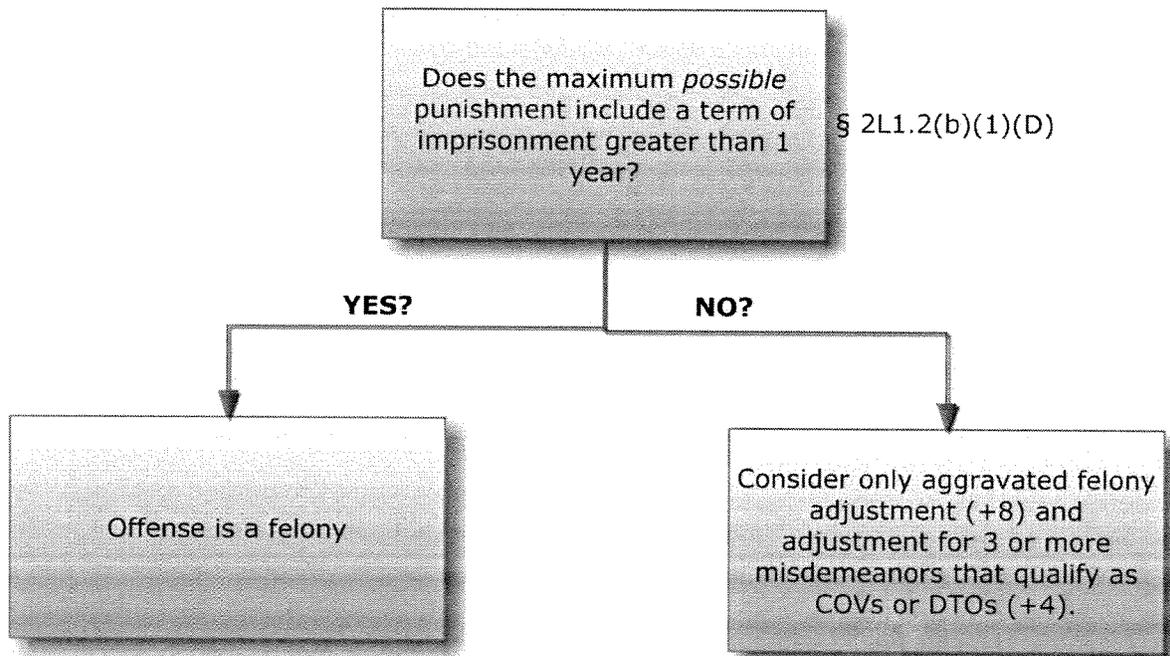
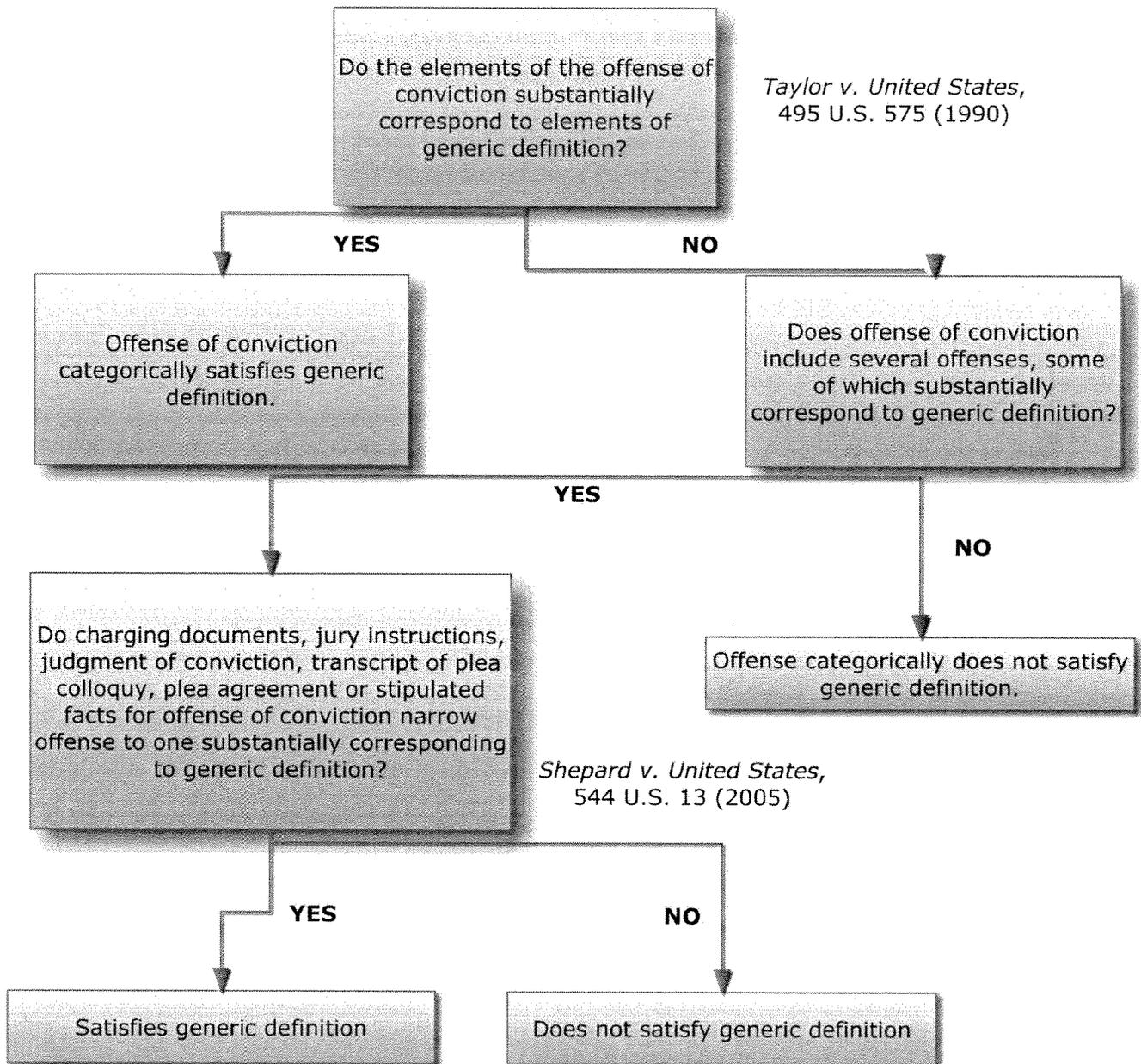


## Felony (+4)



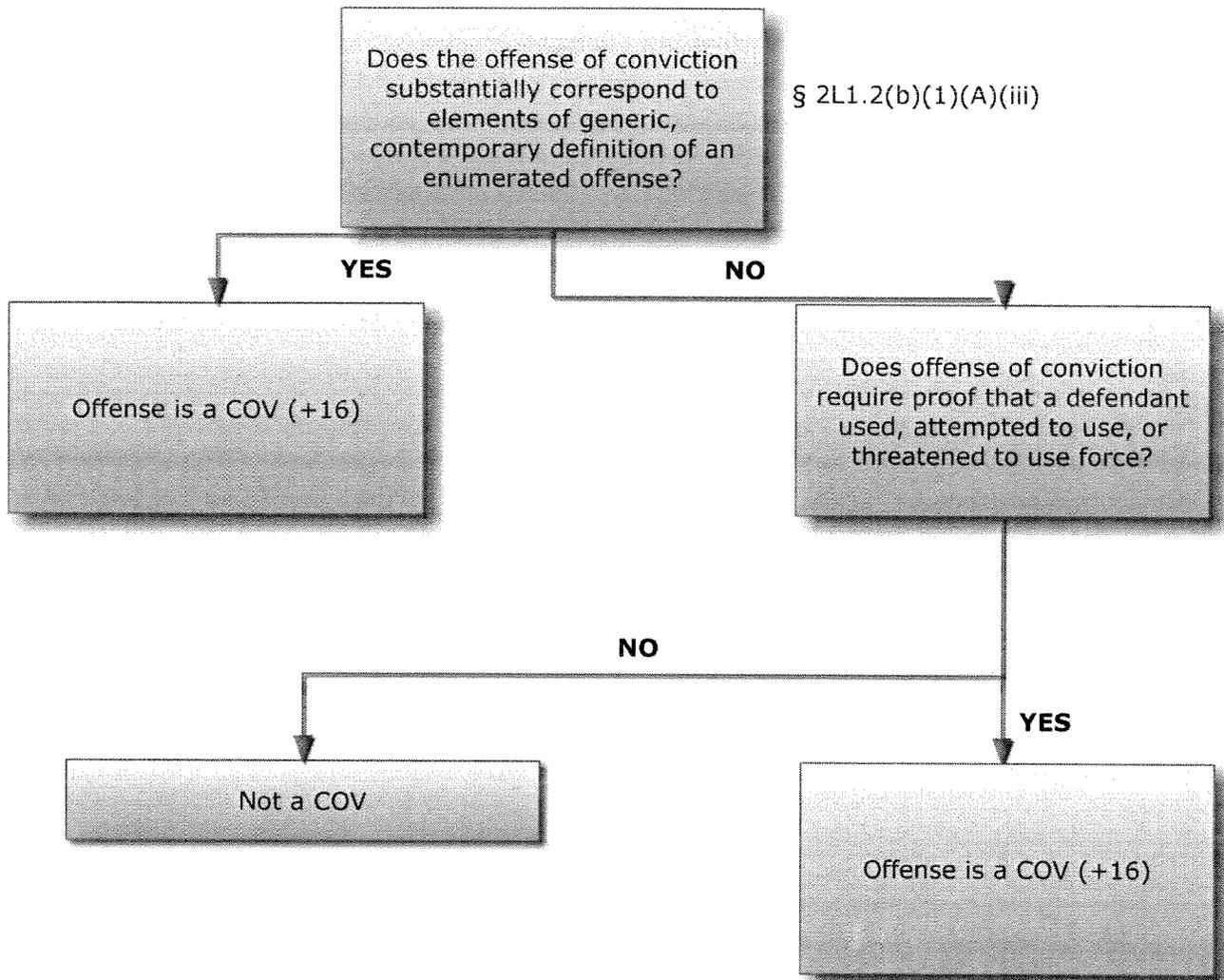
"Felony" means any federal, state, or local offense punishable by imprisonment for a term exceeding one year. U.S.S.G. § 2L1.2 (Application Note 2).

# Categorical/Modified Categorical Approach



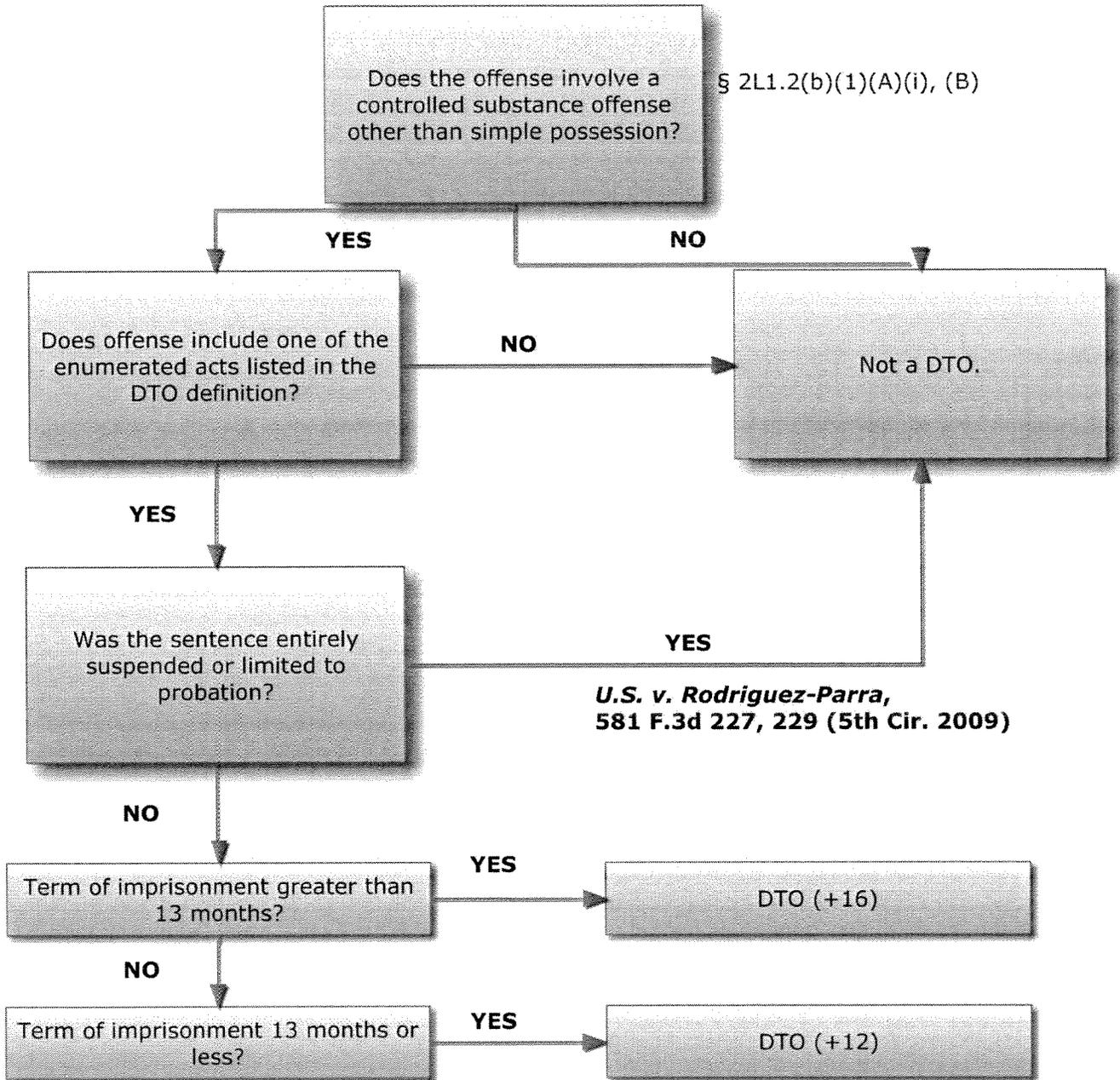
The generic definition is the statutory or Guidelines definition necessary for the enhancement. If the offense of conviction is broader than the generic definition, including only some offenses satisfying the generic definition, then it is characterized as a divisible offense. The narrowing process using approved documents applicable to the conviction represents the modified categorical approach. The facts of the specific offense are largely irrelevant to this analysis. Remember the Government must prove that a particular enhancement applies. The defense need only establish doubt as to whether an enhancement applies.

# Crime of Violence (+16)



"Crime of violence" means any of the following offenses under federal, state, or local law: [1] murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses (including where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced), statutory rape, sexual abuse of a minor, robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, or [2] any other offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another U.S.S.G. § 2L1.2 (Application Note 1(B)(iii)).

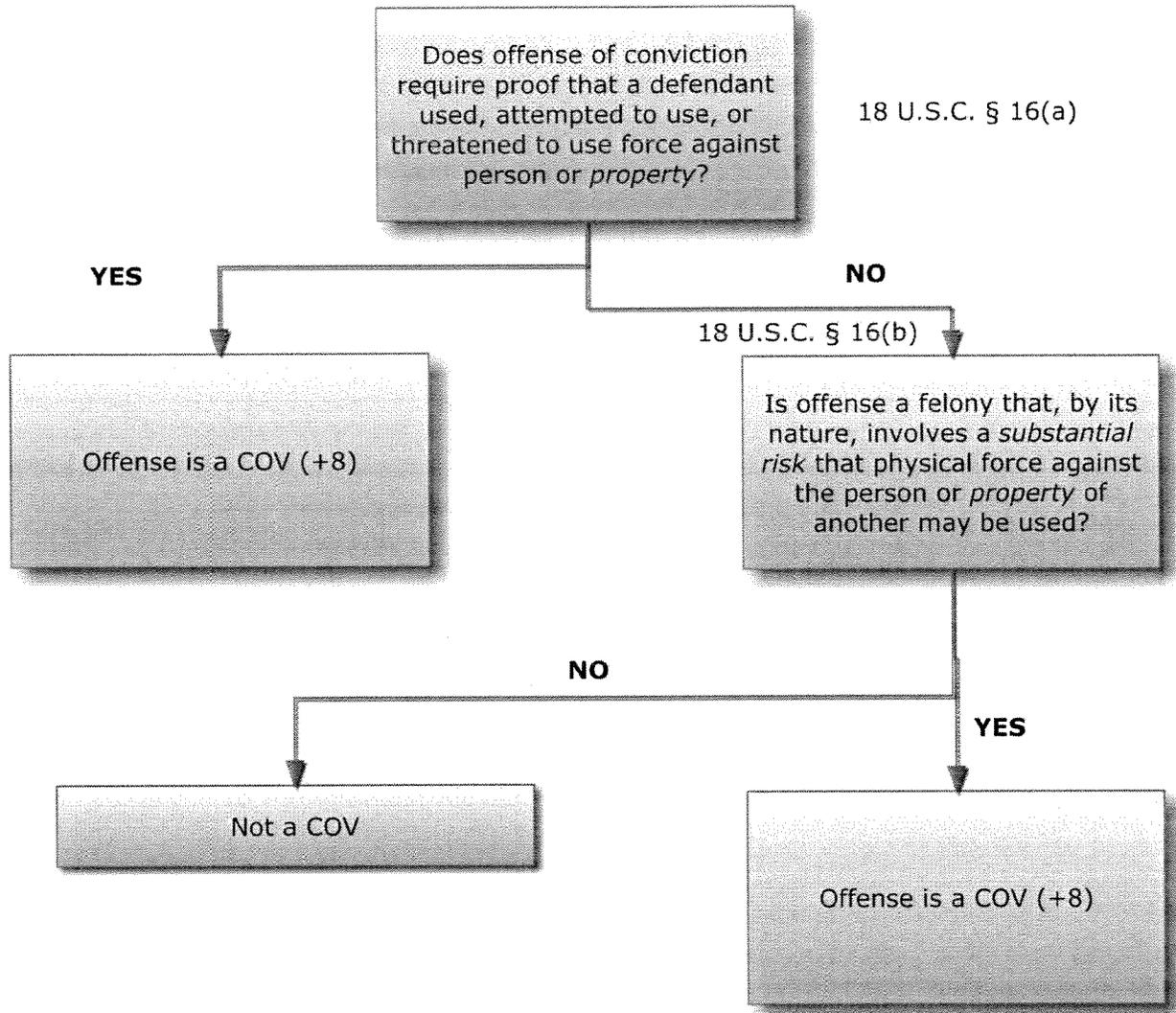
## Drug Trafficking Offense (+12 or +16)



*U.S. v. Rodriguez-Parra,*  
581 F.3d 227, 229 (5th Cir. 2009)

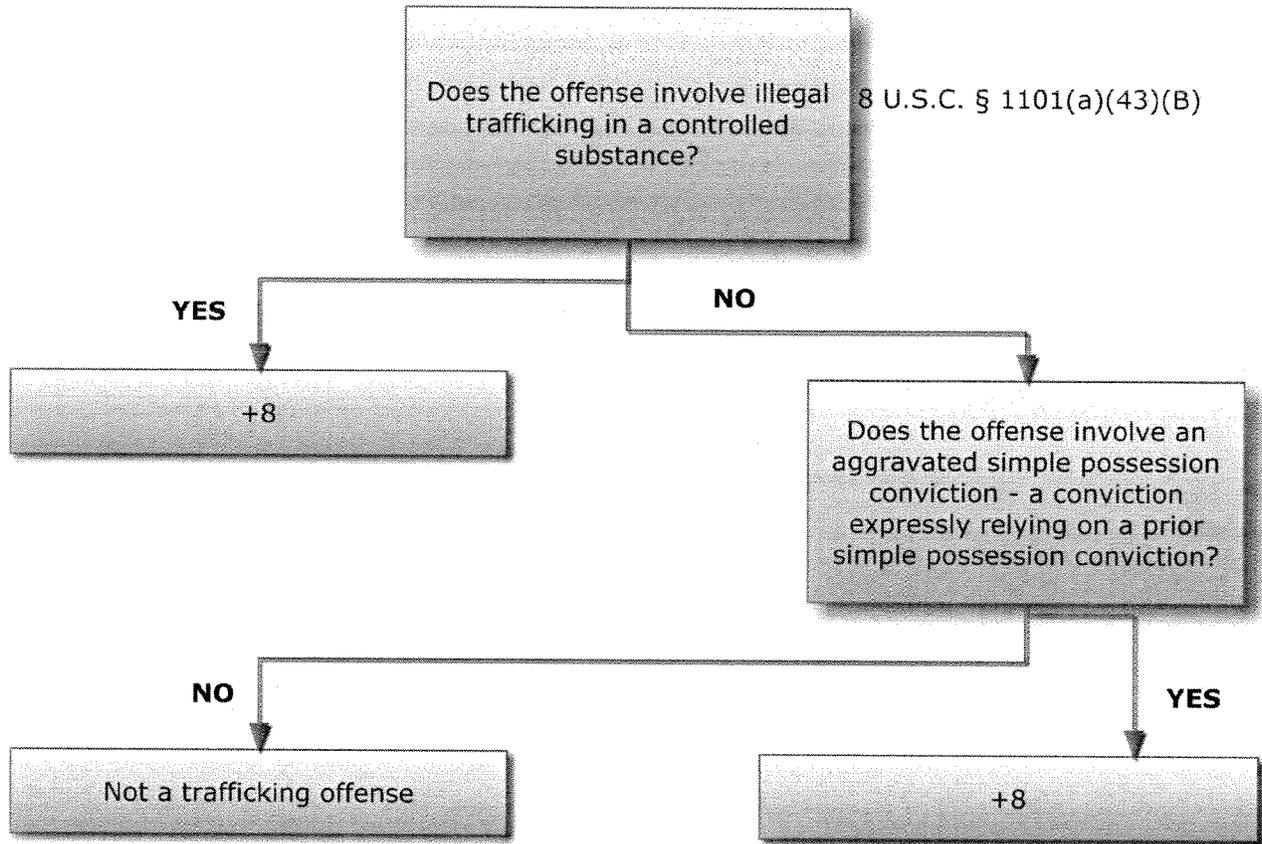
"Drug trafficking offense" means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of, or offer to sell a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense. U.S.S.G. § 2L1.2 (Application Note 1(B)(iv)).

## Crime of Violence (+8)



Section 2L1.2 refers to the aggravated felony definition of 8 U.S.C. § 1101(a)(43), which incorporates the COV definition of 8 U.S.C. § 16. The aggravated felony "crime of violence" is substantially broader than the 16-level COV definition because (1) it adds force against property to the elements analysis and (2) employs a broad "substantial risk" of force analysis (also directed to persons or property) that is not limited to literal elements of the offense. The Supreme Court discusses both concepts in *Leocal v. Ashcroft*, 543 U.S. 1 (2004).

## Illicit Trafficking Offense (+8)



Section 2L1.2 refers to the aggravated felony definition of 8 U.S.C. § 1101(a)(43), which includes illicit trafficking in a controlled substance. This aggravated felony variant of the DTO enhancement includes aggravated simple possession convictions and any drug trafficking offense addressed by federal law. The Supreme Court held that possession of a controlled substance does not qualify, *Lopez v. Gonzales*, 549 U.S. 47, 56 (2006), and that a second possession conviction must actually refer to an earlier possession conviction rather than simply counting individual possession convictions, *Carachuri-Rosendo v. Holder*, 130 S. Ct. 2577 (2010).

## Research/Analysis Pointers

	Keep in mind that "crime of violence" is not a uniform term. You will find three different definitions used in the current <i>Guidelines</i> . Make sure any decision you find discusses the appropriate definition.
	As a quick assessment tool, conduct a search using '2L1.2' and 'categorically' in the same sentence as the statute number or state and common name of statute. If the statute has been held to categorically meet the definition you believe might apply, your available arguments are likely limited.
	Remember statutes are frequently amended. Even if a statute has been addressed in precedent, make sure you are dealing with the same version of the statutes. The question of whether an adjustment does or does not apply often turns on an amendment.
	Do not be discouraged by the name given to an offense of conviction. As terrible as an offense may sound, it is the requirements of proof rather than the name that determines whether adjustments apply.
	Do not be discouraged by the conduct underlying a conviction. Those descriptions generally have little relevance to the legal analysis.
	Do not assume that terms or phrases used in state and federal law have the same meaning as the generic definition to which you are comparing that law. Every word used in adjustments, whether residual clause or enumerated offense, must be defined. The same is true of terms appearing in the offense of conviction. Compare plain English definitions, not undefined legal terms or phrases.
	Remember the Government has the burden of proof. Regardless of how convoluted the analysis may appear, you need only create doubt in the mind of the sentencing court as to whether the adjustment is appropriate.
	Address only the portion of criminal statutes referenced by the judgment. It is better to have the options of a broader statute, but a specific reference to a subsection obviates the need to address the entirety of the statute.
	When addressing whether a particular state law qualifies as an enumerated offense, search the citation under black letter law and identify whether it is a minority view of the law in any way. If a particular law is an anomaly, it likely does not qualify as the generic definition.
	When reading decisions, verify whether the court addressed all or a portion of the statute or law you are considering. If the decision addressed a narrower portion of the law you are considering, then there may well be arguments left for you. Identify the scope of the offense of conviction as well as the scope of any decision you may reference.