

CRIMES OF VIOLENCE UNDER FORMER §2L1.2 (REVISED)¹
Updated 12/8/16

This list was created to assist attorneys in determining whether or not a prior conviction is a crime of violence warranting a **16-level** enhancement under former U.S.S.G. §2L1.2(b)(1)(A)(ii). An amendment to §2L1.2 that removed this enhancement became effective on November 1, 2016. The pre-amendment §2L1.2 still applies to defendants who committed the offense prior to November 1, 2016, if the pre-amendment §2L1.2 guideline calculation is more favorable than the current one. *See* U.S.S.G §1B.11; *Peugh v. United States*, 133 S. Ct. 2072, 2078 (2013).

This list attempts to include the most recent Fifth Circuit decisions, government concessions at the appellate level and district court decisions at the trial level. The purpose of this list being to provide attorneys with a quick reference on crimes of violence under §2L1.2 as well as informing attorneys that an issue has already been researched, written, and litigated, successfully or unsuccessfully. An effort will be made to provide a point of contact and to indicate if an appeal is pending. While the focus of this list is crimes of violence warranting a 16-level enhancement, a few selected aggravated felonies and §4B1.2 crimes of violence are included as well as some important drug cases and a few cases from outside the Western District of Texas and the Fifth Circuit. ***For additions or corrections, please contact [Kristin Kimmelman@fd.org](mailto:Kristin_Kimmelman@fd.org).***

Disclaimer: This list should not be used as a substitute for thorough research by each attorney. Although every effort will be made to keep the list updated, it may not be complete. This list includes Fifth Circuit decisions and district court decisions in the Western District of Texas. It does not include decisions from other circuits or districts except in rare instances. Also, it does not include all possible arguments regarding each prior conviction. Finally, even if an offense is listed as a crime of violence, attorneys should review the listed case and look at the **reasoning** behind the court's decision. You may still have a viable objection or you may want to object to preserve the issue or challenge the court's reasoning.

Note for enumerated COV offenses not defined at common law: On March 15, 2013, the Fifth Circuit created a “plain-meaning” approach for non-common law enumerated offenses. *United States v. Rodriguez*, [711 F.3d 541](#) (5th Cir. 2013).

Note for aggravated felony COVs as defined by 18 U.S.C. § 16(b): On August 5, 2016, the Fifth Circuit held that § 16(b) is not unconstitutionally vague.² *US v. Gonzalez-Longoria*, [831 F.3d 670](#) (5th Cir. 2016). The Supreme Court accepted cert of [Lynch v. Dimaya, No. 15-1498 \(U.S.\)](#), which could resolve the circuit split on this issue.

Note for alternatively phrased statutes: On June 23, 2016, the Supreme Court clarified that the modified categorical approach only applies when a statute lists alternative **elements** that require jury unanimity, not alternative means by which an offense may be committed. *Mathis v. US*, [136 S. Ct. 2243](#) (2016). If the statute only lists alternative means, it is not divisible. If one means is not a COV, the statute as a whole is overbroad and not a COV. *Mathis* may alter the analysis in

¹ This list includes decisions favorable for defendants. For a complete list including unfavorable decisions, contact Kristin_Kimmelman@fd.org.

² On June 26, 2015, the Supreme Court held that the residual clause of the Armed Career Criminal Act, which defines a “violent felony” as one that “otherwise involves conduct that presents a serious potential risk of physical injury to another, was unconstitutionally vague. *Johnson v. US*, [135 S. Ct. 2551](#) (2015).

the defense's favor for pre-*Mathis* cases listed here that relied on the modified categorical approach. Practitioners should analyze any alternatively phrased statute in light of *Mathis*.

Alabama

Alaska

Arizona¹

Aggravated Assault, ARIZ. REV. STAT. ANN § 13-1204(B)

Contact Attorney: Louis Correa

Not a Crime of Violence

Aggravated Assault (Class 6 Felony), ARIZ. REV. STAT. ANN § 13-1204

Contact Attorney: Jim Langell (Please note this case if from the 10th Circuit)

Not a Crime of Violence/Not an Aggravated Felony/Not a Felony

Aggravated Assault on Law Enforcement Officer

Contact Attorney: Reggie Trejo

Not a Crime of Violence/Not an Aggravated Felony/Agreement Reached for 4 Level Enhancement

Aggravated Assault Serious Physical Injury, ARIZ. REV. STAT. ANN § 13-1204 (A)(1)

Contact Attorney: Joseph Cordova

Not a Crime of Violence

Aggravated Assault, ARIZ. REV. STAT. ANN § 13-1204

Contact Attorney: Sergio Garcia

Not a Crime of Violence

Aggravated Assault with a Deadly Weapon, ARIZ. REV. STAT. ANN § 13-1203

Contact Attorney: Santiago Hernandez (contact Kristin Kimmelman)

Not a Crime of Violence/Not an Aggravated Felony/4 Level Enhancement Imposed

Attempted Aggravated Assault, ARIZ. REV. STAT. §13-1204 and § 13-1001

Contact Attorney: Margarito G. Rodriguez

Not a Crime of Violence

Human Smuggling, ARIZ. REV. STAT. § 13-2319

US v. Alcantara-Rodriguez, No. 13-40168, 7:12-CR-1350 (S.D. Tex.)

Contact Attorney: Darrell Bryan (SDTX)

Appellate Attorney: Tim Crooks (SDTX)

Not Alien Smuggling Offense

¹The Ninth Circuit disagrees with the Fifth Circuit's holding in *US v. Mungia-Portillo* and has held that Aggravated Assault under ARIZ. REV. STAT. §13-1204(A)(11) is not a crime of violence. *US v. Esparza-Herrera*, No. 07-30490, 557 F.3d 1019 (9th Cir. 2009).

Sexual Abuse, ARIZ. REV. STAT. ANN § 13-1404(A)
Contact Attorneys: Manuel Acosta & Kristin Kimmelman
Not a Crime of Violence

Sexual Assault, ARIZ. REV. STAT. § 13-1406
Contact Attorney: Christine Kelso (contact Kristin Kimmelman)
Not a Crime of Violence/ Not an Aggravated Felony/4 Level Enhancement Imposed

Arkansas

Aggravated Assault, ARK. CODE ANN. § 5-13-204
US v. Esparza-Perez, [681 F.3d 228](#) (5th Cir. 2012)
Contact Attorney: Anne Berton and Mike Gorman
Appellate Attorney: Judy Madewell
Not a Crime of Violence

Battery in the Second Degree, ARK. CODE ANN. § 5-13-202
US v. Limon-Rivera, [164 F. App'x 466](#) (5th Cir. Dec. 7, 2005) (unpub.)
Contact Attorney: Sandra S. Lewis
Appellate Attorney: Philip Lynch (contact Donna Coltharp)
Not a Crime of Violence

Burglary, ARK CODE ANN. § 5-39-201(2004)
Contact Attorney: Todd Durden
Not a Crime of Violence

Forgery, ARK. CODE ANN. § 5-27-201(a)
Contact Attorney: Marjorie Meyers
Not an Aggravated Felony

California

Battery on School Property with Criminal Street Gang Activity, CAL. PENAL CODE §§ 186.22(d), 243.2
Contact Attorneys: Louis Correa & Kristin Kimmelman
Not a Crime of Violence (Court sustained PSR objection)

Burglary, CAL. PENAL CODE § 459³

1. *Descamps v. US*, [133 S. Ct. 2276](#) (2013)
Not a Crime of Violence

³ See also *US v. Gonzalez-Terrazas*, No. 07-50375, 529 F.3d 293 (5th Cir. 2008); *US v. Ortega-Gonzaga*, No. 06-40493, 490 F.3d 393 (5th Cir. 2007). But see *US v. Murillo-Lopez*, No. 04-41397, 444 F.3d 337 (5th Cir. 2006).

2. Burglary in the Second Degree
Contact Attorneys: Alex Almanzan & Kristin Kimmelman
Contact Attorneys: Jose Moncayo & Bruce Weathers
Not an Aggravated Felony (in Almanzan's case, Probation conceded not +8, and Court concurred; in Moncayo's case, the Court granted the objection)

Child Abuse, CAL. PENAL CODE § 273a(a)

Contact Attorney: Marie Romero-Martinez

Not a Crime of Violence/Not an Aggravated Felony/Four Levels Imposed

Criminal Terroristic Threats, CAL. PENAL CODE § 422

Not a Crime of Violence

1. *US v. De La Rosa-Hernandez*, [264 F. App'x 446](#) (5th Cir. 2008) (unpub.)
2. *US v. Cruz-Rodriguez*, [625 F.3d 274](#) (5th Cir. 2010)

False Imprisonment, CAL. PENAL CODE §§ 236 AND 237

Contact Attorney: Horatio Aldredge

Not a Crime of Violence/Not an Aggravated Felony

Felon-in-Possession, CAL. PENAL CODE § 12021(a)(1) (2003)

US v. Hernandez, 769 F.3d 1059 (9th Cir. 2014) (note this is from the Ninth Circuit)

Not an Aggravated Felony

Kidnapping, CAL. PENAL CODE §207(a)

US v. Moreno-Flores, [542 F.3d 445](#) (5th Cir. 2008)

Not a Crime of Violence

Oral Copulation, Victim Unconscious and Sexual Penetration, Victim Unconscious, CAL. PENAL CODE §§ 288a(f) and 289(d)

US v. Raya-Romero, [157 F. App'x 703](#) (5th Cir. 2005) (unpub.)

Not a Crime of Violence b/c not supported by the record

Oral Copulation of a Minor, CAL. PENAL CODE § 288a(b)(1)

US v. Munoz-Ortenza, [563 F.3d 112](#) (5th Cir. 2009)

Not a Crime of Violence

Possession of a Deadly Weapon, CAL. PENAL CODE § 1202 (a)

US v. Medina-Anicacio, [325 F.3d 638](#) (5th Cir. 2003)

Not a Crime of Violence/ Not an Aggravated Felony

Sexual Battery, CAL. PENAL CODE § 243.4 (1998)⁴
US v. Bonilla-Mungia, [422 F.3d 316](#) (5th Cir. 2005)
Possibly Not a Crime of Violence/Remanded

Taking Vehicle without Consent, CAL. PENAL CODE § 10851(a)
Gonzalez v. Dueñas-Alvarez, [549 U.S. 183](#) (2007)
Aggravated Felony

Willful Infliction of Corporal Injury (misdemeanor), CAL. PENAL CODE § 273.5
US v. Alfaro-Enriquez, [No. 15-40461](#), 2016 WL 386142, 2016 U.S. App. LEXIS 1694
(5th Cir. Feb. 1, 2016) (unpub.)

Not a Crime of Violence (plain error; offense treated as a misdemeanor and defendant was never exposed to receiving a sentence of imprisonment exceeding a year; remanded even though sentence was a downward departure from the incorrect range)

Colorado

Assault (Misdemeanor), COLO. REV. STAT. § 18-3-204
US v. Villareal-Lerma, EP-04-CR-2375-DB
Contact Attorney: Anne Berton (contact Kristin Kimmelman)
Not a Crime of Violence

Criminal Attempt to Commit Assault in the Second Degree, COLO. REV. STAT. §§ 18-2-101 and 18-3-203
Contact Attorney: Rita Rodriguez
Not a Crime of Violence

Criminal Trespass in First Degree, COLO. REV. STAT. § 18-4-502
Contact Attorney: Edgar Holguin
Aggravated Felony (8 level Enhancement Imposed)

Kidnapping in Second Degree (Attempt), COLO. REV. STAT. § 18-3-302(1)
US v. Cervantes-Blanco, [504 F.3d 576](#) (5th Cir. 2007)
Contact Attorney: Margarito Rodriguez
Appellate Attorney: Judy Madewell
Not a Crime of Violence/Appealed/Remanded

Menacing, COLO. REV. STAT. § 18-3-206

1. *US v. Landeros-Arreola*, [260 F.3d 407](#) (5th Cir. 2001)
Not an Aggravated Felony

⁴ The Ninth Circuit held that a sexual battery conviction under CAL. PENAL CODE § 243.4(a) does not constitute a crime of violence. *US v. Lopez-Montanez*, No. 04-50260, 421 F.3d 926 (9th Cir. 2005).

2. Contact Attorneys: Reggie Trejo & Kristin Kimmelman (W.D. Tex. 2014)
Not a Crime of Violence
3. *But see US v. Tavarez-Grado*, [No. 14-51165](#), 2015 WL 5674959, 2015 U.S. App. LEXIS 17253 (5th Cir. Sept. 28, 2015) (unpub.) (finding is COV); *US v. Bencomo-Hinojos*, EP-10-CR-811-PRM, 2011 WL 3666716 (W.D. Tex. Feb. 23, 2011) (same)

Sexual Assault in Second Degree, COLO. REV. STAT. §18-3-403
US v. Palomares-Candela, [104 F. App'x 957](#) (5th Cir. 2004) (unpub.)
Not a Crime of Violence

Sexual Assault in Third Degree (Misdemeanor), COLO. REV. STAT. §18-3-404
US v. Frausto-Flores, EP-03-CR-2210-FM
Contact Attorney: Edgar Holguin
Not a Crime of Violence

Trespass of an Automobile, COLO. REV. STAT. §18-4-502 (2006)
US v. Portillo-Covos, [373 F. App'x 476](#) (5th Cir. 2006) (unpub.)
Contact Attorneys: Selena Solis, and Mike Gorman
Appellate Attorney: Carolyn Fuentes (contact Laura Spindler)
Not an Aggravated Felony

Unlawful Sexual Contact (Misdemeanor), COLO. REV. STAT. §18-3-404
US v. Morales-Sandoval, No. 04-51127, EP-04-CR-1030-PRM
Contact Attorney: Marie Romero-Martinez
Appellate Attorney: Carolyn Fuentes (contact Laura Spindler)
Government conceded Not a Crime of Violence

Connecticut

Delaware

District of Columbia

Florida

Aggravated Battery, FLA. STAT. § 784.045

1. *US v. Gonzalez-Chavez*, [432 F.3d 334](#) (5th Cir. 2005)
Not Categorically Crime of Violence/Vacated & Remanded
2. Contact Attorney: Edgar Holguin
Not a Crime of Violence/Not an Aggravated Felony/4 Level Enhancement Imposed

Aggravated Stalking, FLA. STAT. § 784.048(4)
US v. Insaulgarat, [378 F.3d 456](#) (5th Cir. 2004)
Not a Crime of Violence

Battery, FLA. STAT. § 784.03(1)(a), (2) (2003)
Johnson v. US, [559 U.S. 133](#) (2010)
Not a Violent Felony Under ACCA (Offering approach to interpreting state law in connection with enhancements)

Battery of a Police Officer, FLA. STAT. ANN. § 784.07/784.03
Contact Attorney: Maureen Franco
Not a Crime of Violence

Burglary, FLA. STAT. ANN. § 810.02
Not a Crime of Violence

1. *US v. Garcia-Montejo*, [570 F. App'x 408](#) (5th Cir. June 4, 2014) (unpub.)
FLA. STAT. § 810.02(1) & (2)(a)
2. *US v. Gomez-Guerra*, [485 F.3d 301](#) (5th Cir. 2007)
FLA. STAT. §810.02(3) (1995)
3. *US v. Rodriguez-Lopez*, [472 F. App'x 333](#) (5th Cir. 2012) (unpub.)
Contact Attorney: Molly Roth
Appellate Attorney: Judy Madewell
4. Contact Attorney: Erik Hanshew
Appellate Attorney: Judy Madewell
Gov't conceded at appeal not a COV
5. Contact Attorney: Frances Cusack & Brad Bogan
FLA. STAT. §810.02(1), (3)(b)(2004)

Committing a Lewd and Lascivious Act Upon a Child Under the Age of 16 Years,
FLA. STAT. ANN. § 800.04(2)(1999)
Contact Attorney: Anne Berton
Not a Crime of Violence

Dealing in Stolen Property, Fla. Stat. § 812.019
US v. Sanchez-Rodriguez, ___ F.3d ___, [No. 15-41056](#), 2016 WL 3920552, 2016 U.S. App.
LEXIS 12628 (5th Cir. July 8, 2016)
Not an Aggravated Felony (theft)

DUI/Manslaughter and DUI/Bodily Injury, FLA. STAT. § 316.193 (3)(c)(2) & (3)
US v. Valenzuela, [389 F.3d 1305](#) (5th Cir. 2004)
Not a Crime of Violence

Kidnapping, FLA. STAT. § 787.01(1)(a)(3)
US v. Martinez-Romero, ___ F.3d ___, [No. 15-40246](#), 2016 WL 1358509, 2016 U.S. App. LEXIS 6225 (5th Cir. 2016)
Not a Crime of Violence (did not meet generic kidnapping definition and did not require force; even though district court stated three times that it would have imposed the same sentence, error was not harmless because government did not show the sentence at the bottom of the incorrect range was not influenced by the erroneous Guidelines calculation)

Manslaughter, FLA. STAT. § 782.07
US v. Garcia-Perez, [779 F.3d 278](#) (5th Cir. Feb. 23, 2015)
Not a Crime of Violence

Murder in Second Degree (Attempted), FLA. STAT. ANN. §§ 777.04(1), 782.04(2)
US v. Hernandez-Montes, [831 F.3d 284](#) (2016)
Not a Crime of Violence

Possession of a Firearm by a Felon, FLA. STAT. § 790.23(1)
US v. Sanchez, [502 F. App'x 375](#) (5th Cir. 2012) (unpub.)
Aggravated Felony (under plain error review)

Throwing a Deadly Missile, FLA. STAT. § 790.19
Contact Attorney: Horatio Aldredge
Not an Aggravated Felony

Georgia

Cruelty to Children, GA. CODE ANN. § 16-5-70(b)
US v. Resendiz-Moreno, [705 F.3d 203](#) (5th Cir. 2013)
Not Crime of Violence

Family Violence Battery, GA. CODE ANN. § 16-5-23.1 (f)
US v. Lopez-Hernandez, [112 F. App'x 984](#) (5th Cir. 2004) (unpub.)
Not a Crime of Violence

Felon in Possession of Firearm, GA. CODE ANN. § 16-11-131
US v. Gutierrez-Rostro, [537 F. App'x 586](#) (5th Cir. Aug. 5, 2013) (unpub.)
Aggravated Felony on Plain Error Review

Involuntary Manslaughter, GA. CODE ANN. § 16-5-3
Contact Attorney: Marie Romero-Martinez and Mike Gorman
Not a Crime of Violence

Hawaii

Idaho

Accessory to First Degree Murder, IDAHO CODE ANN. § 18-205
United States v. Gamboa-Garcia, [620 F.3d 546](#) (5th Cir. 2010)
Aggravated Felony

Attempted Robbery and Battery, IDAHO CODE ANN. §§ 18-6501, 18-6502, 18-306,
18-909 and 18-903
Contact Attorney: Margarito Rodriguez
Not a Crime of Violence/Aggravated Felony 8 Level Enhancement Imposed

Second Degree Burglary, IDAHO CODE ANN. § 18-1401
Contact Attorney: Bill Ibbotson
Appellate Attorney: Judy Madewell
Not a Violent Felony under 924(e)(ACCA)/Govt Conceded at Appellate Level

Illinois

Aggravated Battery, 720 ILL. COMP. STAT. § 5/12-4
Not Crime of Violence

1. *US v. Bustos-Rios*, No. 05-50007, DR-04-CR-530
Contact Attorney: William E. Hermesmeier & Joseph Cordova
Appellate Attorney: Donna Coltharp
Remanded (§ 5/12-4 (1996))
2. *US v. Gomez-Vargas*, [111 F. App'x 741](#) (5th Cir. 2004) (unpub.)
3. *US v. Aguilar-Delgado*, [120 F. App'x 522](#) (5th Cir. 2004) (unpub.)
4. *US v. Orozco-Pazo*, No. 05-50467, EP-04-CR-1953-FM
Contact Attorney: Selena Solis
Appellate Attorney: Henry Bemporad
Not a COV at resentencing (§ 12-4(b)(1))
5. Contact Attorney: Bill Ibbotson (2005 case; conviction under § 12-4(a) (1986))
6. Contact Attorney: Rebecca Reyes (contact Kristin Kimmelman) (2005 case;
conviction under §12-4(b)(1))

Aggravated Battery/Peace Officer/Fireman

US v. Diaz-Cortez, [451 F. App'x 323](#) (5th Cir. 2011) (unpub.)

Not a Crime of Violence

Aggravated Stalking, 720 ILL.STAT. CH. 38 § 12-7.4

Contact Attorney: Selena Solis

Appellate Attorney: Judy Madewell

Gov't Conceded Not a Crime of Violence/Remanded/4 Level Enhancement Imposed

Domestic Battery, 720 ILL. COMP. STAT. § 5/12-3.2 (1996)

Contact Attorney: Santiago D. Hernandez (contact Kristin Kimmelman)

Not a Crime of Violence

Domestic Battery-Class 4 Felony, 720 ILL.COMP. STAT. § 5/12-3.2(a)(2)

US v. Rocha-Martinez, A-10-CR-326

Contact Attorney: Bill Ibbotson

Not a Crime of Violence/4 Level Enhancement Imposed

Domestic Battery and Battery Causing Bodily Harm, 720 ILL. COMP.STAT.§ 5/12-3.2-A-1; 5/12-3-A-1

Contact Attorney: Randall Lockhart

Not a Crime of Violence

Failure to Report, 720 ILL. COMP. STAT. § 5/31-6(A)

Chambers v. US, No. 06-11206, 555 U.S. 122 (2009)

Not a Violent Felony Under ACCA

Indiana

Forgery, IND. CODE § 35-43-5-2 (1995)

Contact Attorneys: Darren Ligon & Bruce Weathers

Not an Aggravated Felony (Government conceded)

Iowa

Aggravated Assault, IOWA CODE §§ 708.1 & 708.2(3)

US v. Rico-Mendoza, [548 F. App'x 210](#) (5th Cir. Dec. 9, 2013) (unpub.)

Not Crime of Violence

Assault with Intent to Commit Sexual Abuse, IOWA CODE ANN. § 709.11 (West 2003)⁵

Contact Attorneys: Christina Norton, Manuel Pacheco, and Bill Fry

Not a Crime of Violence

⁵ *But see US v. Amaya*, [576 F. App'x 416](#) (5th Cir. Aug. 1, 2014) (unpub.) (finding § 709.11 is a crime of violence (attempted sexual abuse of a minor)).

Burglary, Iowa Code § 702.12

Mathis v. US, ___ U.S. ___, [136 S. Ct. 2243](#) (2016)

Not a Violent Felony (burglary) (clarifies means versus elements; statute was indivisible, so no modified categorical approach)

Going Armed with Intent, IOWA CODE ANN. § 708.8

Contact Attorney: Reginaldo Trejo

Not a Crime of Violence

Serious Domestic Abuse Assault (Misdemeanor), IOWA CODE ANN. §§ 236.2(2), 708.1 & 708.2A

US v. Favela-Masuca, [247 F. App'x 464](#) (5th Cir. 2007) (unpub.)

Not an Aggravated Felony

Kansas

Aggravated Battery, KAN. STAT. § 21-3414(a)(1)(C)

Larin-Ulloa v. Gonzalez, [462 F.3d 456](#) (5th Cir. 2006)

Not an Aggravated Felony

Aggravated Sexual Battery, KAN. STAT. § 21-3518

US v. Matute-Galdamez, [111 F. App'x 264](#) (5th Cir. 2004) (unpub.)

Not a Crime of Violence

Attempted Aggravated Sexual Battery, KAN. STAT. § 21-3518

US v. Meraz-Enriquez, [442 F.3d 331](#) (5th Cir. 2006)

Not a Crime of Violence

Kentucky

Assault, KY. REV. STAT. ANN § 508025(1)(a)(1)

Contact Attorney: Reggie Trejo

Not a Crime of Violence/Eight Level Enhancement Imposed

Misdemeanor 4th Degree Assault, KY. REV. STAT. ANN. § 508.030

Contact Attorney: Clare Koontz (contact Laura Spindler)

Government conceded at trial level Not a Crime of Violence

Louisiana

Aggravated Battery, LA. REV. STAT. ANN. § 14:34

1. *US v. Herrera-Alvarez*, [753 F.3d 132](#), (5th Cir. May 22, 2014)

Not a Categorical Crime of Violence (but was COV (force) in this case under modified categorical approach)

2. *US v. Hernandez-Rodriguez*, [788 F.3d 193](#) (2015)
Not a Crime of Violence (no *Shepard* documents to rule out intentional administration of a poison to another)

Unauthorized Entry of Inhabited Dwelling, LA. REV. STAT. ANN. § 14:62.3

Contact Attorney: Dan Ramirez

Not a Crime of Violence/Aggravated Felony 8 Level Enhancement Imposed

Maine

Maryland

Massachusetts

Assault and Battery, MASS. GEN. LAWS CH. 265, § 13A

1. *Andrade v. Gonzalez*, [459 F.3d 538](#) (5th Cir. 2006)
Aggravated Felony
2. *US v. Grant-Martinez*, No. EP-07-CR-1163-PRM, 511 F. Supp. 2d 738 (W.D. Tex. 2007)
Not a Crime of Violence (insufficient record)
3. *US v. Holloway*, No. 08-2273, 630 F.3d 252 (1st Cir. 2011)
Not a Violent Felony Under ACCA

Assault and Battery with a Deadly Weapon, MASS. GEN. LAWS CH. 265, § 15A(b)

Contact Attorney: Frank Morales

Not a Crime of Violence

Michigan

Home Invasion

1. MICH. COMP. LAWS § 750.110a(3)
Molina-Ramirez v. Holder, [362 F. App'x 387](#) (5th Cir. 2010) (unpub.)
Aggravated Felony
2. MICH. COMP. LAWS § 750.110
US v. Lopez-Guzman, EP-07-CR-1045-FM
Contact Attorney: Rebecca Reyes and Bruce Weathers
Not a Crime of Violence/ Not an Aggravated Felony⁶

⁶ *But see US v. Carranza-Raudales*, [605 F. App'x 325](#) (5th Cir. Mar. 24, 2015) (unpub.) (finding § 750.110a(2) is a COV on plain error review.

Manslaughter, MICH. COMP. LAWS § 750.321 (1990)
Contact Attorneys: Alex Almanzan and Mike Gorman
Not a Crime of Violence

Minnesota

Criminal Sexual Conduct in Fourth Degree, MINN. STAT. § 609.345(1)(C)
US v. Rosas-Pulido, [526 F.3d 829](#) (5th Cir. 2008)
Not a Crime of Violence

Damage to Property (Gross Misdemeanor) in First Degree, MINN. STAT. § 609.13
Contact Attorney: Tyrone Mansfield
Not a Felony/No Enhancement

Forgery, MINN. STAT. 609. 63 subd. 1
Contact Attorneys: Shane McMahon & Kristin Kimmelman
Not an Aggravated Felony (Government agreed and PSR revised)

Terroristic Threats , MINN. STAT. § 609.713 (2000)
US v. Naranjo-Hernandez, [133 F. App'x 96](#) (5th Cir. 2005) (unpub.)
Not Crime of Violence

Unlawful Possession of Short-Barreled Shotgun, MINN. STAT. § 609.67 (2006)
Johnson v. US, [134 S. Ct. 2551](#) (2015)
Not an ACCA Violent Felony (residual clause unconstitutionally vague)

Mississippi

Obstructing Justice by Intimidating Judge, MISS. CODE ANN. § 97-9-55
Kirk v. US, No. 05-CR-52-GHD-DAS, 2016 WL 6476963 (N.D. Miss. Nov. 1, 2016)
Not a Violent Felony (force element)

Missouri

Sexual Assault, MO. REV. STAT. § 566.040(1)
US v. Sarmiento-Funes, No. 03-40741, 374 F3d. 336 (5th Cir. 2004)
Not a Crime of Violence
But see US v. Rodriguez-Juarez, [631 F.3d 192](#) (5th Cir. 2011) (“forcible sex offenses” amended in 2008 to include any offenses where consent not given or legally invalid)

Montana

Sexual Intercourse Without Consent, MONT. CODE ANN. § 45-5-503(1)

1. Contact Attorney: Sandra Lewis
Not a Crime of Violence
2. *Perez-Gonzalez v. Holder*, [667 F.3d 622](#) (5th Cir. 2012)
Not Aggravated Felony (not rape under aggravated felony definition)

Nebraska

Manslaughter, NEB. REV. STAT. §28-305 (1999)
US v. Ramos-Guerrero, [254 F. App'x 305](#) (5th Cir. 2007) (unpub.)
Not a Crime of Violence (insufficient record)

Theft By Receiving Stolen Property, NEB. REV. STAT. § 28-517 (2008)
US v. Miller-Ortiz, [398 Fed.Appx. 997](#) (5th Cir. 2010) (unpub.)
Aggravated Felony

Nevada

Invasion of the Home, NEV. REV. STAT. § 205.067
Contact Attorney: Edgar Holguin
Not a Crime of Violence

Possession of Stolen Vehicle, NEV. REV. STAT. § 205.273
Contact Attorneys: Anne Berton and Mike Gorman
Not an Aggravated Felony

New Hampshire

New Jersey

Aggravated Assault in Third Degree, N.J. STAT. ANN. § 2C:12-1b(7)
US v. Martinez-Flores, [720 F.3d 293](#) (5th Cir. 2013)
Not a Crime of Violence

Attempt, N.J. STAT. ANN. § 2C:51
US v. Garcia-Jimenez, [807 F.3d 1079](#) (9th Cir. 2015) (note: Ninth Circuit)
Not a COV (broader than generic attempt)

Lewdness in 4th Degree, N.J. STAT. ANN. § 2C:14-4b(1)
US v. Martinez, No. 13-50788, [595 F. App'x 330](#) (5th Cir. Dec. 15, 2014) (unpub.)
Not Crime of Violence (Sexual Abuse of a Minor)

Promoting Prostitution, N.J. STAT. ANN. § 2C:34-1
Contact Attorney: Edgar Holguin
Not an Aggravated Felony

New Mexico

Abandonment or Abuse of a Child, N.M. STAT. § 30-6-1

1. Contact Attorney: Erik Hanshew
Not an Aggravated Felony/Four Level Enhancement Imposed
2. *US v. Torres-Reyes*, [444 F. App'x 828](#) (5th Cir. 2011)
Contact Attorneys: Liz Rogers & Donna Coltharp (appellate)
Not a Crime of Violence

Attempted Possession of a Deadly Weapon by a Prisoner, N.M. STAT. ANN. §§ 30-22-16, 30-28-1

Contact Attorneys: David Peterson & Kristin Davidson
Not an ACCA Violent Felony (Government conceded)

Battery upon a Peace Officer, N.M. STAT. ANN. § 30-22-24

Contact Attorneys: David Peterson & Kristin Davidson (2014 case)
Not an ACCA Violent Felony

Burglary, N.M. STAT. ANN. § 30-16-3 (1986)

Contact Attorneys: David Peterson & Kristin Davidson (2014 case)
Not an ACCA Violent Felony

Criminal Sexual Contact of a Minor in Fourth Degree, N.M. STAT. § 30-9-13

Contact Attorneys: Jim Langell & Sherri Lynn Allison (D.N.M.)
Not a Crime of Violence (note this was in the Tenth Circuit)

Criminal Sexual Penetration, N.M. STAT. § 30-9-1(c)

Contact Attorney: Anne Berton
Not a Crime of Violence

Driving Under the Influence, N.M. STAT. § 66-8-102(A), (C)

Begay v. US, No. 06-11543, 553 U.S. 137 (2008)
Not a Violent Felony under ACCA

Possession of Stolen Vehicle, N.M. STAT. ANN. §§ 66-3-505 (1978) or 30-16D-4(A)

Contact: Erik Hanshew
Not Aggravated Felony

Vandalism, N.M. STAT. § 30-15-1

Contact Attorneys: Tyrone Mansfield and Bruce Weathers

Not An Aggravated Felony

New York

Assault in the Second Degree, N.Y. PENAL LAW § 120.05

1. Contact Attorneys: Santiago Hernandez and Bruce Weathers (2007 case)
Not a Crime of Violence/Not an Aggravated Felony
2. Contact Attorneys: Bianca Rocha Del Rio and Katherine Godin (2014 case, § 120.05(3))
Not a Crime of Violence (conceded by AUSA)

Attempted Gang Assault in the Second Degree, N.Y. PENAL LAW § 120.06

Contact Attorney: William Fry (contact Donna Coltharp)

Not a Crime of Violence

Criminal Possession of Stolen Property in the Third Degree, N.Y. PENAL LAW § 165.50

Burke v. Mukasey, [509 F.3d 695](#) (5th Cir. 2007)

Aggravated Felony

Manslaughter (Attempted), N.Y. PENAL LAW §125.15

US v. Bonilla, No. 06-40894, [524 F.3d 647](#) (5th Cir. 2008)

Not a Crime of Violence

North Carolina

Assault with Deadly Weapon Inflicting Serious Bodily Injury, N.C. GEN. STAT. § 14-32(b)

US v. Ocampo-Cruz, [561 F. App'x 361](#) (5th Cir. Apr. 4, 2014) (unpub.)

Not a Crime of Violence

Breaking and Entering, N.C. GEN. STAT. § 14-54(a)

Contact Attorney: Marie Romero-Martinez

Appellate Attorney: Phil Lynch (contact Donna Coltharp)

**Government Conceded at Appellate Level that it is Not a Crime of Violence/
8 Levels Imposed**

Discharging Firearm into Occupied Property, N.C. GEN. STAT. § 14-34.1 (2002)

US v. Hernandez-Perez, [589 F. App'x 282](#) (5th Cir. Jan. 6, 2015) (unpub.)

Not a Crime of Violence

Elude Arrest in a Motor Vehicle-Three or More Aggravating Factors (Felony), N.C.
GEN. STAT. § 20-141.5(B)

(See *US v. Castro-Magama*, 465 F. App'x 370 (5th Cir. 2012))

Contact Attorney: Anne Berton and Mike Gorman

Not a Felony (Maximum term of imprisonment set by NC sentencing guidelines.)

Involuntary Manslaughter, N.C. GEN. STAT. § 14-18(1994)

Contact Attorney: Anne Berton & Bruce Weathers

Not a Crime of Violence/Not an Aggravated Felony/4 Levels Imposed

Involuntary Manslaughter

US v. Peterson, No. 08-4889, 629 F.3d 432 (4th Cir. 2011)

Not a Crime of Violence Under Career Offender

North Dakota

Ohio

Aggravated Burglary, OHIO REV. CODE ANN. § 2911.11(A)(1) (2001)

US v. Ramirez, [344 F. App'x 962](#) (5th Cir. 2009) (unpub.)

Not a Crime of Violence

Involuntary Manslaughter, OHIO REV. CODE ANN. § 2903.4

US v. Pickens, 1-10cr46 (S.D. Ohio)

Contact Attorney: James Maus

Not a Crime of Violence (For purposes of Career Offender Definition)

Oklahoma

Assault and Battery, OKLA. STAT. TIT. 21, § 644C

US v. Miranda-Ortegon, No. 10-51129, 670 F.3d 661 (5th Cir. 2012)

Contact Attorney: Sandra Lewis

Appellate Attorney: Phil Lynch (contact Donna Coltharp)

Not a Crime of Violence

Burglary in the Second Degree, OKLA. STAT. TIT., 21, § 1435

US v. Avila, [496 F. App'x 492](#) (5th Cir. 2012) (unpub.)

Not a Crime of Violence, plain error

Child Abuse, OKLA. STAT. TIT. 10, § 7115

US v. Ontiveros-Adame, No. 11-50196 (5th Cir.), EP-10-CR-2499-FM (W.D. Tex.)

Contact Attorneys: Edgar Holguin & Shane McMahon

Appellate Attorney: Carolyn Fuentes (Laura Spindler)

Not a Crime of Violence (Government filed motion to vacate sentence and remand to district court)

First Degree Manslaughter, OKLA. STAT. TIT. 21, § 711(1)
US v. Gutierrez-Salinas, [257 F. App'x 448](#) (5th Cir. 2007) (unpub.)
Not a Crime of Violence

Kidnapping, OKLA. STAT. TIT. 21, § 741
US v. Najera-Mendoza, [683 F.3d 627](#) (5th Cir. 2012)
Contact Attorney: Reggie Trejo and Mike Gorman
Not a Crime of Violence

Maiming, OKLA. STAT. TIT. 21, § 751
Contact Attorney: Francisco "Frank" Morales
Not a Crime of Violence

Oregon

Pennsylvania

Aggravated Assault, 18 PA. CONS. STAT. § 2702 (2000)
US v. Gonzalez-Molina, No. 09-10097, 353 F. App'x 959 (5th Cir. 2009) (unpub.)
Not a Crime of Violence (Gov't conceded)

Terroristic Threats, 18 PA. CONS. STAT. §2706
US v. Ortiz-Gomez, [562 F.3d 683](#) (5th Cir. 2009) (§ 2706(a))
US v. Martinez-Paramo, [380 F.3d 799](#) (5th Cir. 2004)
Not a Crime of Violence

Rhode Island

South Carolina

South Dakota

Tennessee

Aggravated Burglary, TENN. CODE ANN § 39-14-403
US v. Herrera-Montes, [490 F.3d 390](#) (5th Cir. 2007)
Not a Crime of Violence

Facilitation of Aggravated Assault
Contact Attorney: Bill Fry (contact Donna Coltharp)
Appellate Attorney: Carolyn Fuentes
Not a Crime of Violence (Government conceded on appeal)

Facilitation of Aggravated Robbery, TENN. CODE ANN. §39-11-403
US v. Trejo-Palacios, 418 F. Supp. 2d 915 (S.D. Tex. 2006)
Not Crime of Violence/It is an Aggravated Felony/8 Levels Imposed

Reckless Aggravated Assault, TENN. CODE ANN. § 39-13-102

Contact Attorney: Selena Solis

Not a Crime of Violence

Texas

Aggravated Assault, TEX. PENAL CODE § 22.02 (1989)

US v. Cortez-Rocha, [552 F. App'x 322](#) (5th Cir. Jan. 15, 2014) (unpub.)

Not a Crime of Violence

Aggravated Assault, TEX. PENAL CODE § 22.02

US v. Barcenas-Yanez, ___ F.3d ___, No. 15-4363, 2016 WL 3408889, 2016 U.S. App. LEXIS 11213 (4th Cir. June 21, 2016) (note this case is from the Fourth Circuit and conflicts with *US v. Guillen-Alvarez*, [489 F.3d 197](#) (5th Cir. 2007))

Not a Crime of Violence (aggravated assault or force element)

Aggravated Assault, Tex. Penal Code § 22.02

US v. Vazquez-Munoz, No. A-16-CR-132-SS

Contact Attorney: Bill Ibbotson (Kristin Kimmelman)

Not a §4B1.2 Crime of Violence (probation agreed with objection); *but see US v.*

Jeffries, [No. 14-51250](#) (5th Cir. July 28, 2016) (denying panel rehearing and noting not clear Texas aggravated assault was not a §4B1.2 crime of violence)

Aggravated Assault with a Deadly Weapon, TEX. PENAL CODE § 22.02(a)(4) (1993)

Contact Attorney: Anne Berton and Mike Gorman

Not a Crime of Violence (*Note: There may be some arguments to the pre-1994 statute*)

Aggravated Assault of a Peace Officer, TEX. PENAL CODE § 22.02

Not a Crime of Violence

1. *US v. Mendez-Rubi*, [438 F. App'x 293](#) (5th Cir. 2011) (§ 22.02(a)(2)(A) not aggravated felony COV under § 16(a))
2. *US v. Antuna-Moran*, [488 F.3d 1048](#) (5th Cir. 2007)
3. *US v. Fierro-Reyna*, [466 F.3d 324](#) (5th Cir. 2006)

Assault

1. TEX. PENAL CODE § 22.01

Gomez-Perez v. Lynch, ___ F.3d ___, [No. 14-60808](#), 2016 WL 3709757, 2016 U.S. App. LEXIS 12751 (5th Cir. July 11, 2016)

Not a Crime Involving Moral Turpitude (applies *Mathis* and determines § 22.01 is not divisible; cannot be a CIMT because includes reckless conduct)

2. TEX. PENAL CODE ANN. § 22.01(a)(1) (misd)
US v. Villegas-Hernandez, [468 F.3d 874](#) (5th Cir. 2006)
US v. Davila-Solis, [217 F. App'x 402](#) (5th Cir. 2007) (unpub.)
Not a Crime of Violence/ Not an Aggravated Felony
3. TEX. PENAL CODE. ANN. § 22.01(b)(2)
Contact: Manuel Acosta & Kristin Kimmelman (2012 case)
Not Crime of Violence or Aggravated Felony (Government agreed conviction was felony but not COV or aggravated felony, +4)

Assault on a Public Servant-Third Degree, TEX. PENAL CODE ANN. § 22.01
Contact Attorney: Santiago D. Hernandez (contact Kristin Kimmelman)
Not a Crime of Violence

Attempted Aggravated Assault-Third Degree, TEX. PENAL CODE ANN. § 22.02
Contact Attorney: Tyrone T. Mansfield
Not a Crime of Violence

Attempted Sexual Assault, TEX. PENAL CODE § 22.011
US v. Quintanilla-Ventura, [No. 14-41261](#), 2015 WL 5674900, 2015 U.S. App. LEXIS 17272 (5th Cir. Sept. 28, 2015)
Not a Crime of Violence or Aggravated Felony (plain error)

Bond Jumping, TEX. PENAL CODE ANN. § 38.10
Contact Attorney: Jose Gonzalez-Falla
Not an Aggravated Felony (b/c no element in the offense requiring a court order)

Burglary of Building, TEX. PENAL CODE ANN. § 30.04
US v. Rodriguez-Guzman, No. 94-60379, 56 F.3d 18 (5th Cir. 1995)
Aggravated Felony

Burglary of Building, TEX. PENAL CODE ANN. § 30.02 (1990), applying 1974 version
US v. Rodriguez-Guzman, [56 F.3d 18](#) (5th Cir. 1995)
Aggravated Felony

Burglary of Habitation

1. TEX. PENAL CODE ANN. §30.02(a)(3)
Not Crime of Violence
 - a. *US v. Castaneda*, [740 F.3d 169](#) (5th Cir. Dec. 19, 2013) (unpub.)
 - b. *US v. Morales-Ramirez*, [540 F. App'x 368](#) (5th Cir. Sept. 25, 2013) (unpub.)

c. *US v. Herrera-Montes*, [490 F.3d 390](#) (5th Cir. 2007)⁷

2. TEX. PENAL CODE ANN. § 30.02
Contact Attorney: Darren Ligon (2008 case)
Not a Crime of Violence

3. TEX. PENAL CODE § 1389 OR 1390 (1963)
US v. Montoya-Beltran, No. 07-51410, 2008 WL 3876507 (5th Cir. 2008)
Contact Attorney: Bill Fry (contact Donna Coltharp)
Appellate Attorney: Carolyn Fuentes (contact Laura Spindler)
Not a Crime of Violence

Burglary of a Vehicle, TEX. PENAL CODE ANN. § 30.04 (post-1994)
Contact Attorney: David Peterson
Not an Aggravated Felony

Criminal Mischief, TEX. PENAL CODE ANN. § 28.03(a)(3)
US v. Landeros - Gonzalez, [262 F.3d 424](#) (5th Cir. 2001)
Not a Crime of Violence/Not an Aggravated Felony

Criminally Negligent Homicide, TEX. PENAL CODE ANN. § 19.05
US v. Dominguez-Ochoa, [386 F.3d 639](#) (5th Cir. 2004)
Not a Crime of Violence

Child Endangerment, TEX. PENAL CODE ANN. § 22.041(c)
US v. Calderon-Pena, [383 F.3d 254](#) (5th Cir. 2004)
Not a Crime of Violence

Deadly Conduct, TEX. PENAL CODE ANN. § 22.05(b)(2)
Contact Attorney: Robert Castaneda and Bruce Weathers
Not a Crime of Violence/4 Level Enhancement Imposed

Driving While Intoxicated, TEX. PENAL CODE § 49.04
US v. Chapa-Garza, [243 F.3d 921](#) (5th Cir. 2001) *see also* 262 F.3d 479 (5th Cir. 2001)
Not a Crime of Violence/ Not an Aggravated Felony

Evading Arrest with a Motor Vehicle, TEX. PENAL CODE ANN. § 38.04(b)(1)

1. *US v. Sanchez-Ledezma*, [630 F.3d 447](#) (5th Cir. 2011)
Aggravated Felony

⁷ Although this case deals with a Tennessee statute, it is identical to Texas statute 30.02(a)(3). *See also US v. Castro*, No. 07-40762, 272 F. App'x 385 (5th Cir. 2008) (unpub.); *US v. Beltran-Ramirez*, No. 07-50218, 266 F. App'x 371 (5th Cir. 2008) (unpub.); *US v. Constante*, No. 07-41004, 544 F.3d 584 (5th Cir. 2008) (not COV under 18 U.S.C. § 924(e)).

2. *US v. Salas Villela*, No. SA-13-CR-1003-XR (W.D. Tex.)
Contact Attorneys: Molly Roth & Laura Spindler
Not Crime of Violence (Government conceded was only aggravated felony)

Engaging in Organized Criminal Activity Involving Burglary of a Motor Vehicle,
TEX. PENAL CODE § 71.02(a)(1)
US v. Paniagua, [481 F. App'x 162](#) (5th Cir. 2012) (unpub.)
Aggravated Felony

Engaging in Organized Criminal Activity Involving Vehicle Theft, TEX. PENAL CODE
ANN. §31.03
US v. Blancas-Rosas, [414 F. App'x 634](#) (5th Cir. 2011) (unpub.)
Aggravated Felony

Felony Assault, TEX. PENAL CODE § 22.01(a)(1) & (b)(2)
US v. Cano-Esparza, [243 F. App'x 15](#) (5th Cir. 2007) (unpub.)
Not a Crime of Violence

Injury to a Child

1. TEX. PENAL CODE ANN. § 22.04
Not a Crime of Violence or Aggravated Felony/4 Levels
 - a. *US v. Garcia-Cantu*, [302 F.3d 308](#) (5th Cir. 2002)
 - b. *US v. Vasquez-Torres*, [134 F. App'x 648](#) (5th Cir. 2005) (unpub.)
 - c. *US v. Andino-Ortega*, [608 F.3d 305](#) (5th Cir. 2010) (not COV; did not address whether aggravated felony)
2. TEX. PENAL CODE ANN. § 22.04(a)(3)
Perez-Munoz v. Keisler, [507 F.3d 357](#) (5th Cir. 2007)
Aggravated Felony

Intoxicated Assault, TEX. PENAL CODE ANN. § 49.07 (1994)
US v. Vargas-Duran, [356 F.3d 598](#) (5th Cir. 2004)
Not a Crime of Violence

Intoxicated Assault with a Vehicle, TEX. PENAL CODE § 49.07
US v. Maul-Paez, No. EP-12-CR-1030-PRM
Contact Attorney: Anne Berton (contact Kristin Kimmelman)
Not an Aggravated Felony

Intoxicated Manslaughter, TEX. PENAL CODE ANN. § 49.08
US v. Iovino, No. Crim. A. B-05-602, 405 F. Supp. 2d 771 (S.D. Tex. 2005)
Not a Crime of Violence

Possession of Short-Barrel Firearm, TEX. PENAL CODE ANN. § 46.05
US v. Diaz-Diaz, No. 02-20392, [327 F.3d 410](#) (5th Cir. 2003)
Aggravated Felony

Possession of Short-Barrel Firearm, TEX. PENAL CODE ANN. § 46.05
US v. Diaz-Diaz, [327 F.3d 410](#) (5th Cir. 2003)
US v. Rivas-Palacios, [244 F.3d 396](#) (5th Cir. 2001)
Aggravated Felony

Retaliation, TEX. PENAL CODE ANN. §36.06
Not a Crime of Violence

1. *US v. Martinez-Mata*, [393 F3d. 625](#) (5th Cir. 2004) (§ 36.06(a))
2. *US v. Acuna-Cuadros*, [385 F.3d875](#) (5th Cir. 2004) (§ 36.06 (1995))
3. *US v. Rodriguez-Lopez*, No. 08-50608, EP-08-CR-550-DB
Contact Attorney: Margarito Rodriguez
Appellate Attorney: Judy Madewell
Not an Aggravated Felony (Gov't conceded)/ Four Level Enhancement Imposed
(§ 36.06(a)(1)(A))

Robbery, TEX. PENAL CODE § 29.02
US v. Fennell, No. 3:15-CR-443-L(01), 2016 WL 4702557 (N.D. Tex. Sept. 8, 2016)
(unpub.)
Not a Violent Felony

Sexual Assault, TEX. PENAL CODE ANN. § 22.011(a)(1)

1. *US v. Luciano-Rodriguez*, [442 F.3d 320](#) (5th Cir. 2006)
Not a Crime of Violence
But see US v. Rodriguez-Juarez, [631 F.3d 192](#) (5th Cir. 2011) (“forcible sex offenses” amended in 2008 to include any offenses where consent not given or legally invalid)
2. *Rodriguez v. Holder*, [705 F.3d 207](#) (5th Cir. 2013)
Not an Aggravated Felony

Stalking, TEX. PENAL CODE § 42.072
US v. Rodriguez-Rodriguez, [775 F.3d 706](#) (5th Cir. 2015)
Not a Crime of Violence

Theft from a Person, TEX. PENAL CODE ANN. § 31.03¹⁰
US v. Luna-Montoya, [80 F. App'x 334](#) (5th Cir. 2003) (unpub.)
Not a Crime of Violence

Theft of Vehicle, TEX. PENAL CODE ANN. § 31.03

US v. Silva, [423 F. App'x 415](#) (5th Cir. 2011)

Aggravated Felony

Unauthorized Use of a Motor Vehicle, TEX. PENAL CODE ANN. § 31.07(a)

US v. Armendariz-Moreno, [571 F.3d 490](#) (5th Cir. 2009)¹¹

Not an Aggravated Felony

Unlawfully Carrying a Firearm, TEX. PENAL CODE ANN. § 42.02(c)

US v. Hernandez-Neave, [291 F.3d 296](#) (5th Cir. 2001)

Not an Aggravated Felony

Unlawful Possession of a Firearm by Felon, TEX. PENAL CODE ANN. § 46.04(a)

Hernandez v. Holder, [592 F.3d 681](#) (5th Cir. 2009)

Aggravated Felony

Unlawful Restraint, TEX. PENAL CODE ANN. § 22.01 & 20.01 (1999)

US v. Hernandez-Rodriguez, [135 F. App'x 661](#) (5th Cir. 2005) (unpub.)

Not a Crime of Violence

Utah

Aggravated Assault with Deadly Weapon, UTAH CODE ANN. § 76-5-103

US v. Leal-Rax, [594 F. App'x 844](#) (5th Cir. Dec. 5, 2014) (unpub.)

Not Crime of Violence under enumerated or force clauses

Assault of a Peace Officer, UTAH CODE ANN. § 76-5-102.4

US v. Miranda-Garcia, [427 F. App'x 296](#) (5th Cir. 2011) (unpub.)

Crime Against the Person (Offense Qualifies as "Crime Against the Person" for Purposes of 8 U.S.C. § 1326(b)(1)).

Vermont

Virginia

Assault of a Peace Officer, VA. CODE ANN. § 18.2-57 (1999)

Contact Attorney: Michael Young (2010 case)

Not Crime of Violence

Assault to a Police Officer (Class 6 Felony), VA. CODE ANN. § 18.2-57(C)

US v. Rosales-Miranda, [434 F. App'x 404](#) (5th Cir. 2011) (unpub.)

Felony

Burglary, VA. CODE § 13.2-91

US v. Membreno-David, [No. 15-20281](#), 2016 WL 3033277, 2016 U.S. App. LEXIS 9675 (5th Cir. May 26, 2016) (unpub.)

Not an Aggravated Felony (burglary or crime of violence)

Forgery of a Public Record, VA. CODE ANN. § 18.2-168

Contact Attorney: Alex Almanzan

Not an Aggravated Felony

Grand Larceny, VA. CODE ANN. § 18.2-95

US v. Argumedo-Perez, [326 F. App'x 293](#) (5th Cir. 2009) (unpub.)

Not an Aggravated Felony

Shooting into an occupied dwelling, VA. CODE ANN. § 18.5-279

US v. Alfaro, [408 F.3d 204](#) (5th Cir. 2005)

Not a Crime of Violence

Washington

Assault in the Second Degree, WASH. REV. CODE §9A.36.021(1)(C) (West 1988 & Supp. 1995)

Contact Attorney: Todd Durden and Brad Bogan

Not a Crime of Violence

Assault in the Fourth Degree, WASH. REV. CODE § 9A.36.041(1)

US v. Sanchez-Torres, [136 F. App'x 644](#) (5th Cir. 2005)

Not Four Level Crime of Violence Based on 3 or More Misdemeanor Crimes of Violence

Drive-By Shooting, WASH. REV. CODE § 9A.36.045(1)

Contact Attorneys: David Fannin & Carolyn Fuentes (contact Laura Spindler)

Not a Crime of Violence

Manslaughter in Second Degree, WASH. REV. CODE § 9A.32.070(1) (West 1988)

Contact Attorney: Todd Durden and Brad Bogan

Not a Crime of Violence

Residential Burglary, WASH. REV. CODE § 9A.52.025

Contact Attorney: Marina Douenat

Not a Crime of Violence (Four Level Enhancement imposed) (*but see US v. Guerrero-Navarro*, [737 F.3d 976](#) (5th Cir. Dec. 16, 2013))

Robbery, WASH. REV. CODE § 9A.56.210

US v. Swanson, 502 F. Supp. 2d 563 (W.D. Tex. 2007)

Contact Attorney: Erik Hanshew

Not a Crime of Violence Under Career Offender (*but see US v. Alcasar-Sanchez*, [350 F. App'x 969](#) (5th Cir. 2009) (unpub.))

Theft in Third Degree, WASH. REV. CODE §§ 9A.56.020(1) AND 9A.56.050
US v. Juarez-Gonzalez, No. 10-40972, 2011 WL 5554799 (5th Cir. 2011) (unpub.)
Not an Aggravated Felony

West Virginia

Wisconsin

Substantial Battery, WISC. STAT. § 940.19(2)
US v. Calzada-Ortega, [551 F. App'x 790](#) (5th Cir. Jan. 10, 2014) (unpub.)
Not a Crime of Violence

Wyoming

Possession of a Forged Instrument, WYO. STAT. ANN. § 6-3-603(a)(i)
US v. Martinez-Valdez, [419 F. App'x 523](#) (5th Cir. 2011) (unpub.)
Aggravated Felony

U.S. Code

Conspiring to Commit Mail Fraud, Wire Fraud, Bank Fraud, and Money Laundering, 18 USC § 371, 1341, 1343, 1344, 1956(h)
Nijhawan v. Holder, [129 S. Ct. 2294](#) (2009)
Aggravated Felony (pursuant to 8 USC 1101(a)(43)(m)(i) (“an offense that involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000))

Illegal Reentry of Alien Previously Convicted of an Aggravated Felony, 8 U.S.C. § 1326(b)(2)

1. *US v. Gamboa-Garcia*, [620 F.3d 546](#) (5th Cir. 2010)
Contact Attorney: John Calhoun
Appellate Attorney: Judy Madewell
Aggravated Felony (Court made this finding based on fact that judgment listed § 1326(b)(2) as statute of conviction.)
2. Contact Attorneys: Marie Romero & Kristin Kimmelman (W.D. Tex. 2014)
Not an Aggravated Felony because never deported as an aggravated felon and prior conviction of simple possession no longer an aggravated felony (probation conceded)

Residual Clause Crime of Violence, 18 U.S.C. § 16(b)
US v. Gonzalez-Longoria, [813 F.3d 225](#) (5th Cir. 2016) (pending rehearing en banc)
Not an Aggravated Felony (§ 16(b) unconstitutionally vague under the *Johnson* test for vagueness)

Riot, 18 U.S.C. § 1792 (2000)
Contact Attorneys: Anne Berton and Michael Gorman
Not a Crime of Violence

“Substantial Risk” COV, 18 U.S.C. § 16(b)
Dimaya v. Lynch, [803 F.3d 1110](#) (9th Cir. 2015) (note: Ninth Circuit)
United States v. Vivas-Ceja, ___ F.3d ___, [No. 15-1770](#), 2015 WL 9301373, 2015 U.S. App. LEXIS 22438 (7th Cir. Dec. 22, 2015) (note: Seventh Circuit)
Not an Aggravated Felony (§ 16(b) is unconstitutionally vague similar to the ACCA’s residual clause (*Johnson v. United States*, ___ U.S. ___, [135 S. Ct. 2551](#) (2015)))

Willfully Making and Subscribing a False Tax Return and Aiding and Assisting in the Preparation of a False Tax Return, 26 U.S.C. §§ 7206(1) and (2)
Kawashima v. Holder, [132 S. Ct. 1166](#) (2012)
Aggravated Felony (When the Government’s revenue loss exceeds \$10,000.)

A FEW SELECTED DRUG CASES:

General

Entirely Suspended Sentence in Drug Trafficking Case
US v. Rodriguez-Parra, [581 F.3d 227](#) (5th Cir. 2009)
Not a Drug Trafficking Offense Warranting a Twelve Level Enhancement

Second or Subsequent Simple Possession
Carachuri -Rosendo v. Holder, [560 U.S. 563](#) (2010)
Not an Aggravated Felony (unless record of conviction shows it was based on fact of a prior drug conviction)

Sentence of Imprisonment Upon Revocation of State Probation in Drug Trafficking Case
US v. Bustillos-Pena, [612 F.3d 863](#) (5th Cir. 2010)
Court finds 16 level enhancement for drug trafficking NOT warranted due to ambiguous Sentencing Guideline under 2L1.2 requiring defendant be deported AFTER a sentence was imposed that exceeded thirteen months where defendant sentenced INITIALLY to probation on state drug trafficking conviction, deported, re-entered illegally, and sentenced to imprisonment that exceeded thirteen months upon revocation of state probation.

State Drug Possession

Lopez v. Gonzalez, 549 U.S. 47 (2006)

Not a Drug Trafficking Offense under §2L1.2 (b)(1)(A)(i) and Not an Aggravated Felony

State Marijuana Possession with Intent to Distribute

1. *Moncrieffe v. Holder*, [133 S. Ct. 1678](#) (2013) (GA. CODE ANN. § 15-13-30(j)(1) (2007))

Not an Aggravated Felony (if small amount or no remuneration)

2. *US v. Martinez-Lugo*, [782 F.3d 198](#) (5th Cir. 2015)

Drug Trafficking Offense under § 2L1.2(b)(1)(A)

Arizona

Attempted Possession of Narcotic Drug for Sale, ARIZ. REV. STAT. §§ 13-610, 604, 1001, 3418, 3401, 3408, 701, 702, 702.01, and 801

Contact Attorneys: Darren Ligon & Kristin Kimmelman

Not a Drug Trafficking Offense (court gave a +4; the Arizona controlled substance schedule was broader than federal one and no *Shepard* documents to narrow substance)

Solicitation to Possess Narcotic Drug for Sale, ARIZ. REV. STAT. § 13-1002, 12-114.01, 13-3401, 13-3408, 13-701, 3-702, 13-702.01, 13-801, 13-610

Contact Attorneys: Darren Ligon & Kristin Kimmelman

Not a Drug Trafficking Offense (court applied +4)

California

Manufacturing a Controlled Substance, CAL. HEALTH & SAFETY CODE § 11379.6

US v. Reyes-Mendoza, [665 F.3d 165](#) (5th Cir. 2011)

Not a Drug Trafficking Offense Under § 2L1.2 (b)(1)(A)(i)

Offer to Transport, Sell, Furnish, Administer, or Give Away a Controlled Substance, CAL. HEALTH & SAFETY CODE § 11379(a)

US v. Garza-Lopez, [410 F.3d 268](#) (5th Cir. 2005)

Not a Drug Trafficking Offense under §2L1.2 (b)(1)(A)(I)

Possession of a Controlled Substance for Sale, CAL. HEALTH & SAFETY CODE § 11351

US v. Leal-Vega, No. 11-50065, 680 F.3d 1160 (9th Cir. 2012)

Not Categorically a Drug Trafficking Offense (Defining “controlled substance” as substances listed in schedules under Federal CSA)

Possession of Marijuana for Transportation, CAL. HEALTH & SAFETY CODE § 11379(a)

US v. Nunez-Segura, [566 F. App'x 389](#) (5th Cir. May 6, 2014) (unpub.)

Not a Drug Trafficking Offense

Possession for Sale of a Controlled Substance, CAL. HEALTH & SAFETY CODE § 11378

US v. Lopez-Cano, [516 F. App'x 350](#) (Mar. 11, 2013) (unpublished)

Not Drug Trafficking Offense or Aggravated Felony

Selling a Substance in Lieu of a Controlled Substance, CAL. HEALTH & SAFETY CODE § 11355

Contact Attorneys: Anne Berton and Mike Gorman

Not a Drug Trafficking Offense and Not an Aggravated Felony under 2L1.2

Selling or Transporting Marijuana, CAL. HEALTH & SAFETY CODE § 11360(a) (1989)

US v. Santillan-Hernandez, [432 F. App'x 288](#) (5th Cir. 2011) (unpub.)

Not an Aggravated Felony

Selling/Transporting Controlled Substance, Possessing Controlled Substance for Sale CAL. HEALTH & SAFETY CODE §§ 11351, 11352, 11378, 11379 (1999)

Contact Attorneys: David & Kristin Kimmelman

Not a Drug Trafficking Offense (court granted objection and applied +4)

Unlawful Transport, Import, Sale, Administration or Gift of Controlled Substance, CAL. HEALTH & SAFETY CODE § 11352

US v. Gutierrez-Ramirez, [405 F.3d 352](#) (5th Cir. 2005)

Not a Drug Trafficking Offense under §2L1.2 (b)(1)(A)(I)

Colorado

Conspiracy to Distribute or Manufacture a Controlled Substance, COLO. REV. STAT. §18-18-405(1)(a)

Contact Attorney: Reggie Trejo

Not a Drug Trafficking Offense

Distribution of a Controlled Substance, COLO. REV. STAT. § 18-18-405(1)

Not Categorically Drug Trafficking Offense or Aggravated Felony

1. Contact Attorneys: Reggie Trejo and Kristin Kimmelman (2014 case with 1998 conviction; AUSA conceded)
2. Contact: David Kimmelman or Kristin Kimmelman (2012 case; Court imposed +4 felony enhancement instead of the recommended +16)

Second State Conviction for Possession, COLO. REV. STAT. §18-1.3-501(1)
US v. Sanchez-Villalobos, No.04-50732, 412 F.3d 572 (5th Cir. 2005)
Aggravated Felony (No longer an aggravated felony - see *Carachuri-Rosendo v. Holder*, No. 09-60 , 130 S. Ct. 2577 (2010))

Florida

Delivery of Controlled Substance, FLA. STAT. § 893.13(1)(a)(1)
Sarmientos v. Holder, [742 F.3d 624](#) (5th Cir. 2014)⁸
Not an Aggravated Felony

Trafficking in Methamphetamine, FLA. STAT. § 893.13(1)(f)
US v. Sarabia-Martinez, [779 F.3d 274](#) (5th Cir. 2015)
Not a Drug Trafficking Offense under § 2L1.2(b)(1)(A)

Georgia

Possession With Intent to Distribute Marijuana, GA. CODE ANN. § 16-13-31(j)(1)
Moncrieffe v. Holder, [133 S. Ct. 1678](#) (2013)
Not an Aggravated Felony (if small amount or no remuneration)

Kansas

Possession with Intent to Sell, etc. Meth, KAN. STAT. § 65-4161(a) (2002)
Contact Attorneys: Joseph Cordova, Kristin Davidson, & Katherine Godin
Not a Drug Trafficking Offense (Government conceded)

New Mexico

Conspiracy to Commit Trafficking of a Controlled Substance, N.M. STAT. § 30-31-20
Contact Attorney: Anne Berton (contact Kristin Kimmelman)
Not a Drug Trafficking Offense under 2L1.2(b)(1)(B) (b/c could have been by “barter or giving away of”)

Criminal Solicitation to Commit Trafficking, N.M. STAT. § 30-31-20(A)(2) (1978)
Contact Attorney: Rita Rodriguez
Not a Drug Trafficking Offense

Distribution of Marijuana (Cause the Transfer) and Criminal Solicitation to Commit Distribution of Marijuana, N.M. STAT. § 30-31-22(A)(1)(C)
Contact Attorney: Anne Berton and Mike Gorman
Not a Drug Trafficking under 2L1.2(b)(1)(B)

⁸ *But see US v. Juarez-Velazquez*, [577 F. App'x 254](#) (5th Cir. Aug. 5, 2014) (unpub.) (finding was drug trafficking offense on plain error review).

New York

Attempted Criminal Sale of Controlled Substance, N.Y. Penal Law § 220.39

Contact Attorney: Rita Rodriguez

Not an Aggravated Felony/Four Level Enhancement Imposed

Criminal Sale of Cocaine in the Second Degree, N.Y. PENAL LAW § 220.41(2003)

United States v. Davila, [381 F. App'x 413](#) (5th Cir. 2010) (unpub.)

Not an Aggravated Felony (Note: offense may warrant a 4 level enhancement if sentence was entirely suspended based on *US v. Rodriguez-Parra*.)

North Carolina

Possession of Marijuana With Intent To Sell, N.C. GEN. STAT. § 90-95

US v. Simmons, No. 08-4475, 649 F.3d 237 (4th Cir. 2011)

Not a Predicate Felony Conviction under the CSA based on Hypothetical Criminal History Enhancement

Transporting Marijuana, N.C. GEN. STAT. § 90-95(h)

US v. Lopez-Salas, [513 F.3d 174](#) (5th Cir. 2008)

Not a Drug Trafficking Offense Under 2L1.2 (b)(1)(A)

Oklahoma

Trafficking in a Controlled Substance, OKLA. STAT. tit. 63, § 2-415

US v. Rauda-Constantino, [No. 15-40850](#), 2016 WL 1566544, 2016 U.S. App. LEXIS 6986 (5th Cir. Apr. 18, 2106) (unpub.)

Not a Drug Trafficking Offense (*Shepard* documents narrowed to simple possession; did not resolve whether alternative ways to violate statute were alternative elements or means)

South Carolina

Trafficking in Cocaine, S.C. CODE ANN. § 44-53-370 (E)(2)

Contact Attorney: Joseph Cordova

Not an Aggravated Felony/Four Level Enhancement Imposed

Texas

Delivery of a Controlled Substance, TEX. HEALTH & SAFETY CODE § 481.112

1. **Not a Drug Trafficking Offense under § 2L1.2(b)(1)(A) & (B)⁹**
US v. Gonzalez, [484 F.3d 712](#) (5th Cir. 2007)
US v. Morales-Martinez, [496 F.3d 356](#) (5th Cir. 2007)
2. **Not an Aggravated Felony**
US v. Ibarra-Luna, [628 F.3d 712](#) (5th Cir. 2010)
3. **Not a §4B1.2 Controlled Substance Offense**
US v. Hinkle, [832 F.3d 569](#) (5th Cir. 2016) (statute indivisible, and “offer to sell” does not meet CSO definition; note that it does meet the §2L1.2 DTO definition)

Knowing and Intentional Delivery of Cocaine, TEX. PENAL CODE ANN. § 481.112(a)
US v. Price, No. 07-40040, 516 F.3d 285 (5th Cir. 2008)

Not a Drug Trafficking Offense 2K2.1(a)(2) but may apply under 2L1.2(b)(1)(A)(i)

Possession of a Controlled Substance, TEX. HEALTH & SAFETY CODE ANN. § 481.115
US v. Estrada-Mendoza, [475 F.3d 258](#) (5th Cir. 2007)

Not an Aggravated Felony

Possession with Intent to Deliver, TEX. HEALTH & SAFETY CODE § 481.112(a)
US v. Flores-Alcorta, 998 F. Supp. 2d 537 (S.D. Tex. Feb. 5, 2014)

Not a Drug Trafficking Offense

Possession of Marijuana, 2,000 lbs. or less but over 50 lbs., TEX. HEALTH & SAFETY CODE ANN. § 481.12(b)(5)
Arce Vences v. Mukasey, [512 F.3d 167](#) (5th Cir. 2007)

Not an Aggravated Felony

Second State Conviction for Possession, TEX. HEALTH & SAFETY CODE ANN. § 481.115
Carachuri-Rosendo v. Holder, [560 U.S. 563](#) (2010)

US v. Andrade-Aguilar, [570 F.3d 213](#) (5th Cir. 2009)

Not an Aggravated Felony

⁹ For Illegal Reentry Offenses Committed on or after November 1, 2008, Offer to Sell under 2L1.2, Application Note 1(B)(iv) is a Drug Trafficking Offense. See *US v. Garcia-Arellano*, [522 F.3d 477](#) (5th Cir. 2008).

Utah

**Attempted Distribution of a Controlled Substance (Arrange to Distribute), UTAH
CODE ANN. § 58-37-8(1)(a)(ii)
Contact Attorney: Anne Berton and Mike Gorman
Not Drug Trafficking under 2L1.2(b)(1)(A)**

U.S. Code

**Using a Telephone to Facilitate the Commission of a Narcotics Offense, 21 U.S.C. §
843(b)
US v. Henao-Melano, [591 F.3d 798](#) (5th Cir. 2009)
Some Conduct Not Drug Trafficking Under 2L1.2(b)(1)(A)(I) But Issue Not
Adequately Preserved Here**

GENERAL

**Prior “Adult” Offense Committed While Under 18 Unscorable if Older Than 5 Years,
U.S.S.G. § 4A1.2(d)(2)(B)
US v. Trejo-Martinez, [477 F. App’x 278](#) (5th Cir. 2012) (unpub.)
No Criminal History Points assessed for prior offense committed while under 18 and adult
sentence imposed more than 5 years prior to commencement of instant offense. Thus, a 12
level enhancement imposed instead of 16 for prior crime of violence.**