

**CATEGORICAL-APPROACH SENTENCING ENHANCEMENTS:  
COVs, DTOs, CSOs, Aggravated Felonies, Violent Felonies (REVISED)<sup>1</sup>  
Updated 1/8/18**

**Advisory:** This list has not been updated since January 8, 2018, due to the significant changes to enhancement definitions and evolving case law. When reviewing offenses and opinions, keep in mind the current categorical approach framework and check for recent developments.

The categorical approach applies to determining whether a defendant’s prior conviction qualifies as an enumerated crime, such as a crime of violence, violent felony, or controlled substances offense. Under the categorical approach, “the court should ignore the particular facts of the case and instead should ask whether the elements of the crime of conviction and the elements of the generic crime are sufficiently similar.” *United States v. Reyes-Contreras*, 910 F.3d 169, 174 (5th Cir. 2018) (en banc) (cleaned up).

**First step: elements v. means.**

The Supreme Court clarified in *Mathis v. United States* that elements “are what the defendant necessarily admits when he pleads guilty” and what the jury had to find if he had gone to trial. 136 S. Ct. 2243, 2248 (2016). When faced with an alternatively phrased statute, the first task is “to determine whether its listed items are elements or means.” *Id.* at 2256. If they are elements, the court should “review the record materials to discover which of the enumerated alternatives played a part in the defendant’s prior conviction, and then compare that element (along with all others) to those of the generic crime.” *Id.* If they are means, then the offense cannot be narrowed. “[I]t is indivisible and must be taken as a whole instead of using the facts of the offense to narrow the statute.” *Reyes-Contreras*, 910 F.3d at 174.

**Second step: compare least culpable act to the enumerated crime.**

Because the categorical approach depends on “what the state conviction necessarily involved, not the facts underlying the case, we must presume that the conviction rested upon [nothing] more than the least of the acts criminalized, and then determine whether even those acts are encompassed by the generic federal offense.” *Moncrieffe v. Holder*, 569 U.S. 184, 190-91 (2013).

This is “not an invitation to apply legal imagination to the state offense; there must be a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime.” *Id.* at 191. The Fifth Circuit takes this a step farther, requiring the defendant or noncitizen to point to a case in which the state courts applied the statute in the nongeneric manner argued. Reliance on the statute’s text alone is not sufficient. *United States v. Castillo-Rivera*, 853 F.3d 218, 223 (5th Cir. 2017) (en banc).

**Residual clauses found unconstitutional.**

The Supreme Court has gradually held residual clauses to be unconstitutionally vague:

- Armed Career Criminal Act’s violent felony residual clause, *Samuel Johnson v. United States*, 135 S. Ct. 2551 (2015); 18 U.S.C. § 924(e)(2)(B);

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<sup>1</sup> This list includes decisions favorable for defendants. For a complete list including unfavorable decisions, contact Kristin\_Kimmelmann@fd.org.

- 18 U.S.C. § 16(b)'s crime of violence residual clause, *Sessions v. Dimaya*, 138 S. Ct. 1204, 1210 (2018);
- 18 U.S.C. § 924(c)'s crime of violence residual clause; *United States v. Davis*, 139 S. Ct. 2319, 2330 (2019).

But even with the residual clause unconstitutional, offenses may be COVs or violent felonies under the force element clause.

**Force element includes indirect application of force.**

For over a decade, the Fifth Circuit held that causation of bodily injury, indirect force, did not establish a force element for purposes of crimes of violence or violent felony definitions. The Fifth Circuit reversed course in November 2018, issuing an en banc decision that overturned or abrogated many cases. *Reyes-Contreras*, 910 F.3d at 187 (collecting cases). It did so citing *United States v. Castleman*, 572 U.S. 167 (2014). Other circuits agree with the Fifth Circuit's new position. *Id.* at 180-81.

In the wake of *Reyes-Contreras*, the Fifth Circuit has already held that Texas robbery and assault have an element of force. *United States v. Gracia-Cantu*, 920 F.3d 252 (5th Cir. 2019) (applying *Reyes-Contreras* to Texas assault family violence); *United States v. Burris*, 920 F.3d 942 (5th Cir. 2019) (applying *Reyes-Contreras* to Texas robbery).

**Force element includes reckless conduct.**

For over a decade, the Fifth Circuit had also held that the “use” of force required that a “defendant intentionally avail himself of that force.” *United States v. Burris*, 920 F.3d 942, 950 (5th Cir. 2019) (quoting *United States v. Vargas-Duran*, 356 F.3d 599, 599 (5th Cir. 2004) (emphasis added)).<sup>1</sup> In *Reyes-Contreras*, 910 F.3d at 183, the Fifth Circuit abrogated that precedent, finding it did not survive the Supreme Court's decision in *Voisine v. United States*, 136 S. Ct. 2272 (2016). In short, “reckless conduct constitutes the ‘use’ of physical force” for the force element. *Burris*, 920 F.3d at 952. Some circuits disagree. *See, e.g., United States v. Begay*, \_\_\_ F.3d \_\_\_, 2019 WL 3884261, at \*4-6 (9th Cir. Aug. 19, 2019).

**The degree of force must at least be “capable of causing physical pain or injury to another person.”**

The degree of force must still be more than common law force of slight, offensive touching. *Burris*, 920 F.3d at 955. It must be force “capable of causing physical pain or injury.” *Id.* (quoting *Curtis Johnson v. United States*, 559 U.S. 133, 140 (2010)). The focus is on “capable”—the potentiality of pain or injury, not any particular degree of likelihood or probability of it. *Id.* (citing *Stokeling v. United States*, 139 S. Ct. 544, 554 (2019)). This “encompasses the force necessary to overcome a victim's resistance.” *Id.* “Even minor uses of force—including hitting, slapping, shoving, grabbing, pinching, biting, and hair pulling—that lead to minor forms of injury, such as a cut, abrasion, or bruise, qualify as ‘physical force’ under *Curtis Johnson*.” *Id.*

This advisory was written on September 4, 2019.

This list was initially 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.<sup>2</sup> The list now includes favorable cases addressing sentencing enhancements applied using the categorical approach, such as crimes of violence under §2L1.2, §4B1.2, and 18 U.S.C. § 924(c); drug trafficking offenses/crimes under §2L1.2 and 18 U.S.C. § 924(c); controlled substance offenses under §4B1.2; violent felonies and serious drug offenses under 18 U.S.C. § 924(e); and aggravated felonies under 8 U.S.C. § 1001(a)(43).

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. Occasionally cases from outside the Western District of Texas and the Fifth Circuit are included. The purpose of this list is to provide attorneys with a quick reference on these categorical-approach sentencing enhancements as well as inform 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 for district court decisions and to indicate if an appeal is pending. Because the initial focus of this list was crimes of violence warranting a 16-level enhancement under former §2L1.2, the majority of cases relate to that enhancement. An effort to include cases addressing other sentencing enhancements began in 2017. *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.

## **Alabama**

## **Alaska**

## **Arizona<sup>1</sup>**

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

Contact Attorney: Louis Correa

**Not a §2L1.2 Crime of Violence**

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<sup>2</sup> 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. US*, 133 S. Ct. 2072, 2078 (2013).

<sup>1</sup>The 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 (9<sup>th</sup> Cir. 2009).

**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 §2L1.2 Crime of Violence/Not an Aggravated Felony/Not a Felony**

**Aggravated Assault on Law Enforcement Officer**  
Contact Attorney: Reggie Trejo  
**Not a §2L1.2 Crime of Violence/Not an Aggravated Felony**

**Aggravated Assault Serious Physical Injury**, ARIZ. REV. STAT. ANN § 13-1204 (A)(1)  
Contact Attorney: Joseph Cordova  
**Not a §2L1.2 Crime of Violence**

**Aggravated Assault**, ARIZ. REV. STAT. ANN § 13-1204  
Contact Attorney: Sergio Garcia  
**Not a §2L1.2 Crime of Violence**

**Aggravated Assault with a Deadly Weapon**, ARIZ. REV. STAT. ANN § 13-1203  
Contact Attorney: Santiago Hernandez (contact Kristin Kimmelman)  
**Not a §2L1.2 Crime of Violence/Not an Aggravated Felony**

**Attempted Aggravated Assault**, ARIZ. REV. STAT. §13-1204 and § 13-1001  
Contact Attorney: Margarito G. Rodriguez  
**Not a §2L1.2 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 Abuse**, ARIZ. REV. STAT. ANN § 13-1404(A)  
Contact Attorneys: Manuel Acosta & Kristin Kimmelman  
**Not a §2L1.2 Crime of Violence**

**Sexual Assault**, ARIZ. REV. STAT. § 13-1406  
Contact Attorney: Christine Kelso (Kristin Kimmelman)  
**Not a §2L1.2 Crime of Violence/Not an Aggravated Felony**

## Arkansas

**Aggravated Assault**, ARK. CODE ANN. § 5-13-204  
*US v. Esparza-Perez*, [681 F.3d 228](#) (5th Cir. 2012)  
**Not a §2L1.2 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. 2005) (unpub.)  
**Not a §2L1.2 Crime of Violence**

**Burglary**, ARK CODE ANN. § 5-39-201(2004)  
Contact Attorney: Todd Durden  
**Not a §2L1.2 Crime of Violence**

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

**Manslaughter**, ARK. CODE § 5-10-104(a)(1)  
*US v. Lobaton-Andrade*, \_\_ F.3d \_\_, [No. 15-41744](#), 2017 WL 543242, 2017 U.S. App. LEXIS 2372 (5th Cir. Feb. 13, 2017)  
**Not a §2L1.2 Crime of Violence** (not manslaughter)

**Residential Burglary**, ARK. CODE § 5-39-201(a)(1)  
*US v. Sims*, [854 F.3d 1037](#) (8th Cir. 2017)  
**Not an ACCA Violent Felony** (not generic burglary)

**Terroristic Threat**, ARK. CODE § 5-13-301(a)(1)  
*US v. Rico-Mejia*, [859 F.3d 318](#) (5th Cir. 2017)  
**Not a §2L1.2 Crime of Violence** (no force element)

## 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 §2L1.2 Crime of Violence (Court sustained PSR objection)**

**Burglary**, CAL. PENAL CODE § 459<sup>3</sup>

1. *Descamps v. US*, [133 S. Ct. 2276](#) (2013)  
**Not a §2L1.2 Crime of Violence**
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)

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<sup>3</sup> 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).

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

Contact Attorney: Marie Romero-Martinez

**Not a §2L1.2 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*, [625 F.3d 274](#) (5th Cir. 2010)

**Not a §2L1.2 Crime of Violence**

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

Contact Attorney: Horatio Aldredge

**Not a §2L1.2 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**

**Inflicting Great Bodily Injury (sentencing enhancement)**, CAL. PENAL CODE § 12022.7(a)

*US v. Chan-Xool*, [No. 16-41667](#), 2017 WL 6554152, 2017 U.S. App. LEXIS 26480 (5th Cir. Dec. 22, 2017) (unpub.)

**Not §4B1.2 Crime of Violence** (force element)

**Kidnapping**, CAL. PENAL CODE §207(a)

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

**Not a §2L1.2 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 §2L1.2 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 §2L1.2 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 §2L1.2 Crime of Violence/Not an Aggravated Felony**

**Sexual Battery**, CAL. PENAL CODE § 243.4 (1998)<sup>4</sup>  
*US v. Bonilla-Mungia*, [422 F.3d 316](#) (5th Cir. 2005)  
**Possibly Not a §2L1.2 Crime of Violence/Remanded**

**Statutory Rape**, CAL. PENAL CODE § 261.5(c) (2014)  
*Esquivel-Quintana v. Sessions*, \_\_\_ U.S. \_\_\_, [137 S. Ct. 1562](#) (2017)  
**Not an Aggravated Felony** (sexual abuse of a minor) (generic federal definition of sexual abuse of a minor requires that the victim be younger than 16)

**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*, [637 F. App'x 797](#) (5th Cir. 2016) (unpub.)  
**Not a §2L1.2 Crime of Violence** (plain error)

## 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 §2L1.2 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 (contact Kristin Kimmelman)  
**Not a §2L1.2 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)  
**Not a §2L1.2 Crime of Violence/Appealed/Remanded**

**Menacing**, COLO. REV. STAT. § 18-3-206

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

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<sup>4</sup> 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. **Not a §2L1.2 Crime of Violence**

Contact Attorneys: Reggie Trejo & Kristin Kimmelman (W.D. Tex. 2014)  
*But see US v. Tavaréz-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 §2L1.2 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)

**Not a §2L1.2 Crime of Violence** (Government concession)

**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 a §2L1.2 Crime of Violence/Vacated & Remanded**

2. Contact Attorney: Edgar Holguin

**Not a §2L1.2 Crime of Violence/Not an Aggravated Felony**



**Aggravated Stalking**, FLA. STAT. § 784.048(4)  
*US v. Insaulgarat*, [378 F.3d 456](#) (5th Cir. 2004)  
**Not a §2L1.2 Crime of Violence**

**Battery**, FLA. STAT. § 784.03(1)(a), (2) (2003)  
*Johnson v. US*, [559 U.S. 133](#) (2010)

**Not an ACCA Violent Felony** (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 §2L1.2 Crime of Violence**

**Burglary**, FLA. STAT. ANN. § 810.02  
**Not a §2L1.2 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 §2L1.2 Crime of Violence**

**Dealing in Stolen Property**, Fla. Stat. § 812.019  
*US v. Sanchez-Rodriguez*, [830 F.3d 168](#) (5th Cir. 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 §2L1.2 Crime of Violence**

**Kidnapping**, FLA. STAT. § 787.01(1)(a)(3)  
*US v. Martinez-Romero*, [817 F.3d 917](#) (5th Cir. 2016)  
**Not a Crime of Violence** (not kidnapping definition and no force element)

**Manslaughter**, FLA. STAT. § 782.07  
*US v. Garcia-Perez*, [779 F.3d 278](#) (5th Cir. 2015)  
**Not a §2L1.2 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 §2L1.2 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 a §2L1.2 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 §2L1.2 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** (plain error review)

**Involuntary Manslaughter**, GA. CODE ANN. § 16-5-3  
Contact Attorney: Marie Romero-Martinez and Mike Gorman  
**Not a §2L1.2 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 §2L1.2 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 an ACCA Violent Felony** (Government conceded at appellate level)

## Illinois

**Aggravated Battery**, 720 ILL. COMP. STAT. § 5/12-4

**Not a §2L1.2 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 §2L1.2 Crime of Violence**

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

Contact Attorney: Selena Solis

Appellate Attorney: Judy Madewell

**Not a §2L1.2 Crime of Violence** (Government conceded on appeal; +4 imposed)

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

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

**Not a §2L1.2 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 §2L1.2 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 §2L1.2 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 an ACCA Violent Felony**

## 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. 2013) (unpub.)

**Not a §2L1.2 Crime of Violence**

**Assault with Intent to Commit Sexual Abuse**, IOWA CODE ANN. § 709.11 (West 2003)<sup>5</sup>

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

**Not a §2L1.2 Crime of Violence**

**Burglary**, Iowa Code § 702.12

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

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

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<sup>5</sup> *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)).

**Going Armed with Intent**, IOWA CODE ANN. § 708.8

Contact Attorney: Reginaldo Trejo

**Not a §2L1.2 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 §2L1.2 Crime of Violence**

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

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

**Not a §2L1.2 Crime of Violence**

**Robbery**, KAN. STAT. § 21-3426 (1999) (repealed 2011)

*US v. Nicholas*, [No. 16-3043](#), 2017 WL 1429788, 2017 U.S. App. LEXIS 7101 (10th Cir. Apr. 24, 2017) (unpub.)

**Not an ACCA Violent Felony** (no force element)

## **Kentucky**

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

Contact Attorney: Reggie Trejo

**Not a §2L1.2 Crime of Violence/Eight Level Enhancement Imposed**

**Misdemeanor 4<sup>th</sup> Degree Assault**, KY. REV. STAT. ANN. § 508.030

Contact Attorney: Clare Koontz (contact Laura Spindler)

**Not a §2L1.2 Crime of Violence** (Government concession)

## **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 §2L1.2 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 §2L1.2 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 §2L1.2 Crime of Violence/Aggravated Felony 8 Level Enhancement Imposed**

**Maine**

**Maryland**

**Robbery**, Common Law

*US v. Wilson*, No. 96-0157 (ESH), 2017 WL 1383644, 2017 U.S. Dist. LEXIS 58592

(D.D.C. Apr. 18, 2017)

**Not an ACCA Violent Felony** (no force element)

**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 §2L1.2 Crime of Violence** (insufficient record)
3. *US v. Holloway*, No. 08-2273, 630 F.3d 252 (1st Cir. 2011)  
**Not an ACCA Violent Felony**

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

1. *US v. Windley*, [864 F.3d 36](#) (1st Cir. 2017)  
**Not ACCA Violent Felony** (force element) (*but see US v. Bernal-Jacinto*, [No. 15-41733](#), 2017 WL 4329726, 2017 U.S. App. LEXIS 18802 (5th Cir. 2017) (unpub.) (finding no clear or obvious error §2L1.2 Crime of Violence))
2. Contact Attorney: Frank Morales  
**Not a §2L1.2 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 §2L1.2 Crime of Violence/Not an Aggravated Felony**  
*But see US v. Carranza-Raudales*, [605 F. App'x 325](#) (5th Cir. 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 §2L1.2 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 §2L1.2 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 a §2L1.2 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 an ACCA Violent Felony** (no 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 §2L1.2 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 §2L1.2 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 §2L1.2 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 §2L1.2 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 §2L1.2 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 §2L1.2 Crime of Violence** (broader than generic attempt)

**Endangering Child Welfare**, N.J. STAT. § 2C:24-4 (1994)

*US v. Solano-Hernandez*, [847 F.3d 170](#) (5th Cir. 2017)

**Not a §2L1.2 Crime of Violence** (sexual abuse of minor)

**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 §2L1.2 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 §2L1.2 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 §2L1.2 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 §2L1.2 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 an ACCA Violent Felony**

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

Contact: Erik Hanshew

**Not an 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 §2L1.2 Crime of Violence/Not an Aggravated Felony**
2. Contact Attorneys: Bianca Rocha Del Rio and Katherine Godin (2014 case, § 120.05(3))  
**Not a §2L1.2 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 §2L1.2 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 §2L1.2 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 §2L1.2 Crime of Violence**

**Assault with Deadly Weapon with Intent to Kill**, N.C. GEN. STAT. § 14-32(c)  
*US v. Taylor*, [No. 15-50909](#), 2017 WL 1239713, 2017 U.S. App. LEXIS 5669 (5th Cir. Apr. 3, 2017) (unpub.)  
*US v. Brown*, No. 09-358 (EGS), 2017 WL 1383640, 2017 U.S. Dist. LEXIS 55860 (D.D.C. Apr. 12, 2017) (unpub.)  
**Not an ACCA Violent Felony** (no force element)

**Breaking and Entering**, N.C. GEN. STAT. § 14-54(a)  
Contact Attorney: Marie Romero-Martinez  
Appellate Attorney: Phil Lynch (contact Donna Coltharp)  
**Not a §2L1.2 Crime of Violence** (Government concession on appeal; +8 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 §2L1.2 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*, 629 F.3d 432 (4th Cir. 2011)  
**Not a §4B1.2 Crime of Violence**

**Robbery**, Common Law  
*US v. Gardner*, [823 F.3d 793](#) (4th Cir. 2016)  
**Not ACCA Violent Felony** (force element)

## 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 §2L1.2 Crime of Violence**

**Burglary**, OHIO REV. CODE § 2911.12  
*US v. Bernel-Aveja*, [844 F.3d 206](#) (5th Cir. 2016)  
**Not a §2L1.2 Crime of Violence** (not generic burglary)

**Involuntary Manslaughter**, OHIO REV. CODE ANN. § 2903.4  
*US v. Pickens*, 1-10cr46 (S.D. Ohio)  
Contact Attorney: James Maus  
**Not a §4B1.2 Crime of Violence**

## 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 §2L1.2 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 §2L1.2 Crime of Violence** (plain error review)

**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 §2L1.2 Crime of Violence** (Government concession on appeal)

**First Degree Manslaughter**, OKLA. STAT. TIT. 21, § 711(1)  
*US v. Gutierrez-Salinas*, [257 F. App'x 448](#) (5th Cir. 2007) (unpub.)  
**Not a §2L1.2 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 §2L1.2 Crime of Violence**

**Maiming**, OKLA. STAT. TIT. 21, § 751  
Contact Attorney: Francisco "Frank" Morales  
**Not a §2L1.2 Crime of Violence**

## Oregon

## Pennsylvania

**Aggravated Assault**, 18 PA. CONS. STAT. § 2702 (2000)

1. *US v. Gonzalez-Molina*, 353 F. App'x 959 (5th Cir. 2009) (unpub.)  
**Not a §2L1.2 Crime of Violence** (Gov't conceded)

2. *US v. Fisher*, No. 01-769-01, 2017 WL 1426049, 2017 U.S. Dist. LEXIS 60825 (E.D. Penn. Apr. 21, 2017) (unpub.)  
**Not an ACCA Violent Felony** (no force element)

**Robbery**, 18 PA. CONS. STAT. § 3701(a)(1)  
*US v. Singleton*, No. 10-CR-578-1, 2017 WL 1508955, 2017 U.S. Dist. LEXIS 64004 (E.D. Penn. Apr. 26, 2017) (unpub.)  
**Not an ACCA Violent Felony** (no force element)

**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 §2L1.2 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 §2L1.2 Crime of Violence**

**Carjacking**, TENN. CODE § 39-13-404 (2000)  
*Shropshire v. US*, No. 1:02-CR-72, 2017 WL 1322147, 2017 U.S. Dist. LEXIS 54164 (E.D. Tenn. Apr. 10, 2017) (unpub.)  
**Not an ACCA Violent Felony** (no force element)

**Facilitation of Aggravated Assault**  
Contact Attorney: Bill Fry (contact Donna Coltharp)  
Appellate Attorney: Carolyn Fuentes  
**Not a §2L1.2 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 a §2L1.2 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 §2L1.2 Crime of Violence**

## Texas

### **Aggravated Assault, TEX. PENAL CODE § 22.02**

*US v. Barcenas-Yanez*, 826 F.3d 752 (4th Cir. 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 §2L1.2 Crime of Violence** (aggravated assault or force element)

### **Aggravated Assault, TEX. PENAL CODE § 22.02 (pre-1994)**

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

**Not a §2L1.2 Crime of Violence**

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

#### 1. **Not a §2L1.2 Crime of Violence**

*US v. Antuna-Moran*, [488 F.3d 1048](#) (5th Cir. 2007)

*US v. Fierro-Reyna*, [466 F.3d 324](#) (5th Cir. 2006)

#### 2. **Not an Aggravated Felony**

*US v. Mendez-Rubi*, [438 F. App'x 293](#) (5th Cir. 2011) (§ 22.02(a)(2)(A) not aggravated felony COV under § 16(a))

## **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 §2L1.2 Crime of Violence/ Not an Aggravated Felony**

#### 3. TEX. PENAL CODE ANN. § 22.01(b)(2)

Contact: Manuel Acosta & Kristin Kimmelman (2012 case)

**Not §2L1.2 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 §2L1.2 Crime of Violence**

### **Attempted Aggravated Assault-Third Degree, TEX. PENAL CODE ANN. § 22.02**

Contact Attorney: Tyrone T. Mansfield

**Not a §2L1.2 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 §2L1.2 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 a §2L1.2 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)<sup>6</sup>

2. TEX. PENAL CODE ANN. § 30.02

Contact Attorney: Darren Ligon (2008 case)

**Not a §2L1.2 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 §2L1.2 Crime of Violence**

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<sup>6</sup> 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)).

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

**Causing Injury to a Child**, TEX. PENAL CODE § 22.04(a)  
*US v. Martinez-Rodriguez*, [857 F.3d 282](#) (5th Cir. 2017)  
**Not an Aggravated Felony** (COV) (not divisible post-*Mathis*)

**Criminal Mischief**, TEX. PENAL CODE ANN. § 28.03(a)(3)  
*US v. Landeros-Gonzalez*, [262 F.3d 424](#) (5th Cir. 2001)  
**Not a §2L1.2 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 §2L1.2 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 §2L1.2 Crime of Violence**

**Deadly Conduct by Discharging Firearm**, TEX. PENAL CODE § 22.05(b)  
*US v. Perlaza-Ortiz*, [869 F.3d 375](#) (5th Cir. 2017)  
*US v. Segovia-Rivas*, [No. 15-51221](#), 2018 WL 280673, 2018 U.S. App. LEXIS 120 (5th Cir. Jan. 3, 2018) (unpub.)  
**Not §2L1.2 Crime of Violence** (§ 22.05(b) not divisible)

**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 §2L1.2 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**
2. *US v. Salas Villela*, No. SA-13-CR-1003-XR (W.D. Tex.)  
Contact Attorneys: Molly Roth & Laura Spindler  
**Not a §2L1.2 Crime of Violence** (Government conceded was 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 §2L1.2 Crime of Violence**

**Indecency with Child by Contact**, TEX. PENAL CODE § 21.11(a)(1)

*US v. Rodriguez-Rodriguez*, [698 F. App'x 192](#) (5th Cir. 2017)

**Not §2L1.2 Crime of Violence** (sexual abuse of minor)

### **Injury to a Child**

1. TEX. PENAL CODE ANN. § 22.04

**Not a §2L1.2 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 § 22.04

**Not ACCA Violent Felony**

*US v. Taylor*, [873 F.3d 476](#) (5th Cir. 2017)

3. 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 §2L1.2 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 §2L1.2 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

1. **Not a §2L1.2 Crime of Violence**  
*US v. Martinez-Mata*, [393 F.3d 625](#) (5th Cir. 2004) (§ 36.06(a))  
*US v. Acuna-Cuadros*, [385 F.3d 875](#) (5th Cir. 2004) (§ 36.06 (1995))
2. **Not an Aggravated Felony** (Gov't conceded) (§ 36.06(a)(1)(A))  
Contact Attorney: Margarito Rodriguez  
Appellate Attorney: Judy Madewell

**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 an ACCA 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 §2L1.2 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 §2L1.2 Crime of Violence**

**Theft from a Person**, TEX. PENAL CODE ANN. § 31.03<sup>10</sup>  
*US v. Luna-Montoya*, [80 F. App'x 334](#) (5th Cir. 2003) (unpub.)  
**Not a §2L1.2 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)<sup>11</sup>

**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 §2L1.2 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** (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 a §2L1.2 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 ANN. § 18.2-91

1. *US v. Reyes-Ochoa*, \_\_\_ F.3d \_\_\_, [No. 15-41270](#), 2017 WL 2820932, 2017 U.S. App. LEXIS 11706 (5th Cir. June 30, 2017), *abrogating US v. Membreno-David*, [650 F. App'x 294](#) (5th Cir. May 26, 2016) (unpub.)  
**Not a §2L1.2 Crime of Violence** (not generic burglary)

2. *Castendet-Lewis v. Sessions*, [855 F.3d 253](#) (4th Cir. 2017)  
**Not an Aggravated Felony** (not generic burglary)

**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**

**Robbery**, Common Law  
*US v. Winston*, [850 F.3d 677](#) (4th Cir. 2017)  
**Not an ACCA Violent Felony** (no force element)

**Shooting into an occupied dwelling**, VA. CODE ANN. § 18.5-279  
*US v. Alfaro*, [408 F.3d 204](#) (5th Cir. 2005)  
**Not a §2L1.2 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 §2L1.2 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 a §2L1.2 Crime of Violence**

**Drive-By Shooting**, WASH. REV. CODE § 9A.36.045(1)  
Contact Attorneys: David Fannin & Carolyn Fuentes (contact Laura Spindler)  
**Not a §2L1.2 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 §2L1.2 Crime of Violence**

**Residential Burglary**, WASH. REV. CODE § 9A.52.025  
Contact Attorney: Marina Douenat  
**Not a §2L1.2 Crime of Violence** (+4 imposed) (*but see US v. Guerrero-Navarro*, [737 F.3d 976](#) (5th Cir. 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 §4B1.2 Crime of Violence** (*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*, 451 F. App'x 387 (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. 2014) (unpub.)

**Not a §2L1.2 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*, [557 U.S. 29](#) (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))

**Exporting Defense Articles**, 22 U.S.C. § 2778(b)(2), (c)

*US v. Guillen-Cruz*, [853 F.3d 768](#) (5th Cir. 2017)

**Not an Aggravated Felony** (not illicit trafficking in arms (§ 1101(a)(43)(C)) or as described in 18 U.S.C. § 924(b) (§1101(a)(43)(E)(ii)))

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

Contact Attorneys: Marie Romero & Kristin Kimmelman (W.D. Tex. 2014)

**Not an Aggravated Felony** (probation conceded; never deported as an aggravated felon and prior conviction of simple possession no longer an aggravated felony)

*But see US v. Piedra-Morales*, [843 F.3d 623](#) (5th Cir. 2016) (aggravated felony); *US v.*

*Gamboa-Garcia*, [620 F.3d 546](#) (5th Cir. 2010) (same)

**Riot**, 18 U.S.C. § 1792 (2000)

Contact Attorneys: Anne Berton and Michael Gorman

**Not a §2L1.2 Crime of Violence**

**“Substantial Risk” COV**, 18 U.S.C. § 16(b)

*Dimaya v. Lynch*, [803 F.3d 1110](#) (9th Cir. 2015), pending rehearing before the Supreme Court, *Lynch v. Dimaya*, No. 15-1498 (U.S.)

*United States v. Vivas-Ceja*, [808 F.3d 719](#) (7th Cir. 2015)

**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)))

*But see US v. Gonzalez-Longoria*, [831 F.3d 670](#) (5th Cir. 2016) (en banc) (§ 16(b) constitutional)

**Use of Firearm During/In Relation to Crime of Violence**, 18 U.S.C. § 924(c)

*US v. Bowman*, [873 F.3d 1035](#) (8th Cir. 2017)

**Not ACCA Violent Felony**

**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*, [565 U.S. 478](#) (2012)

**Aggravated Felony** (when the Government’s revenue loss exceeds \$10,000)

## **DRUG CASES:**

### **General**

#### **Entirely Suspended Sentence in Drug Trafficking Case**

*US v. Rodriguez-Parra*, [581 F.3d 227](#) (5th Cir. 2009)

**Not a §2L1.2 Drug Trafficking Offense**

#### **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)

**Not §2L1.2 Drug Trafficking Offense** 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 §2L1.2 Drug Trafficking Offense/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)  
**§2L1.2 Drug Trafficking Offense**

### **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 §2L1.2 Drug Trafficking Offense** (court gave a +4)

*See also US v. Hernandez-Quijada*, No. 15-10546 (9th Cir.) (tentatively calendared for argument Sept. 2017)

**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 §2L1.2 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)  
*US v. Gonzalez-Navarro*, [No. 16-50310](#), 2017 WL 1289960, 2017 U.S. App. LEXIS 6025 (5th Cir. Apr. 7, 2017) (unpub.)  
**Not a §2L1.2 Drug Trafficking Offense**

**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 §2L1.2 Drug Trafficking Offense**

**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 §2L1.2 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 §2L1.2 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 a §2L1.2 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 §2L1.2 Drug Trafficking Offense or an Aggravated Felony**

**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 §2L1.2 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 §2L1.2 Drug Trafficking Offense**

## Colorado

**Conspiracy to Distribute or Manufacture a Controlled Substance,** COLO. REV. STAT.  
§18-18-405(1)(a)  
Contact Attorney: Reggie Trejo  
**Not a §2L1.2 Drug Trafficking Offense**

**Distribution of a Controlled Substance,** COLO. REV. STAT. § 18-18-405(1)  
**Not Categorically a §2L1.2 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)

1. **Not an Aggravated Felony**  
*Sarmientos v. Holder*, [742 F.3d 624](#) (5th Cir. 2014)
2. **Not a §2L1.2 Drug Trafficking Offense**  
*US v. Medina*, [589 F. App'x 277](#) (5th Cir. 2015 (unpub.))  
*But see US v. Juarez-Velazquez*, [577 F. App'x 254](#) (5th Cir. 2014) (unpub.)  
(§2L1.2 DTO on plain error review)

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

## 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 §2L1.2 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 §2L1.2 Drug Trafficking Offense** (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 §2L1.2 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 §2L1.2 Drug Trafficking**

## 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 §2L1.2 Drug Trafficking Offense**

## Oklahoma

**Trafficking in a Controlled Substance**, OKLA. STAT. tit. 63, § 2-415  
*US v. Rauda-Constantino*, [643 F. App'x 461](#) (5th Cir. 2106) (unpub.)  
**Not a §2L1.2 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 Simulated Controlled Substance**, TEX. HEALTH & SAFETY CODE § 482.002(a)(1)  
*US v. Onick*, [702 F. App'x 231](#) (5th Cir. 2017)  
**Not §4B1.2 Controlled Substance Offense** (Government conceded)

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

1. **Not a §2L1.2 Drug Trafficking Offense**<sup>13</sup>  
*US v. Gonzalez*, [484 F.3d 712](#) (5th Cir. 2007)  
*US v. Morales-Martinez*, [496 F.3d 356](#) (5th Cir. 2007)  
*US v. Flores-Alcorta*, 998 F. Supp. 2d 537 (S.D. Tex. Feb. 5, 2014)
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. Tanksley*, [848 F.3d 347](#) (5th Cir. 2017), *abrogating US v. Ford*, 509 F.3d 714 (5th Cir. 2007) (statute indivisible, and “offer to sell” does not meet CSO definition; note that it does meet the §2L1.2 DTO definition)  
*US v. Zuniga*, [860 F.3d 276](#) (5th Cir. 2017)  
*US v. Hinkle*, [832 F.3d 569](#) (5th Cir. 2016)  
*US v. Price*, [516 F.3d 285](#) (5th Cir. 2008)

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<sup>13</sup> 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.

**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*, [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**

## 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 a §2L1.2 Drug Trafficking Offense**

## 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 a §2L1.2 Drug Trafficking Offense 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.