LPRs traveling abroad to qualify for the moral turpitude "petty offense exception," *see* Part 2(A)(3)(b)(1));

c. Generally, keep the record of conviction "clean": in other words, avoid facts that may make a particular conviction worse for immigration purposes:

   i. For example, keep out facts such as 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;

   ii. There is a special procedure for criminal statutes that define distinct offenses where at least one offense triggers an immigration consequence and another does not These are known as "divisible offenses." For a divisible offense, the factfinder can examine the record of conviction to determine of which offense the state convicted the defendant. The "record of conviction" ("ROC")for purposes of immigration law includes: the statutory definition of the offense, 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. For a more comprehensive explanation, see Part 5: Divisible Statutes and the Record of Conviction.

   iii. If necessary, consider waiving the reading of the facts.

   iv. One important way to keep the record clean is to enter an *Alford* plea.

E. Even if adverse immigration consequences cannot be avoided, and conviction results, properly advise your client:

a. Warn the client of the immigration consequences of conviction, and that the individual may face mandatory detention in federal 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;

b. 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;

c. 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;

d. 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;

Part 2: Determining Your Client's Immigration Status in This Country

General Categories of Immigration Status:

1. **Lawful Permanent Resident ("LPR" or "Green Card Holder"):**
    a. An individual who has been granted status as a "lawful permanent resident" of the United States;
    b. An LPR will generally have one of the following:
        i. A "green card" (which is NOT green): generally titled "Resident Alien" or "Permanent Resident Card," the card states that the person is entitled to reside permanently and work in the United States; a "green card" is formally known as a form I-551; OR
        ii. 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;
2. **An individual with either temporary immigration status or no immigration status (undocumented immigrant), but who wants to preserve the possibility of eventually obtaining permanent status:**
    a. Note: if your client has a temporary visa other than a visitor's visa (such as a student visa, temporary worker visa, etc.), it is STRONGLY advised that the client (or you) consult an immigration attorney before addressing the pending criminal charges. The consequences for each status vary substantially, and are beyond the scope of this guide. However, if your client is less concerned with his or her current temporary status and more concerned with his or her future chances of remaining in the United States permanently or returning to the United States in the future, he or she should be treated in this category;
    b. Individuals with DACA (Deferred Action for Childhood Arrivals) status or those who may eligible also have unique interests in maintaining their status as well as preserving eligibility for future permanent resident status. If your client is a DACA recipient or is DACA eligible,[6] please consult other resources including those put out by the Immigrant Legal Resource Center available at http://www.ilrc.org/files/documents/ilrc-understanding_criminal_bars_to_deferred_action_5.pdf and http://www.ilrc.org/files/documents/ilrc-2012-daca_chart_0.pdf
    c. An individual may be eligible to gain permanent resident status in a number of different ways, but the most likely are:
        i. the client entered lawfully and has a spouse, child, parent or sibling who is a U.S. citizen OR a spouse or (in some cases) parent who is an LPR;
        ii. the client fears persecution or some form of harm (other than general economic deprivation) if returned to his or her country of origin;
    d. Note: many individuals may indicate that they have already filed (or started the process) to obtain permanent residence, and some may even have a temporary work permit while their applications are pending. However, until their applications have been approved and they have been granted LPR status, they should be treated in this category and not in the LPR category.
3. **An individual granted asylum or refugee status, but who has NOT yet become an LPR:**
    a. Refugee status is granted to a person outside of the United States who then enters the United States with that status; asylum is granted to an individual who is already in the United States; both are allowed to remain in the United States because they fear persecution in their country of origin;
    b. 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 remain in this category for a significant period (NOTE that refugees who have been here more than one year, have not adjusted, and who have been convicted or face prosecution for offenses that make them inadmissible face special concerns and should consult expert immigration counsel);

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[6] 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. See http://www.dhs.gov/deferred-action-childhood-arrivals for more information.

c. Refugees will have a document (it could be 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";
d. Asylees will generally have a letter or other document from USCIS or the Department of Justice stating they have been granted asylum.
e. **Note:** if the individual has *applied* for asylum, but has not yet been approved, he or she does not fall into this category. You should consider a client in this position as one who has temporary or no status (Category 2, above).

Part 3: Dispositions To Avoid Based on the Client's Immigration Status

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.

A. *If the client is an LPR:*

1. **Avoid convictions that will trigger virtually mandatory deportation:**
   a. Most importantly, avoid conviction for an Aggravated Felony, *see* 8 U.S.C. § 1101(a)(43).
2. **Avoid other convictions that will trigger deportability:**
   a. Avoid conviction for a Controlled Substance Offense (drug crimes), 8 U.S.C. § 1227(a)(2)(B):
      i. *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);
   b. Avoid conviction for Crime Involving Moral Turpitude ("CIMT") [8 U.S.C. § 1227(a)(2)(A)(i); for definition, see *infra* Appendix A]:
      i. *Except:* If no past CIMT convictions, then one conviction for CIMT does not trigger deportability IF: a) the offense was *committed* more than five years after becoming 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.
   c. Avoid conviction for Firearm Offense, 8 U.S.C. § 1227(a)(2)(C)
   d. Avoid conviction for Crime of Domestic Violence, Crime of Stalking, Crime Against a Child, or violation of domestic violence protection order, 8 U.S.C. § 1227(a)(2)(E)
   e. 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)[7]
   f. Avoid other miscellaneous grounds of deportation.[8]
3. **Avoid convictions that will result in mandatory detention by ICE:**
   a. 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.
4. **Generally, also avoid convictions triggering inadmissibility[9]:**
   a. Avoid conviction for a Controlled Substance Offense, 8 U.S.C. § 1182(a)(1)(II):[10]
      i. *Note:* A conviction for a single offense for simple possession of 30 grams (1.06 oz) or less of marijuana for one's own use will still trigger inadmissibility, but will preserve eligibility for a discretionary waiver of inadmissibility for certain LPRs with qualifying relatives, *see* 8 U.S.C. § 1182(h);
   b. Avoid conviction for Crime Involving Moral Turpitude ("CIMT"), *see* 8 U.S.C. § 1182(a)(2)(A)(i)(I):

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[7], 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) are vastly preferable to other last-ditch options, like taking a losing drug case to trial.

[8] 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.

[9] An LPR with a conviction that makes her "inadmissible" is subject to removal upon return to the United States from a trip abroad.

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

i. *Except:* Petty offense exception: a conviction for a CIMT will NOT trigger inadmissibility IF the defendant has not committed a prior CIMT and the maximum potential penalty for this CIMT does not exceed one year (in Connecticut, this means it is a misdemeanor), AND the defendant was not actually sentenced to more than six months (including any suspended sentence), 8 U.S.C. § 1182(a)(2)(A)(ii)(II);

c. Avoid a situation where the client will have been convicted of two or more offenses *of any type* if the aggregate sentences to confinement actually imposed amount to five years or more, 8 U.S.C. § 1182(a)(2)(B);[11]
d. Avoid convictions relating to prostitution, 8 U.S.C. § 1182(a)(2)(D);
e. 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);
f. Avoid other miscellaneous grounds of inadmissibility.[12]

5. In addition to the above, avoid the following which may affect client's ability to naturalize:

a. Avoid convictions for two or more gambling offenses;
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).
c. Be aware that periods of probation, parole, or suspended sentence for non-removable offenses may delay a client's ability to naturalize, 8 C.F.R. 316.10(c)(1).

6. If you cannot avoid a conviction that falls under categories 1, 2, or 3, above, , then seek to preserve eligibility for immigration "waivers" (immigration "pardons")[13]:

a. Avoid conviction for a Controlled Substance Offense to preserve waiver of inadmissibility (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;
b. If (a) and (b) cannot be avoided, try to at least preserve "withholding of removal" relief by avoiding convictions listed in Section C(4) below under "refugees and asylees."
   i. *Note*: Entering an *Alford* plea may be helpful here.
c. Avoid conviction for "violent or dangerous crime" (definition of term is vague) in order to preserve eligibility for waiver of inadmissibility. *See In re Jean*, 23 I. & N. Dec. 373, 2002 WL 968631 (B.I.A. 2002).

B. ***<u>If the client has only temporary or no status (nonimmigrant or undocumented immigrant):</u>***

1. Avoid convictions that will trigger permanent inadmissibility:

a. Most importantly, avoid conviction for a Controlled Substance Offense, 8 U.S.C. § 1182(a)(1)(II):[14]
   i. *Except:* If conviction is for a first-offense simple possession of 30 grams (1.06 oz) or less of marijuana, client could still ask for waiver of inadmissibility, if he or she meets additional requirements, 8 U.S.C. § 1182(h);
b. Avoid conviction for "violent or dangerous" crime (undefined). *See In re Jean*, 23 I. & N. Dec. 373, 2002 WL 968631 (B.I.A. 2002).

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[11] 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.

[12] 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.

[13] Your client will not necessarily be eligible for a waiver if s/he does not meet the other eligibility criteria for that waiver (such as length of residency, certain family relationships).

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

2. **Avoid other convictions triggering inadmissibility:**
    a. Avoid conviction for Crime Involving Moral Turpitude ("CIMT"), *see* 8 U.S.C. § 1182(a)(2)(A)(i)(I):
        i. *Except:* Petty offense exception: a conviction for a CIMT will NOT trigger inadmissibility IF the defendant has not committed a prior CIMT and the maximum potential penalty for this CIMT does not exceed one year (in Connecticut, this means it is a misdemeanor), AND the defendant was not actually sentenced to more than 6 months (including any suspended sentence), *see* 8 U.S.C. § 1182(a)(2)(A)(ii)(II);
    b. Avoid a situation where the client will have been convicted of two or more offenses *of any type* if the aggregate sentences to confinement actually imposed amount to five years or more, 8 U.S.C. § 1182(a)(2)(B);[15]
    c. Avoid convictions relating to prostitution, 8 U.S.C. § 1182(a)(2)(D);
    d. 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).
    e. Avoid other miscellaneous grounds of inadmissibility.[16]
3. **If the client may seek asylum or withholding of removal (for example, because of fear of persecution):**
    a. Avoid conviction for an Aggravated Felony;
    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 potentially the circumstances of the particular case;
    c. If (a) and (b) cannot be avoided, try to at least preserve "withholding of removal" relief by avoiding convictions listed in Section C(4) below under "refugees and asylees."
4. **Preserve eligibility for voluntary departure, 8 U.S.C. § 1229c:**
    a. Avoid conviction for an Aggravated Felony;
    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);
        ii. Avoid conviction for Crime Involving Moral Turpitude
        iii. Avoid convictions of any type if aggregate sentences of imprisonment are five years or more;
        iv. Avoid convictions for two or more gambling offenses;
        v. Avoid convictions of any type resulting in confinement to a penal institution for 180 days or more.
5. **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.
6. **Avoid convictions that will enhance the client's sentence if convicted of illegal reentry in the future:**
    a. Avoid conviction for an Aggravated Felony [maximum sentence for illegal reentry after being deported for an Aggravated Felony is twenty years];
    b. Avoid conviction for a felony, or three or more misdemeanors involving drugs or crimes against the person [maximum sentence would be ten years].

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[15] 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.

[16] Other grounds of inadmissibility are unlikely to be encountered in Connecticut state court and 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.

7. **For clients who hold valid non-immigrant status, avoid convictions triggering removability**
    a. See Sections A(1) & (2), above, for a list of these categories of offenses.

C. ***If the client is a refugee or asylee but has NOT yet become a Lawful Permanent Resident ("LPR"):***

1. **Whether a refugee or an asylee, avoid grounds of inadmissibility, to maintain the client's eligibility to adjust to LPR status:**
    a. Avoid conviction for a Controlled Substance Offense, 8 U.S.C. § 1182(a)(1)(II):[17]
        i. *Note:* A conviction for a single offense for simple possession of 30 grams (1.06 oz) or less of marijuana will still trigger inadmissibility, but will preserve eligibility for a waiver of inadmissibility (so long as other requirements for waiver are met), 8 U.S.C. § 1182(h);
    b. Avoid conviction for Crime Involving Moral Turpitude ("CIMT"):
        i. *Except:* Petty offense exception: a conviction for a CIMT will NOT trigger inadmissibility IF the defendant has not committed a prior CIMT and the maximum potential penalty for this CIMT does not exceed one year (in Connecticut, this means it is a misdemeanor), AND the defendant was not actually sentenced to more than 6 months (including any suspended sentence), *see* 8 U.S.C. § 1182(a)(2)(A)(ii)(II);
    c. Avoid a situation where the client will have been convicted of two or more offenses *of any type* if the aggregate sentences to confinement actually imposed amount to five years or more, 8 U.S.C. § 1182(a)(2)(B);[18]
    d. Avoid convictions relating to prostitution, 8 U.S.C. § 1182(a)(2)(D);;
    e. 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).
    f. Avoid other miscellaneous grounds of inadmissibility.[19]
2. **If an asylee, avoid conviction for a "particularly serious crime" that would lead to termination of asylum status:[20]**
    a. Avoid a conviction for an Aggravated Felony (automatically a particularly serious crime);
    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 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. *See Matter of N-A-M-*, 24 I & N. Dec. 336, 342 (BIA 2007).
3. **If above convictions cannot be avoided, preserve special waivers of inadmissibility for refugees/asylees:[21]**
    a. Avoid conviction for "violent or dangerous crime" (undefined). *See In re Jean*, 23 I. & N. Dec. 373, 2002 WL 968631 (B.I.A. 2002).
    a. Avoid disposition leading to a determination that client is illicit trafficker or assisted in trafficking of

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[17] A non-citizen will also become inadmissible if he or she *admits* having committed a Controlled Substance Offense or a crime involving moral turpitude as outlined above, or admits act constituting the essential elements of a CSO or CIMT; however, a conviction is clearly worse than an admission.

[18] 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.

[19] Other grounds of inadmissibility are unlikely to be encountered in Connecticut state court and 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.

[20] 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).

[21] The special waiver of inadmissibility for refugees and asylees is found at 8 U.S.C. § 1159(c); *see also Matter of Jean*, 23 I. & N. Dec. 270 (A.G. 2002).

controlled substances.

4. **If the above cannot be avoided, preserve eligibility for "Withholding of Removal," 8 U.S.C. § 1231(b)(3)(B):**
    a. Avoid conviction for Aggravated Felony or felonies with aggregate sentence of imprisonment of at least five years;
    b. Avoid conviction for Aggravated Felony involving unlawful trafficking in a controlled substance, regardless of sentence (and note that a "drug trafficking" AF may include simple possession offenses—consult CT chart);
    c. Avoid conviction for crime that may be determined to be "particularly serious" as discussed above.

Part 4: Important Definitions

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 non-citizen. The reason is that many decisions as to whether to grant a particular immigration benefit—including naturalization—are left to the discretion of federal immigration authorities. And 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 non-citizen deportable (or "removable"). Many of those same classes of convictions will make a non-citizen ineligible for discretionary waivers or other forms of relief that may allow them to stay in the country even if they are considered deportable.

<u>Aggravated Felony ("AF"):</u>

A term of art in immigration law used to describe offenses that will subject a non-citizen to the harshest immigration consequences. The offense does not need to be "aggravated" as that term might be popularly understood, nor does it need to be a felony, for it to qualify as an "Aggravated Felony."

The following is a list of the offenses set out in the immigration statute (8 U.S.C. § 1101(a)(43)):

- Murder;
- Rape;
- Sexual abuse of a minor;
- Illicit trafficking in a controlled substance (including simple possession of flunitrazepam);
- A "crime of violence" if the term of imprisonment (even if suspended) is one year or more;
  - See definition of "crime of violence" below
- A "theft offense" (including 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;
- Illicit trafficking in firearms, destructive devices, or explosive materials;
- Certain money laundering offenses;
- 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 espionage;
- A tax evasion offense where the loss to the government exceeds $10,000;
- Certain alien smuggling offenses;
- Improper entry or illegal reentry by an alien previously deported on the basis of an Aggravated Felony;
- Certain offenses involving falsely making or altering passports;
- An attempt or conspiracy to commit any of the above offenses

When a non-citizen's conviction falls into this category, the consequences are severe: the individual will face mandatory detention and almost certain deportation and will be ineligible for virtually all forms of relief. In addition, if the non-citizen returns illegally to the United States, he or she will face criminal penalties of up to twenty years in federal prison.

Controlled Substances Offenses ("CSO"):

This is another category that will result in drastic immigration consequences for a non-citizen. 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 (if the substance is regulated only by the state, it is not covered). The CSO category probably also covers offenses like possession of drug paraphernalia. Like Aggravated Felony offenses, a conviction in this category renders a non-citizen ineligible for many forms of discretionary relief.

Crime of Violence ("COV"):

The term "crime of violence" is used to describe certain offenses that qualify under other categories of immigration law (that is, Aggravated Felonies or crimes of domestic violence). 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 § 16(a), which requires that force be an element of the offense, and § 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. For example, felony burglary (under the common law definition) would be a COV because there is a substantial risk that the 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.

Both sections refer to the "use of physical force," a concept that has been heavily litigated in both the immigration and federal sentencing contexts. The Supreme Court in *Leocal v. Ashcroft*, 543 U.S. 1 (2004) found that a DUI was not the type of "violent, active crime[]" suggested by the "crime of violence" definition. The court interpreted "the use of physical force" in both § 16(a) and (b) to mean "a higher degree of intent than negligent or merely accidental conduct" because "use requires active employment." *Id* at 9. In *Johnson v. United States*, 559 U. S. 133 (2010), the Court again interpreted the term "physical force" as used in the definition of "violent felony" in the Armed Career Criminal Act as meaning "*violent* force—that is, force capable of causing physical pain or injury to another person" (emphasis in original) and thus not extending to a conviction under a simple battery law that extends to any offensive touching, no matter how slight. 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).

Leoncal left open whether a reckless crime can be a crime of violence. Many circuits have extended *Leoncal*'s reasoning to reckless crimes, concluding that an act committed recklessly is too accidental to constitute the "use of physical force."[22] However, in assessing whether an offense is a COV under § 16(b), some courts will consider not the mens rea

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[22] *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.*

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); *See also 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 seems to align with the BIA's interpretation. *See 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"); *Blake v. Gonzales*, 481 F.3d 152 (2d Cir. 2007) (holding that Massachusetts 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.

<u>Crime of Domestic Violence ("CODV"):</u>

This is a category of crimes that renders an individual legally residing in the United States (most frequently an LPR) deportable. It will also make an undocumented client ineligible for 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 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, and depending on the jurisdiction, the government may be permitted to produce extrinsic evidence that the victim was a protected person. *Compare Bianco v. Holder*, 624 F.3d 265, 273 (5th Cir. 2010) ("the domestic relationship […] can be proven by evidence generally admissible for proof of facts in administrative proceedings") *with Cisneros-Perez v. Gonzales*, 465 F.3d 386, 392 (9th Cir. 2006) (holding that the modified categorical approach applies). 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.

Note that unlike a COV Aggravated Felony, a crime is a CODV *regardless of the sentence imposed*.

<u>Crime of Child Abuse ("CA")</u>

Offenses involving "child abuse, child neglect, or child abandonment" will render LPRs 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. However, the Tenth Circuit has rejected the BIA's broad interpretation of this

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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).

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 merely "conduct that merely could place a child's health and safety at risk").

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 allocating to a negligent mental state and keeping evidence of actual injury out of the record of conviction.

<u>Firearm Offense ("FO")</u>

Conviction for certain firearms offenses makes an otherwise lawful non-citizen 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.

<u>Crimes Involving Moral Turpitude ("CIMT"):</u>

This term has been present in immigration law for over a century, but continues to be a source of confusion for immigration practitioners. The Board of Immigration Appeals ("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." *In re 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." *In re Danesh*, 19 I. & N. Dec. 669 (BIA 1988). In *Matter of Silva-Trevino*, the Attorney General stated that for an offense to be a CIMT, it must be reprehensible conduct involving some element of scienter—either specific intent, deliberateness, willfulness, or recklessness. *Matter of Silva-Trevino*, 24 I. & N. Dec. 682, 706 (AG 2008), *vacated and remanded on other grounds sub. nom. Silva-Trevino v. Holder*, 742 F.3d 197 (5th Cir. 2014). Although offenses must be analyzed on a case-by-case basis and according to a nuanced approached described in this guide, 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, *see, e.g., Mustafaj v. Holder*, 369 F. App'x 163 (2d Cir. 2010) (NY third degree assault is a CIMT) and *Gill v. I.N.S.*, 420 F.3d 82, 89 (2d Cir. 2005) (affirming BIA's holding that reckless assault with a deadly instrument resulting in serious bodily harm is a CIMT) and most offenses involving sexual conduct, *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"); *In re: Romeo Arnulfo Larin Palacios a.k.a. Romeo Arnulfo Larin*, File: A90 491 130, 2004 WL 1059729 (BIA 2004) (unpublished opinion) (citing several BIA opinions where sexual assault on a minor has been found to constitute a crime of moral turpitude). Drug offenses involving sale or distribution may also be found to be CIMTs. *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); *In re 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, 1968 WL 14106 (B.I.A. 1968). Other offenses may also fall under this category depending on the particular elements of the crime. The chart of

Connecticut offenses in Appendix B attempts to give informed predictions for whether a particular Connecticut offense will fall under this category.

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

Petty Offense Exception (“POE”)

Normally, a conviction for a Crime Involving Moral Turpitude (“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.

Part 5: Divisible Statutes and the Record of Conviction

The immigration consequences of a given criminal offense may often turn on what evidence of criminal conduct the adjudicator is permitted to consider. Questions of divisibility and the application of the "categorical" and "modified categorical" approaches are contested and in a state of uncertainty right now.[23] Under the categorical approach, the court looks only to the statute of conviction, and conducts a categorical analysis of the elements to determine if a conviction under that statute is *by definition* a ground of deportability. If a statute describes more than one offense, and thus a conviction under that statute *may or may not* be a ground of deportability, the court should apply the modified categorical approach, looking to the record of conviction to determine which part of the statute the defendant was convicted under. However, the Board of Immigration Appeals has not conformed its caselaw with Supreme Court decisions, which means that there is some remaining uncertainty for defendant pleading before the BIA has determined whether it will attempt to limit Supreme Court precedent. Further, the Supreme Court has noted certain exceptions to these approaches.

<u>The Categorical and Modified Categorical Approaches:</u>

The Supreme Court addressed the categorical and modified categorical approaches in two recent decisions. 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 found that Mr. Moncrieffe was convicted under the "possess with intent" prong. 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).

The Supreme Court again addressed the categorical and modified categorical approaches in *Descamps v. U.S.*, 133 S.Ct. 2276 (2013), a sentencing case regarding the Armed Career Criminal Act that is applicable in the immigration context. 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.

For example, if the court were trying to determine if a conviction constituted a firearm offense, the Court would first inquire whether conviction under the statute in question would ALWAYS be a firearm offense. If the statute required as an element the use of a "firearm" and "firearm" was defined in the state code either equivalently or more narrowly than the federal definition, then a conviction under the statue would categorically be considered a firearm offense. However, if the statute include an element of the use of a "weapon" but did not specify what kind of weapon, then a conviction under the statute would not be firearm offense, even if the defendant actually used a gun. Finally, if a statute provided elements in the alternative such the use of a "firearm or other deadly weapon" then a court would apply the modified categorical approach and look to the record of conviction to see whether the defendant actually used a firearm. If the record of conviction is unclear (if defendant's smart defense attorney kept the record clean as to whether he or she used a firearm, or if the court allowed an *Alford* plea) then the court must conclude that the conviction is not a firearm offense.

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[23] For a more complete discussion, see Immigrant Defense Project, Practice Advisory: *Descamps v. United States* and the Modified Categorical Approach, *available at* http://www.nationalimmigrationproject.org/legalresources/practice_advisories/pa_Descamps_Practice_Advisory_6-26-13.pdf.

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 or tribunal may examine in determining whether an individual's particular conviction falls within a category that renders a non-citizen removable (such as a controlled substance offense, firearms offense or certain subcategories of the Aggravated Felony definition). 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 charging document (to the extent that it is consistent with the final conviction), a plea agreement, a 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). If, after examining this narrow range of documents, the tribunal 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. Further, the Second Circuit has held that a Connecticut *Alford* plea makes it impossible for the 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). Thus, an immigration judge will not be able to find a defendant removable if the court accepts an *Alford* plea to a divisible statute that reaches a crime that is not a removable offense. For this reason, the chart in Appendix B will provide 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.

However, while the government bears the burden of showing that the conviction is a removable offense, the immigrant bears the burden of establishing eligibility for relief from removal. In some jurisdictions (including the Second Circuit), this burden is met by presenting an inconclusive ROC, but in others, an inconclusive record will disqualify the client from relief. Thus, when the client's conduct does not constitute grounds for removal, but they are pleading to a statute that encompasses removable crimes, it is in the client's interest to make sure the ROC proves their minimal conduct.

The Controversy:

The Board of Immigration Appeals reached a different conclusion from that in *Descamps* in a 2012 decision *Matter of Lanferman*, 25 I&N Dec. 721. The Board held that despite federal precedents in the sentencing context requiring the categorical approach, immigration judges could apply the modified categorical approach any time it is unclear from the statute whether the conviction is a grounds for removal. The Supreme Court's decisions in *Moncrieffe* and *Descamps* probably abrogate *Lanferman*, but the Board may attempt to limit these holdings to aggravated felony convictions and carve out more exceptions as "circumstance specific" grounds. Though the Board has some basis in administrative law to argue that it does not need to follow the Supreme Court's sentencing precedent in *Descamps*. most courts have tended to reject these arguments and applied federal case law regarding the definitions of aggravated felonies and other removal grounds. Appendix B reflects an assumption that the categorical and modified categorical approaches will be applied as directed by the Supreme Court in *Descamps*.

Additionally, the Attorney General has carved out a different approach for determining whether a conviction constitutes a "crime involving moral turpitude" ("CIMT"). In *Matter of Silva-Trevino*, 24 I. & N. Dec. 687 (A.G. 2008), *vacated and remanded sub. nom. Silva-Trevino v. Holder*, 742 F.3d 197 (5th Cir. 2014), the Attorney General held that in certain cases where the record of conviction is inconclusive as to whether a given offense involved moral turpitude, immigration authorities may consider other evidence as "necessary and appropriate" to determine whether the defendant's convicted conduct constitutes a CIMT. Several courts have rejected the *Silva-Trevino* rule, including the Third, Fourth, Fifth, Ninth, and Eleventh Circuits. *Silva-Trevino v. Holder*, 742 F.3d 197 (5th Cir. 2014); *Olivas-Motta v. Holder*, 716 F.3d 1199 (9th Cir. 2013); *Prudencio v. Holder*, 669 F.3d 472 (4th Cir. 2012); *Fajardo v. U.S. Attorney General*, 659 F.3d 1303 (11th Cir. 2011); *Jean-Louis v. Attorney General of U.S.*, 582 F.3d 462 (3d Cir. 2009). The Seventh and Eighth Circuits, however, have deferred to the agency interpretation. *Bobadilla v. Holder*, 679 F.3d 1052, 1057 (8th Cir. 2012); *Ali v. Mukasey*, 521 F.3d 737, 739 (7th Cir. 2008). Though the this interpretation is disfavored and is further called into question by the Supreme Court's holdings in *Moncrieffe* and *Descamps*, Immigration Judges are likely to continue to apply it in jurisdictions, including the Second Circuit, which have not explicitly rejected it.

Exceptions:

While the categorical approach applies to most aggravated felony grounds of removal, some provisions are "circumstance-specific" and thus the categorical approach is inapplicable. In *Nijhawan v. Holder*, 129 S. Ct. 2294 (2009), the Supreme Court applied a "circumstance-specific" approach to the $10,000 loss requirement for a fraud offense in order to determine whether it was an aggravated felony. The Court's decision differentiated between aggravated felony grounds that require a generic crime conviction and the requirement in the fraud ground that that the loss to the victim exceed $10,000, which the Court concluded is a factual circumstance. For a "circumstance specific" element, the record of conviction is not the limit of the evidence a factfinder can consider in deciding whether the respondent's conviction constitutes an aggravated felony. However, even where a factfinder applies a circumstance-specific approach,, the Court limited inquiry into the facts underlying a conviction to findings "tied to the specific counts covered by the conviction" and that are obtained under "fundamentally fair procedures" where the evidence that the government offers must meet a "clear and convincing" standard In the case of a "fraud" aggravated felony. A restitution order or other evidence of loss to the victim that is not in the record of conviction may be sufficient to quantify the amount of the loss because the categorical approach does not apply to that element of the fraud or deceit aggravated felony ground.

General Summary of Suggested Approach to Representing Non-Citizen Defendants

As noted earlier, a comprehensive assessment of what offenses should be avoided in a particular case requires knowledge of the individual'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. The above section contains a suggested approach for addressing immigration consequences. However, recognizing that each case will present its own circumstances, criminal defense attorneys should keep in mind the following *general* guidance:

Things to AVOID:

- ✓ **Avoid a "conviction" whenever possible**. See Appendix C 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 sentence or amount of loss: in such cases, simple changes to a plea agreement can make huge differences.
- ✓ **Avoid a "Controlled Substance Offense":** Virtually all drug offenses will result in harsh immigration consequences for most non-citizens. 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, which will not trigger deportability for an LPR and which may leave some avenues open for relief from deportation for other non-citizens. 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," "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, crimes against children, and violations of protective orders.
- ✓ **Avoid a "Crime Involving Moral Turpitude" (CIMT):** Depending on the individual's status 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:
    - o *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);
    - o *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;
    - o *Be aware* that in determining whether a given offense is a CIMT, the immigration court may resort to evidence outside the official record of conviction under *Matter of Silva-Trevino*, 24 I. & N. Dec. 687 (AG 2008). For offenses that may or may not be CIMTs based on an analysis of the elements of the statute alone (see Appendix B), it is important to create a record, where possible, that *controverts* allegations that might increase the chance of a CIMT finding, by specifically denying factual allegations in the charging document that are not necessary elements of the offense of conviction.

What are the things to DO when representing a non-citizen defendant?

- ✓ **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 D 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.

- ✓ **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 action in this area. Where possible, the chart of Connecticut offenses in Appendix B lists important precedents that can help facilitate additional research as to the current law.

Appendix A: A Short Overview of Immigration Law for Criminal Defense Practitioners

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.

Immigrants vs. Non-Immigrants

The first important distinction in immigration law is between immigrants and non-immigrants. The term "immigrant" refers to individuals who have come to the United States to reside permanently and to presumably become U.S. citizens. These individuals are "lawful permanent residents" ("LPRs") of this country. LPR status is often referred to as "green card" status (but note that cards evidencing permanent resident status have not been green for some time). In contrast, the term "non-immigrant" refers to temporary visitors who are allowed into the country for a limited period of time and generally for a limited purpose. Thus, "non-immigrants" include people who enter on tourist visas, student visas, or temporary work visas.

Deportability vs. Inadmissibility:

Although Congress has tried to eliminate the old notion of "deportation" and "exclusion" from immigration law, some distinctions continue to be present depending on whether an individual has been "admitted" to the United States. 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," while people who have not been given such permission are subject to the grounds of "inadmissibility" (because they are seen as still seeking admission). For practical purposes, most non-citizens who have not become LPRs are most concerned with the grounds of inadmissibility, as it is this category that will determine whether they can obtain an immigration benefit that will allow them to stay in the country. The grounds of "deportability" are most relevant to those individuals who have already become LPRs.

How does one become a Lawful Permanent Resident ("LPR")?

There are a number of avenues to immigrate to this country legally and to become an LPR. However, most individuals who obtain LPR status do so through one of four ways: a) a family petition; b) a permanent work visa petition; c) asylum or refugee status; or (d) the diversity visa program. All four of these avenues lead to the same place: LPR status (or "green card" status).

a) <u>Family petitions</u>: 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; for this group, there is no "waitlist," although the processing can take over a year to complete. U.S. citizens can also petition for their adult children and their siblings, but these groups often have very long waitlists. This means that the petition is granted, but the individual will have to wait for many years before actually being able to come to the country legally with a green card. LPRs can also petition for their spouses and unmarried children (of any age), but their petitions are also often subject to long waitlists.

b) <u>Permanent work visas</u>: 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) <u>Asylum or refugee status</u>: 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. Refugees are given this status by U.S. authorities outside the United States, while asylees apply for this status when they are already in the United States. Refugees are eligible and are technically required to apply for LPR status after a year in this country, while asylees are eligible to apply for

LPR status one year after obtaining asylum.

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 the 2011 cycle, ineligible countries included Canada, China (mainland), Dominican Republic, Ecuador, El Salvador, India, Jamaica, Mexico, Pakistan, Philippines, and South Korea, among others.

It bears emphasizing again that these are the four 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 and perhaps because they see no particular benefit in citizenship. As the rest of this guide makes clear, however, LPRs are not truly "permanent" residents, and they can be subject to virtually mandatory deportation for even minor criminal offenses.

Can individuals who are here illegally become LPRs?

Individuals who are in the country illegally may be able to legalize their status and 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 above: 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 legalize their status. As of the time of this writing, Congress is considering legislation that might open up new avenues for undocumented immigrants to earn legal status, but whether that legislation will ultimately be enacted remains uncertain. It is likely that any legalization program that is enacted will include strict bars for those with criminal convictions, which may be different than the general criminal bars to admission. Undocumented immigrants who have faced criminal prosecution should therefore consult expert immigration counsel before applying for status under any such future program.

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 the immigration system. When individuals are seeking to enter the United States, to "adjust their status" to LPRs 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, non-citizens who are present in the United States unlawfully, either because they entered without inspection or because they overstayed a visa, are also subject to grounds of inadmissibility. These grounds are essentially reasons that a person will not be allowed into the country, will not be allowed to obtain permanent residence, or in the case of non-citizens present unlawfully, will not be allowed to remain in the country. Among the many grounds of inadmissibility are several that deal with convictions for criminal activity or even admissions of criminal activity. The specific grounds are listed elsewhere in this guide. If the person falls under the grounds of inadmissibility, the person may be "removed" (deported).

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 long-term permanent residents.

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 [see § 101(f)] precludes an alien 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.

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 non-citizen is subject to deportation because of a criminal conviction in three main ways. First, ICE can find out about the non-citizen during the individual's interaction with the criminal justice system. This can happen either at the initial pre-trial detention, during any jail time that is imposed upon conviction, or as a result of probation. ICE, for example, coordinates with state jails to determine who is a non-citizen, and proceeds to transfer non-citizens directly from criminal custody into immigration custody. Second, ICE can find out about the non-citizen's criminal conviction if the person files an application for an immigration benefit (generally a green card or naturalization, but also even a renewal of an expiring green card), at which point a background check will be conducted. Third, ICE can learn about a non-citizen'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.

Structure of the relevant agencies:

The former Immigration and Naturalization Service ("INS") was eliminated in 2003 by the law that created DHS. Most of its functions have been transferred to two entities within DHS: the U.S. Citizenship and Immigration Services ("USCIS") unit handles application for immigration benefits and for naturalization, while the Immigration and Customs Enforcement ("ICE") unit handles enforcement duties by seeking the deportation of unauthorized non-citizens, including making arrests and litigating on behalf of DHS in immigration court. A separate agency, the Executive Office of Immigration Review ("EOIR"), is responsible for adjudication of removal cases. EOIR is not part of DHS and is headed by the Attorney General.

Additionally, the Court added: "In construing both parts of § 16, we cannot forget that we ultimately are determining the meaning of the term 'crime of violence.' The ordinary meaning of this term, combined with § 16's emphasis on the use of physical force against another person (or the risk of having to use such force in committing a crime), suggests a category of violent, active crimes that cannot be said naturally to include DUI offenses." *Id.* at 11.

Civil Immigration Detainers:

P.A. 13-155 establishes that state and local law enforcement officers cannot detain someone on a civil immigration detainer unless the officer determines that specified public safety risk factors exist. These public safety risk factors include whether the individual has been convicted of a felony, is subject to pending criminal charges in Connecticut where bond has not been posted, has an outstanding arrest warrant in Connecticut, has been identified by the Department of Corrections as a known gang member, has been identified as a possible match in the federal Terrorist Screening Database, is subject to a final removal order, or would otherwise present an unacceptable risk to public safety. Upon determination of whether to detain or release, the law enforcement officer must immediately notify ICE. If the person is to be detained, the officer must notify ICE that he or she will be held for up to 48 hours (excluding Saturdays, Sundays, and federal holidays). If ICE fails to take custody of the individual within 48 hours, the officer must release the individual. No person is to be held on a civil immigration detainer for longer than 48 hours, under any circumstances.

Appendix B: 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 "probably" 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.

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")	▪ In most situations, AF will be the category with the most drastic consequences for an LPR; ▪ 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")	▪ If the individual is not an LPR, CSO conviction may be even worse than AF conviction; ▪ 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 ("CIMT")	▪ 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 pending 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"), FIREARM OFFENSES ("FO").	▪ CODV and 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; ▪ FO will result in mandatory detention pending removal, but CODV will not.

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:** **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
ACCESSORY LIABILITY AND INCHOATE OFFENSES					
Accessory (Soliciting, Requesting, Commanding, Importuning or Aiding)	53a-8(a)	<u>Solicitation:</u> might be considered an AF if underlying offense is AF. <u>Aiding:</u> would be considered an AF if underlying offense is AF.	Would probably be considered a CIMT if underlying offense is CIMT.	CSO or FO: <u>Solicitation</u>: would probably be considered a CSO or FO if underlying offense is CSO or FO. <u>Aiding</u>: would probably be considered a CSO or FO if underlying offense is CSO or FO. CODV or CA : Conviction might be CODV or CA if underlying offense is CODV or CA .	*Consider Coronado-Durazo v. INS*, 123 F.3d 1322 (9th Cir. 1997) (solicitation to sell narcotics was not CSO); *see also United States v. Liranzo*, 944 F.2d 73 (2d Cir. 1991) (similar holding in federal sentencing context); *but see Peters v. Ashcroft,* 383 F.3d 302 (5th Cir. 2004) (solicitation of CSO is CSO). *See Duenas-Alvarez v. Gonzales*, 127 S. Ct. 815 (2007) for aiding and abetting as AFs.
Conspiracy	53a-48	Under CT law, a conspiracy to commit an AF would be considered an AF. *See* 8 U.S.C. § 1101(a)(43)(U).	A conspiracy to commit a CIMT would probably be considered a CIMT. [See note].	CSO or FO: Conviction would be considered a CSO or FO if underlying offense is a CSO or FO. CODV or CA : Conviction might be CODV or CA if underlying offense is CODV or CA .	**ImmPract:** Charge as CIMT of a conspiracy offense where the underlying offense requires only recklessness or negligence should be challenged under *Gill v. INS* (see below under "attempt"), since such an offense would be incoherent under CT law. *See State v. Beccia*, 199 Conn. 1 (1986).
Attempt	53a-49	Under CT law, an attempt to commit an AF would also be considered an AF. *See* 8 U.S.C. § 1101(a)(43)(U).	An attempt to commit a CIMT would probably be considered a CIMT. [See note].	CSO or FO: Conviction would be considered a CSO or FO if underlying offense is a CSO or FO. CODV or CA : Conviction might be CODV or CA if underlying offense is CODV or CA .	**DefAttys:** If otherwise unable to avoid a CIMT which requires only reckless or negligent conduct, consider pleading to an attempt of that CIMT. **ImmPract:** Charge as CIMT of an attempt offense where the underlying offense requires only recklessness or negligence should be challenged under *Gill v. INS*, 420 F.3d 82 (2d Cir. 2005) (holding that such an offense is a legal impossibility that does not demonstrate a clear mental state and therefore should not be considered a CIMT). *See also State v. Almeda*, 189 Conn. 303 (1983).

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:** **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
		HOMICIDE OFFENSES			
Murder, Capital Felony, Felony Murder	53a-54a, 53a-54b, 53a-54c	Yes.	Yes.	CODV – If the victim was a current or former spouse or similarly situated individual, conviction would probably be considered a CODV.	**ImmPract:** Note that CT definition of murder includes causing a suicide by force, duress or deception, which may render that statute divisible as to "murder" and COV AF categories and CODV category.
Manslaughter in the 1st Degree [Class B Felony]	53a-55	If sentence of 1 yr. or more is imposed, conviction under subsections (a)(1) or (2) would be considered a COV AF; *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); conviction under subsection (a)(3) would probably NOT be considered a COV AF.	Yes.	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.	**DefAttys: 1)** If possible, plead down 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, **ImmPract:** For conviction under subsection (a)(3), challenge COV AF charge because of reckless mental state. See *Leocal v. Ashcroft*, 125 S. Ct. 377 (2004).[241]
Manslaughter in the 1st Degree with a Firearm [Class B Felony]	53a-55a	If sentence of 1 yr. or more is imposed, would be considered a COV AF.	Yes.	CODV – If the victim was a current or former spouse or similarly situated individual, conviction would be considered a CODV. FO – Yes. (But see fn. 13).	**DefAttys:** [See note above under Manslaughter in 1st Degree]. **ImmPract:** Charge as COV AF should be challenged because defendant may be convicted even if offense involves only reckless conduct.

[24] *Leoncal* left open whether a reckless crime can be a crime of violence. Many circuits have extended *Leoncal*'s reasoning to reckless crimes. *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). *But see Aguilar v. Att'y Gen. of U.S.*, 663 F.3d 692 (3d Cir. 2011) (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.")

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: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
Manslaughter in the 2nd Degree [Class C Felony]	53a-56	A conviction under subsection (a)(1) would probably NOT be considered an AF. See *Jobson v. Ashcroft*, 326 F.3d 367 (2d Cir. 2003) (NY conviction for 2nd degree manslaughter not COV AF). A conviction under subsection (a)(2) would not be a COV AF.	Conviction under subsection (1) would be CIMT. *See Matter of Franklin*, 20 I. & N. Dec. 867 (BIA 1994). Conviction under subsection (2) would probably be CIMT.		**DefAttys:** If possible, plead down to criminally negligent homicide to avoid AF and CIMT classification. **ImmPract:** Charge as COV AF or CODV should be challenged under *Leocal* and *Jobson, supra.* See fn 1.
Manslaughter in the 2nd Degree with a Firearm [Class C Felony]	53a-56a	If sentence of 1 yr. or more is imposed, might be considered a COV AF.	Yes.	CODV – If the victim was a current or former spouse or similarly situated individual, would probably be considered a CODV. FO –Yes. (But see fn. 13).	[See Note under Manslaughter in the 2nd Degree, above].
Manslaughter in the 2nd Degree with a Motor Vehicle [Class C Felony]	53a-56b	Would NOT be considered an AF. *See Leocal v. Ashcroft*, 125 S. Ct. 377 (2004).	Might be considered a CIMT.	CSO – Might be considered a CSO if ROC establishes a controlled substance as defined in 21 U.S.C. § 802.	**DefAttys**: **1)** Allocute in record that there was no scienter to avoid classification as CIMT **2)** Consider an *Alford* plea to ensure ROC does not establish controlled substance. (See fn. 15)
Misconduct with a Motor Vehicle [Class D Felony]	53a-57	Would NOT be considered an AF. *See Leocal v. Ashcroft*, 125 S. Ct. 377 (2004).	Would probably NOT be considered a CIMT.		
Criminally Negligent Homicide [Class A Misdem.]	53a-58	Would NOT be considered an AF. *See Leocal v. Ashcroft*, 125 S. Ct. 377 (2004).	Would probably NOT be considered a 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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
ASSAULT AND RELATED OFFENSES					
Assault in 1st Degree [Class B Felony][25]	53a-59	If sentence of 1 yr. or more is imposed: conviction under subsections (a)(1), (2), (4) or (5) would be considered a COV AF; conviction under (a)(3) may be considered COV AF.	Would probably be considered a CIMT (under all subsections). *See Nguyen v. Reno*, 211 F.3d 692 (1st Cir. 2000) (conviction under § 53a-60(a)(1), which involves lesser level of scienter, is CIMT).	FO – Conviction under subsection (a)(5) would be considered FO (But see fn. 14);.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. **ImmPract: 1)** Designation as a COV should be challenged because statute is probably divisible; **2)** If conviction is under subsection (a)(3), designation as a COV should be challenged because conviction may result from failure to act. *See, e.g., State v. Miranda*, 260 Conn. 93, 111 (2002); *Leocal v. Ashcroft*, 125 S. Ct. 377 (2004).
Assault in the 2nd Degree [Class D Felony]	53a-60	If sentence of 1 yr. or more is imposed: conviction under subsections (a)(1), (2), or (5) would be considered COV AF; *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); *see also In Re Fuller*, 2005 WL 1766772 (BIA 2005) (convictions under § 53a-60(a)(1) and (a)(2) are COV AFs). Subsections (a)(3) and (4) would likely be considered COV AF. [see note]	Conviction under any subsection would probably be considered a 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 3d Degree w/ less than 1 yr. imposed sentence; **2)** Consider AR or, if DV case, consider FVEP; **3)** If applicable, allocate to recklessness rather than intent. **ImmPract:** If conviction is under subsection (a)(3), designation as a COV should be challenged because of reckless mental state. See fn. 1. If conviction is under (a)(4), designation as COV should be challenged because drugging does not constitute "use of force" and intent to cause stupor does not support the same inference of risk of the use of force as intent to injure. *But see Morris*, 676 F.3d at 316 (discussing poisoning as constituting "use of force.").

[25] §53a-59a governs assault of an elderly, blind, disabled, pregnant, or mentally retarded person 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:** **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Assault in the 2nd Degree with Firearm [Class D Felony][26]	53a-60a	If sentence of 1 yr. or more is imposed, would be considered a COV AF.	Would probably be considered a CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, would be considered a CODV. FO – Yes. (But see fn. 14).	[See Note above under Assault in the 2nd Degree].
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).	Any conviction would be 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)** Allocate to reckless assault if possible. **2)** Otherwise, consider an *Alford* plea or keep the ROC clean as to larceny or intentional assault.
Assault in 2nd Degree w/ Motor Vehicle [Class D Felony]	53a-60d	Would NOT be considered an AF. See *Leocal v. Ashcroft*, 543 U.S. 1 (2004).	Would probably NOT be considered a CIMT.	CSO – Might be considered a CSO if ROC establishes a controlled substance as defined in 21 USC § 802. (See fn. 15)	**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.
Assault in 3rd Degree [Class A Misdem.]	53a-61	Would probably NOT be considered a COV 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). However, <u>if sentence of 1 yr. or more is imposed</u>, and removal proceedings are held outside of 2d Circuit, conviction under subsections (a)(1) or (2) might be considered a COV AF. [See note].	Conviction under subsection (a)(1) would be considered a CIMT. See *Guevara v. Holder*, 533 F. App'x 23, 27 (2d Cir. 2013); Conviction under subsection (a)(2) would probably be considered a CIMT. *See Keungne v. U.S. Atty. Gen.*, 561 F.3d 1281 (11 Cir. 2009); Conviction under subsection (a)(3) would probably NOT be considered a CIMT. (*POE*)	CODV – Would probably NOT be considered a CODV; however, if the victim was a current or former spouse or similarly situated individual, and removal proceedings are held outside of 2d Circuit, conviction under subsections (a)(1) or (2) might be considered a CODV. 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)** Designation as CIMT should be challenged, as BIA case law states that "simple assault" is not CIMT, *see In Re Brieva-Perez*, 23 I. & N. Dec. 766, 772 (BIA 2005); *see also Matter of Fualaau*, 21 I. & N. Dec. 475 (BIA 1996); **2)** Designation as COV AF or CODV should be challenged, *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).

[26] §53a-60c governs assault of an elderly, blind, disabled, pregnant, or mentally retarded person 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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Threatening in the 1st Degree [Class D Felony]	53a-61aa	If sentence of 1 yr. or more is imposed: conviction under subsection (a)(2)(A) or (B) would be considered a COV AF, conviction under subsection (a)(1)(A) or (B) would likely be considered a COV AF as well.	Might be considered a CIMT.	Might be deemed "terrorist activity" triggering deportability or inadmissibility; *see* 8 U.S.C. § 1227(a)(4)(B); 8 U.S.C. § 1182(a)(3)(B)	**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 CIMT. **ImmPract:** If conviction under subsection (a)(1) is charged as COV AF, argue that "use of hazardous substance" does not implicate "use of force."
Threatening in the 2nd Degree [Class A Misdem.]	53a-62	<u>If sentence of 1 yr. or more is imposed</u>, would probably be considered a COV AF under all subsections.	Might be considered a CIMT. (*POE*)	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 recklessness to possibly prevent CIMT classification (but this may not be enough!)
Reckless Endangerment in the 1st Degree [Class A Misdem.]	53a-63	<u>If sentence of 1 yr. or more is imposed</u> and removal proceedings are held outside of 2nd Circuit, conviction might be considered a COV AF. In Second Circuit, probably not a COV. *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).	Would probably be considered a CIMT. *See Knapik v. Ashcroft*, 384 F.3d 84 (3d Cir. 2004), (*POE*)	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 victim was a minor, might be considered a crime of child abuse.	**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)** if victim was minor, keep age out of ROC; **4)** Consider AR or FVEP, if applicable. **ImmPract: 1)** Challenge COV AF charge because use of force is not an element; **2)** Challenge CA charge because age of victim is not an element.
Reckless Endangerment in the 2nd Degree [Class B Misdem.]	53a-64	No. [Maximum sentence is 6 months].	Would probably NOT be considered a CIMT.	CODV – Would probably NOT be considered a CODV. CA – If the victim was a minor, might be considered a crime of child abuse.	**DefAttys:** If victim was a minor, keep age out of ROC. **ImmPract:** Challenge CA charge because age of victim is not en 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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Injury or Risk of Injury to, or Impairing Morals of Children [Class B or C Felony]	53-21	Conviction under subsection (a)(1) may or may not be considered AF [see note]. Conviction under subsection (a)(2) would be considered "sexual abuse of minor" AF 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). Conviction under subsection (a)(3) would probably NOT be considered an AF.	Conviction under subsections (a)(1) and (a)(2) would be considered a CIMT; conviction under subsection (a)(3) might be considered a CIMT.	CA – Conviction under any subsection would likely be considered a crime of child abuse, child neglect or child abandonment. There is an argument that conviction under (a)(1) does not constitute a CA. *See Ibarra v. Holder*, 736 F.3d 903, 915-16 (10th Cir. 2013) (generic definition does not encompass "criminally negligent conduct with no resulting injury to a 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:** Subsection (a)(1) is divisible. *See Santapaola v. Ashcroft*, 249 F. Supp. 2d 181 (D. Conn. 2003). First, it is divisible as to placing in a "situation" or doing an "act". Both prongs may be further divisible as to the type of risk to the child. The CT Supreme Court has narrowed the "act" prong to actions that likely constitute COV AF. *See Santapoala*. An AF charge should be challenged if ROC is unclear or if conviction is clearly under first part ("situation" prong) of (a)(1).
Strangulation in the 1st Degree [Class C Felony]	53a-64aa	If sentence of 1 yr. or more is imposed, would be considered a COV AF.	Would be considered a CIMT. *Matter of Medina*, 15 I. & N. Dec. 611 (BIA 1976)	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.
Strangulation in the 2nd Degree [Class D Felony]	53a-64bb	If sentence of 1 yr. or more is imposed, would be considered a COV AF.	Would probably be considered 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)** Avoid mention of relationship to the victim in record or plea agreement; **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.

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: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
Strangulation in the 3rd Degree [Class A Misdem.]	53a-64cc	Probably NOT an AF.	Not a CIMT unless serious bodily injury resulted. See *In Re Brieva-Perez*, 23 I. & N. Dec. 766, 772 (BIA 2005); *Matter of Fualaau*, 21 I. & N. Dec. 475, 478 (BIA 1996).	CODV – Probably NOT a CODV. If, however, the victim was a current or former spouse or similarly situated individual and removal proceedings are held outside of 2nd Circuit, might be considered a CODV.	**DefAttys: 1**) Allocute to minor or no injuries to avoid CIMT; **2)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract:** Argue that a crime of violence under 18 U.S.C. § 16(a) requires intentional use of force. *Leocal v. Ashcroft*, 543 U.S. 1 (2004); *Jobson v. Ashcroft*, 326 F.3d 367 (2d Cir. 2003); *Matter of Velasquez*, 25 I. & N. Dec. 278, 282 (BIA 2010) (requiring "intentional use of violent force");
SEXUAL ASSAULT AND PROSTITUTION OFFENSES					
Sexual Assault in 1st Degree [Class A or B Felony][27]	53a-70	Conviction would be considered AF: if sentence of 1 yr. or more is imposed, conviction under any subsection would be considered COV AF; regardless of sentence, conviction under subsections (a)(1) and (4) would be considered "rape" AF; conviction under subsection (a)(2) would be considered "sexual abuse of minor" AF	Would probably be considered CIMT.	CA – 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.[28]	

[27] §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.
[28] §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: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
Sexual Assault in 2nd Degree [Class C or B Felony]	53a-71	If sentence of 1 yr. or more is imposed, conviction under any subsection would be considered a COV AF, *Costa v. Holder*, 611 F.3d 110 (2d Cir. 2010); conviction under subsections (a)(2) or (3) would probably be considered a "rape" AF regardless of sentence imposed; conviction under subsections (a)(1), (4), (9B) or (10) would also be considered "sexual abuse of minor" AF regardless of sentence;	Would probably be considered a CIMT.	CA – 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.	
Sexual Assault in the 3rd Degree [Class D or C Felony]	53a-72a	If sentence of 1 yr. or more is imposed, conviction under subsection (a)(1) would be considered a COV AF; conviction under either subsection could be considered "sexual abuse of minor" AF if record of conviction shows that the victim was a minor.	Would probably be considered a 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.	**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. **ImmPract: 1)** Note that the statute might be divisible as to COV AF issue because subsection (a)(2) (incest) should not be deemed a COV AF; **2)** Also, challenge "sexual abuse of minor" AF charge because elements of offense do not require that victim be a minor.
Sexual Assault in the 4th Degree [Class A Misdem. or Class D Felony]	53a-73a	<u>If prosecuted as a felony and sentence of 1 yr. or more is imposed:</u> conviction under any subsection (except (a)(3)) would probably be considered a COV AF. *See Hongsathirath v. Ashcroft*, 322 F. Supp. 2d 203 (D. Conn. 2004) (conviction under § 53a-73a(a)(1)(A) is COV AF). <u>Regardless of sentence imposed:</u> conviction under subsections (a)(1)(A), (B), or (E), (a)(7)(B), or (a)(8)(B) could be considered "sexual abuse of minor" AF.	Would probably be considered a CIMT. (*POE*)	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 record of conviction 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)** If victim was a minor, avoid any reference to that fact in record of conviction; **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)** Statute is divisible because subsection (a)(3) (sexual contact with dead body or animal) would probably not constitute a COV AF and possibly not a CIMT, and other subsections may also not qualify as COV AF or CIMT; **2)** Designation of convictions under subsections (a)(2) through (a)(8) as COV AF should be challenged under *Leocal* as there does not appear to be a *mens rea* requirement.

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:** **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Prostitution [Class A Misdem.]	53a-82	No.	Would probably be considered a CIMT. (*POE*)	Pros. - Would probably trigger "prostitution" inadmissibility. *See* 8 U.S.C. § 1182(a)(2)(D).	**ImmPract:** If client has only one or few convictions under this statute, argue that it does not rise to the level of "engaging in prostitution" to trigger the "prostitution" ground of inadmissibility. *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).
Patronizing a Prostitute [Class A Misdem.][29]	53a-83	If ROC establishes that prostitute was a minor, might be deemed "sexual abuse of a minor" AF.	Would probably be considered a CIMT. (*POE*)	Pros. – Might trigger "prostitution" inadmissibility. *See* 8 U.S.C. § 1182(a)(2)(D).	**DefAttys:** If prostitute was a minor, avoid any reference to that fact in record of conviction.
Promoting Prostitution in the 1st Degree [Class B Felony]	53a-86	If sentence of 1 yr. or more is imposed and ROC shows compelling prostitution by "force or intimidation." subsection (a)(1) is probably a COV AF. Subsection (a)(1) otherwise may be a "prostitution business" AF, 8 U.S.C. § 1101(a)(43)(K)(i) and (ii). *See generally Gertsenshteyn v. United States DOJ*, 544 F.3d 137 (2d Cir. 2008). [*But see Prus v. Holder,* note under 53a-87] A conviction under subsection (a)(2) is likely a "sexual abuse of a minor" AF.	Would probably be considered a CIMT (*POE*). *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).	**DefAttys**: 1) If prostitute was a minor, avoid any reference to that fact in ROC; 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) Charge as COV should be challenged if ROC is unclear as to which clause of (a)(1) governs. 2) Charge as prostitution business AF should be challenged 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"). *Prus v. Holder*, 660 F.3d 144 (2d Cir. 2011)

[29] §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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Promoting Prostitution in the 2nd Degree [Class C Felony]	53a-87	Probably not an AF. *See Prus v. Holder*, 660 F.3d 144 (2d Cir. 2011) (holding that NY second-degree promoting prostitution does not fall within definition of prostitution business AF because state prostitution definition ("sexual conduct") is broader than INA definition ("sexual intercourse").	Would probably be considered a CIMT (*POE*). *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).	**DefAttys**: 1) If prostitute was a minor, avoid any reference to that fact in ROC; 2) Try to plead down to promoting prostitution in the third degree or permitting prostitution under 53a-89.
Promoting Prostitution in the 3rd Degree [Class D Felony]	53a-88	No.	Might be considered a CIMT.	Pros. – Might trigger "prostitution" inadmissibility. *See* 8 U.S.C. § 1182(a)(2)(D).	
Permitting Prostitution [Class A Misdem.]	53a-89	No.	Probably not.		
Enticing a Minor [Class D Felony for 1st offense but a Class B Felony if minor is below 13 years of age][30]	53a-90a	Probably would be deemed a "sexual abuse of a minor" AF.	Would be considered a CIMT.	Pros. – Might trigger "prostitution" inadmissibility. *See* 8 U.S.C. § 1182(a)(2)(D).	
Intimidation Based on Bigotry or Bias in the 1st Degree [Class C Felony]	53a-181j	If sentence of 1 yr. or more is imposed, would probably be considered a COV AF. *See Matter of Singh*, 25 I&N Dec. 670 (BIA 2012)	Would probably be considered a CIMT. *See In re Baczewski,* 2007 WL 275860 (BIA 2007) (suggesting, without holding, that hate crimes are crimes involving moral turpitude).		**ImmPract: 1)** On PFR, argue for appeals court to adopt reasoning in *Malta-Espinoza v. Gonzalez*, 478 F.3d 1080 (9th Cir. 2007) **2)** Challenge classification as CIMT.

[30] 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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Intimidation Based on Bigotry or Bias in the 2nd Degree [Class D Felony]	53a-181k	If sentence of 1 yr. or more is imposed, would probably be considered a COV AF. *See Matter of Singh*, 25 I&N Dec. 670 (BIA 2012)	Would probably be considered a CIMT.		**DefAttys:** Allocute to threatening to deface property, or make and *Alford* plea, to preserve possible argument against COV AF. **ImmPract: 1)** Argue that conviction under (a)(3) is not a COV because use of force is not an element and threatening does not create a substantial risk of the use of force. **2)** Challenge classification as CIMT.
Intimidation Based on Bigotry or Bias in the 3rd Degree [Class A Misdem.]	53a-181*l*	<u>If sentence of 1 yr. or more is imposed</u>, would probably be considered a COV AF.	Would probably be considered a CIMT. (*POE*)		**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possible AF. **ImmPract: 1)** If charged as COV AF, argue that use of physical force is not an element. *See Matter of Velasquez*, 25 I. & N. Dec. 278, 282 (BIA 2010) (requiring "intentional use of violent force"); **2)** Challenge classification as CIMT.
Abuse in the 1st Degree [Class C Felony]	53a-321	If sentence of 1 yr. or more is imposed, would probably be considered a COV AF.	Would probably be considered a CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, conviction under would probably be considered a CODV.	**DefAttys: 1**) If victim was a current or former spouse or similarly situated individual, avoid any reference to that fact in ROC; **2**) Plead down to Abuse in the 3d degree to minimize immigration consequences. **ImmPract:** Argue that "use of force" is not implicated by acts of omission.
Abuse in the 2nd Degree [Class D Felony]	53a-322	If sentence of 1 yr. or more is imposed, would probably be considered a COV AF.	Would probably be considered a CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual, conviction under would probably be considered a CODV.	**DefAttys: 1**) If victim was a current or former spouse or similarly situated individual, avoid any reference to that fact in ROC; **2**) Plead down to Abuse in the 3d degree to minimize immigration consequences. **ImmPract:** Argue that "use of force" is not implicated by acts of omission.

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: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
Abuse in the 3rd Degree [Class A Misdem.]	53a-323	<u>If sentence of 1 yr. or more is imposed</u>, might be considered a COV AF.	Would probably be considered a CIMT. (*POE*).	CODV – If the victim was a current or former spouse or similarly situated individual, conviction might be considered a CODV. (Regardless of sentence imposed)	**DefAttys: 1**) Keep sentence imposed to 364 days or less to avoid possible AF; **2**) Allocute to recklessness rather than knowledge if possible; **3)** If victim was a current or former spouse or similarly situated individual, avoid any reference to that fact in ROC. **ImmPract:** If charged as COV AF, **1)** Argue that "use of force" is not an element **2)** argue that use of force requires intent. *See Matter of Velasquez*, 25 I. & N. Dec. 278, 282 (BIA 2010) (requiring "intentional use of violent force");
KIDNAPPING AND RELATED OFFENSES					
Kidnapping in the 1st Degree [Class A Felony]	53a-92	If sentence of 1 yr. or more is imposed, conviction under any subsection would be considered a COV AF; conviction under subsection (a)(1)(A) might be considered "ransom offense" AF.	Would be considered a CIMT. *See Matter of P*--, 5 I. & N. Dec. 444 (BIA 1953); *Matter of Nakoi*, 14 I. & N. Dec. 208, 209 (BIA 1972).	CODV – Conviction would be considered a CODV if ROC establishes that victim was spouse, former spouse or similarly situated individual. Terrorism – Conviction under subsections (a)(1) or (a)(2)(D) might be deemed "terrorist activity" triggering deportability or inadmissibility.	
Kidnapping in the 1st Degree with a Firearm [Class A Felony]	53a-92a	If sentence of 1 yr. or more is imposed, conviction under any subsection would be considered a COV AF; conviction under subsection (a)(1)(A) might be considered "ransom offense" AF.	Would be considered a CIMT. *See Matter of P*--, 5 I. & N. Dec. 444 (BIA 1953); *Matter of Nakoi*, 14 I. & N. Dec. 208, 209 (BIA 1972).	CODV – Conviction would be considered a CODV if ROC establishes that victim was spouse, former spouse or similarly situated individual. FO – would be considered a FO.	
Kidnapping in the 2nd Degree [Class B Felony]	53a-94	If sentence of 1 yr. or more is imposed, would be considered a COV AF.	Would probably be considered a CIMT.	CODV – Would be considered a CODV if ROC establishes that victim was spouse, former spouse, or similarly situated person.	**DefAttys:** Plead down to Unlawful Restraint in the 2nd Degree, if possible.

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: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
Kidnapping in the 2nd Degree with a Firearm [Class B Felony]	53a-94a	If sentence of 1 yr. or more is imposed, would be considered a COV AF.	Would probably be considered a CIMT.	CODV – Would be considered a CODV if record of conviction establishes that victim was spouse, former spouse, or similarly situated person. FO – would be considered a FO.	
Unlawful Restraint in the 1st Degree [Class D Felony]	53a-95	If sentence of 1 yr. or more is imposed, conviction under that portion of definition of "restraint" that covers restraint without consent of competent adults would be considered a COV AF. *See Dickson v. Ashcroft*, 346 F.3d 44 (2d Cir. 2003) (NY Unlawful Restraint in 1st Degree may be COV AF—divisible).	Might be considered a CIMT.	CODV – Would be considered a CODV if record of conviction shows victim was spouse, former spouse or similarly situated person	**DefAttys: 1)** Consider AR; **2)** Plead down to Unlawful Restraint in 2nd Degree, if possible; **3**) If victim was a current or former spouse or similarly situated individual, avoid any reference to that fact in ROC **ImmPract:** Designation as COV or CODV should be challenged under *Dickson* because CT statute differs slightly, but significantly, from the NY statute in that case (regarding definition of "restraint").
Unlawful Restraint in the 2nd Degree [Class A Misdem.]	53a-96	Probably not a COV AF. Keep sentence to under 1 yr. to be safe.	Might be considered a CIMT. (*POE*)	CODV – Might be considered a CODV if record of conviction shows victim was spouse, former spouse or similarly situated person, regardless of sentence imposed.	**DefAttys: 1**) If victim was a current or former spouse or similarly situated individual, avoid any reference to that fact in ROC; **2**) May be a safer plea to felony kidnapping / restraint offenses, but plead to sentence imposed of 364 days or less to avoid any possibility of COV AF. **ImmPract:** Designation as COV or CODV should be challenged because restraint may be committed without use of force, and § 16(b) (risk of force) does not apply here.
Custodial Interference in the 1st Degree [Class D Felony]	53a-97	If sentence of 1 yr. or more is imposed, conviction under (a)(1) might be considered a COV AF	Might be considered a CIMT. (*POE*)	CA – If ROC shows that victim was a child, would probably 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.
Custodial Interference in the 1st Degree [Class A Misdem.]	53a-98	Probably not an AF.	Might be considered a CIMT. (*POE*)	CA – Conviction under subsections (a)(1) or (3) might be considered a crime of "child abuse."	**DefAttys: 1**) If victim was a minor, avoid any reference to that fact in ROC. **2)** Plead to sentence imposed of 364 days or less to avoid any possibility of "COV" AF.

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: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
BURGLARY AND RELATED OFFENSES					
Home Invasion [Class A Felony]	53a-100aa	Would be considered a COV AF and/or a "burglary" AF.	Would be considered a CIMT if record of conviction establishes that crime intended to be committed was a CIMT or establishes that defendant was convicted of intentionally or knowingly inflicting or attempting to inflict injury.	FO – Subsection (a)(2) is not divisible as to type of weapon and thus should not be considered FO	
Burglary in the 1st Degree [Class B Felony]	53a-101	A conviction under subsection (a)(3) would be considered a "burglary" AF. If sentence of 1 yr. or more is imposed, conviction under any subsection would likely be considered a COV AF.	Would be considered a CIMT if record of conviction establishes that crime intended to be committed was a CIMT or establishes that defendant was convicted of intentionally or knowingly inflicting or attempting to inflict injury.	FO – Subsection (a)(1) is not divisible as to type of weapon and thus should not be considered FO	**DefAttys: 1)** If possible, plead to criminal trespassing; **2)** Keep ROC clean as to offense intended to be committed and type of building. **ImmPract:** See note for Burglary 3rd, below. Harder to challenge COV charge here, where defendant is armed (a)(1) or inflicts bodily injury on a person (a)(2), but same arguments are available regarding the definition.
Burglary in the 2nd Degree [Class C Felony]	53a-102	Categorically a "burglary" AF and a COV AF.	Might be considered a CIMT.		**DefAttys: 1)** If possible, plead to criminal trespassing; **2)** Keep ROC clean as to offense intended to be committed.
Burglary in the 2nd Degree with a Firearm [Class C Felony]	53a-102a	Categorically a "burglary" AF and a COV AF.	Might be considered a CIMT.	FO – Would probably be considered a firearm offense. (See fn. 13).	See Note under 53a-102 above.
Burglary in the 3rd Degree [Class D Felony]	53a-103	If sentence of 1 yr. or more is imposed, may be considered a COV AF. Should not be a "burglary" AF because of broad definition of "building". *See Solorzano-Patlan v. INS*, 207 F.3d 869, 874-75 (7th Cir. 2000)	If removal proceedings held outside of 2d Cir, might be considered a CIMT. In 2d Cir, not a CIMT. *Wala v. Mukasey,* 511 F.3d 102 (2d Cir. 2007)		**DefAttys: 1)** If possible, plead to criminal trespassing; **2)** Keep ROC clean as to offense intended to be committed; **3)** Avoid reference in ROC to unlawful *entry* into building and type of building. ImmPract: Statute is likely not divisible as to "entry" or type of "building" under Descamps v. U.S., 133 S.Ct. 2276. 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.

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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Burglary in the 3rd Degree with a Firearm [Class D Felony]	53a-103a	If sentence of 1 yr. or more is imposed, may be considered a COV AF.	Might be considered a CIMT.	FO – Would probably be considered a firearm offense. (See fn. 13).	See note under 53a-103 above.
Manufacturing or Possession of Burglar's Tools [Class A Misdem.]	53a-106	Would probably NOT be considered an AF, but avoid 1 yr. maximum sentence to be safe.	Might be considered a CIMT. (*POE*)		**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of AF; **2)** Avoid reference in ROC to exact tools.
Criminal Trespass in the 1st Degree [Class A Misdem.]	53a-107	Would probably NOT be considered an AF, but avoid 1 yr. sentence to be safe.	Conviction under subsections (a)(2) or (3) might be considered a CIMT. (*POE*)	If conviction is under subsections (a)(2) or (a)(3), it will probably be considered proof of a violation of a protective order, 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; **3)** Allocute in ROC that there was no scienter to avoid classification as CIMT
Criminal Trespass in the 2nd Degree [Class B Misdem.]	53a-108	No.	No.		
Criminal Trespass in the 3rd Degree [Class C Misdem.]	53a-109	No.	No.		
Simple Trespass [Infraction]	53a-110a	No.	No.		
			DAMAGE TO PROPERTY OFFENSES		
Arson in the 1st Degree [Class A Felony]	53a-111	If sentence of 1 yr. or more is imposed, would be considered COV AF. *See Santana v. Holder*, 714 F.3d 140, (2d Cir. 2013) (NY arson conviction is COV AF, because fire is a "physical force").	Would probably be considered a CIMT. *See Vuksanovic v. United States AG*, 439 F.3d 1308 (11th Cir. 2006) (arson is a CIMT).	CODV - If the victim for a conviction under subsection (a)(2) was a current or former spouse or similarly situated individual, conviction would be considered a CODV.	**DefAttys:** Avoid conviction under subsection (a)(1), or make *Alford* plea. **ImmPract:** Charge as a COV AF should be challenged under *Johnson v. United States*, 559 U. S. 133 (2010) (defining "physical force"). Note also that NY arson requires that another person was in the building and that the defendant knew or should have known this. Burning of one's own property may not create risk of force against "person or property *of another*".

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:** **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Arson in the 2nd Degree [Class B Felony]	53a-112	If sentence of 1 yr. or more is imposed, would be considered COV AF.	Would probably be considered a CIMT.	CODV - If the victim was a current or former spouse or similarly situated individual, conviction would be considered a CODV.	See notes under Arson in 1st Degree.
Arson in the 3rd Degree [Class C Felony]	53a-113	If sentence of 1 yr. or more is imposed, might be considered COV AF. *See Tran v. Gonzalez*, 414 F.3d 464 (3d Cir. 2005) (PA reckless burning conviction NOT "COV" AF).	Might be considered a CIMT. *See Gill v. I.N.S.* 420 F.3d 82, 91 (2d Cir. 2005) (finding that alien's New York conviction for attempted reckless assault did not constitute a CIMT because "no mental state can be clearly discerned from [a conviction for a reckless crime], let alone the sort of aggravated recklessness that has been found to demonstrate moral turpitude")		**ImmPract:** Charge as a COV AF should be challenged under *Leocal* because the statute concerns reckless conduct that does not include the *mens rea* element. See fn. 2.
Reckless Burning [Class D Felony]	53a-114	If sentence of 1 yr. or more is imposed, might be considered a COV AF. [But see note under Arson in the 3d degree].	Might be considered a CIMT.		See notes under Arson in the 3d degree.
Criminal Mischief in the 1st Degree [Class D Felony]	53a-115	If sentence of 1 yr. or more is imposed, would probably be considered COV AF.	Might be considered a CIMT. *Cf. Rodriguez-Herrera v. INS*, 52 F.3d 238 (9th Cir. 1995) (2nd degree malicious mischief not CIMT).		**DefAttys: 1)** Plead to Criminal Mischief in the 2d degree or lower to minimize immigration consequences, **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); **2)** Designation as CIMT should also be challenged. *See Rodriguez-Herrera v. INS*, 52 F.3d 238 (9th Cir. 1995) (similar statute 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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Criminal Mischief in the 2nd Degree [Class A Misdem.]	53a-116	Might be considered a COV AF. Avoid max. 1 yr. sentence to be safe.	Might be considered a CIMT. *But see Rodriguez-Herrera v. INS*, 52 F.3d 238 (9th Cir. 1995) (2nd degree malicious mischief not CIMT). (*POE*)		**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of AF. **ImmPract:** see note under 1st degree criminal mischief.
Criminal Mischief in the 3rd Degree [Class B Misdem.]	53a-117	Not a COV AF because max sentence is less than 1 yr.	If record indicates intentional act under subsection (a)(1), might be considered a CIMT. (*POE*)		**DefAttys:** Allocution to (a)(2) or (a)(4) is least likely to be considered CIMT; thereafter allocution to mere reckless (not intentional) act. Avoid any reference in ROC to intentional act, or make and *Alford* plea. **ImmPract:** see note under 1st degree criminal mischief.
Criminal Mischief in the 4th Degree [Class C Misdem.]	53a-117a	Not a COV AF because max sentence is less than 1 yr.	If record indicates intentional act, might be considered a CIMT. (*POE*)		**DefAttys:** Allocution to mere reckless (not intentional) act minimizes CIMT risk; avoid any reference in ROC to intentional act. **ImmPract:** see note under 1st degree criminal mischief.
Criminal Damage of Landlord's Property in 1st Degree [Class D Felony]	53a-117e	If sentence of 1 yr. or more is imposed, would probably be considered COV AF.	Might be considered a CIMT.		**DefAttys:** Plead to Criminal Damage of Landlord's Property in the 2d or 3d degree to minimize immigration consequences, **ImmPract:** see note under 1st degree criminal mischief.
Criminal Damage of Landlord's Property in 2nd Degree [Class A Misdem.]	53a-117f	If sentence of 1 yr. or more is imposed, would probably be considered COV AF.	Conviction under subsection (a)(1) might be considered a CIMT. (*POE*)		**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. **ImmPract:** see note under 1st degree criminal mischief.
Criminal Damage of Landlord's Property 3rd Degree [Class B Misdem.]	53a-117g	No.	Would probably NOT be considered a CIMT. (*POE*)		**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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
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	If sentence of 1 yr. or more is imposed, conviction under any subsection might be considered a "theft" AF. Regardless of sentence, conviction under subsections (a)(2) or (b)(2) might be considered "fraud or deceit" AF if loss to victim in excess of $10K. If charged as felony, may be considered COV AF. *See Brieva-Perez v. Gonzales*, 482 F.3d 356 (5th Cir. 2007).	Conviction under subsections (a)(1), (b)(1) or (c)(1) would probably NOT be considered CIMT unless record of conviction establishes permanent taking intended. Conviction under subsections (a)(2), (b)(2), (c)(2) would probably be considered CIMT. (*POE*)		**DefAttys**: **1)** Allocute to a temporary taking, or make *Alford* ple; **2)** Avoid conviction under (a)(2) or (b)(2).**3)** If ROC indicates fraud, allocate to a sum less than $10K. **4)** Keep sentence to 364 days or less to avoid risk of "theft" or COV AF. **ImmPract**: **1)** Any designation as CIMT should be challenged because statute does not require intent to permanently deprive. *See Matter of M*, 2 I. & N. Dec. 686 (BIA 1946) (joyriding is not CIMT). **2)** Any designation as theft AF should be challenged 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* and *Johnson*.
Larceny in the 1st Degree [Class B Felony]	53a-122	If sentence of 1 yr. or more is imposed, would be considered "theft" AF;[31] conviction under subsection (a)(4) would be considered a "fraud" AF if loss to victim exceeding $10K; conviction under subsections (a)(2) or (a)(3) might be considered "fraud or deceit" AF if ROC establishes conviction under any part of the CT "larceny" definition that includes larceny by fraud or deceit.	Yes. *See Mendez v. Mukasey*, 547 F.3d 345 (2d Cir. 2008) (conviction under 53a-122 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).		**DefAttys: 1)** To avoid "fraud" AF, allocate to 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) **ImmPract:** see footnote 12 below.

[31] 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 arguable exceeds the generic definition of "theft offense." Additionally, the CT statute may be divisible as to whether the taking was committed with "intent to deprive" or "intent to appropriate," whereas the BIA's definition of larceny requires "intent to deprive." Both of these arguments have been rejected by the Second Circuit. *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

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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Larceny in the 2nd Degree [Class C Felony]	53a-123	If sentence of 1 yr. or more is imposed, would be considered "theft" AF; conviction under subsection (a)(3) would probably be considered a COV AF if sentence imposed is 1 yr. or more; conviction under subsection (a)(5) might be considered "fraud" or deceit" AF if record establishes that loss to victim exceeds $10K.	Yes. See note for 53a-122 above.		**DefAttys:** see note under 1st degree larceny **ImmPract:** see fn. 12.
Larceny in the 3rd Degree [Class D Felony]	53a-124	If sentence of 1 yr. or more is imposed, would be considered "theft" AF; conviction under subsection (a)(5) might be considered "fraud or deceit" AF if record establishes that loss to victim exceeds $10K.	Yes. See note for 53a-122 above.		**DefAttys:** see note under 1st degree larceny. **ImmPract:** see fn. 12.
Larceny in the 4th Degree [Class A Misdem.]	53a-125	If max. sentence of 1 yr. is imposed, would be considered "theft" AF; conviction under subsection (a)(5) might be considered "fraud or deceit" AF if record establishes that loss to victim exceeds $10K.	Yes. See note for 53a-122 above. (*POE*)		**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of theft AF; **2)** See note under 1st degree larceny. **ImmPract:** see fn 12.
Larceny in the 5th Degree [Class B Misdem.]	53a-125a	No (because could not be sentenced to 1 yr. or more, and loss to victim is low).	Yes. See note for 53a-122 above. (*POE*)		**DefAttys:** see note under 1st degree larcency.
Larceny in the 6th Degree [Class C Misdem.]	53a-125b	No (because could not be sentenced to 1 yr. or more, and loss to victim is low).	Yes. See note for 53a-122 above. (*POE*)		**DefAttys:** see note under 1st degree larcency.

larceny is categorically a theft offense notwithstanding "deprive" and "appropriate" distinction in state definition), but immigration practitioners are encouraged to continue preserving this argument. *See United States v. Corona-Sanchez*, 291 F.3d 1201, 1208 (9th Cir. 2002) (en banc) (discussing "theft of services" as outside of generic definition).

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: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
Criminal Trover in 1st Degree [Class C or D Felony]	53a-126a	If sentence of 1 yr. or more is imposed, would be considered a COV AF due to "forcible" entry.	Might be considered a CIMT.		**DefAttys: 1)** To avoid classification as CIMT, allocute that there was no scienter; **2)** Avoid reference in ROC to permanent taking. **ImmPract:** Designation as CIMT or COV AF should be challenged. CIMT should be challenged because statute does not require intent to permanently deprive. *See Matter of M*, 2 I. & N. Dec. 686 (BIA 1946) (joyriding is not CIMT).
Criminal Trover in 2nd Degree [Class A Misdem.]	53a-126b	Would probably NOT be considered AF (but avoid 1 yr. maximum sentence to be safe).	Might be considered a CIMT. (*POE*)		**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of AF. **ImmPract:** Designation as CIMT should be challenged. See note above.
Fraudulent Use of an Automated Teller Machine [Class C Misdem.]	53a-127b	Might be considered "fraud or deceit" AF if loss exceeds $10,000.	Might be considered a CIMT. (*POE*)		**DefAttys: 1)** To minimize risk of "fraud" AF, allocute to loss to victim of $10,000 or less. **2)** consider pleading to 53a-127b for crimes of larceny or credit card fraud.
Theft of Electric, Gas, Water, Steam, Telecommunications, Wireless Radio Communications, or Community Antenna Television Service [Class D Felony]	53a-127c	Might be considered a "theft" AF if sentence of 1 yr. or more is imposed. Subsection (a)(3) might be considered "fraud or deceit" AF if loss exceeds $10,000	Might be considered a CIMT.		**DefAttys:** Keep sentence imposed to 364 days or less to avoid the possibility of a "theft" AF. Allocution to (a)(1) or (a)(2) is least likely to be considered CIMT
Possession of a Shoplifting Device [Class A Misdem.]	53a-127f	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 not.		**DefAttys:** Consider pleading to this for charges of larceny, theft, or shoplifting.
Possession of a Personal Identifying Information Access Device [Class A Misdem.]	53a-127g	Would only be considered a "fraud" AF if loss exceeds $10,000.	Might be considered a CIMT.		**DefAttys:** Consider pleading to this for charges of larceny, theft, or shoplifting.

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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Issuing a Bad Check [Category depends on amount]	53a-128	Might be considered a "fraud" AF if loss exceeds $10,000. See *Mirat v. Atty. Gen. of U.S.*, 184 Fed. Appx. 153 (3d Cir. 2006) (issuing bad check not an AF because fraud was not an express element of offense)	Would probably be considered a CIMT.[32] *Matter of Bart*, 20 I. & N. Dec. 436 (BIA 1992) (finding that a conviction for issuing a bad check constitutes a CIMT when guilty knowledge, such as "intent to defraud," is required for conviction) (*POE* if a misdemeanor)		**DefAttys:** To minimize risk of "fraud" AF, allocute to loss to victim of $10,000 or less.
Credit Card Theft – Illegal Transfer [Class A Misdem. or Class D Felony]	53a-128c	If sentence of 1 yr. or more is imposed, would probably be considered "theft" AF; conviction under subsections (d), (f) or (g) would probably be considered "fraud or deceit" AF if loss exceeds $10,000; conviction under section (f) may also be considered "forgery" AF if sentence of 1 yr. or more is imposed.	Would probably be considered a CIMT. (*POE* if a misdemeanor)		**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF; **2)** To avoid "fraud" AF, allocute to 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.
Illegal Use of Credit Card [Class A Misdem. or Class D Felony]	53a-128d	Would probably be considered "fraud or deceit" AF if loss exceeds $10,000; would probably also be considered a "theft" AF if sentence imposed is 1 yr. or more; might be considered "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.	Yes. (*POE* if a misdemeanor). *See, e.g., Mendez v. Mukasey*, 547 F.3d 345, 347 (2d Cir. 2008) (noting that crimes involving fraud are always crimes involving moral turpitude).		**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF; **2** To avoid "fraud" AF, allocute to loss to victim of $10,000 or less **3)** Consider pleading to 53a-128g to minimize immigration consequences.

[32] The current CT statute does NOT explicitly require an intent to defraud, but it does requires intent or belief that the check will not be honored. This may be read as implicitly requiring an intent to defraud, or at least guilty knowledge.

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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Receipt of Money, Goods or Services obtained by illegal use of credit card [Class A Misdem.]	53a-128g	Would probably be considered "theft" AF if max. sentence of 1 yr. or more is imposed; might also be considered "fraud or deceit" AF if loss to victim exceeds $10,000.	Would probably be considered a CIMT. (*POE*)		**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF; **2)** To avoid "fraud" AF, allocute to loss to victim of $10,000 or less **ImmPract:** Charge as CIMT or "theft" AF should be challenged because statute allows conviction based on presumption of knowledge that goods were stolen.
Identity Theft in the First Degree [Class B Felony]	53a-129b	If sentence of 1 yr. or more imposed, would probably be considered a "theft" AF. Conviction under subsections (a)(1) and (a)(2) would be considered "fraud or deceit" AF if ROC establishes loss to victim exceeds $10,000. However, conviction under the statute is not categorically an aggravated felony. *See Mandujano-Real v. Mukasey*, 526 F.3d 585 (9th Cir. 2008) (finding the state statute regarding identity theft to be broader than the generic theft definition).	Yes. *See Chiaramonte v. INS*, 626 F.2d 1093, 1097 (2d Cir. 1980) (theft crimes presumed to be crimes of moral turpitude).		**DefAttys: 1)** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF; **2)** To avoid "fraud" AF, allocute to loss to victim of $10,000 or less. **ImmPract:** Charge as "theft" AF should be challenged because the statute is broader than the generic theft offense and allows conviction even if owner of identity consents. *See Mandujano-Real v. Mukasey*, 526 F.3d 585 (9th Cir. 2008).
Identity Theft in the Second Degree [Class C Felony]	53a-129c	If sentence of 1 yr. or more imposed, would probably be considered a "theft" AF. See above.	Yes. See note for 53a-129b above.		**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF
Identity Theft in the Third Degree [Class D Felony]	53a-129d	If sentence of 1 yr. or more imposed, would probably be considered a "theft" AF. See above.	Yes. See note for 53a-129b above.		**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF.
Criminal Impersonation [Class A Misdem.]	53a-130	Might be considered a "fraud or deceit" AF if loss to victim exceeds $10,000	Would probably be considered a CIMT. (*POE*)		**DefAttys:** To avoid risk of "fraud" AF, allocute to loss to victim of $10,000 or less
Defrauding Immigrant Laborers [Class A Misdem.]	31-4a	Might be considered a "fraud or deceit" AF if loss exceeds $10,000.	Would probably be considered a CIMT.		**DefAttys:** To minimize risk of "fraud" AF, allocute to loss to victim of $10,000 or less.
		ROBBERY OFFENSES			
Robbery in the 1st Degree [Class B Felony]	53a-134	If sentence of 1 yr. or more is imposed, would be considered a COV and "theft" AF.	Yes.	FO – Conviction under subsection (a)(4) is a FO. (But see fn. 13).	

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Robbery in the 2nd Degree [Class C Felony]	53a-135	If sentence of 1 yr. or more is imposed, would be considered a COV and "theft" AF.	Yes.		**DefAttys:** If first-time offense, consider AR (must show good cause).
Robbery in the 3rd Degree [Class D Felony]	53a-136	If sentence of 1 yr. or more is imposed, would be considered a COV and "theft" AF. *See Gomez v. Ashcroft*, 293 F. Supp. 2d 162 (D. Conn. 2003) (conviction under §53a-136 is COV AF).	Yes.		**DefAttys:** If first-time offense, consider AR.
FORGERY OFFENSES					
Forgery in the 1st Degree [Class C Felony]	53a-138	If sentence of 1 yr. or more is imposed, would be considered a "forgery" AF. *See Richards v. Ashcroft*, 400 F.3d 125, 128-130 (2d Cir. 2005) (Conviction under §53a-139 is "forgery" AF). OR if loss to victim exceeds $10,000, would probably be considered "fraud" AF, 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, 2295 (U.S. 2009) (finding that conspiring to commit mail fraud exceeding $10,000 is AF).	Would probably be considered a CIMT. *See, e.g.*, *United States ex rel. Jelic v. Dist. Director of Immigration and Naturalization,* 106 F.2d 14, 20 (2d Cir. 1939).		**DefAttys: 1)** To avoid "fraud" AF, allocute to 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, 214 (3d Cir. 2002).
Forgery in the 2nd Degree [Class D Felony]	53a-139	If sentence of 1 yr. or more is imposed, would be considered a "forgery" AF; *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) (forgery in the second degree with a one-year sentence imposed constitutes an AF). OR, if loss to victim exceeds $10,000, would probably be considered a "fraud" AF, esp. if ROC shows element of intent to defraud or deceive (as opposed to injury).	Would probably be considered a CIMT.		**DefAttys: 1)** See note regarding "fraud" AF under Forgery in 1st Degree; **2)** If first-time offense, consider AR.

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:** **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Forgery in the 3rd Degree [Class B Misdem.]	53a-140	If loss to victim exceeds $10,000, might be considered a "fraud or deceit" AF, especially if ROC shows element of intent to defraud or deceive (as opposed to injure).	Would probably be considered a CIMT. (*POE*)		[See note under Forgery in the 1st Degree] **DefAttys: 1)** No "forgery" AF so long as no sentence of 1 yr. or more; **2)** See note regarding "fraud or deceit" AF under Forgery in 1st Degree; **3)** If first-time offense, consider AR.
MISCELLANEOUS OFFENSES					
Tampering with a Witness [Class C Felony]	53a-151	If sentence of 1 yr. or more is imposed, is an "obstruction of justice" AF. *Higgins v. Holder*, 677 F.3d 97 (2d Cir. 2012)	Might be considered a CIMT.		*See In re Espinoza-Gonzalez*, 22 I. & N. Dec. 889 (BIA 1999) (discussing at length the definition of "obstruction of justice").
Intimidating a Witness [Class C Felony]	53a-151a	If sentence of 1 yr. or more is imposed, would probably be considered an 'obstruction of justice' AF. See *Lara-Duran v. Gonzalez*,198 F.App'x 621 (9th Cir. 2006). Could also be a 'COV' AF.	Might be considered a CIMT.		See note under Tampering with a Witness.
Tampering with or Fabricating Physical Evidence [Class D Felony]	53a-155	If sentence of 1 yr. or more is imposed: would probably be considered "obstruction of justice" AF; conviction under subsection (a)(2) might be deemed a "forgery" AF.	Conviction under subsection (a)(1) might be considered a CIMT; conviction under subsection (a)(2) would probably be considered a CIMT.		See note under Tampering with a Witness.
Perjury [Class D Felony]	53a-156	If sentence of 1 yr. or more is imposed, would probably be considered an 'obstruction of justice' AF. See *U.S. v. Martinez*, 172 F. App'x 367 (2d Cir. 2006) (obstruction of justice was appropriate sentence increase for perjury)	Yes. See *U.S. ex. Rel. Karpay v. Uhl* ,70 F.2d 792 (2d Cir. 1934).		
False Statement in 2nd Degree [Class A Misdem.]	53a-157b	If loss to victim exceeds $10,000, might be considered a "fraud or deceit" AF.	Would probably be considered a CIMT. (*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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Hindering Prosecution in 1st Degree [Class C Felony]	53a-165aa	If sentence of 1 yr. or more is imposed, would probably be considered "obstruction of justice" AF.	Would probably be considered a CIMT.		**DefAttys:** Try to avoid language in ROC that indicates obstruction of justice to avoid possibility of 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	If sentence of 1 yr. or more is imposed and ROC shows element of obstruction of justice, would be considered "obstruction of justice" AF.	Would probably be considered a CIMT.		**DefAttys:** Try to avoid language in ROC that indicates obstruction of justice to avoid possibility of AF. **ImmPract**: See note under 53a-165aa above.
Hindering Prosecution in the 3rd Degree [Class D Felony]	53a-167	If sentence of 1 yr. or more is imposed and ROC shows element of obstruction of justice, would be considered "obstruction of justice" AF.	Would probably be considered a CIMT.		**DefAttys:** Try to avoid language in ROC that indicates obstruction of justice to avoid possibility of AF. **ImmPract:** See note under 53a-165aa above.
Interfering with an Officer [Class A Misdem.]	53a-167a	If sentence of 1 yr. or more is imposed, might be considered "obstruction of justice" AF.	Would probably NOT be considered a CIMT. (*POE*)		**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of AF. **ImmPract**: See note under 53a-165aa above.
Assault of a Public Safety or Emergency Medical Personnel [Class C Felony]	53a-167c	If sentence of 1 yr. or more is imposed, conviction would be considered a COV AF. *See Canada v. Gonzales*, 448 F.3d 560, 568 (2d Cir. 2006) (conviction under § 53a-167c(a)(1) is COV AF).	Would probably be considered a CIMT. *See Matter of Danesh*, 19 I. & N. Dec. 669 (BIA 1988); *Zaranska v. United States Dep't of Homeland Sec.*, 400 F. Supp. 2d 500 (E.D.N.Y. 2005).		**DefAttys:** *Canada* noted that the statute is divisible and offenses against some public safety personnel may not create the same risk of use of force as when committed against a police officer. An *Alford* plea may best preserve this argument. **ImmPract:** Challenge designation as COV AF. *See Canada v. Gonzales*, 448 F.2d 560, 567 (2d Cir. 2006) (suggesting statute may be divisible).

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: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
Escape in the 1st Degree [Class C Felony]	53a-169	If sentence of 1 yr. or more is imposed, would probably be considered COV AF. *See Canada v. Gonzales*, 448 F.3d 560, 570 (2d Cir. 2006) (in dicta, stating that escape offense is COV AF).	Would probably NOT be considered a CIMT. *See In Re J--*, 4 I. & N. Dec. 512, 513 (BIA 1951).		**DefAttys:** Allocate to "failure to return" or make an *Alford* plea. **ImmPract:** Convictions under subsections (a)(40, (5), and (7) may not be COV AF. *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	If sentence of 1 yr. or more is imposed, would probably be considered COV AF. See note above.	See note under "Escape in the 1st Degree."		
Escape from Custody [Class C Felony or A Misdem.]	53a-171	Only if charged as a felony: conviction under subsection (a)(1) would probably be considered a COV AF if sentence of 1 yr. or more is imposed OR conviction under subsection (a)(2) might be considered a COV AF if sentence of 1 yr. or more is imposed.	Would probably NOT be considered a CIMT. *See United States ex rel. Manzella v. Zimmerman*, 71 F. Supp. 534 (D. Pa. 1947) (*POE*)		**DefAttys:** If charged as misdemeanor, keep sentence imposed to 364 days or less to avoid possibility of AF.
Failure to Appear in 1st Degree [Class D Felony]	53a-172	If charge on which defendant failed to appear is punishable by a sentence of 2 yrs. or more, conviction might be considered "failure to appear" AF. *But 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).	Would probably NOT be considered a 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.
Failure to Appear in 2nd Degree [Class A Misdem.]	53a-173	Would probably NOT be considered an AF (avoid 1 yr. max. sentence to be safe).	Would probably NOT be considered a CIMT.		**DefAttys:** Keep sentence imposed to 364 days or less to avoid possibility of AF.
Breach of the Peace in the 2nd Degree [Class B Misdem.]	53a-181	No.	Would probably NOT be considered a CIMT. *See Chaunt v. U.S*, 364 U.S. 350 (1960)(general breach of peace 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:** **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Creating a Public Disturbance [Infraction]	53a-181a	No.	Would probably NOT be considered a CIMT.		**DefAttys:** Consider as a plea down from Breach of Peace or Disorderly Conduct.
Stalking in the 1st Degree [Class D Felony]	53a-181c	If sentence of 1 yr. or more is imposed, would probably be considered COV AF. *Matter of Singh*, 25 I&N Dec. 670 (BIA 2012)*; 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. *Arriaga v. Mukasey*, 521 F.3d 219, 228 (2d Cir. 2008).	CODV - A conviction would probably trigger deportability as a "crime of stalking," OR, if victim was current or former spouse or similarly situated individual, might be considered CODV.	**DefAttys: 1)** Consider AR or FVEP, if applicable. **2)** Stalking 2nd is safer plea, even if the full year sentence is imposed.
Stalking in the 2nd Degree [Class A Misdem.]	53a-181d	If sentence of 1 yr. is imposed, might be considered COV AF.	Would probably be considered a CIMT. (*POE*)	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. **ImmPract:** *Singh* held that stalking is a COV under § 16(b). Argue that threatening use of force is not an element here.
Stalking in the 3rd Degree [Class B Misdem.]	53a-181e	No.	Would probably be considered a CIMT. (*POE*)	CODV - A conviction would probably trigger deportability as a "crime of stalking."	**DefAttys:** Consider AR or FVEP, if applicable.
Disorderly Conduct [Class C Misdem.]	53a-182	No.	Would probably NOT be considered a CIMT. (*POE*)		
Harassment in the 1st Degree [Class D Felony]	53a-182b	If sentence of 1 yr. or more is imposed, would probably be considered COV AF.	Would probably be considered a CIMT. See *Manzar v. Mukasey,* 266 F.App'x 656 (9th Cir. 2008)(unpublished) (felony harassment is CIMT).	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."	**ImmPract:** Argue that threats to physically injure do not necessarily constitute the threatened use of physical force.
Harassment in the 2nd Degree [Class C Misdem.]	53a-183	No.	Might be considered a CIMT. (*POE*)	CODV – Conviction might trigger deportability as "crime of stalking."	**DefAttys:** Consider AR or FVEP, if applicable.
Interfering with an Emergency Call [Class A Misdem.]	§ 53a-183b	No.	Would probably NOT be considered a CIMT		**ImmPract:** Argue against categorization as CIMT.
Loitering on School Grounds [Class C Misdem.]	§ 53a-185	No.	Would probably NOT be considered a CIMT.		**ImmPract**: Argue against categorization as CIMT.

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Public Indecency [Class B Misdem.]	53a-186	No, except that conviction might be considered a "sexual abuse of a minor" AF if ROC establishes that victim was a minor.	Conviction under subsec. (a)(1) would probably NOT be considered CIMT; conviction under subsections (a)(2) or (a)(3) would probably be considered CIMT. *See* Unpublished BIA decision: *In Re Villalta*, 2004 WL 2952201 (BIA 2004) (conviction under § 53a-186 is divisible as to CIMT). *See also Mehboob v. Attorney General Of U.S.*, 549 F.3d 272 (3d Cir. 2008) (holding that indecent exposure with a child constituted a CIMT)		**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:** Challenge any "sexual abuse of minor" AF charge because statute is not divisible under *Descamps v. U.S.*, 133 S.Ct. 2276 (2013). *See aslo, 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.	Would probably NOT be considered a CIMT.		**ImmPract:** Argue against categorization as CIMT.
Eavesdropping [Class D Felony]	§ 53a-189	No.	Might be considered a CIMT.		
Voyeurism [Class D Felony]	§ 53a-189a	No.	Might be considered a CIMT.		**ImmPract:** Argue against categorization as CIMT. *See In re 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.") There is no case law on this point.
Disseminating Voyeuristic Material [Class D Felony]	§ 53a-189b	No.	Would probably be considered a CIMT.		**ImmPract**: See note on voyeurism, 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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Bigamy **[Class D Felony]**	§ 53a-190	No.	Would probably be considered a CIMT. See, e.g., *Matter of E*—, 2 I. & N. Dec. 328, 1945 WL 5566 (B.I.A. 1945) (bigamy is a crime involving moral turpitude)		**ImmPract**: Some cases indicate that statute must require criminal intent in order to qualify as CIMT. Try to argue that CT statute does not require criminal intent. *Forbes v. Brownell*, 149 F. Supp. 848 (D. D.C. 1957) (bigamy that can result from an honest mistake of fact as to the validity or existence of a divorce or annulment "cannot be said to inherently involve moral turpitude"); *Matter of E—,* 2 I. & N. Dec. 328, 1945 WL 5566 (B.I.A. 1945) (indicating that bigamy statute must have criminal intent element).
Incest **[Class D Felony]**	§ 53a-191		Would probably be considered CIMT. See, e.g., *Matter of Y*—, 3 I. & N. Dec. 544, 1949 WL 6490 (B.I.A. 1949)		**ImmPract:** Argue that incest statute is not CIMT. 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	No.	Would probably NOT be considered a CIMT		**ImmPract:** Argue against categorization as CIMT.
Trafficking in Persons **[Class B Felony]**	§ 53a-192a	Would likely be considered a trafficking AF.	Would probably be considered a CIMT.		**ImmPract: 1)** CT statute may be broader than "generic" trafficking in persons. (No case law on this point; compare with federal and other state laws) **2)** Argue against categorization as CIMT
Obscenity **[Class B Misdem.]**	§ 53a-194	No.	Would probably NOT be considered a CIMT.		**ImmPract:** Argue against categorization as CIMT. See *Matter of D*—, 1 I. & N. Dec. 190, 1942 WL 6514 (B.I.A. 1942) (mailing an obscene letter not a crime of 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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Obscenity as to Minors [Class D Felony]	§ 53a-196	No.	Would probably be considered a CIMT.	CA —would probably be considered a CA .	**ImmPract: 1)** Argue against categorization as CIMT. **2)** Argue against classification as CA. See *Matter of Velazquez-Herrera*, 24 I. & N. Dec. 503, 512, 2008 WL 2152210 (B.I.A. 2008) ("child abuse" means "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."). But see *Ibarra v. Holder*, 736 F.3d 903, 915-16 (10th Cir. 2013), *Fregozo v. Holder*, 576 F.3d 1030 (9th Cir. 2009) (requiring injury to a child).
Employing a Minor in an Obscene Performance [Class A Felony]	§ 53a-196a	Would be considered a child pornography AF.	Would probably be considered a CIMT.	CA —would probably be considered a CA .	
Promoting a Minor in an Obscene Performance [Class B Felony]	§ 53a-196b	Might be considered a child pornography AF.	Would probably be considered a CIMT.	CA —would probably be considered a CA .	**DefAttys:** Consider *Alford* plea to keep ROC clean as to specific conduct constituting "promotion." Avoid "receives" or "distributes." **ImmPract: 1)** Challenge AF designation because statue is not divisible under *Descamps* and definition of "promotion" is very broad**. 2)** Argue against CA categorization (see above note).
Importing Child Pornography [Class B Felony]	§ 53a-196c	Would be considered a child pornography AF.	Would probably be considered a CIMT.	CA —would probably not be considered a CA .	
Possessing Child Pornography in the 1st Degree [Class B Felony]	§ 53a-196d	Would be considered a child pornography AF.	Would be considered a CIMT. See *U.S. v. Santacruz*, 563 F.3d 894 (9th Cir. 2009) (possession of child pornography is CIMT); *In re Olquin-Rufino*, 23 I. & N. Dec. 896 (B.I.A. 2006) (same).	CA —would probably not be considered a CA .	

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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Possessing Child Pornography in the 2nd Degree [Class C Felony]	§ 53a-196e	Would probably be considered a child pornography AF.	Would probably be considered a CIMT.	CA —would probably not be considered a CA .	
Possessing Child Pornography in the 3rd Degree [Class D Felony]	§ 53a-196f	Would probably be considered a child pornography AF.	Would probably be considered a CIMT.	CA —would probably not be considered a CA .	
Commercial Sexual Exploitation of a Minor [Class C Felony]	§ 53a-196i	Might be considered a child pornography AF.	Would probably be considered a CIMT.	CA – would probably not be considered a CA.	**ImmPract:** If charged as AF, argue that this conduct is not covered by federal child pornography statutes.
Violation of Conditions of Release in the 1st Degree [Class D Felony]	§ 53a-222	No. But see note.	Would probably NOT be considered a 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	No. But see note.	Would probably NOT be considered a CIMT. (*POE*)		**DefAttys**: See note above.
Criminal Violation of a Protective Order [Class D Felony]	53a-223	If sentence of 1 yr. or more is imposed, may be considered a COV AF if ROC establishes force element in protective order or in the violation of it.	Might be considered a CIMT. *See Rincon v. State*, 2006 Tex. App. LEXIS 2758 (Tex. App. San Antonio Apr. 5, 2006) ("violation of a protective order will be considered a crime of moral turpitude when the underlying, uncharged offense is one of family violence or the direct threat of family violence").	CODV – Conviction would probably trigger deportability for violation of protective order AF if ROC establishes DV circumstances.	**DefAttys:** If possible, allocate 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). **ImmPract:** If charged as COV AF, argue that statue is not divisible under *Descamps* and covers conduct that is not a COV.

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: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
Criminal Violation of a Standing Crim. Protective Order [Class D Felony]	53a-223a	If sentence of 1 yr. or more is imposed, would probably be considered a COV AF if ROC establishes force element in protective order or in the violation of it.	Might be considered a CIMT.	CODV – Conviction would probably trigger deportability for violation of protective order if ROC establishes DV circumstances.	**DefAttys**: See note above. 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	If sentence of 1 yr. or more is imposed, would probably be considered a COV AF if ROC establishes force element in protective order or in the violation of it.	Might be considered a CIMT.	CODV – Conviction would probably trigger deportability for violation of protective order if ROC establishes DV circumstances.	**DefAttys**: See note above. Allocute circumstances if protective order or violation of it do NOT have force element for COV AF.
OFFENSES RELATING TO FIREARMS[33]					
Unlawful Discharge of a Firearm [up to 3 months]	53-203	No.	If ROC establishes intentional (as opposed to negligent or careless) discharge, might be considered CIMT. *See Recio-Prado v. Gonzalez*, 456 F.3d 819 (C.A.8,2006)	FO – Would probably be considered a FO. (See fn. 13).	**DefAttys**: **1)** Make *Alford* plea to preserve argument that CT firearm definition is broader than federal definition. **2)** Allocute to negligent or careless discharge to avoid CIMT.
Carrying of Pistol or Revolver w/o Permit [1-5 yrs. sentence]	29-35	No.	Would probably NOT be considered a CIMT.	FO – Would probably be considered a FO. (See fn. 13).	**DefAttys: 1)** Make *Alford* plea. **2)** Might be a better plea for violent offenses when significant jail time is required.
Carrying a Dangerous Weapon [up to 3 yrs. Sentence]	53-206	No.	Would probably NOT be considered a CIMT.		**DefAttys:** Make *Alford* plea.

[33] Important Note Regarding Firearm Offenses: 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). 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.*

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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Stealing a Firearm [Class C Felony]	53a-212	If sentence of 1 yr. or more is imposed, would probably be considered a "theft" AF; might be considered a "firearm offense" AF [offense described in 18 USC 922(g)] if ROC establishes act falls within federal definition.	Would probably be considered a CIMT. *But see Wala v. Mukasey,* 511 F.3d 102 (2d Cir. 2007) (3rd degree burglary is not a CIMT due to statute's lack of distinction between temporary and permanent taking).	FO – Might be considered a FO. (See fn. 13).	**DefAttys:**. Allocute to specific behavior if it will prevent FO AF classification. Otherwise make *Alford* plea. **ImmPract:** Challenge classification as 'theft' AF because CT statute does not differentiate between 'permanent' and 'temporary' taking.
Possession of a Sawed-off Shotgun or Silencer [Class D Felony]	§ 53a-211	If sentence of 1 yr. or more is imposed, might be considered a COV AF. *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). Might be considered a FO AF if ROC establishes act falls within federal definition.	Would probably NOT be considered a 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—Would probably be considered a FO. (See fn. 13).	**DefAttys:** Allocute to specific behavior if it will prevent FO AF classification. Otherwise make *Alford* plea. **ImmPract:** Challenge classification as COV AF.
Possession of a Weapon on School Grounds [Class D Felony]	§ 53a-217b	If sentence of 1 yr. or more is imposed, might be considered a COV AF But see *Henry v. Bureau of Immigration*, 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).	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 – Likely divisible as to "firearm" and "other deadly weapon." Conviction would be FO if ROC establishes that offense involved a firearm (as defined in 18 USC 921(a)). CA —Might be considered a crime against children.	**DefAttys:** Allocute to specific behavior if it will prevent FO AF classification. Otherwise make *Alford* plea. **ImmPract:** Challenge classification as CA .

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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Criminal Possession of Firearm or Electronic Defense Weapon [Class C Felony]	53a-217	If convicted under subsections (a)(1), (3) or (5) would probably be considered a FO AF offense; otherwise, if sentence of 1 yr. or more is imposed, might be considered a COV AF. *See U.S. v. Allen*, 409 F.Supp.2d 622 (D.Md. 2006) (being felon in possession of firearm is COV) But see *U.S. v. Johnson*, 399 F.3d 1297 (11th Cir. 2005) (violation of statute prohibiting possession of firearm by felon was not COV)	Might be considered a CIMT if convicted under subsections (a)(3) or (4).	FO – Would probably be considered a FO, but only if record of conviction establishes that offense involved a firearm (as defined in 18 USC 921(a)).	**DefAttys: 1)** Allocute to specific sub-section if allocution will prevent AF and CIMT classifications. **2)** If possible keep ROC clean as to possession of firearm. **3)** Or, consider *Alford* plea. **ImmPract: 1)** Note that federal definition of "firearm" may be narrower than CT definition (see fn.1); **2)** If ROC is bare, statute may be divisible b/c it includes possession of Electronic Defense Weapon **3)** Charge as COV should be challenged; **4)** Statute may be divisible based on intent to use firearm. *See Henry v. Bureau of Immigration*, 493 F.3d 303 (3d Cir. 2007) (finding that criminal possession with intent to use constituted a COV AF).
Criminal Possession of a Pistol or Revolver [Class C Felony]	53a-217c	Conviction under subsections (a)(1), (3), (4), (5), (7) or (8) would probably be considered a FO AF, otherwise, if sentence of 1 yr. or more is imposed, might be considered a COV AF. See note for 53a-217 above.	Might be considered a CIMT if convicted under subsections (a)(5) or (6).	FO – Would probably be considered a FO. (See fn. 13).	**DefAttys:** Allocute to specific sub-section if allocution will prevent AF and CIMT classifications. **ImmPract: 1)** Note that offenses listed in subsection (a)(1) go beyond "felony" description in 18 USC 922(g); **2)** Charge as COV should be challenged.
Gun Trafficking [Class B or C Felony]	53-202aa	Would probably be considered a Firearm Trafficking AF.	Would probably NOT be considered a CIMT	FO – Would probably be considered a FO. (See fn. 13).	**DefAttys:** Make *Alford* plea to preserve argument that CT firearm definition is broader than federal definition.
False Information or Statement Connected with Purchase of a Pistol or Revolver [Class C Felony]	29-34a	No.	Would probably be considered a 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:** **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Aiding Person Under 21 Years to Obtain a Pistol or Revolver [Class C Felony]	29-34b	May be considered a firearm trafficking AF if ROC demonstrates remuneration. *See Kuhali v. Reno*, 266 F.3d 93 (2d Cir. 2001) (deferring to BIA's broad definition of "trafficking" as pertaining to firearms trafficking AF).	Might be considered a CIMT.	FO –May be considered FO if ROC demonstrates remuneration.	**DefAttys:** Allocute to "lending" or "giving," keeo ROC clean of remuneration, or make *Alford* plea. **ImmPract: 1)** Challenge designation as FO or firearm trafficking AF since statute is divisible. **2)** If charged as firearm trafficking AF, challenge definition of "trafficking."
Removing or Defacing Maker's Mark on Any Firearm [Class C Felony]	29-36	Would probably be considered a FO AF. 8 U.S.C. § 1101(a)(43)(E)(iii).	Would probably be considered a CIMT; fraudulent conduct is often embraced in definition of CIMT.	FO – Would probably be considered a FO. *See Kuhali v. Reno*, 266 F.3d 93 (2d Cir. 2001) (deferring to BIA's reading of INA 237(a)(2)(c) as including any offense where possession or use is element).	
Purchasing a Firearm with Intent to Transfer or Soliciting Persons to Do So [Class B, C or D Felony]	29-37j	Would probably NOT be considered a firearm trafficking AF.	Might be considered a CIMT.	FO – Would probably be considered a FO.	**ImmPract: 1)** Challenge designation as firearm trafficking AF because remuneration or "trading or dealing" is not an element.
Criminally Negligent Storage of a Firearm [Class D Felony]	53a-217a	Would probably NOT be considered a COV AF.	Would probably NOT be considered a CIMT; crimes that require only criminal negligence often do not constitute a CIMT.	FO – Would probably NOT be considered a FO.	**DefAttys:** Keep sentence imposed under 1 yr to avoid risk of COV AF. **ImmPract: 1)** Challenge COV designation under *Leocal*. **2)** Challenge FO designation because negligent storage does not implicate unlawful possession or use.
VEHICLE OR TRAFFIC OFFENSES					
Operation Without a License [Up to 30 days]	14-213	No.	Would probably NOT be considered a CIMT.		**ImmPract:** Effective 1/1/2015, undocumented immigrants will be able to apply for drivers' licenses. P.A. 13-89
Operation with No or Insufficient Insurance [Fine or Class D Felony if Commercial Operator]	14-213b	No.	Would probably NOT be considered a 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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Operation While Registration or License is Refused, Suspended or Revoked [Up to 1 yr.]	14-215	No.	Would probably NOT be considered a CIMT.		
Reckless Driving [Up to 1 yr.]	14-222	No.	Would probably NOT be considered a CIMT. *But see Supnet v. Holder*, Slip Copy, 2009 WL 4913592 (9th Cir. 2009) (unpublished) (reckless driving while evading police officer is CIMT). (*POE*).		
Failure to Stop / Engaging in Police Pursuit [Fine / Class A Misdem. or Class C Felony]	14-223	Conviction under subsection (a) would probably NOT be considered an AF; conviction under subsection (b) might be considered an "obstruction of justice" AF if sentence of 1 yr. or more is imposed.	Might be considered a CIMT. See *Mei v. Ashcroft,* 393 F.3d 737 (7th Cir. 2004) (aggravated fleeing from police officer is CIMT). If convicted under subsection (b) and ROC establishes likelihood of death or serious injury would probably be considered CIMT. 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.

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:** **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Evading Responsibility [Leaving Scene of Accident) and Racing [Fine or Imprisonment]	14-224	Would probably NOT be considered an AF.	Conviction under subsection (a) might be considered a CIMT; conviction under subsection (b) would probably NOT be considered CIMT. *See Garcia-Maldonado v. Gonzales*, 491 F.3d 284 (5th Cir. 2007) (knowingly leaving the scene of a fatal accident constituted a CIMT);		**DefAttys:** If charged as misdemeanor, keep sentence imposed to 364 days or less to avoid possibility of AF. Allocute to specific sub-section if allocution will prevent AF and CIMT classifications **ImmPract:** Charge as CIMT should be challenged because conviction could result even without intent to avoid responsibility. Statute may also be divisible as to racing provision.
Operation While Under the Influence of Liquor or Drug [Fine or Imprisonment]	14-227a	Would NOT be considered an AF. *See Leocal v. Ashcroft*, 125 S. Ct. 377 (2004).	Might be a CIMT if certain aggravating circumstance present. See *In Re Lopez-Meza*, 22 I. & N. Dec. 1188 (BIA 1999) (aggravated DUI—when driver knows he is prohibited from driving—is CIMT) and *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 fn. 15)	**DefAttys: 1)** Consider AEP. **2)** Try to keep ROC clean of aggravating circumstances for CIMT. **3)** Allocute to alcohol or make *Alford* plea to avoid CSO. **ImmPract:** Dispute CIMT charge. *See Hernandez-Martinez*, 329 F.3d 1117 (9th Cir. 2003) (finding that Arizona DUI statute was divisible).
CONTROLLED SUBSTANCES OFFENSES[34]					

[34] Two substances, thenylfentanyl and benzylfentanyl have ceased to be controlled under 21 U.S.C. § 802 but remain on the Connecticut schedule. In an unpublished decision, the BIA found that DHS had not shown that the respondent was convicted of a drug trafficking AF where record did not indicate what substance was at issue. *In Re Spaulding*, 2004 WL 2943545, (BIA Nov. 2, 2004). Thus, If the charge is based either thenylfentanyl or benzylfentanyl, allocate to the specific substance. Otherwise, an Alford plea can mitigate consequences because a fact-finder cannot determine the specific factual basis for the plea. *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: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
Illegally Obtaining Drugs, Forged Prescriptions [Up to 1 year]	21a-108	If sentence of 1 yr. or more is imposed, conviction under subsections (1)(b), (1)(d), (4) or (5) would probably be considered a "forgery" AF; conviction under subsections (1), (3), (4) or (5) might be considered "fraud" AF if drugs involved are worth more than $10,000.	Conviction under subsections (1), (3), (4) or (5) would probably be considered a CIMT.	CSO -- Would probably be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802. (See fn. 15)	**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)** Make *Alford* plea to preserve argument that CT controlled substances are broader than federal list.
Failure to Keep Narcotic Drug in Original Container [Up to 2 or 10 years]	21a-257	Probably not an AF.	Would probably NOT be considered a CIMT.	CSO - Would be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802. (See fn. 15)	**DefAttys:** Make *Alford* plea to avoid CSO **ImmPract:** Challenge designation as a "drug trafficking" AF because offense is not punishable under federal Controlled Substances Act.
Possession or Delivery of Drug Paraphernalia [Class A or C Misdem.]	21a-267	Conviction under subsection (a) would probably NOT be considered a "drug trafficking" AF; but conviction under subsections (b) or (c) might be considered a "drug trafficking" AF. "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").	Would probably NOT be considered a CIMT.	CSO - Would probably 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, or make *Alford* plea. **ImmPract:** If charged as "drug trafficking" AF, argue this offense is not punishable under federal CSA because no commercial element.
Illegal Manufacture, Distribution, Sale, Possession w/ Intent to Distribute, etc. – Hallucinogenic or Narcotic [First Offense = up to 15 years]	21a-277(a)	Would be considered a "drug trafficking" AF especially if ROC establishes a controlled substance as defined in 21 U.S.C. § 802. *Cf. Gousse v. Ashcroft*, 339 F.3d 91 (2d Cir. 2003) (conviction held "drug trafficking" AF even though ROC unclear on substance).	Yes. *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 record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802. (See fn. 15)	**DefAttys: 1)** If first-time offense, strongly consider AR or CADAC; **2)** Make *Alford* plea.

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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
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)[35] Other than this exception, likely a "drug trafficking" AF. See note for 21a-277(a).	If "drug trafficking," then 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 fn. 15)	**DefAttys: 1)** If first-time offense, strongly consider AR or CADAC; **2)** Allocute to a small quantity of marijuana with no remuneration if possible, otherwise keep record clean as to quantity and remuneration, or make *Alford* plea.
Possession of Drug Paraphernalia in Drug Factory [First Offense = up to 2 y	21a-277(c)	Would probably NOT be considered a "drug trafficking" AF.	Would probably be considered a CIMT.	CSO - Would probably be considered a CSO. *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 clean of any information that would establish sale, delivery, or intent to sell or deliver. **ImmPract:** if charged as "drug trafficking" AF, challenge whether this offense is punishable under federal CSA.
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)	Would be considered a "drug trafficking" AF if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.	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 fn. 15)	**DefAttys: 1)** If first-time offense, strongly consider AR; **2)** Make *Alford* plea.

[35] *See* Immigrant Defense Project, Practice Advisory: *Moncrieffe v. Holder*: Implications for Drug Charges and Other Issues Involving the Categorical Approach, *available at* http://www.nationalimmigrationproject.org/legalresources/practice_advisories/pa_Moncrieffe v. Holder 5-2-13.pdf

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: **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
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)	Would be considered a "drug trafficking" AF if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.	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 fn. 15)	**DefAttys: 1)** If first-time offense, strongly consider AR; **2)** Make *Alford* plea.
Illegal Manufacture, Sale or Distribution to Minor by Non-drug Dependent Person [2 years]	21a-278a(a)	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.	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, other than 30g or less of marijuana. (See fn. 15)	**DefAttys: 1)** If first-time offense, strongly consider AR **2)** Allocute to a small quantity of marijuana with no remuneration if possible, otherwise keep record clean as to quantity and remuneration, or make *Alford* plea.
Illegal Manufacture, Sale or Distribution in or near School, Project, Day Care [3 years[	21a-278a(b)	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.	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, other than 30g or less of marijuana. (See fn. 15)	**DefAttys: 1)** If first-time offense, strongly consider AR; **2)** Allocute to a small quantity of marijuana with no remuneration if possible, otherwise keep record clean as to quantity and remuneration, or make *Alford* plea.

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:** **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Illegal Possession – Narcotic Substance [First Offense = up to 7 yrs.]	21a-279(a)	Would probably NOT be considered a "drug trafficking" AF. *Lopez v. Gonzales,* 549 U.S. 47 (2006) establishes that simple possession is not a "drug trafficking" AF, with the exception of possession of any amount of flunitrazepam. 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.[36]	Would probably NOT be considered a 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 fn. 15)	**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, especially if flunitrazepam; **3)** Avoid mention of a prior drug offense conviction (per *Carachuri-Rosendo*). **Imm Pract:** Challenge "drug trafficking" AF charge even if ROC does establish prior conviction. See footnote 17.
Illegal Possession – Hallucinogenic or 4 or More Ounces of Marijuana [First Offense = up to 5 yrs.]	21a-279(b)	Would probably NOT be considered a "drug trafficking" AF. Recidivist offense may be "drug trafficking" AF but see note to 21a-279(a) above.	Would probably NOT be considered a CIMT. See note for 21a-279(a) above.	CSO - Would be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802. (See fn. 15)	**DefAttys: 1)** If first-time offense, strongly consider DEP or CSLP (but avoid guilty plea). **2)** Avoid mention of a prior drug offense conviction (per *Carachuri-Rosendo*). **3)** Make *Alford* plea to avoid CSO. **Imm Pract:** Challenge "drug trafficking" AF charge even if ROC does establish prior conviction. See footnote 17.

[36] *See* Immigrant Defense Project, Practice Advisory: Multiple Drug Possession Cases After *Carachuri-Rosendo v. Holder,* June 21, 2010, *available at* http://immigrantdefenseproject.org/wp-content/uploads/2011/02/Carachuri.pdf

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:** **ImmPract:** Notes to Immigration Practitioners **DefAttys:** Notes to Criminal Defense Attorneys
Illegal Possession – Other Controlled Substance not a Narcotic or Hallucinogenic; or less than 4 ounces of marijuana [First Offense = up to 1 yr.]	21a-279(c)	Would probably NOT be considered an AF. Recidivist offense may be "drug trafficking" AF but see note to 21a-279(a) above.	Would probably NOT be considered a CIMT. See note for 21a-279(a) above.	CSO - Would be considered a CSO for inadmissibility purposes if ROC establishes a controlled substance as defined in 21 U.S.C. § 802. Would be considered a CSO for deportability only if ROC establishes controlled substance, other than marijuana, as defined in 21 U.S.C. § 802.,	**DefAttys: 1)** If pleading to this offense and it involves simple possession of 30g or less of marijuana, ensure that ROC so states to preserve eligibility for waiver. However, if offense involves a controlled substance other than marijuana or more than 30g of marijuana, avoid any reference to specific drug or quantity in the record of conviction; **Note: 30g = 1.06 ounces. 2)** If first-time offense, strongly consider DEP or CSLP (but avoid guilty plea).**3)** Avoid 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. See footnote 15. **2)** Challenge CSO for deportability under *Moncrieffe.*
Illegal Possession in or near School or Day Care [Up to 2 years]	21a-279(d)	Would probably NOT be considered an AF. Recidivist offense may be "drug trafficking" AF but see note to 21a-279(a) above.	Would probably NOT be considered a CIMT (see note for 21a-279(a) above) unless due to protected class' status. *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)	May be considered a CSO for deportability if offense is for possession of marijuana in a drug-free zone such as a school. *See In re Martinez-Zapata*,24 I. & N. Dec. 424, (BIA 2007), However, would NOT constitute a CSO for deportability unless ROC establishes possession of more than 30g (just over one ounce) of marijuana or any amount of another controlled substance, or if second or subsequent offense.	**DefAttys:** See note above **Imm Pract:** Challenge "drug trafficking" AF charge even if ROC does establish prior conviction. See footnote 15. **2)** Challenge CSO for deportability under *Moncriiffe* and *Descamps.*
END					

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

I. Introduction

Section 101(a)(48)(A) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(48)(A)) defines conviction for purposes of immigration law as follows:

> The term "conviction" means, with respect to an alien, 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.

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. Conn. Gen. Stat. § 54-142a(c).

A nolle prosequi should NOT be considered a conviction as a matter of federal immigration law. The "nolle" disposition does not fit either requirement of the INA definition of "conviction": there is clearly 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).

A slightly more complicated question, however, is whether a non-citizen should state that charges are "pending" in a USCIS application form if the charges have been nolled but the police and court records have not been erased (that is, if the application is being filed within the thirteen-month period before automatic erasure). 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 non-citizen 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)).

Practitioners should note, however, that the entry of a nolle prosequi does not eliminate other potential immigration consequences for a non-citizen. For instance, certain grounds of inadmissibility do not require an actual conviction but merely information giving the Attorney General "reason to believe" that an alien engaged in specified conduct, such as drug trafficking. *See, e.g.*, 8 U.S.C. § 1182(a)(2)(C). 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 non-citizen was excludable under "reason to believe" provision even though criminal charges had been dismissed). It should also be noted that, even though a criminal charge was "nolled" in Connecticut state court, a non-citizen 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).

III. Pleas

Nolo Contendere Pleas

Nolo Contendere pleas are expressly included in the statutory definition of "conviction" in the INA. A Nolo Contendere plea will not mitigate immigration consequences.

***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 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 Part 5: Divisible Statutes and the Record of Conviction.

IV. Pretrial Diversion Programs

Connecticut law provides a number of pre-trial disposition programs that do not require the defendant to plead guilty or to admit sufficient facts to warrant a finding of guilt, and which will therefore not count as a "conviction" for immigration purposes. Practitioners should counsel criminal defendant clients about the benefits of these rehabilitative programs when they are charged with any offense that might result in adverse immigration consequences.[37]

Defense attorneys should be aware, however, that certain grounds of inadmissibility based on criminal conduct do not require an actual conviction. Rather, a non-citizen may be held to be inadmissible if the Attorney General simply "has reason to believe" that the non-citizen 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 non-citizen 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 the pre-trial dispositions listed below will ensure that their client will not face immigration consequences down the road. In particular, defense counsel should try to avoid allowing their clients to make admissions regarding offenses that could be considered crimes of moral turpitude or involving controlled substances. Nonetheless, 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 non-citizen clients. Practitioners are advised, however, to pay close attention to the notes on each pre-trial diversion program.

[37] 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 non-citizen 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 non-citizen 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 ("AR"):

AR would NOT be considered a conviction for immigration purposes.

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

Who is eligible?

The court must find that the defendant applying for AR:

- Will probably not offend in the future;
- Has no previous record of conviction of a crime or certain serious motor vehicle violations;[38]
- 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 that "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)[39]
- Class C felony, unless the defendants 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));
    - 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 pretrial family violence education program;
- A drug or drug paraphernalia possession crime which makes the person eligible for the pretrial 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).

NOTE: 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.

[38] 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.

[39] 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.

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)

Who is eligible?

The court must find that the defendant:

- 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 accelerated rehabilitation for 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 he or she is charged with a family violence crime[40] 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).

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

SVPP should NOT be considered a conviction for immigration purposes.

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

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).

Who is eligible?

The defendant must be a student of a public or private secondary school AND:

- Must state under oath that he or she has not invoked SVPP in the past and has not been convicted of the type

[40] 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.

of offenses that are eligible for the program, either in Connecticut or in another state for a similar offense.

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?

The defendant must state under oath:
- That he or she has not benefited from AEP in the past ten years if the charge is DUI (§ 14-227a);
- That he or she has never benefited from AEP if the charge is for DUI by a minor (§ 14-227g);
- That he or she 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 Program ("DEP"):

DEP 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?

The court must find that the defendant:
- 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 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: Unlike other pre-trial diversion programs, CSLP 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. Defense attorneys should understand that, 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 that 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, or a determination that the defendant is a "drug abuser or addict."

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 (distribution or possession of controlled substances or drug paraphernalia, Conn. Gen. Stat. §§ 21a-267, 277, 278, 279);
- Has not previously been placed in CSLP (if the defendant has been placed in CSLP in one occasion, defendant will still be eligible, but will be required to plead guilty in order to qualify—therefore, no mitigation of immigration consequences: see above);

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.

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

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. 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, but practitioners should be aware that they exist. 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.

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

<u>Who is eligible?</u>

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;
- Suspension of prosecution will advance the interests of justice;

<u>What offenses are eligible?</u>

The statute excludes from eligibility class A, B or C felonies, as well as DUI offenses (§ 14-227a) 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.

Youthful Offender Status ("YO"):

A disposition of "Youthful Offender" should not be considered a conviction for immigration purposes, under the BIA's decision in *In Re Devison-Charles*, 22 I. & N. Dec. 1362 (BIA 2000). However, practitioners should be aware that the INA's definition of "conviction" could well be read to cover Connecticut's "youthful offender" status since it involves a finding of the defendant's guilt (either through a plea or a bench trial). Nonetheless, in *Devison*, the BIA found a similar program in New York not to constitute a conviction for immigration purposes.

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

<u>Who is eligible?</u>

The court must find that the defendant:

- Is 16 or 17 years of age.

- Has not previously been convicted of a felony;
- Has not previously been adjudged a serious juvenile offender or serious juvenile repeat offender, or youthful offender;
- 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 driving while under the influence [§14-227(a) and 14-227(g)];
- Leaving a child unsupervised in place of public accommodation or motor vehicle (§53-21a)
- Certain enumerated sexual offenses,[41] including 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:

Suspension of prosecution under this provision should NOT be considered a conviction for immigration purposes.

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;
- 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 . . . ."

41 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.

Community Court Program (especially Hartford Community Court)

> **CAUTION**: 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

- has not previous 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.

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

> Pretrial Supervised Diversionary Program for Persons with Psychiatric Disabilities and Veterans should NOT be considered a conviction for immigration purposes.

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

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 (A) is a veteran as defined in §27-103 or (B) is eligible to receive services from the US Department of Veteran Affairs
- Must be eligible for pretrial accelerated rehabilitation (AR; see above); and
- Must not have previously participated in AR twice.

What offenses are eligible?

- Crime or crimes "not of a serious nature" or
- Motor vehicle violation or violations for which a sentence to a term of imprisonment may be imposed "not of a serious nature"

Appendix D: Basic Immigration Status Questionnaire

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

Documents: Copy any immigration documents/passport.

Criminal History: Criminal record and current plea-bargain offers

______________________________ ________________
Client's Name Date of Interview

Immigration Hold: YES NO

____________________________ ( )____________ ______________
Client's Immigration Lawyer Telephone Number Client's Date of Birth

1. Entry: Date first entered U.S.? ___________ Visa Type:____________

 Significant departures: Date: _________________ Length: ________

 Purpose: _________________

 Date last entered U.S.? _____________ Visa Type: _______________

2. Immigration Status: Lawful permanent resident? YES NO

 If so, date client obtained green card? ______________

 Other special immigration status: (refugee), (asylee), (temp. resident), (work permit), (TPS), (Family Unity), (ABC), (undocumented), (visa - type:________________) Date obtained? _____________

 Did anyone ever file a visa petition for you? YES NO
 Name and #:________________________________ Date? ____________.
 Type of visa petition? __________________ Was it granted? YES NO

(continued)►

Basic Immigration Status Questionnaire (page 2 of 2)

3. Prior Deportations: Ever been deported or gone before an immigration judge? YES NO Date? ______________________
Reason? ____

Do you have an immigration court date pending? YES NO
Date? ________________________________
Reason?__________________________________

4. Prior Immigration Relief: Ever before received a waiver of deportability [§ 212(c) relief or cancellation of removal] or suspension of deportation? YES NO
Which:______________ Date: ____________

5. Relatives with Status: Do you have a U.S. citizen (parent), (spouse), (child -- DOB(s) ____), (brother) or (sister)?
Do you have a lawful permanent resident (spouse) or (parent)?
____

6. Employment: Would your employer help you immigrate? YES NO
Occupation:______________________
Employer's name and number:____

7. Possible Unknown U.S. Citizenship: Were your or your spouse's parent or grandparent born in the United States or granted U.S. citizenship? YES NO
Were you a permanent resident under the age of 18 when a parent naturalized to U.S. citizenship? YES NO

8. Have you been abused by your spouse or parents? YES NO

9. In what country were you born? _________________
Would you have any fear about returning? YES NO
Why? ____

10. Have you been the victim of a serious crime in the United States? YES NO
When/Where? ____
Did you help the police/prosecution, or would you be willing to assist? YES NO

Notes on Appendix D: Basic Immigration Status Questionnaire

In the "Basic Immigration Status Questionnaire," many of the later questions are designed to determine what sort of immigration relief a non-citizen defendant might be eligible for. This page explains what specific type of immigration relief each question addresses.

5. Relatives with Status
-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.

6. Employment
-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.

7. Possible Unknown U.S. Citizenship
-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.

8. Abuse by Spouse
- If the client is married to or married and subsequently divorced from a U.S. citizen or LPR who abused him or her, he or she may be able to self-petition for LPR status under the a provision of the Violence Against Women Act (VAWA). The parent of a victim may also qualify.

9. Fear of Return to Home Country
-The client might be eligible for asylum, temporary protective status (TPS) (if he or she is from one of a certain list of TPS countries), withholding of removal, or relief under the Convention Against Torture.

10. Victim of Crime in the United States
-If the client is the victim of one of a certain list of enumerated crimes (including rape, felonious assault, and kidnapping), he or she may be eligible for a U-Visa if he or she did or is willing to help with the prosecution.

Appendix E: Additional Resources

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. (Free membership required)
- A news page with recent news and events related to immigration and crimes.
- Upcoming trainings on immigration and crimes.

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. It is the nation's first project founded to respond to the 1996 immigration laws.

Resources include

- Immigration Consequences of Convictions Checklist

This one-page checklist summarizes the criminal offenses that might have immigration consequences for immigrant defendants.

- Aggravated Felony Practice Aid

This chart describes the types of offenses that may be deemed "aggravated felonies" under immigration law and includes a table of case law determinations.

- Protocol for the Development of a Public Defender Immigration Service Plan (2009)

A protocol that can be used by public defender offices for development of a plan to serve the special needs of their immigrant clients.

- How to Work With an Immigration Lawyer to Protect Your Noncitizen Client

This handout suggests steps a criminal defense attorney should take when consulting with immigration experts about the consequences for an immigrant client and lists resource materials and immigration experts.

3) **Tooby's Guide to Criminal Immigration Law: How Criminal and Immigration Counsel Can Work Together in Criminal Cases** (2008)
http://nortontooby.com/node/657

This 230 page volume is being offered for downloading free of charge by the Law Offices of Norton Tooby, includes strategies for avoiding deportation at each stage of a criminal case: investigation and consultation, plea, sentence, post-conviction relief.

4) **From Tooby's Guide: Selected Resources**

- ABA COM'N ON IMMIGRATION, JUDICIAL IMMIGRATION EDUCATION PROJECT, A JUDGE'S GUIDE TO IMMIGRATION LAW IN CRIMINAL PROCEEDINGS (2004)

- M. BALDINI-POTERMIN, DEFENDING NON-CITIZENS IN MINNESOTA COURTS (1998), distributed by the Minnesota Bar Ass'n, (612) 333-1183
- ANN BENSON & JONATHAN MOORE, IMMIGRATION AND WASHINGTON STATE CRIMINAL LAW (Washington Defender Association's Immigration Project, 2005)
- K. BRADY, WITH N. TOOBY, M. MEHR, & A. JUNCK, DEFENDING IMMIGRANTS IN THE NINTH CIRCUIT (Immigrant Legal Resource Center 2007)
- K. BRADY, D. KEENER, & N. TOOBY, *Representing the Noncitizen Criminal Defendant*, Chap. 52 in California Continuing Education of the Bar, CALIFORNIA CRIMINAL LAW:PROCEDURE AND PRACTICE (2007)
- LYNN COYLE, BARBARA HINES, & LEE TERAN, BASICS OF IMMIGRATION LAW FOR TEXAS CRIMINAL DEFENSE ATTORNEYS (Tex. Crim. Defense Lawyers Ass'n 2003), available at (512) 478-2514
- D. KESSELBRENNER AND L. ROSENBERG, IMMIGRATION LAW AND CRIMES (West Group 2007). Encyclopedic.
- MARY E. KRAMER, IMMIGRATION CONSEQUENCES OF CRIMINAL ACTIVITY (2d ed. 2007)
- KURZBAN, KURZBAN'S IMMIGRATION SOURCEBOOK (10th ed. 2007)
- J. LIEBMAN AND R. HERTZ, FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE (2007)
- ROBERT JAMES MCWHIRTER, THE CRIMINAL LAWYER'S GUIDE TO IMMIGRATION LAW (2d ed. 2006)
- LINDA FRIEDMAN RAMIREZ, ED., CULTURAL ISSUES IN CRIMINAL DEFENSE (2d ed. 2007). Best on cultural issues and litigation.
- IRA P. ROBBINS, HABEAS CORPUS CHECKLISTS (2008)
- N. TOOBY & J. ROLLIN, AGGRAVATED FELONIES (2006)
- N. TOOBY, CALIFORNIA EXPUNGEMENT MANUAL (2002)
- N. TOOBY, CALIFORNIA POST-CONVICTION RELIEF FOR IMMIGRANTS (2002)
- N. TOOBY, J. ROLLIN & J. FOSTER, CRIMES OF MORAL TURPITUDE (2005)
- N. TOOBY & J. ROLLIN, CRIMINAL DEFENSE OF IMMIGRANTS (2007)
- N. TOOBY, POST-CONVICTION RELIEF FOR IMMIGRANTS (2004)
- N. TOOBY & J. ROLLIN, SAFE HAVENS: HOW TO IDENTIFY AND CONSTRUCT NONDEPORTABLE CONVICTIONS (2005)
- M. VARGAS, REPRESENTING NONCITIZEN CRIMINAL DEFENDANTS IN NEW YORK STATE (NY State Defender's Association, Criminal Defense Immigration Project 2007)
- D. WILKES, STATE POST-CONVICTION REMEDIES AND RELIEF HANDBOOK (2006)
- LARRY W. YACKLE, POSTCONVICTION REMEDIES (1981 with 2007-2008 cum. supp.)

Appendix G: Information on Selected Foreign Consulates or Missions Having Jurisdiction Over Connecticut

BRAZIL
1185 Avenue of Americas, 21st Floor
New York, NY 10036
(212) 827-0976

CHINA
520 12th Ave.
New York, NY 10036
(212) 244-9392

COLOMBIA
535 Boylston St., 3rd Floor
Boston, MA 02116
(617) 536-6222

COSTA RICA
225 West 34 Street
Suite 1202, NY 10122
(212) 509-3066

DOMINICAN REPUBLIC
1501 Broadway, Suite 410
New York, NY 10036
(212) 768-2480

ECUADOR
800 2nd Ave., Suite 600
New York, NY 10017
(212) 808-0170

Consulate General of Ecuador
1 Church Street
New Haven, CT 06510
(203) 752-1947

EL SALVADOR
1090 Suffolk Ave.
Brentwood, NY 11717
(631) 273-1355

GUATEMALA
57 Park Ave.
New York, NY 10016
(212) 686-3837

HAITI
271 Madison Ave., 5th Floor
New York, NY 10016
(212) 697-9767

HONDURAS
35 West 35st Street, 6th floor
New York, NY 10001
(212) 714-9451

INDIA
3 E. 64th Street
New York, NY 10021
(212) 774-0600

ITALY
690 Park Ave.
New York, NY 10021
(212) 737-9100

JAMAICA
767 3rd Ave., 2d Floor
New York, NY 10017
(212) 935-9000

MEXICO
27-29 E. 39th Street.
New York, NY 10016
(212) 217 6400, (212) 689-0456
Emergency number for legal problems: 1-800-PAISANI
(1-800-724-7264)

NICARAGUA
820 2nd Ave., Suite 802
New York, NY 10017
(212) 983-1981

PERU
250 Main St., Suite D
Hartford, CT 06106
(860) 548-0266, (860) 548-0337

POLAND
233 Madison Ave.
New York, NY 10016
(212) 561-8160, (646) 237-2100

PORTUGAL
630 Fifth Avenue, 8th Floor, Suite 801
New York, NY 10111
Tel: (212) 246-4580