

CRIMES OF VIOLENCE UNDER § 2L1.2 Updated 9/4/13

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 U.S.S.G. §2L1.2(b)(1)(A)(ii). This list will be updated on a monthly basis. It will attempt to include the most recent 5th 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. 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 will be included as well as a few cases from other districts and some important drug cases. *For additions or corrections, please contact: [Kristin Kimmelman@fd.org](mailto:Kristin.Kimmelman@fd.org) or [Lupe Maldonado@fd.org](mailto:Lupe.Maldonado@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 5th Circuit decisions and district court decisions in the Western District. 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 objections or you may want to object to preserve the issue or challenge the court's reasoning.

Note: On March 15, 2013, the Fifth Circuit created a new "plain-meaning" approach for non-common law enumerated offenses. *United States v. Cabecera Rodriguez*, [No. 11-20881](#), ___ F.3d ___, 2013 WL 1092568, 2013 U.S. App. LEXIS 5290 (5th Cir. Mar. 15, 2013). Any pre-*Cabecera Rodriguez* case addressing an enumerated crime of violence that is not defined at common law, such as sexual abuse of a minor or statutory rape, is potentially abrogated and no longer clear precedent.

Alabama

Alaska

Arizona¹

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

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).

Aggravated Assault Serious Physical Injury, ARIZ. REV. STAT. ANN § 13-1204 (A)(1)
Contact Attorney: Joseph Cordova
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

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, No. 11-50090, 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
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

Burglary, CAL. PENAL CODE § 459²
Descamps v. US, [No. 11-9540](#), 133 S. Ct. 2276 (2013)
Not a Crime of Violence

Child Abuse, CAL. PENAL CODE § 273a(a)
US v. Rodriguez-Sandoval, No. EP-06-CR-1334-PRM, 2006 WL 3030779 (W.D. Tex. Oct. 16, 2006)
Contact Attorney: Marie Romero-Martinez
Not a Crime of Violence/Not an Aggravated Felony/Four Levels Imposed

Criminal Terroristic Threats, CAL. PENAL CODE § 422
US v. De La Rosa-Hernandez, 264 F. App'x 446 (5th Cir. 2008) (unpub.)
US v. Cruz-Rodriguez, No. 09-40500, 2010 WL 4299274 (5th Cir. 2010)
Not a Crime of Violence

False Imprisonment, CAL. PENAL CODE §§ 236 AND 237
Contact Attorney: Horatio Aldredge
Not a Crime of Violence/Not an Aggravated Felony

Kidnapping, CAL. PENAL CODE § 207(a)
US v. Moreno-Flores, No. 07-50833, 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, No. 04-40447, 157 F. App'x 703 (5th Cir. 2005) (unpublished)
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, No. 07-51344, 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, No. 01-41171, 325 F.3d 638 (5th Cir. 2003)
Not a Crime of Violence/ Not an Aggravated Felony

Sexual Battery, CAL. PENAL CODE § 243.4 (1998)³
US v. Bonilla-Mungia, No. 03-41751, 422 F.3d 316 (5th Cir. 2005)
Possibly Not a Crime of Violence/Remanded

² 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).

³ 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).

Taking Vehicle without Consent, CAL. PENAL CODE § 10851(a)
Gonzalez v. Dueñas-Alvarez, 127 S.Ct. 815 (2007)
Aggravated Felony

Colorado

Attempted Second Degree Kidnapping, COLO. REV. STAT. § 18-3-302(1)
US v. Cervantes-Blanco, No. 06-50738, 504 F.3d 576 (5th Cir. 2007)
Contact Attorney: Margarito Rodriguez
Appellate Attorney: Judy Madewell
Not a Crime of Violence/Appealed/Remanded

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

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

Menacing, COLO. REV. STAT. § 18-3-206

1. *US v. Landeros-Arreola*, No. 00-50512, 260 F.3d 407 (5th Cir. 2001)
Not an Aggravated Felony
2. *But see US v. Bencomo-Hinojos*, EP-10-CR-811-PRM, 2011 WL 3666716 (W.D. Tex. Feb. 23, 2011) (finding is Crime of Violence)

Misdemeanor Assault, COLO. REV. STAT. § 18-3-204
Contact Attorney: Anne Berton (contact Kristin Kimmelman)
Not a Crime of Violence

Misdemeanor Third Degree Sexual Assault, COLO. REV. STAT. § 18-3-404
Contact Attorney: Edgar Holguin
Not a Crime of Violence

Misdemeanor Unlawful Sexual Contact, COLO. REV. STAT. § 18-3-404
Contact Attorney: Marie Romero-Martinez
Appellate Attorney: Carolyn Fuentes
Government conceded Not a Crime of Violence

Trespass of An Automobile, COLO. REV. STAT. § 18-4-502 (2006)
US v. Portillo-Covos, No. 09-50061, 373 Fed.Appx. 476 (5th Cir. 2010)(unpub.)
Contact Attorneys: Carolyn Fuentes, Selena Solis, and Mike Gorman
Not an Aggravated Felony

Connecticut

Delaware

District of Columbia

Florida

Aggravated Battery, FLA. STAT. § 784.045

1. *US v. Gonzalez-Chavez*, No. 04-40173, 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. Insaugarat*, No. 02-40917, 378 F.3d 456 (5th Cir. 2004) **Not a Crime of Violence**

Battery, FLA. STAT. ANN. § 784.03(1)(a), (2) (2003) *Johnson v. US*, No. 08-6925, 130 S. Ct. 1265 (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. Rodriguez-Lopez*, No. 11-50864, 2012 WL 2864523 (5th Cir. 2012) (unpub.)
Contact Attorney: Molly Roth
Appellate Attorney: Judy Madewell
2. *US v. Gomez-Guerra*, No. 05-41789, 485 F.3d 301 (5th Cir. 2007)
FLA. STAT. §810.02(3)(1995)
3. Contact Attorney: Erik Hanshew
Appellate Attorney: Judy Madewell
Gov't conceded at appeal not a COV
4. 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**

DUI/Manslaughter and DUI/Bodily Injury, FLA. STAT. ANN. § 316.193(3)(c)(2) & (3) *US v. Valenzuela*, No. 03-20395, 389 F.3d 1305 (5th Cir. 2004) **Not a Crime of Violence**

Possession of a Firearm by a Felon, FLA. STAT. ANN. § 790.23(1)
US v. Sanchez, No. 11-40139, 2012 WL 89956 (5th Cir. 2012) (unpub.)
Aggravated Felony (under plain error review)

Throwing a Deadly Missile, FLA. STAT. ANN. § 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, [No. 11-51139](#), ___ F.3d ___, 2013 WL 173425, 2013 U.S. App. LEXIS 1387(5th Cir. 2013)
Not Crime of Violence

Family Violence Battery, GA. CODE ANN. § 16-5-23.1 (f)
US v. Lopez-Hernandez, No. 02-21078, 112 F. App'x 984 (5th Cir. 2004) (unpub.)
Not a Crime of Violence

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, No. 09-50513, 2010 WL 3633061 (5th Cir. Sept. 21, 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. Hermesmeyer & 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*, No. 04-40309, 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. *US v. Jose Reyes-Vasquez*, A-05-CR-192-SS (§ 12-4(a) (1986))
 Contact Attorney: Bill Ibbotson
6. *US v. Hernandez-Zavala*, EP-06-CR-275-FM (§12-4(b)(1))
 Contact Attorney: Rebecca Reyes (contact Kristin Kimmelman)

Aggravated Battery/Peace Officer/Fireman

US v. Diaz-Cortez, No. 10-40272, 2011 WL 4601030 (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

Iowa

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

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

Not a Crime of Violence

Going Armed with Intent, IOWA CODE ANN. § 708.8
Contact Attorney: Reginaldo Trejo
Not a Crime of Violence

Misdemeanor Serious Domestic Abuse Assault, IOWA CODE ANN. §§ 236.2(2), 708.1 & 708.2A
US v. Favela-Masuca, No. 06-40607, 247 F. App'x 464 (5th Cir. 2007) (unpub.)
Not an Aggravated Felony

Kansas

Aggravated Battery, KAN. STAT. ANN. § 21-3414(a)(1)(C)
Larin-Ulloa v. Gonzalez, No. 03-60721, 462 F.3d 456 (5th Cir. 2006)
Not an Aggravated Felony

Aggravated Sexual Battery, KAN. STAT. ANN. § 21-3518
US v. Matute-Galdamez, No. 03-41728, 111 F. App'x 264 (5th Cir. 2004) (unpub.)
Not a Crime of Violence

Attempted Aggravated Sexual Battery, KAN. STAT. ANN. § 21-3518
US v. Meraz-Enriquez, No. 04-40607, 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

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*, No. 04-30247, 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 § 750.110
Contact Attorney: Rebecca Reyes and Bruce Weathers
Not a Crime of Violence/ Not an Aggravated Felony
2. MICH. COMP. LAWS § 750.110a(3)
Molina-Ramirez v. Holder, No. 09-60070, 362 F. App'x 387 (5th Cir. 2010) (unpub.)
Aggravated Felony

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

Minnesota

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

Fourth Degree Criminal Sexual Conduct, MINN. STAT. § 609.345(1)(C)
US v. Rosas-Pulido, No. 06-41223, 526 F.3d 829 (5th Cir. 2008)
Not a Crime of Violence

Terroristic Threats, MINN. STAT. § 609.713 (2000)
US v. Naranjo-Hernandez, No. 03-41081, 133 F. App'x 96 (5th Cir. 2005) (unpub.)
Not Crime of Violence

Mississippi

Missouri

Sexual Assault, MO. REV. STAT. § 566.040(1)
US v. Sarmiento-Funes, No. 03-40741, 374 F.3d 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*, No. 10-60798, 667 F.3d 622 (5th Cir. 2012)
Not Aggravated Felony (did not satisfy rape definition under aggravated felony)

Nebraska

Manslaughter, NEB. REV. STAT. § 28-305 (1999)
US v. Ramos-Guerrero, No. 06-41593, 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, No. 09-50682, 2010 WL 4269462 (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

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

Third Degree Aggravated Assault, N.J. STAT. ANN. § 2C:12-1b(7)
US v. Martinez-Flores, [No. 11-41375](#), ___ F.3d ___, 2013 WL 3064797, 2013 U.S. App. LEXIS 12522 (5th Cir. 2013)
Not Crime of Violence

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*, No. 10-51011, 444 F. App'x 828 (5th Cir. 2011)
Contact Attorneys: Liz Rogers & Donna Coltharp (appellate)
Not a Crime of Violence

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

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

Attempted Manslaughter, N.Y. PENAL LAW § 125.15
US v. Bonilla, No. 06-40894, 524 F.3d 647 (5th Cir. 2008)
Not a Crime of Violence

Criminal Possession of Stolen Property in the Third Degree, N.Y. PENAL LAW § 165.50
Burke v. Mukasey, No. 06-60710 509 F.3d 695 (5th Cir. 2007)
Aggravated Felony

Second Degree Assault, N.Y. PENAL LAW § 120.05
Contact Attorney: Santiago Hernandez and Bruce Weathers
Not a Crime of Violence/Not an Aggravated Felony

North Carolina

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**

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, No. 08-41192, 344 Fed.Appx. 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, [No. 11-50895](#); 2012 U.S. App. LEXIS 23798; 2012 WL 5839153 (5th Cir. 2012) (unpublished)

Not a Crime of Violence, plain error

First Degree Manslaughter, OKLA. STAT. TIT. 21, § 711(1)

US v. Gutierrez-Salinas, No. 06-41346, 257 F. App'x 448 (5th Cir. 2007) (unpub.)

Not a Crime of Violence

Kidnapping, OKLA. STAT. TIT. 21, § 741

US v. Najera-Mendoza, No. 11-50187, 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, No. 08-40292, 562 F.3d 683 (5th Cir. 2009) (§ 2706(a))
United States v. Martinez-Paramo, 380 F.3d 799 (5th Cir. 2004)
Not Crime of Violence

Rhode Island

South Carolina

South Dakota

Tennessee

Aggravated Burglary, TENN. CODE ANN. § 39-14-403
US v. Herrera-Montes, No. 06-41426, 490 F.3d 390 (5th Cir. 2007)
Not a Crime of Violence

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 with a Deadly Weapon, TEX. PENAL CODE ANN. § 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 ANN. §22.02
Not a Crime of Violence

1. *US v. Mendez-Rubi*, No. 10-10453, 2011 WL 3628876 (5th Cir. 2011) (§ 22.02(a)(2)(A) not aggravated felony COV under § 16(a))
2. *US v. Antuna-Moran*, No. 06-40103, 488 F.3d 1048 (5th Cir. 2007)
3. *US v. Fierro-Reyna*, No. 05-51198, 466 F.3d 324 (5th Cir. 2006)

Assault

1. TEX. PENAL CODE ANN. § 22.01(a)(1) (misd)
US v. Villegas-Hernandez, No. 05-40988, 468 F.3d 874 (5th Cir. 2006)
US v. Davila-Solis, No. 06-40826, 217 F. App'x 402 (5th Cir. 2007) (unpub.)
Not a Crime of Violence/ Not an Aggravated Felony

2. TEX. PENAL CODE ANN. § 22.01(b)(2)
US v. Chairez-Barrera, No. EP-12-CR-1279-FM
Contact: Manuel Acosta & Kristin Kimmelman
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

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 a Building, TEX. PENAL CODE ANN. § 30.02 (1990), applying 1974 version
US v. Rodriguez-Rodriguez, No. 02-20697, 388 F.3d 466 (5th Cir. 2004)
Not a Crime of Violence

Burglary of Habitation

1. TEX. PENAL CODE ANN. § 30.02(a)(3)
US v. Herrera-Montes, No. 06-41426, 490 F.3d 390 (5th Cir. 2007)⁴
Not a Crime of Violence
2. TEX. PENAL CODE ANN. § 30.02
US v. Cera-Martinez, EP-08-CR-1024-KC
Contact Attorney: Darren Ligon
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
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

⁴ 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)).

Criminal Mischief, TEX. PENAL CODE ANN. § 28.03(a)(3)
US v. Landeros-Gonzalez, No. 01-10066, 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, No. 03-40260, 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, No. 02-20331, 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 ANN. § 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

Engaging in Criminal Activity Involving Burglary of a Motor Vehicle, TEX. PENAL CODE ANN. § 71.02(a)(1)
US v. Aviles, No. 11-20097, 2012 WL 2849497 (5th Cir. 2012) (unpub.)
Aggravated Felony

Engaging in Organized Criminal Activity Involving Vehicle Theft, TEX. PENAL CODE ANN. § 31.03
US v. Blancas-Rosas, No. 10-40679, 2011 WL 409012 (5th Cir. 2011) (unpub.)
Aggravated Felony

Evading Arrest with a Motor Vehicle, TEX. PENAL CODE ANN. § 38.04(b)(1)
US v. Sanchez-Ledezma, No. 10-40451, 630 F.3d 447 (5th Cir. 2011)
Aggravated Felony

Felony Assault, TEX. PENAL CODE ANN. §§ 22.01(a)(1) & (b)(2)
US v. Cano-Esparza, No. 06-41020, 243 F. App'x15 (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*, No. 01-41029, 302 F.3d 308 (5th Cir. 2002)
 - b. *US v. Vasquez-Torres*, No. 04-41172, 134 F. App'x 648 (5th Cir. 2005) (unpub.)
 - c. *US v. Andino-Ortega*, No. 09-40498, 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, No. 06-60440, 507 F.3d 357 (5th Cir. 2007)
Aggravated Felony

Intoxicated Assault, TEX. PENAL CODE ANN. § 49.07 (1994)
US v. Vargas-Duran, No. 02-20116, 356 F.3d 598 (5th Cir. 2004)
Not a Crime of Violence

Intoxicated Assault with a Vehicle, TEX. PENAL CODE ANN. § 49.07
Contact Attorney: Anne Berton
Not an Aggravated Felony

Intoxication 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 Shotgun, TEX. PENAL CODE ANN. § 46.05
US v. Rivas-Palacios, No. 00-40508, 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*, No. 03-40490, 393 F.3d 625 (5th Cir. 2004) (§ 36.06(a))
2. *US v. Acuna-Cuadros*, No. 03-20345, 385 F.3d 875 (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))

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

1. *US v. Luciano-Rodriguez*, No. 04-41016, 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*, [No. 10-60763](#), 705 F.3d 207, 212 (5th Cir. 2013)
Not an Aggravated Felony

Theft from a Person, TEX. PENAL CODE ANN. § 31.03⁵
US v. Luna-Montoya, No. 02-41444, 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, No. 10-20433, 2011 WL 1560661 (5th Cir. 2011)
Aggravated Felony

Unauthorized Use of a Motor Vehicle, TEX. PENAL CODE ANN. § 31.07(a)
US v. Armendariz-Moreno, No. 07-40225, 571 F.3d 490 (5th Cir. 2009)⁶
Not an Aggravated Felony

Unlawfully Carrying a Firearm, TEX. PENAL CODE ANN. § 42.02(c)
US v. Hernandez-Neave, No. 01-50059, 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, No. 09-60261, 592 F.3d 681 (5th Cir. 2009)
Aggravated Felony

Unlawful Restraint, TEX. PENAL CODE ANN. §§ 22.01 & 20.01 (1999)
US v. Hernandez-Rodriguez, No. 03-41524, 135 F. App'x 661 (5th Cir. 2005)
Not a Crime of Violence

Utah

Assault of a Peace Officer, UTAH CODE ANN. § 76-5-102.4
US v. Miranda-Garcia, No. 09-11187, 2011 WL 2150326 (5th Cir. 2011)
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)
US v. Andrade-Carrillo, B-10-CR-1250
Contact Attorney: Michael Young
Not Crime of Violence

⁵ Note: Texas theft arguably is not generic theft if the conviction could have been based on deception. *See* Tex. Penal Code § 31.01(4) (providing that consent is not effective if "induced by deception"); *Martinez v. Mukasey*, 519 F.3d 532, 540 (5th Cir. 2008) (holding that fraud is not theft because there is consent even if unlawfully obtained). *But see Nugent v. Ashcroft*, 37 F.3d 162 (3d Cir. 2004) (providing the generic definition of theft as including theft by deception). Contact Natalia Cornelio (SDTX) or Kristin Kimmelman.

⁶*See also US v. Lopez-Solis*, No. 07-51091, 330 F. App'x 497 (5th Cir. 2009); *US v. Reyes-Figueroa*, No. 08-40108, 282 F. App'x 330 (5th Cir. 2009) (unpub.).

Assault to a Police Officer (Class 6 Felony), VA. CODE ANN. § 18.2-57(C)
US v. Rosales-Miranda, No. 10-41120, 434 F. App'x 404 (5th Cir. 2011) (unpub.)
Felony

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, No. 08-10132, 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, No. 04-40176, 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

Residential Burglary, WASH. REV. CODE § 9A.52.025
Contact Attorney: Marina Douenat
Not a Crime of Violence (Four Level Enhancement imposed)

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

Second Degree Manslaughter, WASH. REV. CODE § 9A.32.070(1) (West 1988)
Contact Attorney: Todd Durden and Brad Bogan
Not a Crime of Violence

Third Degree Theft, 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

Wyoming

Possession of a Forged Instrument, Wyo. Stat. Ann. § 6-3-603(a)(i)
US v. Martinez-Valdez, No.10-50154, 2011 WL 1057578 (5th Cir. 2011) (unpub.)
Aggravated Felony

U.S.S.C.

Conspiring to Commit Mail Fraud, Wire Fraud, Bank Fraud, and Money Laundering,
18 USC § 371, 1341, 1343, 1344, 1956(h)
Nijhawan v. Holder, No. 08-495, 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, 8 U.S.C. § 1326(b)(2)
US v. Gamboa-Garcia, No. 09-50513, 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)

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

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, No. 10-577, 132 S. Ct. 1166 (2012)
Aggravated Felony (When the Government’s revenue loss exceeds \$10,000.)

A FEW SELECTED DRUG CASES:

U.S.S.C.

Entirely Suspended Sentence in Drug Trafficking Case
US v. Rodriguez-Parra, No. 08-40708, 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, No. 09-60, 130 S. Ct. 2577 (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, No. 09-20360, 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 No. 05-547, 127 S.Ct. 625 (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

Moncrieffe v. Holder, [No. 11-702](#), ___ U.S. ___, 185 L. Ed. 2d 727, 2013 WL 1729220, 2013 U.S. LEXIS 3313 (Apr. 23, 2013) (GA. CODE ANN. § 15-13-30(j)(1) (2007))

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

Using a Telephone to Facilitate the Commission of a Narcotics Offense, 21 U.S.C. § 843(b)

US v. Henao-Melano, No. 08-41313, 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

California

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

US v. Reyes-Mendoza, No. 10-11119, 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, No. 03-41750, 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 for Sale of a Controlled Substance, CAL. HEALTH & SAFETY CODE § 11378

US v. Lopez-Cano, [No. 11-4142](#), 2103 WL 1151914, 2013 U.S. App. LEXIS 4893 (Mar. 11, 2013) (unpublished)

Not Drug Trafficking Offense or Aggravated Felony

Second State Conviction for Possession, CAL. HEALTH & SAFETY CODE § 11352

US v. Cepeda-Rios, No. 07-50731, 530 F.3d 333 (5th Cir. 2008)

Aggravated Felony (No longer an aggravated felony - see *Carachuri-Rosendo v. Holder*, No. 09-60 , 130 S. Ct. 2577 (2010))

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, No. 10-10742, 432 F. App'x 288 (5th Cir. 2011) (unpub.)

Not a an Aggravated Felony

Unlawful Transport, Import, Sale, Administration or Gift of Controlled Substance,
CAL. HEALTH & SAFETY CODE § 11352
US v. Gutierrez-Ramirez, No. 03-41742, 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)
Contact: David Kimmelman and Kristin Kimmelman
Not Categorically Drug Trafficking Offense or Aggravated Felony (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))

New Mexico

Conspiracy to Commit Trafficking of a Controlled Substance, N.M. STAT. § 30-31-20
Attorney: Anne Berton
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)

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, No. 08-60530, 381 Fed.Appx. 413 (5th Cir. 2010)
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, No. 06-41637, 513 F.3d 174 (5th Cir. 2008)

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

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. **Drug Trafficking Offense Under § 2L1.2(b)(1)(B)**
US v. Garcia-Arellano, No. 06-11276, 522 F.3d 477 (5th Cir. 2008)
2. **Not a Drug Trafficking Offense under § 2L1.2(b)(1)(A)& (B)**⁷
US v. Gonzalez, No. 05-41221, 484 F.3d 712 (5th Cir. 2007)
3. **Not a Drug Trafficking Offense Under §2L1.2 (b)(1)(A)**
US v. Morales-Martinez, No. 06-40467, 496 F.3d 356 (5th Cir. 2007)
4. **Not an Aggravated Felony**
US v. Ibarra-Luna, No. 09-40768, 628 F.3d 712 (5th Cir. 2010)
US v. Fuentes, No. 06-20325, 245 F. App'x 358 (5th Cir. 2007) (unpub.)

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)⁸

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 of Marijuana, 2,000 lbs. or less but over 50 lbs., TEX. HEALTH & SAFETY CODE ANN. § 481.12(b)(5)

Arce Vences v. Mukasey, No. 06-6003, 512 F.3d 167 (5th Cir. 2007)

Not an Aggravated Felony

⁷ 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.

Second State Conviction for Possession, TEX. HEALTH & SAFETY CODE ANN. § 481.115

Carachuri-Rosendo v. Holder, No. 09-60, 130 S. Ct. 2577 (2010)

US v. Andrade-Aguilar, No. 07-41132, 570 F.3d 213 (5th Cir. 2009)

Not an Aggravated Felony

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)

Virginia

Possession with Intent to Manufacture/Sell Methamphetamine, VA. CODE ANN. § 18.2-248(A)

US v. Flores Jimenez, No. 11-50566, 2012 WL 2579901 (5th Cir. 2012) (unpub.)

Drug Trafficking Offense Under § 2L1.2 (b)(1)(A)(i) (Plain Error Review-Appears to suggest that “Giving” is not drug trafficking)

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, No. 11-11123, 2012 WL 3062154 (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.