Immigration Consequences Reference Guide for Alabama Criminal Defense Attorneys

The Following guide is designed for use by criminal defense counsel when representing non-citizen defendants. This chart, which discusses select crimes charged under the Alabama criminal and motor vehicle codes, is designed to be used in conjunction with other resources on immigration law, such as the Immigrant Defense Project's Immigration Consequences of Crimes Summary Checklist. Using these materials may make an enormous difference in your clients' lives. In some instances, even a slight change in the criminal disposition can be the difference between permanent banishment from the U.S. and the chance to remain with one's families and loved ones.

The Chart discusses the most common criminal grounds of deportability and inadmissibility. A non-citizen who has been admitted into the United States is subject to removal if the government can prove a ground of deportability. A non-citizen who is applying for admission, or who has entered the US without permission, is subject to removal unless they can prove the absence of any grounds of inadmissibility. Common designations relating to these removal grounds are "aggravated felonies" and "crimes involving moral turpitude." A conviction for an aggravated felony constitutes a criminal ground of deportability and constitutes a bar to nearly all forms of relief or protection from removal. All noncitizen defendants have a strong interest in avoiding an aggravated felony conviction. A conviction for a crime involving moral turpitude is a ground of inadmissibility, and can be a ground of deportability if committed within 5 years of admission or is one of two or more moral turpitude convictions. A conviction for a crime involving a federally controlled substance is a ground of both inadmissibility and deportability. Please note, even though a defendant is subject to a ground of removal, they my still be eligible for various forms of relief in immigration court. Relief from removal is beyond the scope of this guide. Non-citizen defendants should be advised to consult an immigration attorney regarding eligibility for relief.

In general, when determining whether a crime meets one of these designations, the agency/court must consider the minimum conduct that would have a "realistic probability" of sustaining a conviction under the statute. If the statute includes alternative elements, it is labeled a "divisible statute." In deciding whether a conviction for a divisible statute satisfies a ground of deportability, a factfinder can examine certain documents in the record to determine for which the defendant was convicted. If the statute is not divisible, i.e. describes only alternative means rather than elements, then the agency/court may not look beyond the statute itself to

the record of conviction. In general, an applicant for admission or for relief from removal bears the burden of showing that they were not charged under a subsection or division of the statute that would trigger inadmissibility. Thus, whenever possible, it is best to stipulate to elements that do not constitute an aggravated felony, crime involving moral turpitude, or controlled substance offense, and to record this stipulation in the plea agreement or another document that will become a part of the record and will be readily available to the defendant or their immigration counsel in future proceedings.

This guide was created by Ruth Swift with the support of the Arthur Liman Public Interest Foundation and the Jefferson County Public Defender's Office. Special thanks are also due to Dan Kesselbrenner of the National Immigration Project of the National Laywers Guild, who reviewed the chart. Questions or suggestions can be directed to ruthmswift@gmail.com and dan@nipnlg.org.

Abbreviations and definitions:

AF – Aggravated Felony, 8 USC § 1101(a)(43) (listing several sub-definitions). Many distinct offenses, including misdemeanor offenses, can constitute aggravated felonies.

BIA – Board of Immigration Appeals

CIMT – Crime Involving Moral Turpitude. There is no statutory definition of this term. A definition the BIA often references is a "reprehensible act" committed with a mes rea of at least recklessness.

CODV – Crime of Domestic Violence, 8 USC § 1227(a)(2)(E). An offense which meets the definition of a "crime of violence" and was committed against a person with a family or domestic relationship with the defendant as described in the statute, constitutes a ground of deportability.

COV - Crime of Violence, 8 USC § 16.

Imm Atty – designates a note intended for immigration practitioners. Defense attorneys should generally not rely on these notes when advising defendants, as they represent speculative or optimistic arguments to be presented in Immigration Court.

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Offense	Aggravated Felony	Crime Involving Moral Turpitude (CIMT)	Other grounds of deportability or inadmissibility:	Would this conviction make a client deportable?	Would this conviction make a client inadmissible?	Comments, Strategies & Tips
§ 13A-6-2 Murder *A Felony*	**This is an AF.**	**This is a CIMT.**		**Yes.**	**Yes.**	
§ 13A-6-3 Manslaughter *B Felony*	**Likely a Crime of Violence AF**	**This is a CIMT.**		**Yes.**	**Yes.**	
§ 13A-6-4 Criminally Negligent Homicide *A Misdemeanor or C Felony*	**Not an AF.** See Leocal v. Ashcroft, 125 S. Ct. 377 (2004); United States v. Vargas-Duran, 356 F.3d 598 (5th Cir. 2004).	**Probably not a CIMT.**		**No.**	**Probably not,** unless multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-6-20 Assault 1 *B Felony*	Subsections (a)(1), (a)(2), and probably (a)(4) **are COV AFs**. Subsection (a)(3) **may not be an AF** because of reckless mental state, see United States v. Vargas-Duran, 356 F.3d 598 (5th Cir. 2004) (requiring intentional use of force). **Subsection (a)(5) is not an AF** because no mens rea requirement.	Subsections (a)(1)-(4) are CIMTs. Subsection (a)(5) is probably not a CIMT.		**Yes, if conviction is under (a)(1), (2), or (4). Potentially under (a)(3)** if charged as an AF, if within 5 yrs of admission to the US or if 2nd CIMT not "arising out of a single scheme." **No, if conviction is under (a)(5).**	**Yes,** unless conviction is under subsection (a)(5), **or** if multiple convictions with 5+ yrs aggregate imprisonment.	

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§ 13A-6-21 Assault 2 *C Felony*	**This is a COV AF, except subsection (a)(3) should not be an AF** because of reckless mental state, see US v. Palomino Garcia, 606 F. 3d 1317, 1335–36 (11th Cir. 2010); US v. Vargas-Duran, 356 F.3d 598 (5th Cir. 2004) (requiring intentional use of force).	**Yes** under any subsection because either intentional conduct or serious physical injury. See Matter of Sejas, 24 I. & N. Dec. 236 (BIA 2011).		**Yes.** Subsection (a)(3) may not trigger deportability**,** but even if not AF, is deportable offense **if** within 5 yrs of admission or if 2nd CIMT not "arising out of a single scheme"	**Yes.**	**Note:** Caselaw regarding reckless assault as COV may be revisited due to a recent supreme court case, Voisine v. US. See practice advisory: https://www.nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/crim/2016_1July_voisine-alert.pdf
§ 13A-6-22 Assault 3 *A Misdemeanor*	**Conviction under subsection (a)(1) is an AF *if* sentence of 1 yr is imposed.** Convictions under other subsections should not be considered AFs**. But see** notes for Assault 2 re: reckless mental state.	**Subsection (a)(1) and (a)(4) are CIMTs. Subsection (a)(2) may not be a CIMT.** See In re Fualaau, 21 I&N Dec. 475 (BIA 1996) (reckless assault generally requires an aggravating factor such as the use of a weapon or serious injury); Gomez-Perez v. Lynch, No. 14-60808, 2016 WL 3709757, at *1 (5th Cir. July 11, 2016) **Subsection (a)(3) is probably not a CIMT** due to negligence mens rea.	If DV related, could be a CODV even if sentence is less than 1 year. Keep reference to domestic violence or name of victim out of the record if possible – *BUT this may not be enough to avoid deportability.*	**Yes,** if 1 yr sentence **or** if charged as a CIMT within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme." **Yes** if found to be CODV	**Yes, if charged as a CIMT.** However, if sentence ≤ 6 mo & this is only CIMT, would qualify for the petty offense exception. **Yes,** if multiple convictions with 5+ yrs aggregate imprisonment.	**Note:** sentence imposed includes suspended sentence. Try to plead to 6mo sentence to ensure eligibility for petty offense exception and avoid AF. Length of probation is irrelevant **Harassment is a safe alternate plea.**

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§ 13A-6-23 Menacing *B Misdemeanor*	**No.** Not a COV AF because max sentence is less than 1 year.	**Probably a CIMT.** Imm atty may argue that this is a simple assault statute, and thus not a CIMT. See In re Ahortalejo-Guzman, 25 I&N 465, 466 (BIA 2011). But defense atty should advise likely to be charged as CIMT.	If DV related, could be a CODV. See Damasco-Mendoza v. Holder, 653 F.3d 1245 (10th Cir. 2011) (threat that creates a fear of imminent serious bodily injury is a threat of physical force under §16(a))	**Yes if CODV**. **Yes,** if CIMT within 5 yrs of admission or 2nd CIMT "not arising out of a single scheme."	**Yes, if found to be CIMT,** however if this is only CIMT, would qualify for petty offense exception. **Yes** if multiple convictions with 5+ yrs aggregate imprisonment.	**Note:** Could be found to be a CODV as threatened use of force. Sentence is irrelevant for CODV.
§ 13A-6-24 Reckless Endangerment *A Misdemeanor*	**Not an AF.** Because force or threat of force is not an element and offense is NOT a felony.	**Likely to be charged as CIMT.** See In re Leal, 26 I&N Dec. 20 (BIA 2012) (reckless endangerment with a substantial risk of imminent death" is CIMT); Keungne v. US Att'y Gen, 561 F.3d 1281 (11th Cir. 2009) (reckless endangering bodily safety of other under GA law is CIMT)	If victim is a minor, may be charged as a crime of child abuse. Keep age of victim out of the record if possible.	**Yes,** if CIMT within 5 yrs of admission or 2nd CIMT "not arising out of a single scheme."	**Yes, if CIMT.** However, if sentence $\leq$ 6 mo & this is only CIMT, would qualify for the petty offense exception. **Yes,** if multiple convictions with 5+ yrs aggregate imprisonment.	**Imm Atty:** BIA and 11th Cir caselaw on CIMT is distinguishable. AL statute involves neither gross recklessness nor risk of death.
§ 13A-6-25 Criminal Coercion *A Misdemeanor*	**Not an AF.** Because may be committed by threats to reputation, not threat of force. **Is AF** if threat of force element and 1 yr sentence imposed.	**May be a CIMT.**		**Yes,** if CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes, if CIMT.** However, if sentence $\leq$ 6 mo & this is only CIMT, would qualify for the petty offense exception. **Yes,** if multiple convictions with 5+ yrs aggregate imprisonment.	**Note:** If complaint alleges threats of force, amend to include "or damage to reputation." If cannot amend, **avoid 12 month sentence (even suspended).**

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§ 13A-6-41 Unlawful Imprisonment 1 *A Misdemeanor*	**Not an AF.** Because force or threat of force is not an element and offense is NOT a felony.	**Likely to be charged as a CIMT.**		**Yes,** if charged as a CIMT within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes, if charged as a CIMT.** However, if sentence ≤ 6 mo & this is only CIMT, would qualify for the petty offense exception. **Yes,** if multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-6-42 Unlawful Imprisonment 2 *C Misdemeanor*	**Not an AF.** Because force or threat of force is not an element and offense is NOT a felony.	**Possibly a CIMT.** Because there is no force or threat requirement and no injury, may argue not a CIMT. See Turijan v. Holder, 744 F.3d 617, 619 (9th Cir. 2014) (CA law not a CIMT where it did not require an intent to injure, actual injury, or a protected class of victim).		**Yes,** if charged as a CIMT within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes, if charged as a CIMT.** However, if sentence ≤ 6 mo & this is only CIMT, would qualify for the petty offense exception. **Yes**, if multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-6-43/44 Kidnapping 1/2 *A/B Felony*	**Yes,** as a COV under 18 USC § 16(b). Arguably not as a COV under 16(a) because physical force is one means of effecting abduction, but not an element.	**Yes**		**Yes**	**Yes**	*COV residual clause, 18 USC § 16(b), may be void for vagueness. SCOTUS likely to rule on issue this term in Lynch v. Dimaya.

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§ 13A-6-45 Interference with Custody *C Felony*	**Probably not** because use of force is not an element and arguably no risk of use of force in typical case	**Probably not.** See Hamdan v. I.N.S., 98 F.3d 183, 187 (5th Cir. 1996) (removal of child by parent from custodial parent is not a CIMT). See also note above for unlawful imprisonment		**Possibly,** if charged as a CIMT within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Possibly,** if charged as a CIMT. **Yes**, if multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-6-61 Rape 1 *A Felony*	**Likely yes.** Likely charged as Rape AF. Subsection (a)(1) is COV AF under 18 USC 16(a) because requires use of force. (a)(3) is a "Sexual Abuse of Minor" AF.	**Yes**		**Yes**	**Yes**	**Imm atty:** May argue not Rape AF. See Perez-Gonzalez v. Holder, 667 F.3d 622 (5th Cir. 2012) (Only common law rape is Rape AF).
§ 13A-6-62 Rape 2 *B Felony*	**Likely yes.** Subsection (a)(1) is a Sex Abuse of a Minor AF. Subsection (a)(2) is likely to be charged as Rape AF.	**Arguably not CIMT** because strict liability offense. See Matter of Silva-Trevino, s 26 I&N Dec. 826, 834 n. 9 (BIA 2016) (reserving question of whether statutory rape is a CIMT).		**Yes** if (a)(1). Possibly not if (a)(2).	**Yes** if (a)(1). **Yes**, under either subsection, if multiple convictions with 5+ yrs aggregate imprisonment.	See note above re: Rape AF definition.
§ 13A-6-63 Sodomy 1 *A Felony*	**Likely yes.** Subsection (a)(1) is COV AF under 18 USC § 16(a) (use of force). (a)(2) may be COV AF under § 16(b). (a)(3) is a "Sexual Abuse of Minor" AF.	**Yes**		**Yes**	**Yes**	

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§ 13A-6-64 Sodomy 2 *B Felony*	**Likely yes.** Subsection (a)(1) is a Sex Abuse of a Minor AF. Subsection (a)(2) is likely to be charged as Rape AF.	**Arguably not CIMT**, because strict liability offense. See Matter of Silva-Trevino, 26 I&N Dec. 826, 834 n. 9 (BIA 2016) (reserving question of whether statutory rape is a CIMT).		**Yes** if (a)(1). Possibly not if (a)(2).	**Yes** if multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-6-65 Sexual Misconduct *A Misdemeanor*	**Probably not.** Not Rape AF because not common law rape. See Perez-Gonzalez v. Holder, 667 F.3d 622 (5th Cir. 2012). Not COV because no use of force element and not a felony	**Yes** (unless convicted under unconstitutional provision condemning consensual "deviant sexual intercourse.")	Could be deportable "Crime of Child Abuse " if victim is minor. Keep age of victim out of record.	**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes.** However, if sentence $\leq$ 6 mo & this is only CIMT, would qualify for the petty offense exception. **Yes**, if multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-6-65.1 Sexual Torture *A Felony*	**Yes.** Any subsection is likely a COV AF. (a)(3) is a Sex Abuse of a Minor AF.	**Yes**	Subsection (a)(3) is deportable "Crime of Child Abuse"	**Yes**	**Yes**	
§ 13A-6-67 Sexual Abuse 1 *C Felony*	Subsection (a)(1) is a COV AF due to forcible compulsion element. Subsection (a)(2) may not be an AF.	**Yes**	Could be found to be deportable "Crime of Child Abuse" if victim is minor. Keep age of victim out of record.	**Yes** if (a)(1). **Possibly not** if (a)(2), **BUT yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes**	

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§ 13A-6-67 Sexual Abuse 2 *A Misdemeanor (or C Felony if recidivist)*	Subsection (a)(1) is probably not a AF. Subsection (a)(2) is a Sex Abuse of a Minor AF.	**No**, because strict liability offense.	Subsection (a)(2) is deportable "Crime of Child Abuse"	**Yes** if (a)(2) **Possibly not** if (a)(1)	**Only if** multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-6-68 Indecent Exposure *A Misdemeanor (or C Felony if recidivist)*	**Probably not**	**Yes** because "intent to arouse or gratify sexual desire" is element. See In re Cortes Medina 26 I&N Dec. 79 (BIA 2013) (CIMT if lewd intent element)	Could be found to be deportable "Crime of Child Abuse" if victim is minor. Keep age of victim out of record.	**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes** However, if sentence $\leq$ 6 mo & this is only CIMT, would qualify for the petty offense exception. **Yes**, if multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-6-69 Enticing a Child *C Felony*	**Yes.** This is likely to be found to be a Sex Abuse of a Minor AF or Attempted Sex Abuse of a Minor	**Yes**	Also A deportable "Crime of Child Abuse"	**Yes**	**Yes**	**Imm Atty:** Challenge overbroad definition of Sex Abuse of a Minor
§ 13A-6-69.1 Sexual Abuse of a Child *B Felony*	**Yes.** This is a Sex Abuse of a Minor AF.	**Yes**	Also A deportable "Crime of Child Abuse"	**Yes**	**Yes**	
§ 13A-6-90 Stalking 1 *C Felony*	**Likely Yes.** This is likely to be found to be a COV AF because can be read to require threat of use of force	**Yes**	If DV related, likely a CODV.	**Yes**	**Yes**	**Imm Atty:** Challenge COV AF designation because threat of *force* is not an element and threat can be by implication only.

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§ 13A-6-90.1 Stalking 2 *B Misdemeanor*	**No**	**Likely Yes**	If DV related, could be a CODV. Keep reference to domestic violence or protected person out of the record if possible – BUT may not avoid deportability. .	**Yes if CODV.** **Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes** However, if this is only CIMT, would qualify for the petty offense exception. **Yes**, if multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-6-111 Trans. Obscene Material to Child *B Felony* **§ 13A-6-121** Fac. Solicitation of Sexual Conduct w/ Child *C Felony* **§ 13A-6-122** E- Solicitation of a Child *B Felony* **§ 13A-6-123** Fac. On-line Solicitation of a Child *B Felony* **§ 13A-6-124** Traveling to Meet a Child for Sex Act *A Felony*	**Yes**. All likely to be found a Sex Abuse of a Minor AF or Attempted Sex Abuse of a Minor. See Taylor v. United States, 396 F.3d 1322 (11th Cir. 2005) (defining "sexual abuse of a minor" as "physical or nonphysical misuse or maltreatment of a minor for a purpose associated with sexual gratification"); In re Rodriguez-Rodriguez, 22 I&N Dec. 991 (BIA 1999) (Adopting definition in 18 USC § 3509(a)(8):"the employment, use, persuasion,	**Yes** because lewd intent element of each offense. See In re Cortes Medina 26 I&N Dec. 79 (BIA 2013) **Aggravated Felony analysis continued:** inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children")	Also likely a deportable "Crime of Child Abuse"	**Yes**	**Yes**	**Imm Atty:** Challenge overbroad definition of Sex Abuse of a Minor AF.

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§ 13A-6-130 Domestic Violence 1 *A Felony*	See analysis for Assault 1, Stalking 1	**Yes** – see analysis for Assault 1, Stalking 1	CODV if COV	**Yes**	**Yes**	
§ 13A-6-131 Domestic Violence 2 *B Felony*	See analysis for Assault 2, Intimidating a Witness, Stalking 1, Burglary 2/3, Criminal Mischief 1	See analysis for Assault 2, Intimidating a Witness, Stalking 1, Burglary 2/3, Criminal Mischief 1	CODV if COV	**Yes** If CODV. For CIMT and AF analysis, see analysis for underlying charge	Depends on underlying charge – see analysis for underlying charge	
§ 13A-6-132 Domestic Violence 3 *A misdemeanor (C Felony if recidivist)*	See analysis for Assault 3, Menacing, Reckless Endangerment, criminal coercion, harassment, criminal surveillance, harassing communications, criminal trespass, criminal mischief 2/3, Arson 3.	**Yes,** if underlying charge is assault. In Re Sanudo, 23 I. & N. Dec. 968, 971–72 (BIA 2006). For other underlying conduct, see analysis for named offense.	CODV if COV *Regardless of sentence*	**Yes** If CODV. For CIMT and AF analysis, see analysis for underlying offense	Depends on underlying charge – see analysis for underlying offense **DV 3 Harassment** is not a COV and Probably not a CIMT. See In re Sejas, 24 I&N Dec. 236 (BIA 2007) (No CIMT in DV assault and battery offense because no physical injury element).	**Note:** Regardless of underlying charge, a DV3 conviction will not be an AF if sentence < 1yr. However, the conviction will be deportable CODV if it meets the COV definition regardless of the length of sentence.
§ 13A-6-137 Interference with DV emergency call *B Misdemeanor*	**No.** Not Obstruction of Justice AF because max sentence is less than 1 year.	**Possibly** – no caselaw on point but conduct is intentional and arguably "reprehensible"	Not CODV because not COV	**Yes,** if charged as a CIMT within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes, if charged as a CIMT.** However, if this is only CIMT, would qualify for the petty offense exception.	

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§ 13A-6-138 DV Strangulation *B Felony*	**Yes**, almost certainly whether committed through assault or menacing.	**Yes**	CODV if COV	**Yes**, if found to be AF. **Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes**	**Imm Atty:** If charged as menacing, can argue statute not divisible between Strangulation and Suffocation and no force required to commit suffocation, to attempt to avoid AF finding.
§ 13A-6-142 Violation of DV Protective Order *A Misdemeanor*	**No**	Arguably not CIMT because violation can take many forms, many of which are malum prohibitum regulatory offenses.	Deportable Violation of a Protective Order	**Yes**	**No,** unless one of multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-6-192 Elder Abuse 1 *A Felony*	**No**. Not a COV AF because may be committed through neglect – no use of force. **However,** if record makes clear offense committed by abuse, then COV AF.	**Yes**		**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes**	While statute is probably not divisible between abuse and neglect, stipulating to neglect is best way to protect client's interests
§ 13A-6-193 Elder Abuse 2 *B Felony*	**No**, if by neglect. See note above.	**Yes,** because either intentional conduct (a)(1) or reckless + serious physical injury (a)(2).		**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes**	While statute is probably not divisible between abuse and neglect, stipulating to neglect is best way to protect client's interests

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§ 13A-6-194 Elder Abuse 3 *C Felony*	**No**. Not a COV AF because reckless mens rea may be committed through neglect (a)(1) or emotional abuse (a)(2) so no use of force	**Likely to be charged as CIMT**. However, can argue that "minimum conduct" is not CIMT because only caused emotional harm. Matter of Sejas, 24 I. & N. Dec. 236 (BIA 2007) (assault resulting in emotional harm not CIMT); Gomez-Perez v. Lynch, 829 F.3d 323, 328 (5th Cir. 2016) (holding that reckless mental state was insufficient).		**Yes** if charged as CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes** if charged as CIMT. **Yes** if multiple convictions with 5+ yrs aggregate sentences	While statute is almost certainly not divisible between abuse and neglect, stipulating to neglect is best way to protect client's interests t
§ 13A-6-195/6 Financial Exploitation of Elder 1/2 *B/C Felony*	**Probably not an AF**. Not a Theft AF because no non-consensual taking required. In re Garcia-Madruga, 24 I&N Dec. 436 (BIA 2008). Probably not COV AF because not divisible as to means. **BUT could be** a "fraud" AF if loss exceeds $10,000.	**Probably yes**. However, breach of a fiduciary duty may not be a CIMT.		**Yes** if charged as CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes** if charged as CIMT. **Yes** if multiple convictions with 5+ yrs aggregate sentences	Statute may be divisible as to breach of fiduciary duty vs. other listed means. Almost certainly not divisible as to "deception, intimidation, undue influence, force, or threat of force." Stip to breach of fiduciary duty if possible. Otherwise stip to deception or undue influence.

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Offense	Aggravated Felony	Crime Involving Moral Turpitude (CIMT)	Other grounds of deportability or inadmissibility:	Would this conviction make a client deportable?	Would this conviction make a client inadmissible?	Comments, Strategies & Tips
§ 13A-6-197 Financial Exploitation of Elder 3 *A Misdemeanor*	**Probably not an AF**. See note above. **However, best way to protect against AF is to get sentence < 1year**	**Probably yes**. However, breach of a fiduciary duty may not be a CIMT.		**Yes** if charged as CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes** if charged as CIMT. However, if sentence ≤ 6 mo & this is only CIMT, would qualify for the petty offense exception. **Yes** if multiple convictions with 5+ yrs aggregate sentences	**Note:** Suspended sentences count as sentence imposed for immigration. Ask for 6mo suspended sentence to avoid AF and preserve petty offense exception. **See note above re: divisibility**
§ 13A-7-2/3/4 Criminal Trespass 1/2/3 *A/B/C Misdemeanor*	**No**	**No**. Trespass is only a CIMT where it has as an essential element the intent to commit a theft. *In re Esfindiary*, 16 I. & N. Dec. 659 (BIA 1979).		**No**	**Yes**, if multiple convictions with 5+ yrs aggregate sentences	
§ 13A-7-5 Burglary 1 *A Felony*	**Yes** as either Burglary AF, COV AF, or attempted theft AF– see comments for Burglary 3	**Likely yes** because dwelling is element.		**Yes**	**Yes**	*COV residual clause may be void for vagueness, in which case, subsections (a)(1) or (a)(3) not COV AF because no use of force element. SCOTUS likely to address in Lynch v. Dimaya this term

Offense	Aggravated Felony	Crime Involving Moral Turpitude (CIMT)	Other grounds of deportability or inadmissibility:	Would this conviction make a client deportable?	Would this conviction make a client inadmissible?	Comments, Strategies & Tips
§ 13a-7-6 Burglary 2 *B Felony*	**Yes** as either Burglary AF, COV AF, or attempted theft AF – see comments for Burglary 3	**Likely yes** due to any of the three aggravating circumstances in (a)(1), (a)(2), or (a)(3) – see Matter or Logan, 17 I&N Dec. 367 (BIA 1980)(use of weapons in the course of other crimes may indicate moral turpitude) - or under (b) which has dwelling element.		**Yes**	**Yes**	***COV residual clause may be void for vagueness, in which case, not COV AF because no use of force element. SCOTUS likely to address this term in Lynch v. Dimaya.**
§ 13a-7-7 Burglary 3 *C Felony*	**Likely yes**, as either Burglary AF, COV AF, or attempted theft AF. However, can argue that this is not a "burglary" AF because does not meet the elements of generic burglary (because "enter or remain unlawfully" is broader than "unlawful or unprivileged entry"). See Descamps v. US, 133 S. Ct. 2276 (2013). Subsection (a)(3)	**A burglary of a non-dwelling is a CIMT if the intended offense is a CIMT.** If possible, plead to intent to commit a specified offense that is not a CIMT (NOT theft). **AF analysis continued:** (unoccupied building) arguably not a COV AF under 16(b) because no substantial risk of use of force.		**Probably** will be found to be AF. Even if not found to be AF, if CIMT within 5 yrs of admission or 2nd CIMT "not arising out of a single scheme."	**If found to be CIMT, then yes. Also yes** if multiple convictions with 5+ yrs aggregate imprisonment.	Criminal Trespass is a safe plea. If you have to plead to burglary, try to get subsection (a)(3) and avoid admitting to unlawful entry and intent to commit theft. **Imm atty:** Per jury instructions, statute is not divisible as to "enter or remain unlawfully." May not be divisible as to crime intended.

Offense	Aggravated Felony	Crime Involving Moral Turpitude (CIMT)	Other grounds of deportability or inadmissibility:	Would this conviction make a client deportable?	Would this conviction make a client inadmissible?	Comments, Strategies & Tips
§ 13a-7-8 Possession of Burglar's tools *Class C Felony*	**No**	**Should not be found to be CIMT** because not divisible as to intent to commit forced entry vs. theft by force. See Burrell v. State, 429 So. 2d 636 (Ala. Crim. App. 1982). Forced entry should not be CIMT w/o intent to steal. See In re Esfindiary, 16 I&N Dec. 659 (BIA 1979); In re S-, 6 I&N Dec. 769 (BIA 1955)		**Yes,** if found to be CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**If found to be CIMT, then yes. Also yes** if multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-7-21 Criminal Mischief 1 *C Felony*	**Probably not an AF.** U.S. v. Landeros-Gonzales, 262 F.3d 424 (5th Cir. 2001).	**May be charged as CIMT** because intentional crime, but the BIA has found it is not a CIMT in at least one unpublished decision.		**Potentially,** if found to be CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Potentially,** if found to be a CIMT**. Yes,** if multiple convictions with 5+ yrs aggregate imprisonment.	**Note:** While a defense atty can't promise that this is a "safe" plea for immigration consequences, it may be a good disposition if a misdemeanor is not possible.
§ 13A-7-22 or § 13A-7-23 Criminal Mischief 2/3 *A/B Misdemeanor*	**No.** Cannot be found to be a COV AF because max sentence is less than 1 yr.	**May be charged as CIMT** because intentional crime, BUT the BIA has found it is not a CIMT in at least one unpublished decision.		**Potentially -** if found to be CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of single scheme"	**Potentially -** if found to be a CIMT**. Yes,** if multiple convictions with 5+ yrs aggregate imprisonment.	This is a pretty good plea. Likely not CIMT and does not fall in any common DHS "priority" categories.

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§ 13A-7-25(a)(1) Criminal Tampering 1 *C Felony*	**No**	**Likely yes** – intentional crime, potential for significant harm to many people		**Yes,** if found to be CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of single scheme"	**Yes,** if found to be a CIMT**. Yes,** if multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-7-25(a)(2) Criminal Tampering 1 (threaten with deadly weapon) *C Felony*	**Yes,** this is a COV AF	**Yes**		**Yes**	**Yes**	
§ 13A-7-26 Criminal Tampering 2 *A Misdemeanor*	**No**	**May be charged as CIMT** because intentional crime, but is similar offense to criminal mischief, which BIA appears not to be treating as CIMT		**Potentially -** if found to be CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of single scheme"	**Potentially -** if found to be a CIMT**. Yes,** if multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-7-41/42 Arson 1/2 *A/B Felony*	**Yes.** This is an Arson AF. Also probably a COV AF under §16(b).	**Yes**		**Yes**	**Yes**	
§ 13A-7-43 Arson 3 *A Misdemeanor*	**Not an Arson AF** because no malicious intent	**Arguably not a CIMT.** Statute criminalizes only reckless damage to property.		**Potentially -** if found to be CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of single scheme"	**Potentially,** if found to be a CIMT. **Yes,** if multiple convictions with 5+ yrs aggregate imprisonment.	

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§ 13A-8-3/4/4.1 Theft of Property 1/2/3 *B/C/D Felony*	**Yes.** This is a "theft offense" AF.	**Yes**		**Yes**	**Yes**	**Imm Atty:** Can argue that because AL definition of theft includes theft by deception, offense not a generic "theft" because no non-consensual taking element.
§ 13-8-5 Theft of Property 4 *A Misdemeanor*	**Yes IF 1yr sentence, *even suspended*, is imposed.** If sentence is less than 1yr, it is NOT an AF.	**Yes**		**If 12mo sentence, then YES. Also yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes.** However, if sentence $\leq$ 6 mo & this is only CIMT, would qualify for the petty offense exception.	Suspended sentences count as "sentence imposed" for immigration. Ask for 6 mo susp. sentence.
§ 13A-8-7/8/8.1 Theft of Lost Property 1/2/3 *B/C/D Felony*	**Yes.** This is a "theft offense" AF	**Yes**		**Yes**	**Yes**	
§ 13-8-9 Theft of Lost Property 3 *A Misdemeanor*	**Yes IF 1yr sentence, *even suspended*, is imposed.** If sentence is less than 1yr, it is NOT an AF.	**Yes**		**If 12mo sentence, then YES. Also yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes.** However, if sentence is 6 months or less and this is only CIMT, would qualify for the petty offense exception.	Suspended sentences count as "sentence imposed" for immigration. Ask for 6 mo susp. sentence.

Offense	Aggravated Felony	Crime Involving Moral Turpitude (CIMT)	Other grounds of deportability or inadmissibility:	Would this conviction make a client deportable?	Would this conviction make a client inadmissible?	Comments, Strategies & Tips
§ 13A-8-10.1 Theft of Services 1 *B Felony*	**May not be** a "theft" AF because no non-consensual taking is required. In re Garcia-Madruga, 24 I&N Dec. 436 (BIA 2008). **BUT could be** a "fraud" AF if loss is $10,000 or more.	**Yes**		**Yes** if loss of $10,000 can be shown. **Also yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes**	Statute should not be found to be divisible, but stipulate to obtaining by "deception" or "false token" and loss ≤ $10,000 to protect client's interests.
§ 13A-8-10.2 or § 13A-8-10.25 Theft of Services 2/3 *C/D Felony*	**May not be** a "theft" AF because no non-consensual taking is required. In re Garcia-Madruga, 24 I&N Dec. 436 (BIA 2008).	**Yes**		**Yes** if services obtained by threat. **Also yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes**	Stipulate to obtaining by "deception" or "false token" to potentially avoid theft AF.
§ 13A-8-10.3 Theft of Services 4 *A Misdemeanor*	**May not be** a "theft" AF because no non-consensual taking is required. In re Garcia-Madruga, 24 I&N Dec. 436 (BIA 2008). **Definitely not theft AF if sentence less than 1yr.**	**Yes**		**Yes** if services obtained by threat and 12 month sentence, even suspended, is imposed. **Also yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes.** However, if sentence is 6 months or less and this is only CIMT, would qualify for the petty offense exception.	Avoid 12 mo sentence to guarantee not a theft AF.

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§ 13A-8-11(a) Unauthorized Use of a Vehicle *A Misdemeanor*	**Probably** "theft" AF if 1 yr sentence because requires non-consensual taking or use. But see Nevarez-Martinez v. INA, 326 F.3d 1053 (9th Cir. 2003) (Not theft AF where intent to deprive owner is not an element).	**Probably not.** See In re M-, 2 I&N Dec. 686 (BIA 1946) (joyriding is not CIMT).		**Probably yes, if sentence (even suspended) is 1 year,** otherwise no.	**Probably not,** unless multiple convictions with 5+ yrs aggregate sentences.	Ask for 11 month or 364 day suspended sentence.
§ 13A-8-11(b) Breaking and Entering a Vehicle *C Felony*	**Likely Yes.** Courts have found burglary of a vehicle a COV AF. See: Escudero-Arciniega v. Holder, 702 F3d 781 (5th Cir 2012). Will be considered an attempted theft AF if committed with intent to commit theft. See Garcia v. Holder, 756 F.#d 839 (5th Cir. 2014). Likewise, will be considered an AF if any felony intended is an AF.	**Yes,** if felony intended (including theft) is a CIMT.		**Yes,** if an attempted theft, attempted crime of violence, etc. **Also yes** if a CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes,** if charged as a CIMT. **Yes**, if multiple convictions with 5+ yrs aggregate imprisonment.	**unauthorized use or criminal trespass are good alternatives**. Otherwise, stip to intent to commit criminal mischief (or generic "felony") to potentially avoid both AF and CIMT. **Note:** If SCOTUS holds 18 USC § 16(b) void for vagueness, not a COV AF.

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§ 13A-8-17 or § 13A-8-18 or § 13A-8-18.1 Receiving Stolen Property 1/2/3 *B/C/D Felony*	**Should not be charged as an AF,** because only mens rea of "reasonable grounds to believe" is required. In re Sierra, 26 I&N Dec. 288 (BIA 2014)	May not be a CIMT because only mens rea of "reasonable grounds to believe" is required. See In re K, 2 I&N Dec. 90 (BIA 1944).		**Probably not.**	**Probably not, unless** multiple convictions with 5+ yrs aggregate imprisonment.	Not divisible w/r/t "knowing or with reasonable grounds to believe," but stip to "reasonable grounds" if possible
§ 13A-8-19 Receiving Stolen Property 4 *A Misdemeanor*	**Definitely not an AF if sentence is less than 1 year**	May not be a CIMT because only "reasonable grounds to believe" is required. See In re K, 2 I&N Dec. 90 (BIA 1944).		**No, if sentence less than 1 year.**	**Probably not, unless** multiple convictions with 5+ yrs aggregate imprisonment.	If possible, get 6 mo sentence to avoid AF and preserve petty offense exception
§ 13A-8-41 or § 13A-8-42 or § 13A-8-43 Robbery 1/2/3 *A/B/C Felony*	**Yes,** this is both a theft and COV AF.	**Yes**		**Yes**	**Yes**	
§ 13A-8-140 Theft by Fraudulent Leasing >$500 *C Felony*	**Should not be a theft AF.** In re Garcia-Madruga, 24 I&N Dec. 436 (BIA 2008). **But** may be a fraud AF if loss to victim exceeds $10,000	**Yes**		**Yes,** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme" **or** If loss >$10,000	**Yes**	
§ 13A-8-140 Theft by Fraudulent Leasing <$500 *A Misdemeanor*	**Probably not**. See note above.	**Yes**		**Yes,** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes.** However, if sentence $\leq$ 6 mo & this is only CIMT, would qualify for petty offense exception.	

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§ 13A-8-192 Identity Theft *B Felony*	**Probably yes.** Likely a theft AF. United States v. Mejia-Barba, 378 F.3d 678 (8th Cir. 2003). Also, Fraud AF if loss exceeds $10,000	**Yes**		**Yes**	**Yes**	Plead to (a)(1) "obtains, records or access identifying information" to possibly avoid Theft AF. Stip to loss ≤ $10,000 to avoid Fraud AF
§ 13A-8-193 Trafficking in Stolen Identities *B Felony*	**Likely a theft AF.**	**Yes**		**Yes**	**Yes**	Try plea suggested above for Identity Theft
§ 13A-8-194 Obstruction of Justice- False ID *C Felony*	**Possibly an obstruction of Justice AF.** The BIA has construed obstruction broadly. In re Valenzuela Gallardo, 25 I&N Dec. 175 (BIA 2001).	**Likely yes.** In re Pinzon, 26 I&N Dec. 189, 192-95 (BIA 2013) (federal crime of making materially false statement to government official is CIMT).		**Yes**	**Yes**	GFI - § 13A-9-18.1 is probably not an AF, may still be a CIMT. **Imm Atty:** Challenge designation as AF or CIMT. See notes for § 13A-9-18.1.
§ 13A-9-2/3/3.1 Forgery 1/2/3 *B/C/D Felony*	**Yes, Forgery AF**	**Yes**		**Yes**	**Yes**	
§ 13A-9-4 Forgery 4 *A Misdemeanor*	**Yes,** Forgery AF ***if* 1 year sentence**. If sentence < 1yr, then may be **fraud AF if loss > $10,000**	**Yes**		**Yes** if AF **or** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes.** However, if sentence ≤ 6 mo & this is only CIMT, would qualify for petty offense exception.	Ask for 6mo sentence to avoid AF and preserve petty offense exception

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§ 13A-9-5/6/6.1 Poss. Forged Instrument 1/2/3 *B/C/D Felony*	**Yes,** CA11 has held that this is a crime relating to forgery. US v. Martinez-Gonzales, 663 F.3d. 1305 (11th Cir 2011)	**Yes**		**Yes**	**Yes**	
§ 13A-9-7 PFI 4 *A Misdemeanor*	**Yes,** Forgery AF ***if* 1 year sentence**. Even if sentence < 1yr, will be Fraud AF **if loss exceeds $10,000**	**Yes**		**Yes** if AF **or** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes.** However, if sentence ≤ 6 mo and only CIMT, would qualify for the petty offense exception.	Ask for 6 mo to avoid Forgery AF and preserve petty offense. Stip to amount of loss if ≤ $10,000
§ 13A-9-9 Crim Poss of a Forgery Device *C Felony*	**Yes,** Forgery AF.	**Yes**		**Yes**	**Yes**	
§ 13A-9-13.1 Negotiating a worthless neg. instrument *A Misdemeanor*	**No**	**No.** Bad check offense where intent to defraud not an element is not a CIMT. In re Balao, 20 I&N 440 (BIA 1992)		**No**	Only if multiple convictions with 5+ yrs aggregate imprisonment	
§ 13A-9-14(a) Illegal Poss Credit Card *D Felony*	**Yes,** this is probably theft AF	**Yes**		**Yes**	**Yes**	Imm Atty: Can argue not generic "theft" because committed by "exercising control." See Jaggernauth v. AG 432 F.3d 1346 (11th Cir. 2005).

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§ 13A-9-14(b) Fraudulent Use Credit Card *D Felony*	**(b)(1) is theft AF** b/c receipt of stolen property. **Others should not be Theft AF** b/c no non-consensual taking. **But** would be **fraud AF if loss > $10,000**	**Yes**		**Yes** if AF **or** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes**	To potentially avoid deport-ability, stip to use of a revoked or cancelled card.
§ 13A-9-18 Criminal impersonation *B Misdemeanor*	**No**	**Yes**		**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes.** However, if this is only CIMT, would qualify for the petty offense exception	
§ 13A-9-18.1 Giving a false name/address to LEO *A Misdemeanor*	**Probably not an AF,** but keep sentence under 1 yr to be safe. Obstruction of Justice AF requires 1 yr min sentence.	**Possibly,** because intent to mislead. In re Pinzon, 26 I&N Dec. 189, 192-95 (BIA 2013) (materially false statement to gov't official is CIMT); In re Jurado 24 I&N 29 (BIA 2007) (false written statement to police CIMT); But see Bobadilla v. Holder, 679 F.3d 1052 (8th Cir. 2012) (giving a false name at a traffic stop not necessarily CIMT); Blanco v. Mukasey, 518 F.3d 714 (9th Cir. 2008).		**Yes** if AF **or** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Likely yes.** However, if sentence is 6 mo or less and this is only CIMT, would qualify for the petty offense exception.	

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§ 13A-9-150 Fraudulently obtaining benefits *C Felony or A Misdemeanor*	**No,** unless the loss to the gov't exceeds $10,000.	**Yes**		**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes**	
§ 13A-10-2 Obstructing governmental operations. *A Misdemeanor*	Probably an Obstruction of Justice AF ***if*** 1 year sentence	**Yes**		**Yes** if 1yr sentence. **Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes** However, if sentence $\leq$ 6 mo & this is only CIMT, would qualify for the petty offense exception.	Ask for 6mo sentence to avoid AF and preserve petty offense exception.
§ 13A-10-9 False reporting to law enforcement authorities. *A Misdemeanor*	**Probably not**	**Probably.** See In re Pinzon, 26 I&N Dec. 189, 192-95 (BIA 2013) (federal crime of making materially false statement to government official is CIMT); In re Jurado 24 I&N 29 (BIA 2007) (false written statement to police CIMT).		**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes** However, if sentence $\leq$ 6 mo & this is only CIMT, would qualify for the petty offense exception.	Ask for 6mo sentence to avoid AF and preserve petty offense **Imm Atty:** Argue not CIMT because no written statement required.

Offense	Aggravated Felony	Crime Involving Moral Turpitude (CIMT)	Other grounds of deportability or inadmissibility:	Would this conviction make a client deportable?	Would this conviction make a client inadmissible?	Comments, Strategies & Tips
§ 13A-10-15 Terrorist threats *C Felony*	**Possibly an AF.** Conviction under (a)(1) subsections should not be a COV AF because not divisible as to intentionally or recklessly. See Olmsted v. Holder, 588 F.3d 556 (8th Cir. 2009) (MN terrorist threats conviction COV AF only because record established intentional, not reckless conduct). Conviction under (a)(2) is likely an Obst Justice AF.	**Likely to be charged as CIMT.** However, conviction under any (a)(1) subsections arguably not a CIMT because not divisible as to intentionally or recklessly.	.	**Yes** if AF **or** if within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Likely yes** – see CIMT analysis.	Stipulate to reckless mens rea to avoid AF and possibly avoid CIMT. **Imm atty**: Statute is also not divisible as to commit crime of violence or damage any property. Crime of violence is not defined and caselaw states judge does not need to provide jury with any definition. Lansdell v. State, 25 So.3d 1169 (Ala. Crim. App. 2007).
§ 13A-10-31 Escape 1 *B Felony*	Conviction under (a)(1) is a COV AF. (a)(2) is probably not an AF, but could be charged as an Obst. Justice AF	**Yes** under (a)(1). Probably not under (a)(2). See Matter of J —, 4 I&N Dec. 512 (BIA 1951); Matter of Z, 1 I&N. Dec. 235 (BIA 1942) (escape w/o force or violence is not CIMT).		**Yes** if (a)(1)	**Yes** if (a)(1) **or** if multiple convictions with 5+ yrs aggregate imprisonment	**Imm Atty:** Challege Obst. Justice AF charge. See note below.

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§ 13A-10-32 Escape 2 *C Felony*	**Probably not**, but could be charged as an Obst. Justice AF	**Probably Not.** See Matter of J —, 4 I&N Dec. 512 (BIA 1951); Matter of Z, 1 I&N. Dec. 235 (BIA 1942) (escape w/o force or violence is not CIMT).		**Probably Not**	**Yes** if multiple convictions with 5+ yrs aggregate imprisonment	**Imm Atty:** Challege Obst. Justice AF charge. The BIA has defined "an offence relating to obstruction of justice" to refer only to those listed in 18 USC §§ 1501-21. In Re of Espinoza-Gonzalez, 22 I&N Dec. 889 (BIA 1999). Thus, Escape shouldn't be an Obst Justice AF. See Salazar-Luviano v Mukasey, 551 F.3d 857 (9th Cir. 2008). Some circuits have declined to follow Espinoza. See Denis v. Att'y Gen, 633 F.3d 201 (3d Cir. 2011) (reading "relating to" broadly); but see Mellouli v. Lynch, 135 S. Ct. 1980 (2015) (narrow reading of "relating to" in CS context).
§ 13A-10-33 Escape 3 *C Felony*	**Probably not**, but could be charged as an Obst. Justice AF	**Probably Not**, see note above.		**Probably not**	**Yes** if multiple convictions with 5+ yrs aggregate imprisonment	
§ 13A-10-34 Permitting or Facilitating Escape 1 *C Felony*	**Probably not,** but could be charged as an Obst. Justice AF	**Probably not,** see Matter of B-, 5 I&N Dec. 538 (BIA 1953) (Not all conduct taken intending to aid in escape of prisoner involves moral turpitude)		**Probably not**, but yes if CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes** if CIMT **Yes** if multiple convictions with 5+ yrs aggregate imprisonment	
§ 13A-10-35 Permitting or Facilitating Escape 2 *A Misdemeanor*	**Probably not,** but could be charged as an Obst. Justice AF ***but only if 1 year sentence***	**Probably not,** see Matter of B-, 5 I&N Dec. 538 (BIA 1953). (Not all conduct taken intending to aid in escape of prisoner involves moral turpitude)		**Probably not**, but yes if CIMT and within 5 yrs of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes if CIMT,** but if sentence $\leq$ 6 mo & this is only CIMT, would qualify for the petty offense exception. **Yes** if multiple convictions with 5+ yrs aggregate imprisonment	

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§ 13A-10-36 Promoting Prison Contraband 1 *C Felony*	**Probably not**	**Probably not –** No intent required. Also, see Matter of B-, 5 I&N Dec. 538 (BIA 1953). (Introducing contraband *with intent of helping prisoner escape* is not necessarily CIMT)		**Probably Not**	**Probably Not**	
§ 13A-10-37 Promoting Prison Contraband 2 *C Felony*	**Probably not**	**Probably not**	**controlled substance grounds**. If possible, stipulate that substance involved is Salvia or other drug not federal CS.	**Yes,** as CS offense	**Yes,** as CS offense	**Imm Atty:** argue that statute is not divisible as to substance and salvia would satisfy this element.
§ 13A-10-38 Promoting Prison Contraband 3 *B Misdemeanor*	**Probably not**	**Probably not**		**Probably not**	**Probably not**	
§ 13A-10-41 Resisting Arrest *B Misdemeanor*	**No.**	**No,** because no use of force element. See Cano v. Att'y Gen, 709 F.3d 1052 (11th Cir. 2013) (FL Resisting Arrest with Violence is a CIMT, because requires intentional use of violent force)		**No**	**No,** unless one of multiple convictions with 5+ yrs aggregate imprisonment.	

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§ 13A-10-43 Hindering Prosecution 1 *C Felony*	**Probably not**, but could be charged as an Obst. Justice AF	**Yes**		**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of single scheme."	**Yes**	See note above regarding Escape and Permitting or Facilitating Escape for AF analysis.
§ 13A-10-43 Hindering Prosecution 2 *A Misdemeanor*	**Probably not,** but could be charged as an Obst. Justice AF ***but only if 1 year sentence***	**Yes**		**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of single scheme."	**Yes.** However, if sentence $\leq$ 6 mo & this is only CIMT, would qualify for the petty offense exception.	Ask for 6 mo sentence to ensure eligibility for petty offense exception and avoid AF.
§ 13A-10-52 Attempt to Elude *A Misdemeanor or C Felony (if injury to third party)*	**No.**	**No.** Even if charged as felony, should not be charged as CIMT because no intent or reckless mental state element as to death or injury to third party. See In re Ruiz-Lopez, 25 I. & N. Dec. 551 (BIA 2011)		**No.**	**No,** unless one of multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-10-101 Perjury 1 *C Felony*	**Yes,** this is a "Perjury" AF	**Yes**		**Yes**	**Yes**	
§ 13A-10-102 Perjury 2 *A Misdemeanor*	**Yes,** Perjury AF, ***but only if sentence is 1 year*.**	**Yes**		**Yes,** if 1 year sentence, even suspended. **Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of single scheme."	**Yes.** However, if sentence is 6 mo or less and this is only CIMT, would qualify for the petty offense exception.	Ask for 6 mo sentence to ensure eligibility for petty offense exception and avoid AF.

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§ 13A-10-122 Bribing a Witness *C Felony*	**Yes,** this is an Obst. Justice/Bribing a Witness AF.	**Yes**		**Yes**	**Yes**	
§ 13A-10-123 Intimidating Witness *C Felony*	**Yes,** this is an Obst. Justice AF	**Yes**		**Yes**	**Yes**	
§ 13A-10-124 Tampering with Witness *B Misdemeanor*	**No.** (Cannot be Obst. Justice AF because max sentence is 6 mo)	**Probably Yes**		**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of single scheme."	**Yes.** However, if this is only CIMT, would qualify for the petty offense exception.	
§ 13A-10-129 Tampering with Physical Evidence *A Misdemeanor*	**Possibly** an Obst. Justice AF, ***but only if 1 year sentence***	**Yes**		**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of single scheme."	**Yes.** However, if sentence ≤ 6 mo & this is only CIMT, would qualify for the petty offense exception.	Ask for 6mo sentence to avoid AF and preserve petty offense exception. **Imm Atty:** See note above for Escape and Permitting or Facilitating Escape for AF analysis.
§ 13A-11-7 Disorderly Conduct *C Misdemeanor*	**No**	**No**		**No**	**No,** unless one of multiple convictions with 5+ yrs aggregate imprisonment.	

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§ 13A-11-8(a) Harassment *C Misdemeanor*	**No,** not COV and max sentence is 3mo	**No.** See In re Ahortalejo-Guzman, 25 I&N 465, 466 (BIA 2011) ("Simple assault or battery is generally not considered to involve moral turpitude for purposes of the immigration laws")	Even if DV related, should not be CODV under (a)(1)(a) because not COV. *In re Guzman-Polanco*, 26 I&N Dec. 713 (BIA 2016). If charge is based on threat, could be CODV.	**No**	**No,** unless one of multiple convictions with 5+ yrs aggregate imprisonment.	**Imm Atty:** (a)(1)(a) is not divisible as to "strikes, shoves, kicks, or otherwise touches." (a)(1)(b) is not divisible as to threat or other "abuse or obscene language" or "gesture"
§ 13A-11-8(b) Harassing Communications *C Misdemeanor*	**No**	**Should not be charged as CIMT** because includes conduct that is not "reprehensible" i.e. a single prank phone call.	Even if DV related, not CODV because not COV.	**No**	**No,** unless one of multiple convictions with 5+ yrs aggregate imprisonment.	
§ 13A-11-9 Loitering *Violation*	**No**	(a)(3) (loitering for prostitution could be a CIMT. Other subsections are not CIMTs.	(a)(7) is probably a crime "relating to a controlled substance" (a)(3) may trigger prostitution inadmissibility ground.	**Yes**, if (a)(7), unless it involves less than 30g marijuana and no other drug offenses.	**Yes**, if (a)(7), however, if it involves 30g or less of marijuana, client may be eligible for a waiver under INA § 212(h). **Yes** if (a)(3).	Plead specifically to as safe subsection if possible. Write the subsection number on each of the plea forms.

Offense	Aggravated Felony	Crime Involving Moral Turpitude (CIMT)	Other grounds of deportability or inadmissibility:	Would this conviction make a client deportable?	Would this conviction make a client inadmissible?	Comments, Strategies & Tips
§ 13A-11-10 Public Intoxication *Violation*	**No**	**No**	Not a contr. subst. offense because not divisible as to intoxication by alcohol, legally prescribed drug, or illegal drug.	**No**	**No,** unless one of multiple convictions with 5+ yrs aggregate imprisonment.	Although statute is not divisible, avoid specifically admitting intoxication by cont. subst. if possible.
§ 13A-11-11 Falsely Reporting an Incident *A Misdemeanor or C Felony*	**No**	**Yes**		**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of single scheme."	**Yes.** However, if misdo conviction w/ sentence $\leq$ 6mo & this is only CIMT, would qualify for the petty offense exception.	
§ 13A-11-14 Cruelty to Animals *A Misdemeanor*	**No**	**Probably not CIMT** because can be committed by criminal negligence.		**Probably not**	**Probably not,** unless one of multiple convictions with 5+ yrs aggregate imprisonment.	While statute is not divisible w/r/t mental state, stip to criminal negligence to best protect client's interests.
§ 13A-11-61 Discharge Firearm into Building *C Felony (unoccupied building) or B Felony (occupied)*	**This is likely to be charged as a COV AF.** However, there is a very good argument that it is not a COV because can be committed with criminal negligence. **Also, use of explosives is an AF.** Avoid pleading to use of explosives	**Likely to be charged as CIMT.** However, good argument that this is not a CIMT because it can be committed with criminal negligence. Sullens v. State, 878 So.2d 1216 (Ala. Crim. App. 2003).	**This may be charged as a deportable Firearm Offense.** If possible, stip to projectile weapon that is not a firearm. **Imm Atty**: see note below re: AL Firearm definition.	**Likely yes,** as firearm offense.	**Possibly not.** This is arguably not a CIMT and there is no firearm inadmissibility ground. **But yes** if one of multiple convictions with 5+ yrs aggregate imprisonment.	**Note:** if client is undocumented, may be prosecuted federally for alien in possession.

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§ 13A-11-72(a) Certain Person Forbidden to Possess Firearm *C Felony*	**Yes,** if this is a firearm aggravated felony, because it is narrower than the federal felon in possession law. In Re Vasquez-Muniz, 23 I. & N. Dec. 207 (BIA 2002).	**Probably not**	**Likely a deportable firearm offense.** Imm atty may argue that AL firearm definition is broader than federal defniniton. *Compare* 18 USC 922(a)(16)(C) (excluding weapons that cannot used fixed ammunition) and 18 USC 922(a)((3) (defining firearm in reference to expelling a projectile) *with* Ala.Code 1975 § 13A-8-1 (5) (defining "firearm" as "A weapon from which a shot is discharged by gunpowder.") *See Atwood v. The State*, 53 Ala. 508 (1875) (defining "firearm" as "A weapon acting by the force of gun-powder" and upholding conviction involving a gun too old to fire.)	**Possibly,** as a firearms offense	**Yes** if 5+ yrs aggregate imprisonment on this and priors. Otherwise, not technically, because not CIMT. (There is no firearm inadmissibility ground.)	**Note:** if client is undocumented, may be prosecuted federally for alien in possession.
§ 13A-11-73 Pistol in Vehicle or Concealed on Person *A Misdemeanor*	**No**	**No.** See In re Granados, 16 I&N Dec. 726 (BIA 1979).		**Possibly,** as a firearms offense	**No, unless** one of multiple convictions with 5+ yrs aggregate imprisonment.	**Note:** if client is undocumented, may be prosecuted federally for alien in possession.

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§ 13A-12-111 Promoting Prostitution 1 *B Felony*	(a)(1) is a COV AF. (a)(2) may be a prostitution business AF.	**Yes**		**Yes**	**Yes**	**Imm Atty:** argue that no AL conviction for prostitution or promoting prostitution is AF because AL prostitution definition includes sexual contact, while federal definition requires intercourse. See Prus v. Holder, 660 F.3d 144 (2d Cir. 2011).
§ 13A-12-112 Promoting Prostitution 2 *C Felony*	(a)(1) is a prostitution business AF. (a)(2) may be charged a prostitution business AF.	**Yes**		**Yes**	**Yes**	
§ 13A-12-113 Promoting Prostitution 3 *A Misdemeanor*	Arguably not a prost. bus. AF b/c "advance or profit" from prostitution is broader than "own, control, manage, or supervise prost. bus."	**Yes**		**Yes** if AF. **Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of single scheme."	**Yes**	
§ 13A-12-121 Prostitution (including solicitation) *A Misdemeanor*	**No**	**Yes,** under any subsection	Be aware of prostitution grounds of inadmissibility, but a single act of prostitution does not trigger these grounds. Matter of Gonzalez-Zoquiapan, 24 I&N Dec. 549 (BIA 2008).	**Yes** if within 5 yrs of admission **or** 2nd CIMT "not arising out of single scheme."	**Yes**	

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§ 13A-12-214 Poss Marijuana 2 (POM2) *A Misdemeanor*	**No,** not a drug trafficking AF because simple possession	**No**	Can trigger several controlled Substance grounds of inadmissibility and deportability.	If this is only MJ offense, not deportable unless Gov't can prove that it involved more that 30g MJ. Avoid admitting to specific amount over 30g. If prior or subsequent MJ conviction – yes.	**Yes,** because a CS crime, will make client inadmissible. Waiver available under INA § 212(h), but not guaranteed.	**Note:** even if plea is withdrawn after successful completion of Drug Court, conditional guilty plea constitutes conviction for immigration purposes. Attempt to get pre-plea deferral w/ case dismissed upon completion of program.
§ 13A-12-213(a)(1) Poss Marijuana 1 – other than personal use *C Felony*	**Yes**. This is an AF under 11th Cir. law because that court has held there is no realistic possibility that this statute would be applied to the social sharing of marijuana. See U.S. v. White, 837 F.3d 1225 (11th Cir. 2016).	**Maybe**	Can trigger several controlled Substance grounds of inadmissibility and deportability	**Yes** – even if not AF, this is deportable CS Offense	**Yes.**	**Imm atty:** Preserve argument under Moncrieff v. Holder that statute reaches the social sharing of a small amount of MJ and thus is not a drug trafficking AF. **Defense atty:** If possible, have defendant admit specifically to social sharing and preserve in record

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§ 13A-12-213(a)(2) Poss Marijuana 1 – prior poss offense *D Felony*	**Yes**, because prior MJ conviction is an element, this is a recidivist offense under federal law.	**No**	Can trigger several controlled Substance grounds of inadmissibility and deportability	**Yes**	**Yes**	**Note**: An uncounseled prior conviction cannot be used against the defendant under this statute Ex parte Reese, 620 So. 2d 579, 580 (Ala. 1993)
§ 13A-12-214.1 Poss. Salvia *A Misdemeanor*	**No**	**No**	Not a CS offense because salvia is not on federal schedule	**No**	**No,** unless multiple convictions with 5+ yr aggregate imprisonment	
§ 13A-12-212 Unlawful Poss. Controlled Substance (UPOCS) *D Felony*	**No**	**No**	Will be a CS offense if drug possessed is controlled substance under federal law.	**Yes** because a controlled substance offense	**Yes** because a controlled substance offense	**Note:** even if plea is withdrawn after successful completion of Drug Court, conditional guilty plea constitutes conviction for immigration purposes. Attempt to get pre-plea deferral w/ case dismissed upon completion of program. **Or**, try to reduce to Illegal Poss. Rx Drug.

Offense	Aggravated Felony	Crime Involving Moral Turpitude (CIMT)	Other grounds of deportability or inadmissibility:	Would this conviction make a client deportable?	Would this conviction make a client inadmissible?	Comments, Strategies & Tips
§ 34-23-7 Illegal Poss Rx Drug *A Misdemeanor*	**No**	**No**	Not a CS offense unless record shows drug possessed is federally controlled substance. Plead specifically to Rx that is not federal CS if possible, or enter best interest plea.	**Only if found to be CS offense**	**Yes,** if found to be CS offense, including if client admits to possessing federally controlled substance, even if not element. **Yes** if multiple convictions with 5+ yrs aggregate imprisonment	If drug charged is CS, make note on plea paperwork that client is not admitting to specific drug charged and/or is admitting to some other non CS drug
§ 13A-12-260 Unlawful Poss Drug Paraphernalia (UPDP) *A Misdemeanor*	**No**	**No**	Likely to charged as a CS offense. If possible, designate salvia or other non-CS as drug on plea paperwork or enter best interest plea.	**Probably yes,** as CS offense. However, related to use of small amount of MJ, then falls under MJ simple poss exception	**Probably yes,** as CS offense. If related to use of small amount of MJ, then can possibly be waived under INA § 212(h).	Strong argument under Mellouli v. Lynch, 135 S.Ct. 1980 (2016), that this is not a CS offense because could be paraphernalia related to salvia or other non-CS.
§ 13A-12-211(a) Unlawful Distribution of CS (UDOCS). *B Felony*	**Likely to be charged as AF.** Arguably not an AF because no "trafficking element" – criminalizes "giving away" CS. Stipulate to giving away if possible.	**Probably**	Will be a CS offense if drug possessed is controlled substance under federal law.	**Yes** because a controlled substance offense and probably also AF	**Yes** because a controlled substance offense	

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§ 13A-12-211(c) Poss of CS w/Intent *B Felony*	**Yes**	**Probably**	Will be a CS offense if drug possessed is controlled substance under federal law.	**Yes** because a controlled substance offense and probably also AF	**Yes** because a controlled substance offense	**Imm atty:** Arguably not an AF because no "trafficking element" – criminalizes simple poss of certain quantities of drugs, but this argument will probably fail "realistic probability" test.
§ 13A-12-231 Trafficking	**Yes**	**Probably**	Will be a CS offense if drug possessed is controlled substance under federal law.	**Yes** because a controlled substance offense and probably also AF	**Yes** because a controlled substance offense	
§ 13A-13-6 Endangering Child Welfare *A Misdemeanor*	**No**	**Yes,** under (a)(1). **Arguably not** under (a)(2) because "fails to exercise reasonable diligence" is a negligence mens rea	Deportable "Crime of Child Abuse"	**Yes**	**Arguably not** if under (a)(2). **But yes** if multiple convictions with 5+ yrs aggregate sentence.	
§ 26-15-3 Torture, willful abuse of child *C Felony*	**Yes,** this is likely a COV AF	**Yes**	Deportable "Crime of Child Abuse"	**Yes**	**Yes**	
§ 26-15-3.1 Aggravated Child Abuse *A or B Felony*	**Yes**	**Yes**	Deportable "Crime of Child Abuse"	**Yes**	**Yes**	

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§ 26-15-3.2 Chemical Endangerment *A, B, or C Felony (depending on harm to child)*	**No**	**Probably yes.** Arguably not CIMT if committed recklessly and no harm to child (C Felony)	Deportable "Crime of Child Abuse"	**Yes**	**Yes**	
§ 23-5A-191 DUI *A Misdemeanor*	**No**	**No.** In re Lopez-Meza, 22 I&N Dec. 1188 (BIA 1999)	(a)(3) and (a)(4) are controlled substance offense. If charged under one of these subsections, stip to (a)(5) ("any substance")	**Yes, if** controlled substance offense. **Otherwise no.**	**Yes,** if controlled substance offense. **Otherwise no,** unless multiple convictions with 5+ yrs aggregate imprisonment	**NOTE**: while a DUI does not generally trigger inadmissibility or deportability, this offense has been designated a DHS "priority" by previous administrations. A removable client is highly likely to be removed if convicted of DUI.
§§ 32-10-1 - 6 Leaving the Scene of an Accident *A Misdemeanor (damage to property) or C Felony (death or personal injury)*	**No**	**Yes** if C Felony. See Carcia-Madonado. v. Gonzalez, 491 F.3d 284 (5th Cir. 2007) (failure to stop and render aid is CIMT). **Should not be CIMT** if only damage to property.		**Yes** if C Felony and within 5 years of admission **or** 2nd CIMT "not arising out of a single scheme."	**Yes** if C Felony. **Otherwise no,** unless multiple convictions with 5+ yrs aggregate imprisonment.	**Imm Atty:** Argue not CIMT under any subsection. See Latu v. Mukasey, 547 F.3d 1070 (9th Cir. 2008).

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