

A BRIEF GUIDE TO REPRESENTING NONCITIZEN CRIMINAL DEFENDANTS IN CONNECTICUT (Revised 09/01/2005)

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Disclaimer: This brief guide is intended primarily as an introductory tool for criminal defense attorneys representing noncitizen defendants in Connecticut. This guide does not purport to provide legal advice or to give an opinion as to the immigration consequences that might result from a criminal disposition in a particular case. Defense practitioners are advised to consult an immigration attorney familiar with this area of law and to conduct their own research on the possible immigration consequences in a particular case.

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Introduction: Representing Noncitizen Defendants in Connecticut

An illustration of the problem:

John is a 31-year-old legal permanent resident of the U.S. 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. A few months later, John decides to become a citizen. After filing his application, John is detained by officials of the Department of Homeland Security (DHS), who inform him that his conviction is considered an “aggravated felony” for purposes of immigration law.

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John is placed in detention pending deportation, and is ineligible for virtually all relief from removal.

Most criminal defense attorneys are now aware that individuals who are not U.S. citizens² and who are convicted of a criminal offense can face harsh immigration consequences as a result of that conviction. In Connecticut, trial judges are required to warn all defendants about the potential immigration consequences whenever a criminal defendant enters a guilty or nolo contendere plea. Conn. Gen. Stat. § 54-1j. The complexity of the intersection between federal immigration law and state criminal law makes it difficult, however, for defense attorneys to be able to give specific advice about the impact that a particular conviction will have on a client's immigration status.

The purpose of this guide is to provide a tool for criminal defense attorneys to navigate this difficult field. The approach of this guide is to raise "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.³ What this guide does NOT intend to do is to replace the legal advice that only an attorney familiar with this area of immigration law can provide as to the specifics of a particular case. Competent advice about the best criminal disposition in an individual noncitizen defendant's case will depend on that individual's prior criminal record, his or her immigration status, the status of immediate relatives and a number of other factors. In all cases involving a noncitizen defendant, defense counsel should advise their clients to seek the assistance of an immigration attorney as soon as possible regarding the possible impact of the criminal charges on the defendant's immigration status. If the client does not or cannot seek such representation, defense counsel would still be advised to seek the assistance of an immigration attorney in the area.

This guide recognizes, however, that the defense attorney has an independent obligation, to the extent possible, to inform the client about the possible immigration consequences of criminal convictions. See ABA Criminal Justice Standard 14-3.2(f) ("To the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea."). This guide seeks to assist criminal defense attorneys in Connecticut to comply with that ethical obligation.

Dispelling Some Dangerous Myths Regarding Immigration Consequences of Criminal Convictions:

Defense attorneys should understand that the intersection of federal immigration law and Connecticut criminal law often leads to results that are counterintuitive. The following are some of the misconceptions about this area of the law most often heard from defense practitioners. The primary lesson to be conveyed is that the immigration consequences of a criminal conviction must be considered in every case involving a defendant who is not a U.S. citizen.

*** MYTH: *Immigration consequences are only an issue if the person is here "illegally."***

WRONG. A criminal conviction can lead to deportation for any individual who is not a citizen of the United States. A noncitizen defendant could face immigration consequences even if he or she has been in this country since an early age, has been a lawful permanent resident (i.e. "green-card" holder), has assimilated

² This guide uses the term "noncitizen" to refer to any individual who is not a citizen of the United States, and who is therefore subject to potential immigration consequences as a result of a criminal conviction. The term includes lawful permanent residents, individuals with temporary visas, and undocumented migrants (sometimes called "illegal aliens").

³ Prior to 1996, immigration law provided for two types of processes to eject noncitizens from the U.S.: "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.

completely into our society and has never had a criminal conviction. The defendant's status may impact what kind of consequences he or she faces, but all noncitizens could face deportation as long as they have not naturalized.

✘ ***MYTH: Immigration consequences are only an issue if the conviction is a felony.***

WRONG. Even the most drastic of immigration consequences can result from convictions that are only misdemeanors under Connecticut law. Indeed, many misdemeanor convictions under Connecticut law could be classified as "aggravated felonies" under immigration law (this is the case even though the offenses were neither "aggravated" nor "felonies"). Of course, the fact that an offense is a felony is often relevant to the potential immigration consequences, and certain felony convictions are more likely to have drastic consequences, but misdemeanors are in no way outside the scope of immigration law.

✘ ***MYTH: There will be no immigration consequences if the defendant does not serve time.***

✘ ***MYTH: There will be no immigration consequences if the defendant serves only a year or less.***

✘ ***MYTH: There will be no immigration consequences if the sentence is suspended.***

WRONG, WRONG, and WRONG. The term of imprisonment imposed for a particular conviction may be important in determining the immigration consequences of the conviction, but it also may not be relevant at all. In some circumstances, the length of a term of imprisonment will be critically important: for instance, some convictions will qualify as an "aggravated felony" only if a sentence of 1 year OR more is imposed. Defense attorneys should note, however, that, **in most situations, a suspended sentence under Connecticut law will count the same for purposes of immigration law as a fully served sentence.** This creates a dangerous pitfall when a noncitizen is charged with one of the many Connecticut class A misdemeanors that may be considered "aggravated felonies" if a sentence of 1 year or more is imposed. For instance, a fourth-degree larceny conviction with a one-year *suspended* sentence will most likely be considered an aggravated felony because, as far as immigration law is concerned, it is a theft offense for which a term of imprisonment of one year or more has been imposed (again, because the suspension of the sentence is not taken into account). Remember, however, that the length of the sentence is relevant only in some cases. In many situations, it will not matter that the defendant was not sentenced to any jail time: the mere fact of conviction will trigger immigration consequences regardless of sentence.

✘ ***MYTH: If the person is here "illegally," it doesn't matter what they're convicted of since they'll get deported anyway.***

WRONG. A noncitizen without legal status at a particular point could be eligible to obtain lawful immigration status in a number of different ways. Many, if not most, of those avenues could be foreclosed by certain types of criminal convictions. There are also many discretionary waivers of deportation for which a noncitizen could qualify, but again many of these waivers are not available to those convicted of certain offenses. But even if a person will not be able to avoid deportation in the end, criminal convictions can have harsh additional consequences. For instance, most noncitizens being deported because of a criminal conviction will face mandatory detention pending their removal. Many may be ineligible for a type of relief called "voluntary departure," which allows them to depart the country on their own and therefore avoid additional sanctions. Finally, many undocumented individuals may attempt to reenter the country even after being deported. These individuals most often face federal criminal charges when they are caught again by immigration authorities, but the potential sentences they would face are much longer if they were deported subsequent to certain types of criminal convictions. For all of these reasons, immigration consequences comprise an issue that is important to every noncitizen defendant.

✘ ***MYTH: The record in this particular case will be sealed, so there won't be any immigration consequences.***

WRONG. Immigration practitioners have found that nothing is "sealed" for purposes of immigration law. Applicants for immigration benefits are often required to provide information for all prior arrests and

convictions. Defense attorneys are therefore advised to assume that all criminal records will be available to immigration authorities and could trigger immigration consequences—regardless of the fact that those records are considered “sealed” as a matter of state law.

✘ ***MYTH: This issue is just too complicated and there’s nothing I can really do about it.***

✘ ***MYTH: My clients just want to avoid serving time and they won’t care about the immigration consequences.***

WRONG. This area of the law is undoubtedly complex and the lines that are drawn by immigration law do not always make intuitive sense. However, there are often very simple things that a defense attorney can do to improve a client’s chances in immigration court if he or she is alert to particularly dangerous dispositions. In addition, it is certainly the case that many criminal defendants will be more concerned about the more imminent prospect of serving time (or getting out of jail) than they will be about the future immigration consequences. Defense attorneys should recognize, however, that many noncitizens may be operating under the erroneous assumption that a particular conviction will not affect their immigration status: for instance, a defendant may think that because he is a “permanent” resident he cannot be deported. The ultimate decision about how to proceed is of course up to the client, but defense attorneys have an ethical obligation to ensure that the client is properly informed. Defense attorneys should keep in mind that the decisions made during the criminal proceedings will be crucial in framing any subsequent immigration proceedings. Clients should be made aware that there may be little an immigration attorney can do down the line if immigration consequences are not addressed during the criminal proceeding.

What are the categories of crimes that lead to immigration consequences?

It is important to note that any criminal conviction—indeed, any criminal *conduct*, even if it does not lead to a conviction—could have consequences for the immigration status of a noncitizen. 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 those 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 which render a noncitizen deportable (or “removable”). Many of those same classes of convictions will make a noncitizen ineligible for discretionary waivers or other forms of relief that may allow them to stay in the country even if they are considered deportable. The following is a brief overview of these categories:

Aggravated Felony:

In most situations, this will be the worst category of criminal offenses for immigration purposes. Its name is misleading because the offense need be neither “aggravated” (as that term may be commonly understood) nor a “felony” for it to be an “aggravated felony.” The list of what it includes is long (see glossary at Appendix D), but the most common offenses charged as aggravated felonies are: murder, rape, sexual abuse of a minor, a drug-trafficking crime (which could often include a simple drug possession crime!), and certain subcategories of crimes which meet a certain threshold: for example “crimes of violence,” “burglary” or “theft offenses” for which a sentence of 1 year OR more is imposed, or “fraud” offenses in which the loss to the victim exceeds \$10,000. When a noncitizen’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 noncitizen returns illegally to the United States, he or she will face criminal penalties of up to 20 years in federal prison.

Controlled Substances Offenses (CSO):

This is another category that will result in drastic immigration consequences for a noncitizen. This category encompasses offenses “relating to” a controlled substance as defined by federal law, and it therefore

encompasses simple possession and distribution offenses involving substances covered by *federal* drug schedules (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 noncitizen ineligible for many forms of discretionary relief.

Crimes Involving Moral Turpitude (CIMT):

A broad category of criminal offenses, this category is as vague as its title suggests. One often feels that the courts' take on "moral turpitude" is the same as their take on "obscenity": they know it when they see it. However, there is considerable caselaw guiding this analysis. Generally, the following types of crimes are found to be CIMTs: offenses involving theft or an intent to defraud; offenses involving intent to cause bodily harm, or offenses involving recklessness that result in serious bodily harm; and most offenses involving sexual conduct. Unlike Aggravated Felonies and Controlled Substances Offenses, CIMTs do not render a noncitizen removable in every case—the impact of a CIMT will depend on the immigration status, prior criminal record, and actual and potential sentence for the offense. Consult Appendix A for more specifics.

Other categories:

Other categories of offenses are more specific: crimes of domestic violence, crimes against children, firearm offenses, etc... For educated guesses as to whether a particular Connecticut offense falls within one of these categories, see the Chart of Connecticut offenses at Appendix B. Many of these categories of offenses will have their greatest negative impact on noncitizens who have been lawfully admitted to the country, especially lawful permanent residents (LPRs). However, unlike Aggravated Felonies or Controlled Substances Offenses, these categories of offenses will preserve eligibility for discretionary waivers of deportation.

What are the things to AVOID when representing a noncitizen defendant?

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 family circumstances and the specifics of the offense. A suggested approach for addressing immigration consequences can be found at Appendix A. However, recognizing that each case will present its own circumstances, criminal defense attorneys should keep in mind the following *general* guidance:

- ✓ **Avoid a "conviction" whenever possible:** Obviously, obtaining an outright dismissal or a *nolle prosequi* would be ideal. However, Connecticut also provides a number of pre-trial diversion programs which lead to dispositions that would not be considered "convictions" for immigration purposes and which, in most circumstances, would eliminate or reduce possible immigration consequences. [See *Appendix C for more information.*]
- ✓ **Avoid an "Aggravated Felony":** In most situations, and especially when a defendant is a lawful permanent resident (LPR) (also known as a "green-card holder"), 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: here, 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 noncitizens. The only exception is simple possession of 30 grams or less of marijuana (30g = 1.05 ounces), which will not trigger deportability for a lawful permanent resident and which may leave some avenues open for relief from deportation for other noncitizens.
- ✓ **If the defendant is a Lawful Permanent Resident (LPR), avoid "Crimes of Domestic Violence," "Firearm Offenses," and others:** these categories have particularly serious consequences for lawful permanent residents (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:
 - *If the defendant is a Lawful Permanent Resident (LPR), but has had this status for less than five years:* avoid conviction for a CIMT for which a sentence of 1 year or longer may be imposed (i.e. class A misdemeanors or any felony);
 - *Regardless of status:* avoid conviction for any CIMT that is a felony AND avoid conviction for CIMT that results in imposed sentence (even if suspended) that exceeds six months;

What are the things to DO when representing a noncitizen defendant?

- ✓ **Consult with an immigration attorney 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.
- ✓ **Urge 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. Although these programs impose significant requirements, a client should be advised of the benefits in the immigration context. Defense attorneys should note, however, that some of Connecticut’s pretrial diversion programs will NOT prevent immigration consequences (consult Appendix C for more information).
- ✓ **Pay careful attention to crafting a plea agreement:** In many situations, small changes to how the plea agreement is crafted can have a huge impact on the consequences stemming from the conviction. For instance:
 - If the conviction is one which could constitute an aggravated felony if a sentence of 1 year or more is imposed, a plea agreement with a sentence (whether suspended or to be served) of 364 days instead of 1 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 (for instance, it is almost always better to plea to a CIMT than to plea to an aggravated felony).
- ✓ **Conduct one’s own 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 lists important precedents that can help facilitate additional research as to the current law.

Why do you need to properly advise your client, even if you are a criminal defense attorney and not an immigration attorney?

- *Failure to advise* your client of the immigration consequences of a criminal conviction is potentially unethical. The United States Supreme Court and the Second Circuit Court of Appeals appear to be headed towards finding that such failure to advise constitutes ineffective assistance of counsel.
 - The ethical standards of the American Bar Association were revised in 1999 to recognize a lawyer’s duty to investigate and advise regarding potential immigration consequences.
 - The U. S. Supreme Court has noted Conn. Gen. Stat. Section 54-1j and the revised ABA standards with approval; in *INS v. St. Cyr*, 533 U.S. 289, 322-323 n.48 & n.50 (2001) the Court

mentioned that competent defense counsel would have advised the petitioner at the time of his plea as to whether conviction by guilty plea would have put him in a better position for relief from deportation than had he chosen to go to trial.

- Conn. Gen. Stat. Section 54-1j(a) not only prevents a court from accepting a guilty plea without advising a defendant that there may be immigration consequences, but provides that if the defendant has not discussed this possibility with defense counsel, “the court shall permit the defendant to do so prior to accepting the defendant’s plea.”
- Conn. Practice Book, Rules of Professional Conduct Section 1.4. Communication: (b) “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” See also Section 2.1: “...In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client’s situation.”
- In *Michel v. United States*, 507 F.2d 461, 465 (2nd Cir. 1974) the Court recognized that defense counsel (and not the trial court)⁴ has an obligation to advise their client about the indirect consequences the guilty plea may trigger including deportation, stating, “Defense counsel is in a much better position to ascertain the personal circumstances of his client so as to determine what indirect consequences the guilty plea may trigger.” *Id.* at 466. This decision suggests that an attorney does have duty to provide information on the collateral consequences of a criminal conviction.
- You don’t want to *fail to defend*:
 - Consider that it may not be enough to simply inform your client of the negative immigration consequences of conviction; *you must try to stop the consequences* as best as you realistically can by how you handle plea bargaining and the record of the facts at sentencing. Thus, if you are aware of the potential consequences of a conviction, you must do your best to avoid those negative consequences.
- Affirmative *misstatements* to a client about the immigration consequences of a charge or conviction constitutes ineffective assistance of counsel.
 - *United States v. Couto*, 311 F.3d 179, 188 (2nd Cir. 2002), held, “We believe that an affirmative misrepresentation by counsel as to the deportation consequences of a guilty plea is today objectively unreasonable.”

⁴ As explained by the court in *Michel*, the burden is on the defense attorney and not the trial court in Connecticut. In fact, aside from ensuring that the defendant is properly advised, the trial court is forbidden from delving too deeply into the subject. See Conn. Gen. Stat. Section 54-1j (b) (“The defendant shall not be required at the time of the plea to disclose the defendant’s legal status in the United States to the court.”).

Appendix A

A Suggested Approach for Defense Attorneys Representing Noncitizen 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: he or she will NOT face immigration consequences because of a criminal conviction;
- b. If your client is not a U.S. citizen, continue with the suggested approach below;
- c. If your client's citizenship is unclear, you or your client should contact an immigration attorney and clarify:
 - i. Generally, an individual born in the U.S.⁵ or who has completed naturalization 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. 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” should also have no immigration consequences;
- 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). For instance:
 - i. If the defendant is eligible for a disposition as a Youthful Offender, such a disposition will most likely NOT be considered a conviction for immigration purposes;
 - ii. Some pre-trial diversion programs such as Accelerated Pretrial Rehabilitation (AR), Family Violence Education Program (FVEP) or Alcohol Education Program (AEP) should also have no negative immigration consequences so long as the defendant is not required to enter a guilty plea or otherwise admit guilt as a condition of entering the program;
 - iii. Other pre-trial diversion programs, such as the Community Service Labor Program (CSLP), Suspension of Prosecution for Alcohol-Dependent or Drug-Dependent Persons (referred to as “CADAC”) or the Drug Education Program (DEP) should be used with more caution because they either may require the defendant to enter a guilty plea (i.e. CSLP) or to admit being alcohol- or drug-dependent (for CADAC or DEP), which may have negative immigration consequences.
- c. **Note, however:** Even non-conviction dispositions (such as YO or a pre-trial diversion program) may still have negative immigration consequences down the road because USCIS may consider them in making discretionary determinations for immigration benefits; any client with such a disposition should be advised to consult with an immigration attorney before applying for any immigration benefit.

C. If a conviction cannot be avoided, you must determine your client's immigration “status” in this country:

- a. The immigration consequences will vary significantly depending on the client's immigration status;
- b. Your client is most likely to fall into four broad categories of immigration “status” [For more specifics, see Part 2 below]:
 - i. Legal Permanent Resident (LPR): also known as a “green card holder”;
 - ii. An individual who has been *granted* asylum or refugee status, but has NOT yet become an

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

LPR;⁶

- iii. An individual with temporary or no status, but who might be eligible for some form of immigration status;
- iv. An individual with no status who does not appear to be eligible for any immigration status;

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

- a. After determining your client's status, consult Part 3 "Dispositions to Avoid" to determine what categories of convictions you are trying to avoid;
- b. Consult the CT Chart of Immigration Consequences (Appendix B) to determine whether the charged offense fits these categories. This will help you determine the possible immigration consequences for the crime charged and for other offenses to which the client might plead;

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

- a. Plead down 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 (and remember: this category considers the sentence imposed, not the amount of time served, and suspended sentences therefore count!). **Note, however:** many offenses are considered "aggravated felonies" regardless of sentence imposed;
 - ii. 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");
- c. Generally, keep the record of conviction "clean": in other words, avoid facts that may make a particular conviction worse for immigration purposes:
 - i. I.e., 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. 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.
 - iii. If necessary, consider waiving the reading of the facts or entering an *Alford* plea;

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

- a. Warn client that conviction may affect immigration status, and if removable (deportable), s/he may be taken into federal immigration custody upon completion of his or her state sentence;
- b. If client is an LPR, warn them to consult an immigration attorney before traveling abroad (or even to border areas within the U.S.), applying for naturalization, or requesting a replacement "green card";
- c. Warn client that they should consult an immigration attorney before filing for ANY benefit with USCIS (the former INS), including adjustment of status, asylum, work permits, or naturalization;
- d. Warn client that reentering the country illegally after being removed (aka "deported") because of a criminal conviction could lead to federal criminal charges and significant jail time.

⁶ Note: if the individual has merely *applied* for asylum, he or she does not fall into this category (see category iii).

Appendix A (Continued)

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

Note: There are countless categories of immigration "status" that a noncitizen may have. The following information is not meant to be comprehensive, but only provides an outline of the general categories that criminal defense attorneys in Connecticut may encounter. As with all of the information in this guide, defense attorneys are advised to work closely with an immigration attorney whenever possible, or to at least counsel their clients to seek the advice of an immigration attorney.

General Categories of Immigration "Status":

1. Lawful Permanent Resident (LPR) ("Green Card" Holder):

- a. An individual who has been granted status as a "lawful permanent resident" of the U.S.;
- 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 US; 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 granted asylum or refugee status, but who has NOT yet become an LPR:

- a. Refugee status is granted to a person outside of the U.S., who then enters the U.S. with that status; asylum is granted to an individual who is already in the U.S.; both are allowed to remain in the U.S. because they fear persecution in their country of origin;
- b. Refugees are generally able to apply to become lawful permanent residents (LPRs) after one year in the U.S., and asylees are eligible one year after receiving asylum; however, the process can take several years, so individuals may remain in this category for some time;
- c. Refugees will have a document (could be a stamp in 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 former INS) or the Department of Justice stating that the person has been granted asylum;

3. An individual with temporary or no status, but who might be eligible for some form of immigration status (now or in the future):

- a. Note: if your client has a temporary visa other than a visitor's visa (i.e. student visa, temporary worker, etc...), it is STRONGLY advised that the client (or you) consult an immigration attorney before addressing the criminal charges pending. 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 U.S. permanently or returning to the U.S. in the future, he or she should be treated in this category;
- b. An individual may be eligible to gain permanent resident status in a number of different ways, but the most likely are:
 - i. the client has a spouse, child, parent or sibling who is a U.S. citizen OR a spouse or (in some cases) parent who is a U.S. permanent resident;
 - ii. the client fears persecution or some form of harm (other than general economic deprivation) if returned to his or her country of origin;

4. An individual with no immigration status who does not appear to be eligible for any immigration status and does not think he will be eligible in the future:

- a. This is the "catch-all" category, if the client does not fall in any of the categories listed above.

Appendix A (Continued)

PART 3: Dispositions to Avoid Based on Client's Immigration Status:

Note: The information in these charts is not meant to be comprehensive, and there may exist additional consequences or forms of relief available in particular situations. Practitioners are always advised to consult with immigration attorneys where possible or to advise clients to consult with an experienced immigration practitioner. The following charts are 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 a Lawful Permanent Resident (LPR):

1. Avoid Convictions Triggering Deportability:

- a. Most importantly, avoid conviction for Aggravated Felony (AF)
- b. Avoid conviction for Controlled Substance Offense (CSO) (i.e. a drug crime):
 - i. *Except:* Single offense for simple possession of 30 g (1.06 oz) or less of marijuana does not trigger deportability;
- c. Avoid conviction for Crime Involving Moral Turpitude (CIMT):
 - i. *Except:* If no past CIMT convictions, then one conviction for CIMT does not trigger deportability IF: a) more than 5 years since becoming LPR OR b) *potential* punishment for offense is **less** than 1 year in prison (i.e. offense is a B misdemeanor or below);
- d. Avoid conviction for Firearm Offense (FO)
- e. Avoid conviction for Crime of Domestic Violence (CODV), Crime of Stalking, Crime Against Children (CAC), or violation of protection order;
- f. Avoid disposition or record that may give basis for finding that client is “drug abuser or addict.”
- g. Other miscellaneous grounds of deportation⁷;

2. Generally, also Avoid Convictions Triggering Inadmissibility⁸:

- a. Avoid conviction for a Controlled Substance Offense (CSO):⁹
 - i. *Note:* No exception here for small possession of marijuana;
- 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;
- 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;¹⁰
- d. Avoid convictions relating to prostitution;
- e. Avoid dispositions and admissions that may result in client being considered a “drug abuser or addict.”
- f. Avoid other miscellaneous grounds of inadmissibility.¹¹

⁷ The miscellaneous grounds are unlikely to be encountered by defense attorneys in Connecticut state court, but include: unlawful voting, certain federal crimes (i.e. espionage, threats to President), certain immigration offenses, terrorist activities, being a “public charge.”

⁸ An LPR with a conviction that makes her “inadmissible” is subject to removal upon return to the U.S. from a trip abroad.

⁹ A noncitizen 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.

¹⁰ 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 5 years or more.

¹¹ 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 noncitizen who has asserted immunity from prosecution, criminal activity which endangers public safety or national security, terrorist activity, international child abduction, and certain immigration violations.

3. **In addition to the above, avoid the following which may affect client's ability to naturalize (i.e. obtain citizenship):**
 - 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 5 years);
4. **If a conviction that falls under categories 1 or 2, above cannot be avoided, then seek to preserve immigration "waivers" (i.e. immigration "pardons")¹²:**
 - a. Avoid conviction for Aggravated Felony (AF);
 - b. Avoid conviction for Controlled Substance Offense (CSO):
 - i. *Except:* Single offense for simple possession of 30 g (1.06 oz) or less of marijuana may not preclude eligibility for waiver;
 - c. Avoid conviction for "violent or dangerous crime" (definition of term is vague);

B. If the client is a refugee or asylee but has NOT yet become a Legal Permanent Resident (LPR):

1. **Whether a refugee or an asylee, avoid grounds of inadmissibility, to maintain client's eligibility to adjust status to LPR:**
 - a. Avoid conviction for a Controlled Substance Offense (CSO):¹³
 - i. *Note:* No exception here for small possession of marijuana;
 - b. Avoid conviction for Crime Involving Moral Turpitude (CIMT):
 - ii. *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;
 - 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;¹⁴
 - d. Avoid convictions relating to prostitution;
 - e. Avoid dispositions and admissions that may result in client being considered a "drug abuser or addict."
 - f. Avoid other miscellaneous grounds of inadmissibility.¹⁵
2. **If an asylee, avoid conviction for a "particularly serious crime":**
 - a. Avoid a conviction for an Aggravated Felony (AF) (automatically a particularly serious crime);
 - b. Avoid conviction for any other crime that may be considered "particularly serious" (there is no specific definition, but courts will consider the elements of the offense, not the circumstances of the particular case);
3. **If convictions falling above cannot be avoided, preserve special waivers of inadmissibility for refugees/asylees:**
 - a. Avoid conviction for "violent or dangerous crime" (undefined);
 - b. Avoid disposition leading to a determination that client is illicit trafficker or assisted in trafficking of controlled substances;
4. **If above cannot be avoided, preserve eligibility for "Withholding of Removal":**
 - a. Avoid conviction for Aggravated Felony (AF) or Felonies with aggregate sentence of imprisonment

¹² Your client will not necessarily be eligible for a waiver if s/he does not meet the other eligibility criteria for that waiver (i.e. length of residency, certain family relationships).

¹³ A noncitizen 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.

¹⁴ 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 5 years or more.

¹⁵ 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 noncitizen who has asserted immunity from prosecution, criminal activity which endangers public safety or national security, terrorist activity, international child abduction, and certain immigration violations.

- of at least five years;
- b. Avoid conviction for Aggravated Felony (AF) 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” (no specific definition, but courts will consider the elements of the offense, not the circumstances of a particular case).

C. If client has only temporary or no status but might be eligible for permanent status:

1. Avoid convictions triggering inadmissibility:

- a. Avoid conviction for a Controlled Substance Offense (CSO):¹⁶
 - iii. *Note:* No exception here for small possession of marijuana;
- b. Avoid conviction for Crime Involving Moral Turpitude (CIMT):
 - iv. *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;
- 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;¹⁷
- d. Avoid convictions relating to prostitution;
- e. Avoid dispositions and admissions that may result in client being considered a “drug abuser or addict.”
- f. Avoid other miscellaneous grounds of inadmissibility.¹⁸

2. Preserve eligibility for waiver of inadmissibility:

- a. Avoid conviction for Controlled Substance Offense (CSO):
 - i. *Except:* Waiver may still be available if conviction is for single offense of simple possession of 30 grams or less of marijuana;
- b. Avoid conviction for “violent or dangerous” crime (undefined);

3. If client may seek asylum or withholding of removal (i.e. because of fear of persecution):

- a. Avoid conviction for Aggravated Felony (AF);
- b. Avoid conviction for crime that may be considered “particularly serious” or “violent or dangerous.”
- c. If cannot avoid a. and b., try to at least preserve “withholding of removal” relief by avoiding convictions listed in section B.4. under “refugees and asylees” (above);

4. Avoid convictions rendering client ineligible for voluntary departure or increasing potential reentry penalties:

- a. See section D. 2. and D. 4., below

D. If client has no status and no possibility of gaining status:

1. Preserve possibility of attaining status, even if possibility is remote:

- a. Avoid conviction for Controlled Substance Offenses (but a waiver may be available if the offense involves only simple possession of 30 grams or less of marijuana);
- b. Preserve possibility of seeking asylum or withholding of removal relief (see subsection C. 3.

¹⁶ A noncitizen 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.

¹⁷ 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 5 years or more.

¹⁸ 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 noncitizen who has asserted immunity from prosecution, criminal activity which endangers public safety or national security, terrorist activity, international child abduction, and certain immigration violations.

above);

2. Preserve eligibility for Voluntary Departure:

- a. Avoid conviction for an Aggravated Felony (AF);
- b. Avoid other convictions preventing a finding of good moral character:
 - i. Avoid conviction for Controlled Substance Offense (CSO) (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 5 years or more;
 - iv. Avoid convictions for two or more gambling offenses;
 - v. Avoid convictions resulting in confinement to penal institution for 180 days or more;

3. Avoid convictions that will result in mandatory detention by ICE:

- a. Avoid convictions triggering inadmissibility (see Section A. 2. above);
- b. Avoid triggering deportability (see section A. 1. above) because of conviction for Aggravated Felony (AF), Controlled Substance Offense (CSO), Firearm Offense (FO), or Crime Involving Moral Turpitude (CIMT):
 - i. *Except:* no mandatory detention if individual is deportable for single conviction of CIMT and sentence imposed is less than 1 year;

4. Avoid convictions that will enhance the defendant's sentence if convicted of illegal reentry in the future:

- a. Avoid conviction for an Aggravated Felony (AF); [max. sentence for illegal reentry after being deported for an aggravated felony is 20 years];
- b. Avoid conviction for a felony, or three or more misdemeanors involving drugs or crimes against the person; [max. sentence would be 10 years].

Appendix B – IMMIGRATION CONSEQUENCES OF SELECTED CONNECTICUT 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 (*e.g.* 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 an objective 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, 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)	<ul style="list-style-type: none"> ▪ In most situations, AF will be the category with the most drastic consequences for a Lawful Permanent Resident (LPR); ▪ AF makes a noncitizen automatically deportable; ▪ AF conviction eliminates virtually all forms of discretionary relief from deportation; ▪ AF makes a noncitizen ineligible for asylum and, if sentenced to 5+ years for AF, ineligible for withholding of removal; ▪ AF makes noncitizen ineligible for voluntary departure from the U.S.; ▪ AF will generally trigger mandatory detention pending deportation (“removal”); ▪ AF will render a deported individual permanently barred from reentering the U.S. (unless U.S. Atty. Gral. grants waiver); ▪ AF conviction will permanently bar a noncitizen 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)	<ul style="list-style-type: none"> ▪ If the individual is not a Lawful Permanent Resident, CSO conviction may be even worse than AF conviction; ▪ CSO generally makes noncitizen 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 (<i>e.g.</i> for LPRs who have lived in U.S. for 7 years before committing 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 noncitizen from becoming a U.S. citizen for 5 years.
CRIMES INVOLVING MORAL TURPITUDE (CIMT)	<ul style="list-style-type: none"> ▪ A CIMT <i>may</i> render a noncitizen deportable or inadmissible depending on circumstances (see Appendix A); ▪ If the CIMT renders the noncitizen inadmissible or deportable, he or she <i>may</i> be detained pending removal; ▪ However, even if removable, <i>certain</i> individuals <i>may</i> still be eligible for discretionary relief from deportation; ▪ Even if it does not result in deportation, CIMT conviction will bar a noncitizen from becoming a U.S. citizen for 5 years
CRIMES OF DOMESTIC VIOLENCE (CODV), FIREARM OFFENSES (FO), CAC.	<ul style="list-style-type: none"> ▪ CODV and FO will render deportable noncitizens who have been lawfully admitted to U.S. (esp. LPRs); ▪ However, even if deportable, 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
CAC – Crimes Against Children
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 Circuit – 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 CAC – Crime Against Children 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 probably 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 [but see note]. ¹⁹ <u>Aiding</u> : would probably be considered a CSO or FO if underlying offense is CSO or FO. CODV or CAC: Conviction might be CODV or CAC if underlying offense is CODV or CAC.	<i>Consider Coronado-Durazo v. INS</i> , 123 F.3d 1322 (9th Cir. 1997) (solicitation to sell narcotics was not CSO); <i>see also United States v. Liranzo</i> , 944 F.2d 73 (2d Cir. 1991) (similar holding in federal sentencing context); <i>but see Matter of Beltran</i> , 20 I. & N. Dec. 521 (BIA 1992) (solicitation of CSO is CSO).
Conspiracy	53a-48	A conspiracy to commit an AF would be considered an AF.	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 CAC: Conviction might be CODV or CAC if underlying offense is CODV or CAC.	ImmPract: Charge as CIMT of a conspiracy offense where the underlying offense requires only recklessness or negligence should be challenged under <i>Gill v. INS</i> (see below under “attempt”), since such an offense would be incoherent under CT law. <i>See State v. Beccia</i> , 199 Conn. 1 (1986).

¹⁹ 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.

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 CAC – Crime Against Children CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
Attempt	53a-49	An attempt to commit an AF would also be considered an AF.	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 CAC: Conviction might be CODV or CAC if underlying offense is CODV or CAC.	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 <i>Gill v. INS</i> , 2005 WL 1983700 (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). <i>See also State v. Almeda</i> , 189 Conn. 303 (1983).
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 probably be considered a "COV" AF; <i>see Benjamin v. Bureau of Customs</i> , 2005 WL 2009585 (D. Conn. 2005) (conviction under § 53a-55(a)(1) is "COV" AF); conviction under subsection (a)(3) would probably NOT be considered a "COV" AF; however, if sentence of 1 yr. or more is imposed and removal proceedings are held outside of jurisdiction of 2 nd Circuit, conviction under (a)(3) might 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 probably be considered a CODV. If removal proceedings are held outside of jurisdiction of 2 nd Circuit, conviction under subsection (a)(3) might be considered CODV.	See also In Re Vargas-Sarmiento , 23 I. & N. Dec. 651 (BIA 2004) (NY 1 st Deg. Manslaughter is "COV" AF) DefAttys: Allocation to subsection (a)(3) reduces the risk that conviction will be considered AF. ImmPract: Charge as "COV" AF should be challenged under <i>Leocal v. Ashcroft</i> , 125 S. Ct. 377 (2004), and <i>Jobson v. Ashcroft</i> , 326 F.3d 367 (2d Cir. 2003) (NY Conviction for 2 nd Deg. Manslaughter not "COV" AF); <i>but see In Re Vargas-Sarmiento</i> , 23 I. & N. Dec. 651 (BIA 2004).
Manslaughter in the 1st Degree with a Firearm [Class B Felony]	53a-55a	If sentence of 1 yr. or more is imposed, would probably be considered a "COV" AF.	Yes.	CODV – If the victim was a current or former spouse or similarly situated individual, conviction would probably be considered a CODV. FO – Yes. (See fn. 1).	[See note above under Manslaughter in 1 st Degree]. ImmPract: Charge as "COV" AF could be challenged because defendant may be convicted if he represents that he has a firearm (even if not actually armed).

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 CAC – Crime Against Children 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	Would probably NOT be considered an AF [see note]; however, if sentence of 1 yr. or more is imposed and removal proceedings are held outside of the jurisdiction of 2 nd Circuit, conviction under subsection (a) might be deemed a "COV" AF.	Conviction under subsection (a) would be CIMT. <i>See Matter of Franklin</i> , 20 I. & N. Dec. 867 (BIA 1994). Conviction under subsection (b) would probably be CIMT.	CODV – If the victim was a current or former spouse or similarly situated individual and removal proceedings are held outside jurisdiction of 2 nd Circuit, conviction under subsection (a) might be considered a CODV.	See <i>Jobson v. Ashcroft</i> , 326 F.3d 367 (2d Cir. 2003) (NY Conviction for 2 nd Degree Manslaughter not "COV" AF). ImmPract: Charge as "COV" AF or CODV should be challenged under <i>Leocal</i> and <i>Jobson, supra</i> .
Manslaughter in the 2nd Degree with a Firearm [Class C Felony]	53a-56a	If sentence of 1 yr. or more is imposed, would probably 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 – Would probably be considered a firearms offense. (See fn. 1).	[See Note under Manslaughter in the 2 nd Degree, above]. ImmPract: charge as "COV" AF should be challenged if based on reckless manslaughter because defendant may be convicted if he represents that he has a firearm (even if not actually armed).
Manslaughter in the 2nd Degree with a Motor Vehicle [Class C Felony]	53a-56b	Would NOT be considered an AF.	Might be considered a CIMT.	CSO – Might be considered a CSO if ROC establishes a controlled substance as defined in 21 USC § 802.	See <i>Leocal v. Ashcroft</i> , 125 S. Ct. 377 (2004).
Misconduct with a Motor Vehicle [Class D Felony]	53a-57	Would NOT be considered an AF.	Would probably NOT be considered a CIMT.		See <i>Leocal v. Ashcroft</i> , 125 S. Ct. 377 (2004).
Criminally Negligent Homicide [Class A Misdem.]	53a-58	Would NOT be considered an AF.	Would probably NOT be considered a CIMT. (*POE*)		See <i>Leocal v. Ashcroft</i> , 125 S. Ct. 377 (2004).
ASSAULT AND RELATED OFFENSES					
Assault in 1st Degree [Class B Felony]	53a-59	<u>If sentence of 1 yr. or more is imposed:</u> conviction under subsection (a)(5) would be considered a "COV" AF, conviction under subsections (a)(1) or (2) would probably be considered a "COV" AF; conviction under subsection (a) (4) might be considered a "COV" AF. If sentence of 1 yr. or more is imposed and later removal proceedings are held outside of jurisdiction of 2 nd Circuit, conviction under subsection (a)(3) might be considered a "COV" AF.	Would probably be considered a CIMT (under all subsections).	FO – Conviction under subsection (a)(5) would be considered FO; conviction under subsection (a)(1) would be considered FO if ROC establishes that offense involved firearm. (See fn. 1). CODV – If the victim was a current or former spouse or similarly situated individual, conviction under subsections (a)(1), (2) or (5) would probably be considered a CODV; under subsection (4) might be considered CODV, and under subsection (3) might be considered CODV if removal proceedings are held outside the jurisdiction of 2 nd Circuit.	DefAttys: 1) Try to plead down to Assault in 3d Degree without 1 yr. imposed sentence; 2) If can't avoid Assault 1 st 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 <i>State v. Miranda</i> , 260 Conn. 93, 111 (2002).

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 CAC – Crime Against Children 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 2d Degree [Class D Felony]	53a-60	If sentence of 1 yr. or more is imposed: conviction under subsection (a)(2) would probably be considered a "COV" AF, see Unpublished BIA Decision <i>In Re Fuller</i> , 2005 WL 1766772 (BIA 2005) (convictions under § 53a-60(a)(1) and (a)(2) are "COV" AFs), conviction under other subsections might be considered a "COV" AF.	Conviction under any subsection would probably be considered a CIMT. See <i>Nguyen v. Reno</i> , 211 F.3d 692 (1 st Cir. 2000) (conviction under § 53a-60(a)(1) is CIMT).	FO – Conviction under subsections (a)(2) or (3) would be considered FO if ROC establishes that offense involved a firearm. (See fn. 1). CODV – If the victim was a current or former spouse or similarly situated individual: conviction under subsection (a)(2) would probably be considered a CODV, conviction under other subsections might be considered CODV.	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 pleading to this offense, leave record clean as to specific subsection. ImmPract: designation as a COV should be challenged b/c statute is probably divisible, as several subsections may not constitute "COV" AFs.
Assault in the 2nd Degree with a Firearm [Class D Felony]	53a-60a	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, would probably be considered a CODV. FO – Yes. (See fn. 1).	[See Note above under Assault in the 2 nd Degree]. ImmPract: designation as "COV" AF or FO should be challenged because defendant may be convicted if not actually armed.
Assault in 2nd Degree w/ motor vehicle [Class D Felony]	53a-60d	Would NOT be considered an AF. See <i>Leocal v. Ashcroft</i> , 125 S. Ct. 377 (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.	DefAttys: Plead to influence of alcohol (not drugs), or leave ROC clean as to specific controlled substance.
Assault in 3rd degree [Class A Misdem.]	53a-61	Would probably NOT be considered a "COV" AF. See <i>Chrzanoski v. Ashcroft</i> , 327 F.3d 188 (2d Cir. 2003) (not a "COV" AF). However, if sentence of 1 yr. or more is imposed, and removal proceedings are held outside of 2 nd Circuit, conviction under subsections (a)(1) or (2) might be considered a "COV" AF. [See note].	Conviction under subsection (a)(2) would probably be considered a CIMT; conviction under subsections (a)(1) or (3) might be considered a CIMT. [See note]. (*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 2 nd Circuit, conviction under subsections (a)(1) or (2) might be considered a CODV. FO – Would probably be considered FO if convicted under subsection (a)(3) and record of conviction establishes that offense involved a firearm. (See fn. 1).	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 older BIA caselaw states that "simple assault" is not CIMT, see Unpublished BIA decision: <i>In Re Williams</i> – 2005 WL 698372 (BIA 2005); see also <i>Matter of Fualaau</i> , 21 I. & N. Dec. 475 (BIA 1996); 2) Designation as "COV" AF or CODV should be challenged, see <i>Chrzanoski</i> (not a "COV" AF), but see <i>Matter of Martin</i> , 23 I. & N. Dec. 491 (BIA 2002) (holding conviction under subsection (a)(1) is a "COV").
Threatening in the 1st Degree [Class D Felony]	53a-61aa	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, might be considered a CODV. Terrorism – Might be deemed "terrorist activity" triggering deportability or inadmissibility.	DefAttys: Consider AR or FVEP if eligible. ImmPract: If charged as "COV" AF or CIMT, note that this 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 CAC – Crime Against Children 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 2nd Degree [Class A Misdem.]	53a-62	If sentence of 1 yr. or more is imposed, would probably be considered a "COV" AF under all subsections.	Would probably 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.	DefAttys: 1) Consider AR or FVEP if eligible; 2) Keep sentence imposed to 364 days or less to avoid possible AF. ImmPract: If charged as "COV" AF or CIMT, note that statute may be divisible.
Reckless Endangerment in the 1st Degree [Class A Misdem.]	53a-63	If sentence of 1 yr. or more is imposed and removal proceedings are held outside of 2 nd Circuit, conviction might be considered a "COV" AF.	Would probably be considered a CIMT. See <i>Knapik v. Ashcroft</i> , 384 F.3d 84 (3d Cir. 2004). (*POE*)	CODV – If the victim was a current or former spouse or similarly situated individual and removal proceedings are held outside of 2 nd Circuit, might be considered a CODV.	DefAttys: 1) Reckless endangerment in 2 nd Degree is safer plea; 2) Keep sentence imposed to 364 days or less to avoid possibility of AF; 3) Consider AR or FVEP, if applicable.
Reckless Endangerment in the 2nd Degree [Class B Misdem.]	53a-64	No. [Maximum sentence is 6 months].	Would probably NOT be considered a CIMT. (*POE*)	CODV – Would probably NOT be considered a CODV.	
Injury or Risk of Injury to, or Impairing Morals of, Children [Class B or C Felony]	53-21	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; conviction under subsection (a)(1) would probably be considered "sexual abuse of minor" AF and (if sentence of 1 yr. or more is imposed) "COV" AF if ROC indicates sexual conduct with minor; conviction under subsection (a)(1) would probably also be considered a "COV" AF if ROC establishes conviction for "an act likely to impair health" of child ("instances of deliberate, blatant abuse"); 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.	CAC – Conviction under any subsection might be considered a crime of child abuse, child neglect or child abandonment.	ImmPract: This is a divisible statute. See <i>Santapaola v. Ashcroft</i> , 249 F. Supp. 2d 181 (D. Conn. 2003) (§ 53-21 is divisible; conviction under some portions of statute constituted "COV" or "sex abuse of minor" AF). If no sexual conduct involved, conviction may not constitute an AF. Note that <i>Santapaola</i> court found that subsection (a)(1) was itself divisible (part of it may not be AF or CIMT). See also <i>Hongsathirath v. Ashcroft</i> , 322 F. Supp.2d 203 (D. Conn. 2004).

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 CAC – Crime Against Children 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 AND PROSTITUTION OFFENSES					
Sexual Assault in 1st Degree [Class A or B Felony]	53a-70	Conviction would probably be considered AF: would probably be considered "rape" AF; conviction under subsection (a)(1) would be considered "COV" AF if sentence of 1 yr. or more is imposed; conviction under subsections (a)(2), (3) or (4) would probably be considered "COV" AF if sentence of 1 yr. or more is imposed; conviction under subsection (a)(2) would be considered "sexual abuse of minor" AF; conviction under other subsections would be considered "sexual abuse of minor" AF if ROC shows victim was a minor.	Would probably be considered CIMT.	CAC – Conviction under subsection (a)(2) would probably be considered a crime of "child abuse." Conviction under other subsections might be considered a CAC if record of conviction shows that victim was a minor. CODV – If the victim was a former spouse or similarly situated individual, conviction would probably be considered a CODV.	DefAttys: If victim was a minor, avoid any reference to that fact in record of conviction. Note, however, that conviction under this statute would likely be considered an AF anyway as "COV" AF or "rape" AF.
Sexual Assault in 2nd Degree [Class C or B Felony]	53a-71	Conviction under any subsection would probably be considered a "COV" AF if sentence of 1 yr. or more is imposed, and might 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; conviction under other subsections would be considered "sexual abuse of minor" AF if ROC shows victim was a minor.	Would probably be considered a CIMT.	CAC – Conviction under subsections (a)(1), (4), (9B) or (10) would probably be considered a crime of "child abuse." Conviction under other subsections might be considered a CAC if record of conviction shows that victim was a child. CODV – If the victim was a former spouse or similarly situated individual, conviction might be considered a CODV.	<i>See Chery v. Ashcroft</i> , 347 F.3d 404 (2d Cir. 2003) (conviction under § 53a-71 was "COV" AF). DefAttys: If victim was a minor, avoid any reference to that fact in record of conviction. Note, however, that conviction under this statute would likely be considered a "COV" or "rape" AF anyway. ImmPract: Note that the <i>Chery</i> court did not address issue of divisibility.
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 would probably be considered "sexual abuse of minor" AF if record of conviction shows that the victim was a minor.	Would probably be considered a CIMT.	CAC – If the record of conviction shows that victim was a minor, the conviction might be considered a crime of child abuse. CODV – If the victim was a current or former spouse or similarly situated individual, conviction under subsection (a)(1) would probably be considered a CODV.	DefAttys: If victim was a minor, avoid any reference to that fact in record of conviction. 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 (categorical approach).

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 CAC – Crime Against Children 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 the 4th Degree [Class A Misdem. or Class D Felony]	53a-73a	Conviction under subsection (a)(1) would probably be considered a "COV" AF if sentence of 1 yr. or more is imposed; conviction under subsections (a)(2) or (a)(4) through (8) might be considered a "COV" AF if sentence of 1 yr. or more is imposed; conviction under subsection (a)(1)(A) would probably be considered "sexual abuse of minor" AF; conviction under subsections (a)(1)(D), (a)(7)(B) or (a)(8) might be considered "sexual abuse of a minor" AF; conviction under other subsections (except (a)(3)) would probably be considered "sexual abuse of minor" AF if ROC establishes that victim is a minor.	Would probably be considered a CIMT. (*POE*)	CAC – Conviction under subsection (a)(1)(A) would probably be considered a crime of "child abuse." Conviction under other subsections might be considered a CAC 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.	<i>See Hongsathirath v. Ashcroft</i> , 322 F. Supp. 2d 203 (D. Conn. 2004) (conviction under § 53a-73a(a)(1) is "COV" AF). DefAttys: 1) If victim was a minor, avoid any reference to that fact in record of conviction; 2) If treated as misdem., keep sentence imposed to 364 days or less to avoid possibility of "COV" AF; 3) Consider AR. ImmPract: 1) Statute is likely 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 <i>Leocal</i> as there does not appear to be a <i>mens rea</i> requirement.
Prostitution [Class A Misdem.]	53a-82	No.	Would probably be considered a CIMT. (*POE*)	Pros. - Would probably trigger "prostitution" inadmissibility.	<i>See</i> 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. <i>See, e.g., Matter of T-</i> , 6 I. & N. Dec. 474 (BIA 1955).
Patronizing a Prostitute [Class A Misdem.]	53a-83	If record of conviction 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.	<i>See</i> 8 U.S.C. § 1182(a)(2)(D).
KIDNAPPING AND RELATED OFFENSES					
Kidnapping in the 1st Degree [Class A Felony]	53a-92	If sentence of 1 yr. or more is imposed, would probably be considered a "COV" AF; conviction under subsection (a)(1)(A) might be considered "ransom offense" AF.	Would probably be considered a CIMT.	CODV – Would probably 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.	

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 CAC – Crime Against Children 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 [Class B Felony]	53a-94	If sentence of 1 yr. or more is imposed, would probably be considered a "COV" AF.	Would probably be considered a CIMT.	CODV – Would probably be considered a CODV if record of conviction establishes that victim was spouse, former spouse, or similarly situated person.	DefAttys: Plead down to Unlawful Restraint in 2 nd Degree with less than 1-yr. imposed sentence, if possible.
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; conviction under that portion of definition of "restraint" that covers restraint of an incompetent person or child under 16 would probably not be considered a "COV" AF.	Might be considered a CIMT.	CODV – Would probably be considered a CODV if record of conviction shows victim was spouse, former spouse or similarly situated person and conviction was under that portion of definition of "restraint" that covers restraint of competent adults.	<i>See Dickson v. Ashcroft</i> , 346 F.3d 44 (2d Cir. 2003) (NY Unlawful Restraint in 1 st Degree may be "COV" AF—divisible). DefAttys: 1) Consider AR; 2) Plead down to Unlawful Restraint in 2 nd Degree with less than 1-yr. imposed sentence, if possible.
Unlawful Restraint in the 2nd Degree [Class A Misdem.]	53a-96	If max. sentence of 1 yr. is imposed, a conviction under that portion of definition of "restraint" that covers restraint without consent of a competent adult might be considered a "COV" AF. <i>See Dickson v. Ashcroft</i> , 346 F.3d 44 (2d Cir. 2003).	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 and conviction was under that portion of definition of "restraint" that covers restraint of competent adults.	DefAttys: 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 under <i>Dickson</i> because CT statute differs slightly, but significantly, from the NY statute in that case (regarding definition of "restraint").
BURGLARY AND RELATED OFFENSES					
Burglary in the 1st degree [Class B Felony]	53a-101	If sentence of 1 yr. or more is imposed, would probably be considered both a "COV" AF and a "burglary" AF. ²⁰	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 – Conviction under subsection (a)(1) would probably be considered a FO if record of conviction establishes that offense involved a firearm. (See fn. 1).	DefAttys: 1) If possible, plead to criminal trespassing; 2) Keep record of conviction clean as to offense intended to be committed. ImmPract: See Important Footnote below.

²⁰ Note: Connecticut's definition of certain degrees of "Burglary" includes unlawful entering of a vehicle, watercraft or aircraft. Conn. Gen. Stat. § 53a-100. Therefore, it may be argued that Connecticut's "burglary" statutes are divisible and that a conviction under these statutes do not fall under the generic definition of "burglary" set forth by the Supreme Court in *Taylor v. United States*, 495 U.S. 575 (1990). *See Solorzano-Patlan v. INS*, 207 F.3d 869, 874-75 (7th Cir. 2000). It may also be argued that the statute is divisible as to the "COV" AF category because burglary of a vehicle may not be a "COV" AF. *See Ye v. INS*, 214 F.3d 1128, 1133 (9th Cir. 2000); *Solorzano-Patlan, supra*. Note that this issue does not apply to Burglary in the 2nd Degree because that offense requires a burglary of a dwelling.

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 CAC – Crime Against Children 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 2d Degree [Class C Felony]	53a-102	If sentence of 1 yr. or more is imposed, would be considered both a "burglary" AF and a "COV" AF.	Would be considered a CIMT if record of conviction establishes that crime intended to be committed was a CIMT.		DefAttys: 1) if possible, plead to criminal trespassing; 2) Keep record of conviction clean as to offense intended to be committed.
Burglary in the 2d Degree with a firearm [Class C Felony]	53a-102a	If sentence of 1 yr. or more is imposed, would be considered both a "burglary" AF and a "COV" AF.	Would be considered a CIMT if record of conviction establishes that crime intended to be committed was a CIMT.	FO – Would probably be considered a firearm offense. (See fn. 1).	[See Note under Burglary in 2 nd Degree, above]
Burglary in the 3d Degree [Class D Felony]	53a-103	If sentence of 1 yr. or more is imposed, would probably be considered both a "COV" AF and a "burglary" AF.	Would be considered a CIMT if record of conviction establishes that crime intended to be committed was a CIMT.		DefAttys: 1) If possible, plead to criminal trespassing; 2) Keep record of conviction clean as to offense intended to be committed. ImmPract: See Important Footnote under 1 st Degree Burglary.
Burglary in the 3d Degree with a Firearm [Class D Felony]	53a-103a	If sentence of 1 yr. or more is imposed, would probably be considered both a "COV" AF and a "burglary" AF.	Would be considered a CIMT if record of conviction establishes that crime intended to be committed was a CIMT.	FO – Would probably be considered a firearm offense. (See fn. 1).	[See Note under Burglary in 3 rd Degree, 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 if record of conviction establishes that crime intended to be committed was a CIMT. (*POE*)		DefAttys: Keep sentence imposed to 364 days or less to avoid possibility of AF.
Criminal trespass in the 1st Degree [Class A Misdem.]	53a-107	If sentence of 1 yr. or more is imposed, conviction under subsection (a)(3) might be considered a "COV" AF.	Conviction under subsections (a)(2) or (3) might be considered a CIMT. (*POE*)	CODV – A conviction under subsection (a)(3) might be considered a CODV. 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) If the issue is CODV, try to plead down to Criminal Trespass in the 2 nd Degree or lower; 2) Keep sentence imposed to 364 days or less to avoid possibility of AF.
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-110	No.	No.		

Offense	CT Gen. Stat. Sec.	(Remember: imposed "sentence" includes a suspended sentence!) Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other grounds: CSO – Controlled Substances CAC – Crime Against Children CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
DAMAGE TO PROPERTY OFFENSES					
Arson in the 1st Degree [Class A Felony]	53a-111	If sentence of 1 yr. or more is imposed, would probably 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 probably be considered a CODV.	See <i>In Re Palacios</i> , 22 I. & N. Dec. 434 (BIA 1998) (Alaska arson conviction is "COV" AF). ImmPract: Charge as a "COV" AF should be challenged under <i>Leocal</i> .
Arson in the 2nd Degree [Class B Felony]	53a-112	If sentence of 1 yr. or more is imposed, would probably 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 probably be considered a CODV.	See <i>In Re Palacios</i> , 22 I. & N. Dec. 434 (BIA 1998) (Alaska arson conviction is "COV" AF). ImmPract: Charge as a "COV" AF should be challenged under <i>Leocal</i> .
Arson in the 3rd Degree [Class C Felony]	53a-113	If sentence of 1 yr. or more is imposed, might be considered "COV" AF.	Might be considered a CIMT.		See note under Arson in 2 nd Degree.
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].	Might be considered a CIMT.		See <i>Tran v. Gonzalez</i> , 414 F.3d 464 (3d Cir. 2005) (PA reckless burning conviction NOT "COV" AF). ImmPract: Charge as a "COV" AF should be challenged under <i>Leocal</i>
Criminal Mischief in the 1st Degree [Class D Felony]	53a-115	If sentence of 1 yr. or more is imposed, might be considered "COV" AF.	Might be considered a CIMT.		ImmPract: 1) Designation as "COV" AF should be challenged under <i>Leocal</i> and <i>Jobson</i> ("causing damage" does not equal "use of force"); 2) Designation as CIMT should also be challenged. See <i>Rodriguez-Herrera v. INS</i> , 52 F.3d 238 (9th Cir. 1995) (similar statute not CIMT).
Criminal Mischief in the 2nd Degree [Class A Misdem.]	53a-116	Would probably NOT be considered an AF, but avoid max. 1 yr. sentence to be safe.	Might be considered a CIMT. <i>Cf. Rodriguez-Herrera v. INS</i> , 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 1 st degree criminal mischief.
Criminal Mischief in the 3rd Degree [Class B Misdem.]	53a-117	No.	If record indicates intentional act under subsection (a)(1), might be considered a CIMT. (*POE*)		DefAttys: Allocation to (a)(2) is least likely to be considered CIMT; thereafter allocation to mere reckless (not intentional) act. Avoid any reference in ROC to intentional act. ImmPract: see note under 1 st 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 CAC – Crime Against Children 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 4th Degree [Class C Misdem.]	53a-117a	No.	If record indicates intentional act, might be considered a CIMT. (*POE*)		DefAttys: Allocation to mere reckless (not intentional) act minimizes CIMT risk. Avoid any reference in ROC to intentional act. ImmPract: see note under 1 st 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, might be considered "COV" AF.	Might be considered a CIMT.		DefAttys: Allocation to subsection (a)(2) minimizes CIMT risk. Avoid any reference in ROC to intentional act. ImmPract: see note under 1 st degree criminal mischief.
Criminal Damage of Landlord's Property in 2nd Degree [Class A Misdem.]	53a-117f	Would probably NOT be considered an AF, but avoid max. 1-yr. sentence to be safe.	Conviction under subsection (a)(1) might be considered a CIMT.		DefAttys: Keep sentence imposed to 364 days or less to avoid possible AF. ImmPract: see note under 1 st 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 1 st degree criminal mischief.
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	Conviction under subsections (a), (b) or (c)(1) would probably be considered a "theft" AF if sentence imposed is 1 yr. or more; conviction under subsection (c)(2) might be considered a "theft" AF if sentence imposed is 1 yr. or more. Conviction under subsections (a)(2) or (b)(2) might be considered "fraud" AF if ROC establishes loss to victim in excess of \$10K. If conviction is for a second or subsequent offense, conviction under subsections (a), (b) or (c)(1) might also be considered a "COV" AF if sentence of 1 year or more is imposed. [See note].	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*)		<i>See In Re Brieva-Perez</i> , 23 I. & N. Dec. 766 (BIA 2005) (felony unauthorized use of vehicle is "COV" AF). DefAttys: If treated as a misdem., keep sentence imposed to 364 days or less to avoid possibility of AF. ImmPract: any designation as CIMT should be challenged because statute does not require intent to permanently deprive. <i>See Matter of M</i> , 2 I. & N. Dec. 686 (BIA 1946) (joyriding is not CIMT). Designation as a "COV" or "theft" AF should also be challenged.

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 CAC – Crime Against Children 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 1st Degree [Class B Felony]	53a-122	If sentence of 1 yr. or more is imposed, would be considered "theft" AF; ²¹ conviction under subsection (a)(4) would be considered a "fraud" AF if record establishes loss to victim exceeding \$10K; conviction under subsections (a)(2) or (a)(3) might be considered "fraud" AF if ROC establishes conviction under any part of the CT "larceny" definition that includes larceny by fraud or deceit.	Yes.		ImmPract: see footnote below.
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" AF if record establishes that loss to victim exceeds \$10K.	Yes.		DefAttys: to minimize risk of "fraud" AF, avoid any reference in ROC of loss to victim in excess of \$10,000. ImmPract: see footnote under larceny in the 1 st degree.
Larceny in the 3rd Degree [Class D Felony]	53a-124	If sentence of 1 yr. or more is imposed, would be considered "theft" AF. See <i>Abimbola v. Ashcroft</i> , 378 F.3d 173 (2d Cir. 2004) (conviction under § 53a-124 is "theft" AF).	Yes.		DefAttys: to minimize risk of "fraud" AF, avoid any reference in ROC of loss to victim in excess of \$10,000. ImmPract: see footnote under larceny in the 1 st degree.
Larceny in the 4th Degree [Class A Misdem.]	53a-125	If max. sentence of 1 yr. is imposed, would be considered "theft" AF.	Yes. (*POE*)		DefAttys: 1) Keep sentence imposed to 364 days or less to avoid possibility of AF; 2) to minimize risk of "fraud" AF, avoid any reference in ROC of loss to victim in excess of \$10,000. ImmPract: see footnote under larceny in the 1 st degree.
Larceny in the 5th Degree [Class B Misdem.]	53a-125a	No (because could not be sentenced to 1 yr. or more).	Yes. (*POE*)		DefAttys: to minimize risk of "fraud" AF, avoid any reference in ROC of loss to victim in excess of \$10,000.
Larceny in the 6th Degree [Class C Misdem.]	53a-125b	No (because could not be sentenced to 1 yr. or more).	Yes. (*POE*)		DefAttys: to minimize risk of "fraud" AF, avoid any reference in ROC of loss to victim in excess of \$10,000.

²¹ Immigration attorneys should note that Connecticut law encompasses a broad range of conduct under the definition of "larceny." See Conn. Gen. Stat. § 53a-119. One could therefore argue that the larceny statutes constitute divisible offenses in that they include conduct that does not fall under the federal definition of "theft offense" for purposes of the aggravated felony determination. See *United States v. Corona-Sanchez*, 291 F.3d 1201 (9th Cir. 2002) (en banc). The Second Circuit has recently rejected this argument, see *Abimbola v. Ashcroft*, 378 F.3d 173 (2d Cir. 2004) (conviction for CT third-degree larceny constitutes "theft" AF), but immigration practitioners are encouraged to continue preserving this argument.

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 CAC – Crime Against Children 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 probably be considered a "COV" AF.	Might be considered a CIMT.		ImmPract: Designation as CIMT or "COV" AF should be challenged.
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).	Would probably NOT be considered a CIMT.		DefAttys: Keep sentence imposed to 364 days or less to avoid possibility of AF.
Issuing a Bad Check [Category depends on amount]	53a-128	Might be considered a "fraud or deceit" AF if loss exceeds \$10,000.	Would probably NOT be considered a CIMT. ²² (*POE* if a misdemeanor)		DefAttys: to minimize risk of "fraud" AF, avoid any reference in ROC of loss to victim in excess of \$10,000. ImmPract: Designation as AF or CIMT should be challenged.
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" 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 minimize risk of "fraud" AF, avoid any reference in ROC of loss to victim in excess of \$10,000. ImmPract: Designation as CIMT or AF should be challenged.
Illegal Use of Credit Card [Class A Misdem. or Class D Felony]	53a-128d	Would probably be considered "fraud" 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*)		DefAttys: 1) Keep sentence imposed to 364 days or less to avoid possibility of "theft" AF; 2) To minimize risk of "fraud" AF, avoid any reference in ROC of loss to victim in excess of \$10,000. ImmPract: Designation as AF should be challenged.

²² Note to immigration attorneys: the BIA has held that whether a conviction for issuing a bad check constitutes a CIMT depends on whether an "intent to defraud" is required for conviction. The current CT statute does NOT explicitly require an intent to defraud, so a conviction under 53a-128 should not be considered a CIMT. However, practitioners should be aware of older CT caselaw, apparently relying on an older version of the statute, which provides that intent to defraud IS an element of the crime. See, e.g., *State v. Callahan*, 183 A.2d 861 (Conn. Cir. Ct. 1962).

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 CAC – Crime Against Children 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" 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 minimize risk of "fraud" AF, avoid any reference in ROC of loss to victim in excess of \$10,000; 3) Avoid reference in ROC that defendant knew or believed goods were stolen. ImmPract: Charge as CIMT or "theft" AF should be challenged because statute allows conviction based on presumption of knowledge that goods were stolen.
Criminal Impersonation [Class B 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, record should not establish loss to victim in excess of \$10K.
ROBBERY OFFENSES					
Robbery in the First Degree [Class B Felony]	53a-134	Yes: if sentence of 1 yr. or more is imposed, would be considered a "COV" and "theft" AF.	Yes.	FO – Conviction under subsections (a)(2), (3) or (4) might be considered a FO if record of conviction establishes that offense involved a firearm.	ImmPract: See footnote regarding firearm offense.
Robbery in the Second Degree [Class C Felony]	53a-135	Yes: if sentence of 1 yr. or more is imposed, would be considered a "COV" and "theft" AF.	Yes.	FO – Conviction under subsection (a)(2) might be considered a FO if record of conviction establishes that offense involved a firearm.	DefAttys: If first-time offense, consider AR (must show good cause).
Robbery in the Third Degree [Class D Felony]	53a-136	Yes: if sentence of 1 yr. or more is imposed, would be considered a "COV" and "theft" AF.	Yes.		<i>See Gomez v. Ashcroft</i> , 293 F. Supp. 2d 162 (D. Conn. 2003) (conviction under §53a-136 is "COV" AF). 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; OR if loss to victim exceeds \$10,000, might be considered "fraud" AF, especially if ROC shows element of intent to defraud or deceive (as opposed to intent to injure).	Would probably be considered a CIMT.		[See note under Forgery in the 2 nd Degree] DefAttys: To avoid risk of "fraud" AF, ROC should not establish loss to victim in excess of \$10K. If ROC will establish such loss, establishing conviction with "intent to injure" (as opposed to intent to defraud or deceive) minimizes risk that conviction will be considered "fraud" AF. <i>See Valansi v. Ashcroft</i> , 278 F.3d 203 (3d Cir. 2002).

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 CAC – Crime Against Children 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 2nd Degree [Class D Felony]	53a-139	If sentence of 1 yr. or more is imposed, would be considered a "forgery" AF; OR, if loss to victim exceeds \$10,000, might be considered a "fraud" AF, especially if ROC shows element of intent to defraud or deceive (as opposed to injure).	Would probably be considered a CIMT.		<i>See Richards v. Ashcroft</i> , 400 F.3d 125 (2d Cir. 2005) (Conviction under §53a-139 is "forgery" AF). DefAttys: 1) See note regarding "fraud" AF under Forgery in 1 st Degree; 2) If first-time offense, consider AR.
Forgery in the 3rd Degree [Class B Misdem.]	53a-140	If loss to victim exceeds \$10,000, might be considered a "fraud" 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 2 nd Degree] DefAttys: 1) No "forgery" AF so long as no sentence of 1 yr. or more; 2) See note regarding "fraud" AF under Forgery in 1 st 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, would probably be considered "obstruction of justice" AF.	Might be considered a CIMT.		
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 if sentence of 1 yr. or more is imposed.	Conviction under subsection (a)(1) might be considered a CIMT; conviction under subsection (a)(2) would probably be considered a CIMT.		
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*)		
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.
Assault of a Public Safety or Emergency Medical Personnel [Class C Felony]	53a-167c	If sentence of 1 yr. or more is imposed, conviction under subsections (a)(1) or (3) might be considered a "COV" AF; conviction under subsections (a)(2), (4), or (5) would probably be considered "COV" AF.	Would probably be considered a CIMT. <i>See Matter of Danesh</i> , 19 I. & N. Dec. 669 (BIA 1988).		ImmPract: designation as "COV" AF should be challenged because statute is probably divisible.
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.	Would probably NOT be considered a CIMT.		ImmPract: statute may be divisible as to "COV" AF issue because conviction under certain subsections (i.e. (a)(7)) may not be "COV" AF.

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Escape from Custody [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. (*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 note].	Would probably NOT be considered a CIMT.		See <i>Barnaby v. Reno</i> , 142 F. Supp. 2d 277 (D. Conn 2001) (conviction under §53a-172 NOT an AF). DefAttys: Avoid any reference in ROC that failure to appear was pursuant to court order.
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. (*POE*)		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. (*POE*).		
Stalking in the 1st Degree [Class D Felony]	53a-181c	If sentence of 1 yr. or more is imposed, might be considered "COV" AF.	Would probably be considered a CIMT.	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: Consider AR or FVEP, if applicable.
Stalking in the 2nd Degree [Class A Misdem.]	53a-181d	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.
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.	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."	DefAttys: Consider AR or FVEP, if applicable.
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.

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 CAC – Crime Against Children CODV – Crime of Dom. Violence FO – Firearm Offense Pros.- Prostitution	Strategies/ Comments: ImmPract: Notes to Immigration Practitioners DefAttys: Notes to Criminal Defense Attorneys
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 subsection (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: <i>In Re Villalta</i> , 2004 WL 2952201 (BIA 2004) (conviction as to § 53a-186 is divisible as to CIMT).		DefAttys: 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 <i>In Re Rodriguez-Rodriguez</i> , 22 I. & N. Dec. 991 (BIA 1999) (indecency with a child by exposure is "sexual abuse of a minor" AF). ImmPract: Challenge any "sexual abuse of minor" AF charge. See <i>Singh v. Ashcroft</i> , 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).
Criminal Violation of a Protective Order [Class D Felony]	53a-223	If sentence of 1 yr. or more is imposed, might be considered a "COV" AF.	Might be considered a CIMT.	CODV – Conviction would probably trigger deportability for violation of protective order if ROC establishes DV circumstances.	
Criminal Violation of a Standing Criminal Restraining Order [Class D Felony]	53a-223a	If sentence of 1 yr. or more is imposed, might be considered a "COV" AF.	Might be considered a CIMT.	CODV – Conviction would probably trigger deportability for violation of protective order if ROC establishes DV circumstances.	
OFFENSES RELATING TO FIREARMS					
Unlawful Discharge of a Firearm	53-203	No.	If ROC establishes intentional (as opposed to negligent or careless) discharge, might be considered CIMT.	FO – Would probably be considered a FO. (See fn. 1).	
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. 1).	DefAttys: Might be a better plea for violent offenses when significant jail time is required.
Stealing a Firearm [Class D Felony]	53a-212	If sentence of 1 yr. or more is imposed, would probably be considered a "theft" AF.	Would probably be considered a CIMT.	FO – Might be considered a FO. (See fn. 1).	
Criminal Possession of Firearm or Electronic Defense Weapon [Class D Felony]	53a-217	If convicted under subsections (a)(1) or (3) would probably be considered a "firearm offense" AF [offense described in 18 USC 922(g)]; otherwise, if sentence of 1 yr. or more is imposed, might be considered a "COV" AF.	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)).	ImmPract: 1) Note that federal definition of "firearm" may be narrower than CT definition (see fn.1); 2) If record of conviction is bare, statute may be divisible b/c it includes possession of EDW; 3) Charge as "COV" should be challenged.

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 CAC – Crime Against Children 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 a Pistol or Revolver [Class D Felony]	53a-217c	Conviction under subsections (a)(1), (3), (4), (5) or (7) would probably be considered a "firearm offense" AF [offense described in 18 USC 922(g)]; otherwise, if sentence of 1 yr. or more is imposed, might be considered a "COV" AF.	Might be considered a CIMT if convicted under subsections (a)(5) or (6).	FO – Would probably be considered a FO. (See fn. 1).	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.
VEHICLE OR TRAFFIC OFFENSES					
Operation without a License [up to 30 days]	14-36	No.	Would probably NOT be considered a CIMT. (*POE*)		
Operation with No or Insufficient Insurance [Fine]	14-213b	No.	Would probably NOT be considered a CIMT. (*POE*)		
Operation While Registration or License is Refused, Suspended or Revoked [up to 1 yr.]	14-215	No.	Would probably NOT be considered a CIMT. (*POE*)		
Reckless Driving [up to 1 yr.]	14-222	No.	Would probably NOT be considered a CIMT. (*POE*)		
Failure to Stop / Engaging in Police Pursuit [Fine / Class A Misdem. or Class D 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.	Would probably NOT be considered a CIMT, except that if convicted under subsection (b) and ROC establishes death or serious injury, would probably be considered CIMT.		<i>See Mei v. Ashcroft</i> , 393 F.3d 737 (7 th Cir. 2004) (aggravated fleeing police officer is CIMT). DefAttys: If charged as misdemeanor, keep sentence imposed to 364 days or less to avoid possibility of AF.
Evading Responsibility [Leaving Scene of Accident]	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.		DefAttys: If charged as misdemeanor, keep sentence imposed to 364 days or less to avoid possibility of AF. ImmPract: charge as CIMT should be challenged because conviction could result even without intent to avoid responsibility.

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 CAC – Crime Against Children 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 Under the Influence of Liquor or Drug	14-227a	Would NOT be considered an AF. See <i>Leocal v. Ashcroft</i> , 125 S. Ct. 377 (2004).	Without any aggravating circumstance, would probably NOT be considered a CIMT; however, might be considered CIMT if ROC establishes circumstances such as driving while knowing license suspended or revoked due to prior DUI conviction.	CSO – Might be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.	See <i>In Re Lopez-Meza</i> , 22 I. & N. Dec. 1188 (BIA 1999) (aggravated DUI—when driver knows he is prohibited from driving—is CIMT). DefAttys: Consider AEP.
CONTROLLED SUBSTANCES OFFENSES					
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.	DefAttys: Keep sentence imposed to 364 days or less to avoid possibility of AF.
Failure to Keep Narcotic Drug in Original Container [up to 2 or 10 years]	21a-257	Might be considered a "drug trafficking" AF if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.	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.	ImmPract: if charged as "drug trafficking" AF, challenge whether this offense is punishable under federal CSA.
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; conviction under subsection (b) might be considered a "drug trafficking" AF; conviction under subsection (c) would probably be considered a "drug trafficking" AF, especially if ROC establishes sale or distribution of paraphernalia.	Would probably NOT 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 <i>Luu-Le v. INS</i> , 224 F.3d 911 (9 th Cir. 2000) (possession of drug paraphernalia is CSO). DefAttys: if first-time offense, strongly consider DEP or CSLP (but avoid guilty plea). 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. – Hallucinogenic or Narcotic [First Offense = up to 15 years]	21a-277(a)	Yes, would be considered a "drug trafficking" AF if ROC establishes a controlled substance as defined in 21 U.S.C. § 802. Cf. <i>Gousse v. Ashcroft</i> , 339 F.3d 91 (2d Cir. 2003) (conviction held "drug trafficking" AF even though ROC unclear on substance).	Yes. [See note].	CSO – Would be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.	DefAttys: 1) If first-time offense, strongly consider AR or CADAC; 2) Avoid reference in ROC as to specific controlled substance involved. ImmPract: If charged as CIMT, note that conviction does not require knowledge or intent. See <i>In Re Khourn</i> , 21 I. & N. Dec. 1041 (BIA 1997).

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 CAC – Crime Against Children 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)	Yes, 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.	DefAttys: 1) If first-time offense, strongly consider AR or CADAC; 2) Avoid reference in ROC as to specific controlled substance involved.
Possession of Drug Paraphernalia in Drug Factory [First Offense = up to 2 yrs]	21a-277(c)	Might be considered a "drug trafficking" AF.	Would probably be considered a CIMT.	CSO - Would probably be considered a CSO.	<i>See Luu-Le v. INS</i> , 224 F.3d 911 (9 th Cir. 2000) (possession of drug paraphernalia is CSO). DefAttys: if first-time offense, strongly consider AR or CADAC. 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 20 years max.]	21a-278(a)	Yes, 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.	DefAttys: 1) If first-time offense, strongly consider AR; 2) Avoid reference in ROC as to specific controlled substance involved.
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)	Yes, 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.	DefAttys: 1) If first-time offense, strongly consider AR; 2) Avoid reference in ROC as to specific controlled substance involved.
Illegal Manufacture, Sale or Distribution in or near School, Project, Day Care	21a-278a(b)	Yes, would be considered a "drug trafficking" AF if ROC 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.	DefAttys: 1) If first-time offense, strongly consider AR; 2) Avoid reference in ROC as to specific controlled substance involved.

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 CAC – Crime Against Children 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 be considered a “drug trafficking” AF if record of conviction establishes a controlled substance offense as defined in 21 U.S.C. § 802. [See note].	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.	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. ImmPract: Conviction would probably NOT be deemed a “drug trafficking” AF if removal proceedings are held in jurisdiction of Third, Sixth or Ninth Circuits.
Illegal Possession – Hallucinogenic or 4 or More Ounces of Marijuana [First Offense = up to 5 yrs.]	21a-279(b)	Would probably be considered a “drug trafficking” AF if record of conviction establishes a controlled substance offense as defined in 21 U.S.C. § 802. [See note].	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.	DefAttys: if first-time offense, strongly consider DEP or CSLP (but avoid guilty plea). ImmPract: Conviction would probably NOT be deemed a “drug trafficking” AF if removal proceedings are held in jurisdiction of Third, Sixth or Ninth Circuits.
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)	If a first offense, conviction would probably NOT be deemed a “drug trafficking” AF; however, first-offense conviction might be considered a “drug trafficking” AF if record of conviction shows possession of any amount of flunitrazepam [date-rape drug]. If conviction is for second or subsequent offense, it will probably be deemed a “drug trafficking” AF.	Would probably NOT be considered a CIMT.	CSO - Would be considered a CSO for inadmissibility purposes if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802. 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: 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; 2) If first-time offense, strongly consider DEP or CSLP (but avoid guilty plea). Note: 30g = 1.06 ounces.
END					

Appendix C

IMMIGRATION CONSEQUENCES OF CONNECTICUT PRE-TRIAL DIVERSION PROGRAMS

Introduction

Section 101(a)(48)(A) of the Immigration and Nationality Act (8 USC § 101(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.

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 therefore counsel their criminal defendant clients about the benefits of taking advantage of these rehabilitative programs when they are charged with any offense that might result in adverse immigration consequences.²³

Defense attorneys should be aware, however, that certain grounds of inadmissibility based on criminal conduct do not require an actual conviction. Rather, a noncitizen may be held to be inadmissible if the Attorney General simply “has reason to believe” that the noncitizen is or has aided a drug trafficker, see 8 U.S.C. § 1182(a)(2)(C), or has engaged in the trafficking of persons, § 1182(a)(2)(H). Similarly, a noncitizen may be found to be inadmissible if he or she admits committing a crime involving moral turpitude or a controlled substances offense, even if he or she is not convicted of such a crime. See 8 U.S.C. § 1182(a)(2)(A). Therefore, defense counsel cannot assume that obtaining one of 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, it seems clear that, generally, obtaining a disposition under some of Connecticut’s pre-trial diversion programs will be the best outcome (short of an outright dismissal) for most noncitizen clients. Practitioners are advised, however, to pay close attention to the notes on each pre-trial diversion program.

The following is an overview of Connecticut pre-trial diversion programs, with some notes on their probable immigration consequences:

²³ Connecticut law leaves the decision as to whether to grant a defendant’s application for the pre-trial diversion programs to the discretion of the trial judge. Defense attorneys may therefore consider whether raising the potentially drastic immigration consequences of a criminal conviction to a noncitizen defendant may be a positive factor a trial judge may weigh in making the discretionary decision. In addition, certain kinds of offenses will not qualify for a particular pre-trial diversion program unless the defendant shows “good cause” (e.g. class C felonies and AR). Defense counsel may consider raising the potential immigration consequences of conviction on a noncitizen defendant as establishing “good cause” for that defendant’s eligibility for the program (especially if the defendant is a lawful permanent resident who has lived for many years in this country).

Accelerated Pretrial Rehabilitation (AR):

AR should 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;²⁴
- Has not been adjudged a youthful offender within the preceding five years;
- 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 which “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)²⁵
- Class C felony, unless the defendant shows good cause;
- Certain enumerated offenses:
 - Driving Under the Influence offenses (§ 14-227a)
 - Indecent, sexual contact with a minor under sixteen (§ 53-21(a)(2));
 - 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).

Pretrial Family Violence Education Program (FVEP):

FVEP should NOT be considered a conviction for immigration purposes.

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;

²⁴ 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.

²⁵ 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.

- Has not previously invoked or accepted accelerated rehabilitation for family violence crime after 10/1/86;

What kinds of offenses are eligible?

A defendant is eligible for FVEP if he or she is charged with a family violence crime²⁶ 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 of offenses that are eligible for the program.

Pretrial 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, or assault with a motor vehicle, or DUI, 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, 15-133, 15-140l, 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.

²⁶ For a specific definition of “family violence crime,” see Conn. Gen. Stat. § 46b-38a. Generally, however, a family violence crime is one which involves physical harm or threatened violence between members of a household.

Pretrial 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 require such a plea in its discretion 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 lead to their own 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—i.e. 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 through 698

Who is eligible?

The court must find that:

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

What offenses are eligible?

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 precedent of *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 system in New York not to constitute a conviction for immigration purposes.

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

Who is eligible?

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 sexual offenses (see Conn. Gen. Stat. § 54-76b).

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 regulate 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”

Appendix D

BRIEF GLOSSARY OF IMMIGRATION TERMS

Aggravated Felony (AF):

A term of art in immigration law used to describe offenses that are considered particularly serious. 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 (but this could include simple possession);
- A “crime of violence” if the term of imprisonment (even if suspended) is 1 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 1 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 2 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 1 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 1 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

Crime of Violence (COV):

The term “crime of violence” is used to describe certain offenses that qualify under other categories of immigration law (i.e. 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.”

Crime of Domestic Violence (CODV):

This is a category of crimes that renders an individually legally residing in the United States (most frequently a lawful permanent resident) deportable. The definition of this category is found at 8 U.S.C. § 1227(a)(2)(E)(i):

“[T]he term ‘crime of domestic violence’ means any crime of violence [see definition above] 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.”

Crimes Involving Moral Turpitude (CIMT):

This category has been present in immigration law for several decades, but continues to be a source of confusion for immigration practitioners. Federal courts and administrative tribunals have used different concepts to try to define this category, but those concepts tend not to be all that helpful. For instance, the BIA has stated that a CIMT is “an act which is per se morally reprehensible and intrinsically wrong, or malum in se, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude.” *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). As a general matter, defense attorneys should keep in mind that offenses that involve an intent to defraud, an intent to steal or an intent to cause serious physical injury will almost always be considered CIMTs, as will most sexual offenses. 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 educated guesses for whether a particular Connecticut offense will fall under this category.

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). However, for practical purposes, most noncitizens who have not become legal permanent residents (LPRs or “green-card holders”) 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.

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 one of the categories that can render a noncitizen removable (i.e. the aggravated felony category). In many situations, any conviction under a particular statute will fall under an applicable category of offenses in the immigration laws. In those situations, it is unnecessary to look at the record of conviction. However, in many other situations, an

offense may be “divisible”: conviction under certain portions of the statute may fall within a particular immigration category, but conviction under another portion may not. In this latter set of circumstances, the immigration tribunals will be able to examine a limited set of documents to determine whether the conviction of the individual involved falls within or outside the applicable immigration category. Federal caselaw indicates that the only documents that may be examined when the conviction was the result of a guilty or nolo 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*, 125 S. Ct. 1254, 1263 (2005). If, after examining this narrow range of documents, the tribunal is still unclear as to what portion of the statute was involved, then the conviction will not be considered to fall within the applicable immigration category. This could benefit the noncitizen facing potential deportation if the question is whether a particular conviction will trigger deportation because it falls under one of the relevant categories. It is for this reason that the chart in Appendix B will provide warnings about the kind of information that is important to keep out of the record of conviction during criminal proceedings.

Appendix E

Immigration Consequences of a “Nolle Prosequi” in a Connecticut Criminal Case

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).

What does this Connecticut disposition mean in terms of immigration law? A nolle prosequi should NOT be considered a conviction as a matter of federal immigration law. The federal definition of conviction for immigration purposes requires either 1) a formal judgment of guilt or 2) some form of admission of guilt (or no contest) plus the imposition of punishment or some form of restraint on the alien’s liberty. See 8 U.S.C. 101(a)(48)(A). The “nolle” disposition in no way fits this definition: 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.

A slightly more complicated question, however, is whether an immigrant should state that charges are “pending” in an USCIS application form if the charges have been nolled but the police and court records have not been erased (i.e. if the application is being filed within the 13-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 noncitizen filing an application with USCIS should be able to state that no criminal charges are *pending* if a nolle prosequi has actually been entered in Connecticut state court (even if less than 13 months have passed since the entry of the nolle and the records have therefore not yet been erased pursuant to § 54-142a(c)).

Practitioners should note, however, that the entry of a nolle prosequi does not eliminate other potential immigration consequences for a noncitizen. For instance, certain grounds of admissibility do not require an actual conviction but merely information giving the Attorney General “reason to believe” that an alien engaged in particular conduct (for example, 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 noncitizen 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 noncitizen would still have to answer affirmatively if asked whether he or she has ever been arrested or charged with an offense (for instance, in part 3 of the I-485 Application for Adjustment of Status form).

Appendix F

Information on Selected Foreign Consulates or Missions Having Jurisdiction Over Connecticut

BRAZIL

1185 Avenue of Americas, 21st Floor
New York, NY 10036
(917) 777-7777

CHINA

520 12th Ave.
New York, NY 10036
(212) 279-4275

COLOMBIA

535 Boylston St., 11th Floor
Boston, MA 02116
(617) 303-4656

COSTA RICA

80 Wall Street, #718
New York, NY 10005
(212) 425-2620

DOMINICAN REPUBLIC

1501 Broadway, Suite 410
New York, NY 10036
(212) 768-2480, Fax (212) 768-2677

ECUADOR

800 2nd Ave., Suite 600
New York, NY 10017
(212) 867-2552

EL SALVADOR

46 Park Ave.
New York, NY 10016
(212) 889-3608

GUATEMALA

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

HAITI

271 Madison Ave., 17th Floor
New York, NY 10016
(212) 697-9767

HONDURAS

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

INDIA

3 E. 64th Street
New York, NY 10021
(212) 879-7800

ITALY

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

JAMAICA

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

MEXICO

27-29 E. 39th Street.
New York, NY 10016
212 217 6400
(212) 689-0456
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