
Quick Reference Chart for Determining Immigration Consequences of Common New York Offenses



For information on the applicability of these consequences to a specific category of immigrants, see *Chapter 3*.

For detailed information on the following, see applicable sections:

- Aggravated Felony (AF) deportability, see *Appendix G, §1* (for AF practice aids and sample caselaw determinations, see also *Appendix C*)
- Crime Involving Moral Turpitude (CIMT) deportability, see *Appendix G, §2*, and inadmissibility, see *Appendix H, §2* (for CIMT sample caselaw determinations, see also *Appendix D*)
- Controlled Substance Offense (CSO) deportability, see *Appendix G, §3*, and inadmissibility, see *Appendix H, §1*
- Crime Against Children (CAC) deportability, see *Appendix G, §5*
- Crime Of Domestic Violence (CODV) and Stalking and Violation of Protection Order deportability, see *Appendix G, §5*
- Firearm Offense (FO) deportability, see *Appendix G, §4*
- Prostitution and commercialized vice inadmissibility, see *Appendix H, §4*

NOTE! This chart provides an overview of the potential immigration consequences of select New York State offenses. Its main purpose is to warn criminal defense attorneys of risky offenses, so that they may advise on and minimize immigration risks to their clients. The assessments of whether a conviction will or might trigger a particular immigration provision are therefore conservative—they tend to err on the side of stating that an offense would fall within a particular category (for example, aggravated felony). Immigration practitioners are advised to continue challenging designations of many offenses as aggravated felonies, crimes involving moral turpitude, etc., even if the chart lists them as “probably” or even “definitely” falling into those categories.

This chart includes some strategies and tips for criminal defense attorneys to avoid certain grounds of deportability and inadmissibility, but these strategies and tips are by no means exhaustive. For additional strategies, see *Chapter 5*.

NEW YORK PENAL LAW OFFENSES

(For New York Vehicle and Traffic Law offenses, see the chart beginning on page A-94)

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips
Criminal solicitation	100.00-100.13	Might be AF if underlying offense is AF.	Probably if underlying offense is CIMT.	Might be CSO, etc., if underlying offense is CSO, etc., but there is some case law supporting a contrary argument (see App. E).	<i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Conspiracy	105.00-105.17	A conspiracy to commit AF also is AF.	A conspiracy to commit CIMT probably is CIMT.	Is CSO or FO if underlying offense is CSO or FO.	Tip for defense lawyers: To preserve an argument that the conviction is not CIMT, plead to a conspiracy to commit a crime that requires a mens rea of recklessness or less. <i>Cf. Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006) (because a person cannot intend to commit a reckless act, an <i>attempted</i> reckless assault could not constitute CIMT even though the completed crime itself is CIMT); <i>Knapik v Ashcroft</i> , 384 F.3d 84 (3d Cir. 2004) (same with attempted reckless endangerment, 1st degree).
Attempt	110.00	An attempt to commit AF also is AF.	An attempt to commit CIMT probably is CIMT.	Is CSO or FO if underlying offense is CSO or FO.	Tip for defense lawyers: To preserve an argument that the conviction is not CIMT, plead to an attempt to commit a crime that requires a mens rea of recklessness or less. <i>See Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006) (because a person cannot intend to commit a reckless act, an <i>attempted</i> reckless assault could not constitute CIMT even though the completed crime itself is CIMT); <i>Knapik v Ashcroft</i> , 384 F.3d 84 (3d Cir. 2004) (same with attempted reckless endangerment, 1 st degree).
Criminal facilitation	115.00-115.08	Might be AF if underlying offense is AF.	Probably if underlying offense is CIMT.	Might be CSO, etc., if underlying offense is CSO, etc., but there is some case law supporting a contrary argument (see App. E).	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Assault, 3rd degree Class A misdemeanor	120.00	No, unless term of imprisonment imposed is one year, in which case subsections (1) and (2) might be "crime of violence" AF in some jurisdictions outside 2 nd Circuit.	Subsection (1) might be CIMT; subsection (2) is NOT CIMT; and subsection (3) is probably NOT CIMT.	Subsection (3) is FO if record of conviction establishes that offense involved a firearm. If the victim was a current or former spouse or similarly situated individual, subsections (1) and (2) might be CODV in some jurisdictions outside 2 nd Circuit. If the victim was a child, conviction might be CAC.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid AF risk, avoid sentence of one year (get 364 days or less). 2. To avoid CIMT and/or FO, have client plead to subsection (2). 3. To avoid CODV or CAC risks, keep age/relationship of victim out of record of conviction. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue not "crime of violence" AF or CODV under any subsection. <i>See Leocal v. Ashcroft</i>, 543 U.S. 1 (2004)(crime of violence AF requires at least reckless mens rea); <i>Chrzanoski v. Ashcroft</i>, 327 F.3d 188 (2d Cir. 2003) (even intentional infliction of injury does not equal the intentional use of force required for crime of violence AF definition under 18 USC 16(a)); <i>Tran v. Gonzales</i>, 414 F.3d 464 (3rd Cir. 2005) (recklessness is not sufficient to be crime of violence AF). 2. Argue that subsection (1) is not CIMT because simple assault is not CIMT. <i>See Matter of Garcia-Hernandez</i>, 23 I&N Dec. 590 (BIA 2003)(simple battery under Cal. Penal Law 242 held not a CIMT). 3. Subsections (2) and (3) are not CIMT. <i>See Matter of Fualaau</i>, 21 I&N Dec. 475 (BIA 1996); <i>Matter of Perez-Contreras</i>, 20 I&N Dec. 615 (BIA 1992).
Reckless assault of a child Class D felony	120.02	If term of imprisonment imposed is one year or more, probably "crime of violence" AF.	Yes.	Probably CAC.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid AF, avoid sentence of one year or more (get 364 days or less) if possible. 2. To avoid CIMT, consider alternative offense of subsection (2) of Assault, 3rd (see above, PL 120.00(2)) if possible.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips
Assault, 2nd degree Class D felony	120.05	If term of imprisonment imposed is one year or more, subsections (2), (3) and (7) probably are "crime of violence" AF and any other subsection might be "crime of violence" AF.	Subsections (1), (2), (4), (8) and (9) probably are CIMT and any other subsection might be CIMT.	Subsections (2) and (4) are FO if record of conviction establishes that offense involved a firearm. If the victim was a current or former spouse or similarly situated individual, subsections (2), (3) and (7) might be CODV. If the victim was a child, might be CAC.	<p><i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i></p> <p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid AF, avoid sentence of one year or more (get 364 days or less) if possible. 2. To decrease CIMT risk, consider alternative offense of an <i>attempt</i> (PL 110.00) to commit subsection (4) of PL120.05. See <i>Gill v. INS</i>, 420 F.3d 82 (2d Cir. 2006) (because a person cannot intend to commit a reckless act, an <i>attempted</i> reckless assault could not constitute CIMT even though the completed crime itself is CIMT); <i>Knapik v Ashcroft</i>, 384 F.3d 84 (3d Cir. 2004) (same with attempted reckless endangerment, 1st degree). 3. To avoid CODV or CAC risks, keep age/relationship of victim out of record of conviction. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue not "crime of violence" AF or CODV under various subsections. See <i>Leocal v. Ashcroft</i>, 543 U.S. 1 (2004)(crime of violence AF requires at least reckless mens rea); <i>Chrzanoski v. Ashcroft</i>, 327 F.3d 188 (2d Cir. 2003) (even intentional infliction of injury does not equal the intentional use of force required for crime of violence AF definition under 18 USC 16(a)); <i>Jobson v. Ashcroft</i>, 326 F.3d 367 (2nd Cir. 2003)(NY reckless manslaughter is not CIMT); <i>Tran v. Gonzales</i>, 414 F.3d 464 (3rd Cir. 2005) (recklessness is not sufficient to be crime of violence AF).
Assault on a peace officer, police officer, etc. Class C felony	120.08	If term of imprisonment imposed is one year or more, probably is "crime of violence" AF.	Probably.		

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Assault, 1st degree Class B felony	120.10	If term of imprisonment imposed is one year or more, subsections (1) and (2) probably are "crime of violence" AF and subsections (3) and (4) might be "crime of violence" AF.	Subsections (1), (2) and (3) probably are CIMT and subsection (4) might be CIMT.	Subsection (1) is FO if record of conviction establishes that offense involved a firearm. If the victim was a current or former spouse or similarly situated individual, might also be CODV. If the victim was a child, conviction might be CAC.	
Aggravated assault upon a police officer or peace officer Class B felony	120.11	If term of imprisonment imposed is one year or more, probably is "crime of violence" AF.	Probably.	FO if record of conviction establishes that offense involved a firearm.	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips
<p>Aggravated assault upon a person less than eleven years old</p> <p>Class E felony</p>	120.12	<p>If term of imprisonment imposed is one year or more and record of conviction shows crime committed is assault as defined under subsection (1) or (2) of PL 120.00, might be “crime of violence” AF in some jurisdictions outside 2nd Circuit.</p>	<p>Maybe depending on subsection of 3rd degree assault under which defendant is charged (see above, PL 120.00).</p>	<p>Probably FO if record of conviction establishes that underlying offense was 120.00(3)(negligent assault with weapon) and involved a firearm. Probably CAC.</p>	<p><i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i></p> <p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid AF, avoid sentence of one year or more (get 364 days or less) if possible. 2. To preserve an argument against CIMT, consider alternative offense of an <i>attempt</i> (PL 110.00) to commit PL 120.12 based on an underlying PL 120.00(2) (reckless assault). See <i>Gill v. INS</i>, 420 F.3d 82 (2d Cir. 2006) (because a person cannot intend to commit a reckless act, an <i>attempted</i> reckless assault could not constitute CIMT even though the completed crime itself is CIMT); <i>Knapik v Ashcroft</i>, 384 F.3d 84 (3d Cir. 2004) (same with attempted reckless endangerment, 1st degree).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Menacing, 1st degree Class E felony	120.13	If term of imprisonment imposed is one year or more and record of conviction (ROC) shows crime comes under subsection (1) of PL 120.14, probably is "crime of violence" AF. If ROC shows crime comes under subsection (2) of PL 120.14, might be "crime of violence" AF. If term of imprisonment imposed is one year or more, might be "crime of violence" AF even if crime comes under subsection (3) of PL 120.14 in some jurisdictions outside 2 nd Circuit.	Probably.	FO if record of conviction shows that the crime committed is menacing as defined under subsection (1) of PL 120.14 and that the offense involved a firearm. If the victim was a current or former spouse or similarly situated individual, might also be CODV. Might also trigger deportability under CODV clause regarding "crime of stalking." If the victim was a child, conviction might be CAC.	Tip for defense lawyers: 1. To avoid AF, avoid sentence of one year or more (get 364 days or less) if possible. 2. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Menacing, 2nd degree Class A misdemeanor	120.14	No, unless term of imprisonment imposed is one year, in which case subsection (1) probably is "crime of violence" AF, subsection (2) might be crime of violence AF, and subsection (3) might be "crime of violence" AF in some jurisdictions outside 2 nd Circuit.	Probably.	Subsection (1) is FO if record of conviction establishes that offense involved a firearm. If the victim was a current or former spouse or similarly situated individual, might also be CODV. A conviction might also trigger deportability under CODV clause regarding "crime of stalking," and subsection (3) might trigger deportability under CODV clause regarding "violators of protection orders." If the victim was a child, conviction might be CAC.	Tip for defense lawyers: 1. To avoid AF, avoid sentence of one year or more (get 364 days or less) if possible. 2. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction.
Menacing, 3rd degree Class B misdemeanor	120.15	No.	Maybe.	If the victim was a current or former spouse or similarly situated individual, might be CODV in some jurisdictions outside 2 nd Circuit. Might also trigger deportability under CODV clause regarding "crime of stalking." If the victim was a child, might be CAC.	Tip for defense lawyers: 1. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Reckless endangerment, 2nd degree Class A misdemeanor	120.20	No, unless term of imprisonment imposed is one year, in which case might be "crime of violence" AF in some jurisdictions outside 2 nd Circuit.	Maybe.	If the victim was a current or former spouse or similarly situated, might be CODV in some jurisdictions outside 2 nd Circuit. If the victim was a child, might be CAC.	Tip for defense lawyers: 1. To avoid AF, avoid sentence of one year (get 364 days or less). 2. To preserve an argument against CIMT, plead to an <i>attempt</i> (PL 110.00) to commit PL 120.20. <i>See Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006) (because a person cannot intend to commit a reckless act, an <i>attempted</i> reckless assault could not constitute CIMT even though the completed crime itself is CIMT); <i>Knapik v Ashcroft</i> , 384 F.3d 84 (3d Cir. 2004) (same with attempted reckless endangerment, first degree). 3. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction. Tip for immigration lawyers: 1. Argue not "crime of violence" AF or CODV. <i>See Leocal v. Ashcroft</i> , 543 U.S. 1 (2004)(crime of violence AF requires at least reckless mens rea); <i>Chrzanoski v. Ashcroft</i> , 327 F.3d 188 (2d Cir. 2003) (even intentional infliction of injury does not equal the intentional use of force required for crime of violence AF definition under 18 USC 16(a)); <i>Tran v. Gonzales</i> , 414 F.3d 464 (3 rd Cir. 2005) (recklessness is not sufficient to be crime of violence AF).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Reckless endangerment, 1st degree Class D felony	120.25	If term of imprisonment imposed is one year or more, might be "crime of violence" AF.	Probably.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the victim was a child, conviction might be CAC.	Tip for defense lawyers: 1. To avoid AF, avoid sentence of one year or more (get 364 days or less) if possible. 2. To preserve an argument against CIMT, plead to an <i>attempt</i> (PL 110.00) to commit PL 120.25. See <i>Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006) (because a person cannot intend to commit a reckless act, an <i>attempted</i> reckless assault could not constitute CIMT even though the completed crime itself is CIMT); <i>Knapik v Ashcroft</i> , 384 F.3d 84 (3d Cir. 2004) (same with attempted reckless endangerment, first degree). 3. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction. Tip for immigration lawyers: 1. Argue not "crime of violence" AF or CODV. See <i>Leocal v. Ashcroft</i> , 543 U.S. 1 (2004)(crime of violence AF requires at least reckless mens rea); <i>Chrzanoski v. Ashcroft</i> , 327 F.3d 188 (2d Cir. 2003) (even intentional infliction of injury does not equal the intentional use of force required for crime of violence AF definition under 18 USC 16(a)); <i>Jobson v. Ashcroft</i> , 326 F.3d 367 (2 nd Cir. 2003)(NY reckless manslaughter is not CIMT); <i>Tran v. Gonzales</i> , 414 F.3d 464 (3 rd Cir. 2005) (recklessness is not sufficient to be crime of violence AF).
Stalking, 4th degree Class B misdemeanor	120.45	No.	Probably.	Probably triggers deportability as a "crime of stalking." If the victim was a current or former spouse or similarly situated individual, might also be CODV in some jurisdictions outside 2 nd Circuit. If the victim was a child, might be CAC.	Tip for defense lawyers: 1. To avoid "crime of stalking," CODV or CAC risks, consider alternative offenses such as Disorderly Conduct or Trespass (see below, PL 240.20 & 140.05).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Stalking, 3rd degree Class A misdemeanor	120.50	No, unless term of imprisonment imposed is one year, in which case subsection (3) might be "crime of violence" AF if the record of conviction (ROC) shows fear of commission of a sex offense, kidnapping, unlawful imprisonment or death (as opposed to physical injury or serious physical injury), and subsections (1), (2) and (4) might also be "crime of violence" AF in some jurisdictions outside 2 nd Circuit if ROC shows crime committed comes under subsection (1) of PL 120.45.	Probably.	Probably triggers deportability as a "crime of stalking." If the victim was a current or former spouse or similarly situated individual, might also be CODV. If the victim was a child, might be CAC.	Tip for defense lawyers: 1. To avoid AF, avoid sentence of one year or more (get 364 days or less). 2. To avoid CIMT, consider alternative offenses such as Disorderly Conduct or Trespass (see below, PL 240.20 & 140.05); if that is not possible <i>and</i> if client has no prior CIMTs, consider alternative offense of <i>attempt</i> (PL 110.00) to commit 155.25, which as a B misdemeanor will not trigger deportability as "1 CIMT within 5 years of admission." 3. To avoid "crime of stalking," CODV or CAC risks, consider alternative offenses such as Disorderly Conduct or Trespass (see below, PL 240.20 & 140.05).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Stalking, 2nd degree Class E felony	120.55	If term of imprisonment imposed is one year or more, subsection (1) probably is "crime of violence" AF, particularly if record of conviction shows threatened use of any of the enumerated weapons (as opposed to mere display) and any other subsection might be "crime of violence" AF.	Probably.	Subsection (1) is FO if record of conviction establishes that offense involved a firearm. Any subsection probably triggers deportability as a "crime of stalking." If the victim was a current or former spouse or similarly situated individual, might also be CODV. If the victim was a child, conviction might be CAC.	Tip for defense lawyers: 1. To avoid AF, avoid sentence of one year or more (get 364 days or less) if possible. 2. If a weapon (but not a gun) was involved, to avoid CODV or CAC risks, consider subsection (1).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Stalking, 1st degree Class D felony	120.60	If term of imprisonment imposed is one year or more, probably is "crime of violence" AF if record of conviction shows crime committed comes under subsection (1) of PL 120.55; otherwise, might be "crime of violence" AF. Subsection (2) might also be "rape, or sexual abuse of a minor" AF.	Probably.	Would probably trigger deportability as a "crime of stalking" or, if the victim was a current or former spouse or similarly situated individual, a CODV. If the victim was a child, conviction might be CAC.	Tip for defense lawyers: 1. To avoid "crime of violence" AF, avoid sentence of one year or more (get 364 days or less) if possible. 2. To avoid "rape, or sexual abuse of a minor" AF risk, avoid subsection (2) if possible.
Criminally negligent homicide Class E felony	125.10	No.	Probably NOT.		
Aggravated criminally negligent homicide Class C felony	125.11	No.	Probably NOT.		
Vehicular manslaughter, 2nd degree Class D felony	125.12	Probably NOT.	Probably NOT.		

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips
Vehicular manslaughter, 1st degree Class C felony	125.13	Probably NOT.	Maybe.		<p><i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i></p> <p>Tip for defense lawyers: 1. To decrease CIMT risk, consider alternative offenses of Criminally Negligent Homicide or Vehicular Manslaughter, 2nd (see above, PL 125.10 & 125.15).</p>
Manslaughter, 2nd degree Class C felony	125.15	NOT AF in 2 nd Circuit, but if term of imprisonment imposed is one year or more, might be "crime of violence" AF in some jurisdictions outside 2 nd Circuit.	Subsection (1) is CIMT; subsections (2) and (3) might be CIMT.	If the victim was a current or former spouse or similarly situated individual, might be CODV in some jurisdictions outside 2 nd Circuit. If the victim was a child, might be CAC.	<p>Tip for defense lawyers: 1. To avoid AF and CIMT, consider alternative offense of criminally negligent homicide (PL 125.10) if possible. 2. If Tip 1 is not possible and incident involved a car, to avoid AF risk consider alternative offenses such as Vehicular Manslaughter, 2nd or 1st degree (see above, PL 125.12 & 125.13) or Leaving the Scene of an Incident Without Reporting (see below, VTL 600(2)). 3. To preserve an argument against CIMT, plead to an <i>attempt</i> (PL 110.00) to commit 125.15. See <i>Gill v. INS</i>, 420 F.3d 82 (2d Cir. 2006) (because a person cannot intend to commit a reckless act, an <i>attempted</i> reckless assault could not constitute CIMT even though the completed crime itself is CIMT); <i>Knapik v Ashcroft</i>, 384 F.3d 84 (3d Cir. 2004) (same with attempted reckless endangerment, first degree). 4. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction.</p> <p>Tip for immigration lawyers: 1. Argue not "crime of violence" AF or CODV. See <i>Leocal v. Ashcroft</i>, 543 U.S. 1 (2004)(crime of violence AF requires at least reckless mens rea); <i>Chrzanoski v. Ashcroft</i>, 327 F.3d 188 (2d Cir. 2003) (even intentional infliction of injury does not equal the intentional use of force required for crime of violence AF definition under 18 USC 16(a)); <i>Jobson v. Ashcroft</i>, 326 F.3d 367 (2nd Cir. 2003)(NY reckless manslaughter is not CIMT); <i>Tran v. Gonzales</i>, 414 F.3d 464 (3rd Cir. 2005) (recklessness is not sufficient to be crime of violence AF).</p>

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Manslaughter, 1st degree Class B felony	125.20	If term of imprisonment imposed is one year or more, subsections (1) and (2) are "crime of violence" AF in the 2 nd Circuit, and subsections (3) and (4) might be "crime of violence" AF.	Subsections (1), (2) and (4) are CIMT; subsection (3) might be CIMT.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the victim was a child, conviction might be CAC.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid AF and CIMT, consider alternative offense of criminally negligent homicide (see above, PL 125.10) if possible. 2. If Tip 1 is not possible and incident involved a car, to avoid AF consider alternative offenses such as Vehicular Manslaughter, 2nd or 1st degree (see above, PL 125.12 & 125.13) or Leaving the Scene of an Incident Without Reporting (see below, VTL 600(2)). 3. If Tips 1 and 2 are not possible, to decrease AF risk consider alternative offense of Manslaughter, 2nd (see above, PL 125.20). 4. To preserve an argument against CIMT, plead to an <i>attempt</i> (PL 110.00) to commit 125.10(4) if possible. See <i>Gill v. INS</i>, 420 F.3d 82 (2d Cir. 2006) (because a person cannot intend to commit a reckless act, an <i>attempted</i> reckless assault could not constitute CIMT even though the completed crime itself is CIMT); <i>Knapik v Ashcroft</i>, 384 F.3d 84 (3d Cir. 2004) (same with attempted reckless endangerment, 1st degree). 5. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue subsection (4) is not "crime of violence" AF or CODV. See <i>Leocal v. Ashcroft</i>, 543 U.S. 1 (2004)(crime of violence AF requires at least reckless mens rea); <i>Chrzanoski v. Ashcroft</i>, 327 F.3d 188 (2d Cir. 2003) (even intentional infliction of injury does not equal the intentional use of force required for crime of violence AF definition under 18 USC 16(a)); <i>Jobson v. Ashcroft</i>, 326 F.3d 367 (2nd Cir. 2003)(NY reckless manslaughter is not CIMT); <i>Tran v. Gonzales</i>, 414 F.3d 464 (3rd Cir. 2005) (recklessness is not sufficient to be crime of violence AF).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Aggravated manslaughter, 2 nd degree Class C felony	125.21	If term of imprisonment imposed is one year or more, might be "crime of violence" AF.	Yes.		Tip for immigration lawyers: 1. Argue not "crime of violence" AF. See <i>Leocal v. Ashcroft</i> , 543 U.S. 1 (2004)(crime of violence AF requires at least reckless mens rea); <i>Chrzanoski v. Ashcroft</i> , 327 F.3d 188 (2d Cir. 2003) (even intentional infliction of injury does not equal the intentional use of force required for crime of violence AF definition under 18 USC 16(a)); <i>Jobson v. Ashcroft</i> , 326 F.3d 367 (2 nd Cir. 2003)(NY reckless manslaughter is not CIMT); <i>Tran v. Gonzales</i> , 414 F.3d 464 (3 rd Cir. 2005) (recklessness is not sufficient to be crime of violence AF).
Aggravated manslaughter, 1 st degree Class B felony	125.22	If term of imprisonment imposed is one year or more, is "crime of violence" AF	Yes.		
Murder, 2nd degree Class A-I felony	125.25	Yes.	Yes.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the victim was a child, might be CAC.	Tip for defense lawyers: 1. To avoid AF, consider alternative offense of Criminally Negligent Homicide (see above, PL 125.20) if possible, or failing that, Manslaughter, 2 nd (see above, PL 125.20) if possible. 2. To preserve an argument against CIMT, plead to an <i>attempt</i> (PL 110.00) to commit 125.25(2) or (4). See <i>Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006) (because a person cannot intend to commit a reckless act, an <i>attempted</i> reckless assault could not constitute CIMT even though the completed crime itself is CIMT); <i>Knapik v Ashcroft</i> , 384 F.3d 84 (3d Cir. 2004) (same with attempted reckless endangerment, 1st degree).]
Murder, 1st degree Class A-I felony	125.27	Yes.	Yes.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the victim was a child, conviction might be CAC.	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Sexual misconduct Class A misdemeanor	130.20	Subsections (1) and (2) might be “rape, or sexual abuse of a minor” AF. If term of imprisonment imposed is one year, might also be “crime of violence” AF.	Yes.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the record of conviction shows that the victim was a child, might also be CAC.	Tip for defense lawyers: 1. If victim is minor, to decrease risk of “sexual abuse of a minor” AF, if at all possible consider alternative offense that does not have sexual conduct as an element of the crime, such as Endangering the Welfare of a Child or Unlawful Imprisonment, 2 nd (see below, PL 260.10 and 135.05). If that’s not possible, plead to alternative offense that does not have the minor age of the victim as an element of the crime or as a definition of “without consent”), such as Forcible Touching (PL 130.52)(see below, 130.52). In any event, try to keep out of the record of conviction any admission or other evidence that the victim was a minor. 2. Regardless of victim’s age, to avoid crime of violence” AF risk, avoid sentence of one year (get 364 days or less). 3. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction.
Rape, 3rd degree Class E felony	130.25	Subsection (2) probably is “sexual abuse of a minor” AF, particularly if the record of conviction shows that the victim is under the age of 16. Subsections (1) and (3) might be “rape” AF. Any subsection might be “crime of violence” AF if term of imprisonment imposed is one year or more.	Yes.	If the victim was a current or former spouse or similarly situated individual, probably is CODV. If the record of conviction shows that the victim was a child, might also be CAC, particularly if subsection (2).	Tip for defense lawyers: 1. Regardless of victim’s age, to avoid “rape” AF risk, avoid this offense altogether. If that’s not possible, to avoid “crime of violence” AF risk, avoid sentence of one year or more (get 364 days or less). 2. If victim is minor, to decrease “sexual abuse of a minor” AF risk, if at all possible avoid subsection (2) and consider alternative offenses that do not have sexual conduct as an element of the crime, such as Endangering the Welfare of a Child (see below, PL 260.10 or Unlawful Imprisonment, 2 nd or 1 st (see below, PL 135.05 & 135.10). If that’s not possible, plead to alternative offense that does not have the minor age of the victim as an element of the crime or as a definition of “without consent”), such as Forcible Touching (see below PL 130.52). In any event, try to keep out of the record of conviction any admission or other evidence that the victim was a minor. 3. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Rape, 2nd degree Class D felony	130.30	Subsection (1) probably is "sexual abuse of a minor" AF and subsection (2) might be "rape, or sexual abuse of a minor" AF. Either subsection might also be "crime of violence" AF if term of imprisonment imposed is one year or more.	Yes.	If the victim was a current or former spouse or similarly situated individual, probably is CODV. If the record of conviction shows that the victim was a child, might also be CAC.	Tip for defense lawyers: 1. Regardless of victim's age, to avoid "rape" AF risk, avoid this offense altogether. If that's not possible, to avoid "crime of violence" AF risk, avoid sentence of one year or more (get 364 days or less) if possible. 2. If victim is minor, to decrease risk of "sexual abuse of a minor" AF, if at all possible avoid subsection (1) and consider alternative offenses that do not have sexual conduct as an element of the crime, such as Endangering the Welfare of a Child (see below, PL 260.10) or Unlawful Imprisonment, 2 nd or 1 st (see below, PL 135.05 & 135.10). If that's not possible, plead to alternative offense that does not have the minor age of the victim as an element of the crime or as a definition of "without consent", such as Forcible Touching (see below, PL 130.52) or even Burglary in the 3 rd Degree (see below, PL 140.20). In any event, try to keep out of the record of conviction any admission or other evidence that the victim was a minor. 3. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction.
Rape, 1 st degree Class B felony	130.35	Yes, "rape, or sexual abuse of a minor" AF.	Yes.	If the victim was a current or former spouse or similarly situated individual, probably is CODV. If the record of conviction shows that the victim was a child, might also be CAC, particularly if subsection (3).	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal Sexual Act, 3rd degree Class E felony	130.40	Subsection (2) probably is “sexual abuse of a minor” AF, particularly if the record of conviction shows that the victim is under the age of 16. Subsections (1) and (3) might be “rape” AF. Any subsection might also be “crime of violence” AF if term of imprisonment imposed is one year or more.	Yes.	If the victim was a current or former spouse or similarly situated individual, probably is CODV. If the record of conviction shows that the victim was a child, might also be CAC, particularly if subsection (2).	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. Regardless of victim’s age, to avoid “rape” AF risk, avoid this offense altogether and consider alternative offenses such as Forcible Touching (see below, PL 130.52). If that’s not possible, to avoid “crime of violence” AF risk, avoid sentence of one year or more (get 364 days or less) if possible. 2. If victim is minor, to decrease “sexual abuse of a minor” AF risk, if at all possible avoid subsection (2) and consider alternative offenses that do not have sexual conduct as an element of the crime, such as Endangering the Welfare of a Child (see below, PL 260.10) or Unlawful Imprisonment, 2nd or 1st (see below, PL 135.05 & 135.10). If that’s not possible, consider alternative offense that does not have the minor age of the victim as an element of the crime or as a definition of “without consent”, such as Forcible Touching (see below, PL 130.52). In any event, try to keep out of the record of conviction any admission or other evidence that the victim was a minor. 3. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal Sexual Act, 2nd degree Class D felony	130.45	Subsection (1) probably is "sexual abuse of a minor" AF and subsection (2) might be "rape, or sexual abuse of a minor" AF. Either subsection might also be "crime of violence" AF if term of imprisonment imposed is one year or more.	Yes.	If the victim was a current or former spouse or similarly situated individual, probably is CODV. If the record of conviction shows that the victim was a child, might also be CAC.	Tip for defense lawyers: 1. Regardless of victim's age, to avoid "rape" AF risk, avoid this offense altogether consider alternative offenses such as Forcible Touching (see below, PL 130.52) if possible. If that's not possible, to avoid "crime of violence" AF risk, avoid sentence of one year or more (get 364 days or less) if possible. 2. If victim is minor, to decrease "sexual abuse of a minor" AF risk, if at all possible avoid subsection (1) and consider alternative offenses that do not have sexual conduct as an element of the crime, such as Endangering the Welfare of a Child (see below, PL 260.10) or Unlawful Imprisonment, 2 nd or 1 st (see below, PL 135.05 & 135.10). If that's not possible, consider alternative offense that does not have the minor age of the victim as an element of the crime or as a definition of "without consent", such as Forcible Touching (see below, PL 130.52) or even Burglary, 3 rd (see below, PL 140.20). In any event, try to keep out of record of conviction admission/ evidence that victim was a minor. 3. To minimize CODV or CAC risks, keep age/ relationship of victim out of record of conviction.
Criminal Sexual Act, 1st degree Class B felony	130.50	Subsections (3) & (4) are "sexual abuse of a minor" AF and subsections (1) & (2) probably are "rape" AF. Any subsection probably also is "crime of violence" AF if term of imprisonment of at least one year is imposed.	Yes.	If the victim was a current or former spouse or similarly situated individual, probably is CODV. If the record of conviction shows that the victim was a child, might also be CAC, particularly if subsection (3).	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Forcible touching Class A misdemeanor	130.52	If record of conviction shows that victim was a minor, particularly under age 16, might be "sexual abuse of a minor" AF. If term of imprisonment imposed is one year, might also be "crime of violence" AF.	Yes.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the record of conviction shows that the victim was a child, might also be CAC.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. Regardless of victim's age, to avoid "crime of violence" AF risk, avoid sentence of one year (get 364 days or less). 2. If victim is minor, to minimize "sex abuse of minor" AF risk, consider alternative offenses that do not have sexual conduct as an element of the crime, such as Endangering the Welfare of a Child (see below, PL 260.10) or Unlawful Imprisonment, 2nd or 1st (see below, PL 135.05 & 135.10). In any event, try to keep out of the record of conviction any admission or other evidence that the victim was a minor. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue that conviction is categorically NOT "sex abuse of minor" AF, even if the victim in fact was minor, because the minority of the victim is not an element of the crime. IJ may not look to the underlying record of conviction to hold to the contrary. <i>See, e.g., Singh v. Ashcroft</i>, 383 F.3d 144 (3rd Cir. 2004).
Sexual abuse, 3rd degree Class B misdemeanor	130.55	If the record of conviction shows that the victim was a minor, particularly if under age 16, probably is "sexual abuse of a minor" AF.	Yes.	If the record of conviction shows that the victim was a child, probably is CAC.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. If victim is minor, to minimize "sex abuse of minor" AF risk, consider alternative offenses that do not have sexual conduct as an element of the crime, such as Endangering the Welfare of a Child (see below, PL 260.10) or Unlawful Imprisonment, 2nd (see below, PL 135.05). In any event, try to keep out of the record of conviction any admission or other evidence that the victim was a minor.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Sexual abuse, 2nd degree Class A misdemeanor	130.60	Subsection (2) probably is "sexual abuse of a minor" AF, AND, if term of imprisonment imposed is one year, either subsection might be "crime of violence" .	Yes.	If the record of conviction shows that the victim was a child, probably is CAC, particularly if subsection (2).	Tip for defense lawyers: 1. Regardless of victim's age, to avoid "crime of violence" AF, avoid sentence of one year (get 364 days or less). 2. If victim is minor, to decrease "sexual abuse of a minor" AF risk, if at all possible avoid subsection (2) and consider alternative offenses that do not have sexual conduct as an element of the crime, such as Endangering the Welfare of a Child (PL 260.10)(see below, 260.10) or Unlawful Imprisonment in the 2d Degree (PL 135.05)(see below, 135.05). If that's not possible, consider alternative offense that does not have the minor age of the victim as an element of the crime or as a definition of "without consent", such as Forcible Touching (PL 130.52)(see below, 130.52). 3. To minimize CODV or CAC risks, keep age/ relationship of victim out of record of conviction.
Sexual abuse, 1st degree Class D felony	130.65	Subsection (3) is "sexual abuse of a minor" AF. Any subsection might also be "crime of violence" AF if term of imprisonment imposed is one year or more.	Yes.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the record of conviction shows that the victim was a child, probably is CAC, particularly if subsection (3).	Tip for defense lawyers: 1. Regardless of victim's age, to avoid "crime of violence" AF risk, avoid sentence of one year or more (get 364 days or less) if possible. 2. If victim is minor, to minimize "sex abuse of minor" AF risk, if at all possible avoid subsection (3) and consider alternative offenses that do not have sexual conduct as an element of the crime, such as Endangering the Welfare of a Child (see below, PL 260.10) or Unlawful Imprisonment, 2 nd or 1 st (see below, PL 135.05 & 135.10). If that's not possible, consider alternative offense that does not have the minor age of the victim as an element of the crime or as a definition of "without consent", such as Forcible Touching (see below, PL 130.52) or even Burglary, 3 rd (see below, PL 140.20). In any event, try to keep out of the record of conviction any admission or other evidence that victim was a minor. 3. To minimize CODV or CAC risks, keep age/ relationship of victim out of record of conviction.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Aggravated sexual abuse, 4th degree Class E felony	130.65-a	If the record of conviction shows that the victim was a minor, might be “sexual abuse of a minor” AF. In other cases, might be “rape” AF. If term of imprisonment imposed is one year or more, might also be “crime of violence” AF.	Yes.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the record of conviction shows that the victim was a child, probably is CAC.	Tip for defense lawyers: 1. Regardless of victim’s age, to avoid “crime of violence” AF risk, avoid sentence of one year or more (get 364 days or less) if possible. 2. If victim is minor, to minimize “sex abuse of minor” AF risk, consider alternative offenses that do not have sexual conduct as an element of the crime, such as Endangering the Welfare of a Child (see below, PL 260.10) or Unlawful Imprisonment, 2 nd or 1 st (see below, PL 135.05 & 135.10). In any event, try to keep out of the record of conviction any admission or other evidence that victim was a minor. 3. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction. Tip for immigration lawyers: 1. Argue that conviction is categorically NOT “sex abuse of minor” AF, even if the victim in fact was minor, because the minority of the victim is not an element of the crime. IJ may not look to the underlying record of conviction to hold to the contrary. See, e.g., <i>Singh v. Ashcroft</i> , 383 F.3d 144 (3 rd Cir. 2004).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Aggravated sexual abuse, 3rd degree Class D felony	130.66	Subsection 1(c) is “sexual abuse of a minor” AF. If the record of conviction shows that the victim was a minor, any other subsection might be “sexual abuse of a minor” AF. Any subsection might also be “rape” AF, AND if term of imprisonment imposed is one year or more, might also be “crime of violence” AF.	Yes.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the record of conviction shows that the victim was a child, probably is CAC, particularly if subsection (1)(c).	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. Regardless of victim’s age, to avoid “crime of violence” AF risk, avoid sentence of one year or more (get 364 days or less) if possible. 2. If victim is minor, to minimize “sex abuse of minor” AF risk, avoid subsection (1)(c) and consider alternative offenses that do not have sexual conduct as an element of the crime, such as Endangering the Welfare of a Child (see below, PL 260.10) or Unlawful Imprisonment, 2nd or 1st (see below, PL 135.05 & 135.10), or Burglary, 3rd (see below, PL 140.20). In any event, try to keep out of the record of conviction any admission or other evidence that the victim was a minor. 3. To minimize CODV or CAC risks, keep age/relationship of victim out of record of conviction. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue that conviction is categorically NOT “sex abuse of minor” AF, even if the victim in fact was minor, because the minority of the victim is not an element of the crime. IJ may not look to the underlying record of conviction to hold to the contrary. <i>See, e.g., Singh v. Ashcroft</i>, 383 F.3d 144 (3rd Cir. 2004).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Aggravated sexual abuse, 2nd degree Class C felony	130.67	Subsection 1(c) is "sexual abuse of a minor" AF. If the record of conviction shows that the victim was a minor, any other subsection might be "sexual abuse of a minor" AF. Any subsection might also be "rape" AF, AND if term of imprisonment imposed is one year or more, might also be "crime of violence" AF.	Yes.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the record of conviction shows that the victim was a child, probably is CAC, particularly if subsection (1)(c).	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Aggravated sexual abuse, 1st degree Class B felony	130.70	Subsection 1(c) is "sexual abuse of a minor" AF, If the record of conviction shows that the victim was a minor, any other subsection might be "sexual abuse of a minor" AF. Any subsection might also be "rape" AF, AND if term of imprisonment imposed is one year or more, might also be "crime of violence" AF.	Yes.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the record of conviction shows that the victim was a child, might also be CAC, particularly if subsection (1)(c).	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Unlawful imprisonment, 2 nd degree Class A misdemeanor	135.05	If term of imprisonment imposed is one year, might be “crime of “violence” AF.	Maybe.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the record of conviction shows that the victim was a child, might also be CAC.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid “crime of violence” AF, avoid sentence of one year (get 364 days or less). If maximum one-year sentence cannot be avoided but the victim is less than 16 years old, try to establish in plea colloquy that the unlawful “restraint” was effected through victim’s acquiescence to fall within the definition of “restraint” at PL 135.00(1)(b)[as opposed to 135.00(1)(a)], or keep the record ambiguous as to which definition of restraint was applied. 2. To minimize CODV or CAC risks, keep age/ relationship of victim out of record of conviction. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue not crime of violence AF if government fails to prove that “restraint” was effected on a competent adult. See <i>Dickson v. Ashcroft</i>, 346 F.3d 44 (2nd Cir. 2003).
Unlawful imprisonment, 1 st degree Class E felony	135.10	If term of imprisonment imposed is one year, might be “crime of “violence” AF.	Maybe.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the record of conviction shows that the victim was a child, might also be CAC.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid “crime of violence” AF, avoid sentence of one year or more (get 364 days or less) if possible. If one- year sentence cannot be avoided but the victim is less than 16 years old, try to establish in plea colloquy that the unlawful “restraint” was effected through victim’s acquiescence to fall within the definition of “restraint” at PL 135.00(1)(b)[as opposed to 135.00(1)(a)], or keep the record ambiguous as to which definition of restraint was applied. 3. To minimize CODV or CAC risks, keep age/ relationship of victim out of record of conviction. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue not crime of violence AF if government fails to prove that “restraint” was effected on a competent adult. See <i>Dickson v. Ashcroft</i>, 346 F.3d 44 (2nd Cir. 2003).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Kidnapping, 2bd Degree Class B felony	135.20	If term of imprisonment imposed is one year, probably is "crime of violence" AF.	Probably.	If the victim was a current or former spouse or similarly situated individual, might be CODV. If the record of conviction shows that the victim was a child, might also be CAC.	
Trespass Violation	140.05	No.	No.		
Criminal trespass, 3rd degree Class B misdemeanor	140.10	No.	No.		
Criminal trespass, 2nd degree Class A misdemeanor	140.15	No.	No.		
Criminal trespass, 1st degree Class D felony	140.17	If term of imprisonment imposed is one year or more, probably is "crime of violence" AF.	Maybe.	Subsections (2) and (3) are FO and, if record of conviction establishes that offense involved a firearm, subsection (1) also is FO.	Tip for defense lawyers: 1. To avoid "crime of violence" AF, avoid sentence of one year or more (get 364 days or less) if possible. 2. To minimize FO risk, avoid this offense altogether and consider alternative offenses that do not have firearms as an element of the crime, such as Burglary, 3 rd (see below, PL 140.20). If that's not possible, avoid subsections (2) and (3) [subsection (1) might be better] and try to keep out of record of conviction that the weapon was a firearm.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Burglary, 3rd degree Class D felony	140.20	If term of imprisonment imposed is one year or more, probably is "burglary" AF, and might be "crime of violence" AF.	Yes if record of conviction establishes that crime intended to be committed was CIMT.		Tip for defense lawyers: 1. To avoid "burglary" or "crime of violence" AF, avoid sentence of one year or more (get 364 days or less) if possible. 2. If burgled "building" is a car and sentence of one year or more cannot be avoided, minimize risk of "burglary" AF by establishing fact of car (as opposed to house). 3. To minimize CIMT risk, consider alternative offense of Criminal Trespass, 2 nd (see above, PL 140.15), even if sentence imposed for that offense is the maximum one year. If that is not possible, leave record of conviction vague as to what was the underlying crime intended, or specify in that record an underlying offense that is NOT a CIMT.
Burglary, 2nd degree Class C felony	140.25	If term of imprisonment imposed is one year or more, subsection (1) probably is "burglary" or "crime of violence" AF, and subsection (2) is "burglary" or "crime of violence" AF.	Yes if record of conviction establishes that crime intended to be committed was CIMT.	Subsection (1)(d) probably is FO and, if record of conviction establishes that offense involved a firearm, subsections (1)(a) and (1)(c) probably also are FO.	Tip for defense lawyers: 1. To avoid "burglary" or "crime of violence" AF, avoid this offense altogether and consider alternative offense of Burglary, 3 rd with a sentence of 364 days or less, if possible (see above, PL 140.20). 2. To minimize FO risk, avoid this offense altogether and consider alternative offenses that do not have firearms as an element of the crime, such as Burglary, 3 rd (see above, PL 140.20). If that's not possible, avoid subsection (1)(d) and try to keep out of record of conviction that the weapon was a firearm. 3. To minimize CIMT risk, leave record of conviction vague as to what was the underlying crime intended, or specify in that record an underlying offense that is NOT a CIMT.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Burglary, 1st degree Class B felony	140.30	If term of imprisonment imposed is one year or more, is "burglary" or "crime of violence" AF.	Yes if record of conviction establishes that crime intended to be committed was CIMT.	Subsection (4) is FO and, if record of conviction establishes that offense involved a firearm, subsections (1) and (3) probably also are FO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid "burglary" or "crime of violence" AF, avoid this offense altogether and consider alternative offense of Burglary, 3rd with a sentence of 364 days or less, if possible (see above, PL 140.20). 2. To minimize FO risk, avoid this offense altogether and consider alternative offenses that do not have firearms as an element of the crime, such as Burglary, 3rd (see above, PL 140.20). If that's not possible, avoid subsection (4) and try to keep out of record of conviction that the weapon was a firearm. 3. To minimize CIMT risk, leave record of conviction vague as to what was the underlying crime intended, or specify in that record an underlying offense that is NOT a CIMT.
Possession of burglar's tools Class A misdemeanor	140.35	No, unless term of imprisonment imposed is one year, in which case might be attempted "burglary" or "theft" AF.	Maybe if record of conviction establishes that the offense intended to be committed was CIMT.		<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid attempted "burglary" or "theft" AF, avoid sentence of one year or more (get 364 days or less). 2. To minimize CIMT risk, consider alternative offense of Criminal Trespass, 2nd, if possible (see below, PL 140.15). If that is not possible, leave record of conviction vague as to what was the underlying crime intended, or specify in that record an underlying offense that is NOT a CIMT. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue not CIMT if government fails to show that underlying crime intended with the burglary tools is not CIMT. See <i>Guarino v. Uhl</i>, 107 F.2d 399 (2nd Cir. 1939); <i>Matter of S</i>, 6 I&N Dec. 769 (BIA 1955).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal mischief, 4th degree Class A misdemeanor	145.00	No (particularly if record of conviction shows subsection (3)), unless term of imprisonment imposed is one year, in which case might be "crime of violence" AF in some jurisdictions outside 2 nd Circuit.	Subsections (1) and (2) might be CIMT. Subsection (3) probably is NOT CIMT.		Tip for defense lawyers: 1. To avoid "crime of violence" AF, avoid sentence of one year (get 364 days or less). 2. To minimize CIMT risk, avoid subsections (1) and (2) and consider alternative offenses that are likely NOT to be CIMT, such as Reckless Endangerment of Property (see below, PL 145.25).
Criminal mischief, 3rd degree Class E felony	145.05	If term of imprisonment imposed is one year or more, might be "crime of violence" AF.	Probably.		Tip for defense lawyers: 1. To avoid "crime of violence" AF, avoid sentence of one year or more (get 364 days or less) if possible.
Criminal mischief, 2nd degree Class D felony	145.10	If term of imprisonment imposed is one year or more, might be "crime of violence" AF.	Probably.		Tip for defense lawyers: 1. To avoid "crime of violence" AF, avoid sentence of one year or more (get 364 days or less) if possible.
Criminal mischief, 1st degree Class B felony	145.12	If term of imprisonment imposed is one year or more, probably is "crime of violence" AF.	Probably.	FO (or destructive device offense) if record of conviction establishes that offense involved "destructive device" (as defined in 18 U.S.C. 921(a)).	Tip for defense lawyers: 1. To avoid "crime of violence" AF, avoid this offense altogether and consider alternative offense of Criminal Mischief, 3 rd or 4 th , with a sentence of 364 days or less, if possible (see above, PL 145.05 & 145.00). 2. To minimize FO risk, avoid this offense altogether and consider alternative offense of Criminal Mischief, 3 rd or 4 th , with a sentence of 364 days or less, if possible (see above, PL 145.05 & 145.00).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Reckless endangerment of property Class B misdemeanor	145.25	No.	Probably NOT.		<i>See Matter of M</i> , 3 I&N Dec. 272 (BIA 1948)(found that property damage offense was CIMT because was not one “where the act was merely accompanied by negligence or carelessness, but one which was perpetrated maliciously and wantonly”); <i>Matter of M</i> , 2 I&N Dec. 686 (BIA 1946)(reckless endangerment of property not a CIMT).
Making graffiti Class A misdemeanor	145.60	No, unless term of imprisonment imposed is one year, in which case might be “crime of violence” AF in some jurisdictions outside 2 nd Circuit.	Probably NOT.		Tip for defense lawyers: 1. To avoid “crime of violence” AF, avoid sentence imposed of one year (get 364 days or less).
Possession of graffiti instrument Class B misdemeanor	145.65	No.	Probably NOT.		
Arson, 5th degree Class A misdemeanor	150.01	No, unless term of imprisonment imposed is one year, in which case probably is “crime of violence” AF.	Maybe.	FO (or destructive device offense) if record of conviction establishes that offense involved “destructive device” (as defined in 18 U.S.C. 921(a)).	Tip for defense lawyers: 1. To avoid “crime of violence” AF, avoid sentence imposed of one year (get 364 days or less).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Arson, 4th degree Class E felony	150.05	If term of imprisonment imposed is one year or more, probably is "crime of violence" AF.	Maybe.	FO (or destructive device offense) if record of conviction establishes that offense involved "destructive device" (as defined in 18 U.S.C. 921(a)).	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid "crime of violence" AF, avoid sentence imposed of one year or more (get 364 days or less) if possible. 2. To minimize CIMT risk, consider alternative offense of Criminal Mischief, 4th, subsection (3) (see above, PL 145.00(3)), with a sentence of 364 days or less, if possible, OR consider pleading to an <i>attempt</i> (PL 110.00) to commit Arson, 4th (see above, PL 150.05). See <i>Gill v. INS</i>, 420 F.3d 82 (2d Cir. 2006) (because a person cannot intend to commit a reckless act, an <i>attempted</i> reckless assault could not constitute CIMT even though the completed crime itself is CIMT); <i>Knapik v Ashcroft</i>, 384 F.3d 84 (3d Cir. 2004) (same with attempted reckless endangerment, 1st degree). 3. To minimize FO risk, avoid this offense altogether if "destructive device" was used, and consider alternative offenses such as Criminal Mischief, 4th Degree, subsection (3), or Arson, 5th Degree (see above, PL 145.00(3) or 150.01), in each case with a sentence of 364 days or less, if possible.
Arson, 3rd degree Class C felony	150.10	If term of imprisonment imposed is one year or more, probably is "crime of violence" AF.	Yes.	FO (or destructive device offense) if record of conviction establishes that offense involved "destructive device" (as defined in 18 U.S.C. 921(a)).	
Arson, 2nd degree Class B felony	150.15	If term of imprisonment imposed is one year or more, probably is "crime of violence" AF.	Yes.	FO (or destructive device offense) if record of conviction establishes that offense involved "destructive device" (as defined in 18 U.S.C. 921(a)).	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Arson, 1st degree Class A-I felony	150.20	If term of imprisonment imposed is one year or more, probably is "crime of violence" AF.	Yes.	FO (or destructive device offense) if record of conviction establishes that offense involved "destructive device" (as defined in 18 U.S.C. 921(a)).	
Petit larceny Class A misdemeanor	155.25	No, unless term of imprisonment imposed is one year, in which case probably is "theft" AF.	Yes.		Tip for defense lawyers: 1. To avoid AF, avoid sentence imposed of one year (get 364 days or less). 2. To avoid CIMT, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20), Trespass (see above, PL 140.04) or Jostling (see below, PL 165.25). If that is not possible <i>and</i> if client has no prior CIMT, consider alternative offense of <i>attempt</i> (PL 110.00) to commit 155.25, which as a B misdemeanor will not trigger deportability as "1 CIMT within 5 years of admission."
Grand larceny, 4th degree Class E felony	155.30	If term of imprisonment imposed is one year or more, probably is "theft" AF. Subsection (11), if the record of conviction shows the property involved to be hydrous ammonia, probably is "drug trafficking" AF regardless of sentence.	Yes.	Subsection (7) probably is FO. Subsection (11) probably is CSO.	Tip for defense lawyers: 1. To avoid "theft" AF, avoid sentence imposed of one year or more (get 364 days or less). 2. To avoid FO risk, avoid subsection (7). 3. To avoid "drug trafficking" AF or CSO risk, avoid subsection (11). 4. If the allegation is car theft, to avoid CIMT risk consider alternative offense of Unauthorized Use of a Vehicle, 3 rd or 2 nd (see below, PL 165.05 & 165.06).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Grand larceny, 3rd degree Class D felony	155.35	If term of imprisonment imposed is one year or more, probably is "theft" AF. If record of conviction establishes that value of property exceeds \$10,000, might be "fraud or deceit" AF regardless of sentence.	Yes.		<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid "theft" AF, avoid sentence imposed of one year or more (get 364 days or less) if possible. 2. If alleged loss exceeds \$10,000, to decrease "fraud or deceit AF" risk, consider alternative offenses such as Criminal Possession of Stolen Property, 4th or 3rd (see below, PL 165.45 & 165.50) or Grand Larceny, 4th (see above, PL 155.30). If pleading to 155.35 cannot be avoided, affirmatively establish in plea colloquy that loss to victim was no more than \$10,000. 3. If the allegation is car theft, to avoid CIMT risk, consider alternative offense of Unauthorized Use of a Vehicle, 3rd or 2nd (see below, PL 165.05 & 165.06). <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. If government alleges "fraud or deceit" AF, argue not AF (1) because fraud or deceit is not a necessary element of the offense; (2) in any event government has failed to prove that loss to victim exceeds \$10,000 (e.g., if plea colloquy admits to loss amount of no more than \$10,000).
Grand larceny, 2nd degree Class C felony	155.40	If term of imprisonment imposed is one year or more, probably is "theft" AF and subsection (2) might also be "crime of violence" AF. If record of conviction establishes that value of property exceeds \$10,000, might be "fraud or	Yes.		

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
		deceit" AF regardless of sentence.			
Grand larceny, 1st degree Class B felony	155.42	If term of imprisonment imposed is one year or more, probably is "theft" AF. Might also be "fraud or deceit" AF regardless of sentence.	Yes.		
Robbery, 3rd degree Class D felony	160.05	If term of imprisonment imposed is one year or more, is "crime of violence" and "theft" AF.	Yes.		Tip for defense lawyers: 1. To avoid AF, avoid sentence imposed of one year or more (get 364 days or less) if possible.
Robbery, 2nd degree Class C felony	160.10	If term of imprisonment imposed is one year or more, is "crime of violence" and "theft" AF.	Yes.	Subsection 2(b) probably is FO if record of conviction establishes that offense involved a firearm.	Tip for defense lawyers: 1. To avoid AF, avoid this offense altogether and consider alternative plea to Robbery, 3 rd with a sentence of 364 days or less (see above, PL 160.05) if possible.
Robbery, 1st degree Class B felony	160.15	If term of imprisonment imposed is one year or more, is "crime of violence" and "theft" AF.	Yes.	Subsections (2), (3) and (4) are FO if record of conviction establishes that offense involved a firearm.	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Unauthorized use of vehicle, 3rd degree Class A misdemeanor	165.05	No, unless term of imprisonment imposed is one year, in which case might be "theft" AF.	Probably NOT.		Tip for defense lawyers: 1. To avoid "theft" AF, avoid sentence imposed of one year (get 364 days or less).
Unauthorized use of vehicle, 2nd degree Class E felony	165.06	If term of imprisonment imposed is one year or more, might be "theft" AF.	Probably NOT.		Tip for defense lawyers: 1. To avoid AF, avoid sentence imposed of one year or more (get 364 days or less) if possible.
Unauthorized use of vehicle, 1st degree Class D felony	165.08	If term of imprisonment imposed is one year or more, might be "theft" AF.	Maybe, particularly if record establishes intent to use vehicle in the commission of a CIMT.		Tip for defense lawyers: 1. To avoid AF, avoid sentence imposed of one year or more (get 364 days or less) if possible. 2. To decrease CIMT risk, avoid this offense altogether and consider alternative offense of Unauthorized Use of Vehicle, 2 nd with a sentence of 364 days or less (see above, PL 165.05) if possible. If pleading to 165.08 cannot be avoided, leave record of conviction vague as to what was the underlying crime intended, or specify in that record an underlying offense that is NOT a CIMT.
Theft of services Violation Class A misdemeanor Class E felony	165.15	If term of imprisonment imposed is one year or more, might be "theft" AF.	Probably.		Tip for defense lawyers: 1. To avoid AF, avoid sentence imposed of one year (get 364 days or less) if possible. 2. To avoid CIMT, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20) or Trespass (see above, PL 140.04). If that is not possible <i>and</i> if client has no prior CIMTs, consider alternative offense of <i>attempt</i> (PL 110.00) to commit PL 165.15, which as a B misdemeanor will not trigger deportability as "1 CIMT within 5 years of admission."
Jostling Class A misdemeanor	165.25	No.	Probably NOT.		

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal possession of stolen property, 5th degree Class A misdemeanor	165.40	No, unless term of imprisonment imposed is one year, in which case probably is "theft" AF.	Probably (but note presumption, not actual finding, that person possessed property with intent to benefit himself or another).		Tip for defense lawyers: 1. To avoid AF, avoid sentence imposed of one year (get 364 days or less). 2. To avoid CIMT risk, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20), Trespass (see above, PL 140.04) or Jostling (see below, PL 165.25); if the allegation is car theft, also consider alternative offense of Unauthorized Use of a Vehicle, 3 rd (see above, PL 165.05 & 165.06). If the strategies in the preceding sentence are not possible <i>and</i> if client has no prior CIMTs, consider alternative offense of <i>attempt</i> (PL 110.00) to commit PL 165.40, which as a B misdemeanor will not trigger deportability as "1 CIMT within 5 years of admission."
Criminal possession of stolen property, 4th degree Class E felony	165.45	If term of imprisonment imposed is one year or more, probably is "theft" AF. Subsection (7), if the record of conviction shows the property involved to be hydrocyanic ammonia, probably is "drug trafficking" AF regardless of sentence.	Probably (but note presumption, not actual finding, that person possessed property with intent to benefit himself or another).	Subsection (7) probably is CSO.	Tip for defense lawyers: 1. To avoid "theft" AF, avoid sentence imposed of one year or more (get 364 days or less) if possible. 2. To avoid "drug trafficking" AF or CSO risk, avoid subsection (7). 3. To avoid CIMT risk, consider alternative offenses such as Jostling (see above, PL 165.25); if the allegation is car theft, also consider alternative offense of Unauthorized Use of a Vehicle, 3 rd or 2 nd (see below, PL 165.05 & 165.06).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal possession of stolen property, 3rd degree Class D felony	165.50	If term of imprisonment imposed is one year or more, probably is "theft" AF.	Probably (but note presumption, not actual finding, that person possessed property with intent to benefit himself or another).		Tip for defense lawyers: 1. To avoid "theft" AF, avoid sentence imposed of one year or more (get 364 days or less) if possible. 2. If the allegation is car theft, to avoid CIMT risk consider alternative offense of Unauthorized Use of a Vehicle, 3 rd or 2 nd (see above, PL 165.05 & 165.06).
Criminal possession of stolen property, 2nd degree Class C felony	165.52	If term of imprisonment imposed is one year or more, probably is "theft" AF.	Probably (but note presumption, not actual finding, that person possessed property with intent to benefit himself or another).		
Criminal possession of stolen property, 1st degree Class B felony	165.54	If term of imprisonment imposed is one year or more, probably is "theft" AF.	Probably (but note presumption, not actual finding, that person possessed property with intent to benefit himself or another).		
Trademark counterfeiting, 3 rd degree Class A misdemeanor	165.71	If term of imprisonment imposed is one year, might be "counterfeiting" AF.	Probably.		Tip for defense lawyers: 1. To avoid AF, avoid sentence imposed of one year (get 364 days or less). 2. To avoid CIMT, consider alternative offense such as Disorderly Conduct (see below, PL 240.20). If that is not possible <i>and</i> if client has no prior CIMT, consider alternative offense of <i>attempt</i> (PL 110.00) to commit PL 165.71, which as a B misdemeanor will not trigger

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
					deportability as “1 CIMT within 5 years of admission.”
Trademark counterfeiting, 2 nd degree Class E felony	165.72	If term of imprisonment imposed is one year or more, might be “counterfeiting” AF. If the loss to the victim(s) exceeds \$10,000, might also be “fraud” AF especially if record of conviction shows element of intent to defraud or deceive (as opposed to evade a lawful restriction).	Probably.		Tip for defense lawyers: 1. To avoid “counterfeiting” AF, avoid sentence imposed of one year or more (get 364 days or less) if possible. 2. To decrease “fraud” AF risk, keep out of record of conviction any reference to a loss amount greater than \$10,000, or specify in the plea colloquy that the loss amount did not exceed \$10,000; and/or specify in plea colloquy that offense was committed with intent to evade a lawful restriction on sale/resale (as opposed to with intent to deceive or defraud). <i>See Valansi v. Ashcroft</i> , 278 F.3d 203 (3d Cir. 2002).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Trademark counterfeiting, 1 st degree Class C felony	165.73	If term of imprisonment imposed is one year or more, might be “counterfeiting” AF. If the loss to the victim(s) exceeds \$10,000, might also be “fraud” AF especially if record of conviction shows element of intent to defraud or deceive (as opposed to evade a lawful restriction).	Probably.		Tip for defense lawyers: 1. To avoid “counterfeiting” AF, consider alternative offense of Trademark Counterfeiting, 3 rd or 2 nd and get sentence of 364 days or less (see above, PL 165.71 & 165.72) if possible. 2. To decrease risk of “fraud” AF, specify in the plea colloquy if possible that the <i>loss</i> amount did not exceed \$10,000 (regardless of retail value); and/or specify in plea colloquy that offense was committed with intent to evade a lawful restriction on sale/resale (as opposed to with intent to deceive or defraud). <i>See Valansi v. Ashcroft</i> , 278 F.3d 203 (3d Cir. 2002).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Forgery, 3rd degree Class A misdemeanor	170.05	If term of imprisonment imposed is one year, probably is "forgery" AF. If the loss to the victim(s) exceeds \$10,000, might also be "fraud" AF especially if record of conviction shows element of intent to defraud or deceive (as opposed to injure).	Yes.		Tip for defense lawyers: 1. To avoid "forgery" AF, avoid sentence imposed of one year (get 364 days or less). 2. To decrease risk of "fraud" AF, specify in the plea colloquy that the loss amount did not exceed \$10,000; and/or specify in plea colloquy that offense was committed with intent to injure (as opposed to with intent to deceive or defraud). <i>See Valansi v. Ashcroft, 278 F.3d 203 (3d Cir. 2002).</i> 3. To decrease CIMT risk, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20) or Trespass (see above, PL, 140.05). If these are not possible, consider alternative offenses that may preserve the potential argument that the conviction is not a CIMT, such as Offering a False Instrument for Filing, 2 nd (see below, PL 175.30) or Making a Punishable False Written Statement (see below, PL 210.45). If these are not possible <i>and</i> if client has no prior CIMTs, consider alternative offense of <i>attempt</i> (PL 110.00) to commit PL 170.05, which as a B misdemeanor will not trigger deportability as "1 CIMT within 5 years of admission."

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Forgery, 2nd degree Class D felony	170.10	If term of imprisonment imposed is one year or more, probably is "forgery" AF. If the loss to the victim(s) exceeds \$10,000, might also be "fraud" AF especially if record of conviction shows element of intent to defraud or deceive (as opposed to injure)	Yes.		Tip for defense lawyers: 1. To avoid "forgery" AF, avoid sentence imposed of one year or more (get 364 days or less) if possible. 2. To decrease "fraud" AF risk, specify in the plea colloquy that the loss amount did not exceed \$10,000; and/or specify in plea colloquy that offense was committed with intent to injure (as opposed to with intent to deceive or defraud). <i>See Valansi v. Ashcroft</i> , 278 F.3d 203 (3d Cir. 2002). 3. To decrease CIMT risk, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20) or Trespass (see above, PL, 140.05). If these are not possible, consider alternative offenses that may preserve the potential argument that the conviction is not a CIMT, such as Offering a False Instrument for Filing, 2 nd (see below, PL 175.30) or Making a Punishable False Written Statement (see below, PL 210.45).
Forgery, 1st degree Class C felony	170.15	If term of imprisonment imposed is one year or more, probably is "forgery" AF. If the loss to the victim(s) exceeds \$10,000, might also be "fraud" AF especially if record of conviction shows element of intent to defraud or deceive (as opposed to	Yes.		

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
		injure)			
Criminal possession of a forged instrument, 3rd degree Class A misdemeanor	170.20	If term of imprisonment imposed is one year, might be "forgery" AF. If the loss to the victim(s) exceeds \$10,000, might also be "fraud" AF especially if record of conviction shows element of intent to defraud or deceive (as opposed to injure).	Yes.		<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid "forgery" AF, avoid sentence imposed of one year (get 364 days or less). 2. To decrease "fraud" AF risk, specify in the plea colloquy that the loss amount did not exceed \$10,000; and/or specify in plea colloquy that offense was committed with intent to injure (as opposed to with intent to deceive or defraud). See <i>Valansi v. Ashcroft</i>, 278 F.3d 203 (3d Cir. 2002). 3. To decrease CIMT risk, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20) or Trespass (see above, PL, 140.05). If these are not possible, consider alternative offenses that may preserve the potential argument that the conviction is not a CIMT, such as Offering a False Instrument for Filing, 2nd Degree (see below, PL 175.30) or Making a Punishable False Written Statement (see below, PL 210.45); if these are not possible <i>and</i> if client has no prior CIMTs, consider alternative offense of <i>attempt</i> (PL 110.00) to commit 170.20, which as a B misdemeanor will not trigger deportability as "1 CIMT within 5 years of admission." <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. If government alleges "fraud or deceit" AF, argue not AF (1) because fraud or deceit is not a necessary element of the offense; (2) in any event government has failed to prove that loss to victim exceeds \$10,000 (e.g., if plea colloquy admits to loss amount of no more than \$10,000).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal possession of a forged instrument, 2nd degree Class D felony	170.25	If term of imprisonment imposed is one year or more, might be "forgery" AF. If the loss to the victim(s) exceeds \$10,000, might also be "fraud" AF especially if record of conviction shows element of intent to defraud or deceive (as opposed to injure).	Yes.		Tip for defense lawyers: 1. To avoid "forgery" AF, avoid sentence imposed of one year or more (get 364 days or less) if possible. 2. To decrease "fraud" AF risk, specify in the plea colloquy that the loss amount did not exceed \$10,000; and/or specify in plea colloquy that offense was committed with intent to injure (as opposed to with intent to deceive or defraud). <i>See Valansi v. Ashcroft, 278 F.3d 203 (3d Cir. 2002).</i> 3. To preserve the potential argument that the conviction might not be a CIMT, consider alternative offenses such as Offering a False Instrument for Filing, 2 nd (see below, PL 175.30) or Making a Punishable False Written Statement (see below, PL 210.45). Tip for immigration lawyers: 1. If government alleges "fraud or deceit" AF, argue not AF (1) because fraud or deceit is not a necessary element of the offense; (2) in any event government has failed to prove that loss to victim exceeds \$10,000 (e.g., if plea colloquy admits to loss amount of no more than \$10,000).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal possession of a forged instrument, 1st degree Class C felony	170.30	If term of imprisonment imposed is one year or more, might be "forgery" AF. If the loss to the victim(s) exceeds \$10,000, might also be "fraud" AF, especially if record of conviction shows element of intent to defraud or deceive (as opposed to injure).	Yes.		
Tampering with public records, 2 nd degree Class A misdemeanor	175.20	Probably NOT.	Maybe.		Tip for defense lawyers: 1. To avoid CIMT risk, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20) or Trespass (see above, PL 140.05). If these are not possible <i>and</i> if client has no prior CIMT, consider alternative offense of <i>attempt</i> (PL 110.00) to commit PL 175.20, which as a B misdemeanor will not trigger deportability as "1 CIMT within 5 years of admission."
Tampering with public records, 1 st degree Class E felony	175.25	If the loss to the victim(s) exceeds \$10,000, might be "fraud" AF.	Yes.		Tip for defense lawyers: 1. To decrease "fraud" AF risk, specify in the plea colloquy that the loss amount did not exceed \$10,000. 2. To preserve the potential argument that the conviction might not be a CIMT, consider alternative offenses such as Offering a False Instrument for Filing, 2 nd (see below, PL 175.30) or Making a Punishable False Written Statement (see below, PL 210.45).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Offering a false instrument for filing, 2 nd degree Class A misdemeanor	175.30	Probably NOT.	Maybe.		Tip for defense lawyers: 1. To avoid CIMT risk, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20) or Trespass (see above, PL 140.05). If these are not possible <i>and</i> if client has no prior CIMT, consider alternative offense of <i>attempt</i> (PL 110.00) to commit PL 175.30, which as a B misdemeanor will not trigger deportability as “1 CIMT within 5 years of admission.”
Offering a false instrument for filing, 1 st degree Class E felony	175.35	If the loss to the victim(s) exceeds \$10,000, might be “fraud” AF.	Yes.		Tip for defense lawyers: 1. To decrease “fraud” AF risk, specify in the plea colloquy that the loss amount did not exceed \$10,000. 2. To preserve the potential argument that the conviction might not be a CIMT, consider alternative offenses such as Offering a False Instrument for Filing, 2 nd (see above, PL 175.30) or Making a Punishable False Written Statement (see below, PL 210.45).
Issuing a bad check Class B misdemeanor	190.05	No.	Probably NOT.		

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal impersonation, 2nd degree Class A misdemeanor	190.25	If the loss to the victim(s) exceeds \$10,000, might be "fraud or deceit" AF especially if record of conviction shows element of intent to defraud (as opposed to intent to obtain a benefit or to injure)	Probably.		<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To decrease "fraud" AF risk, specify in the plea colloquy that the loss amount did not exceed \$10,000; and/or specify in plea colloquy that offense was committed with intent to obtain a benefit or to injure (as opposed to with intent to defraud). See <i>Valansi v. Ashcroft</i>, 278 F.3d 203 (3d Cir. 2002). 2. To decrease CIMT risk, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20), Trespass (see above, PL, 140.05). If these are not possible, consider alternative offenses that may preserve the potential argument that the conviction is not a CIMT, such as Offering a False Instrument for Filing, 2nd (see below, PL 175.30) or Making a Punishable False Written Statement (see below, PL 210.45). If these are not possible <i>and</i> if client has no prior CIMT, consider alternative offense of <i>attempt</i> (PL 110.00) to commit PL 190.25, which as a B misdemeanor will not trigger deportability as "1 CIMT within 5 years of admission." <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. If government alleges "fraud or deceit" AF, argue not AF (1) because fraud or deceit is not a necessary element of the offense; (2) in any event government has failed to prove that loss to victim exceeds \$10,000 (e.g., if plea colloquy admits to loss amount of no more than \$10,000).
Criminal impersonation, 1st degree Class E felony	190.26	If the loss to the victim(s) exceeds \$10,000, might be "fraud or deceit" AF.	Probably.		<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To decrease "fraud" AF risk, specify in the plea colloquy that the loss amount did not exceed \$10,000.
Resisting arrest Class A misdemeanor	205.30	No.	No.		

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Hindering prosecution, 3rd degree Class A misdemeanor	205.55	No, unless term of imprisonment imposed is one year, in which case might be "obstruction of justice" AF.	Maybe.	Probably is NOT CSO, etc., even if underlying offense was CSO, etc. (See Appendix E).	Tip for defense lawyers: 1. To avoid "obstruction of justice" AF, avoid sentence imposed of one year (get 364 days or less).
Hindering prosecution, 2nd degree Class E felony	205.60	If term of imprisonment imposed is one year or more, probably is "obstruction of justice" AF.	Maybe.	Probably is NOT CSO, etc., even if underlying offense was CSO, etc. (See Appendix E).	Tip for defense lawyers: 1. To avoid "obstruction of justice" AF, avoid sentence imposed of one year or more (get 364 days or less) if possible.
Hindering prosecution, 1st degree Class D felony	205.65	If term of imprisonment imposed is one year or more, probably is "obstruction of justice" AF.	Maybe.	Probably is NOT CSO, etc., even if underlying offense was CSO, etc. (See Appendix E).	Tip for defense lawyers: 1. To avoid "obstruction of justice" AF, avoid sentence imposed of one year or more (get 364 days or less) if possible.
Perjury, 3 rd degree Class A misdemeanor	210.05	NO, unless term of imprisonment imposed is one year, in which case might be "perjury" AF.	Maybe.		Tip for defense lawyers: 1. To avoid "perjury" AF, avoid sentence imposed of one year (get 364 days or less). 2. To decrease CIMT risk, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20) or Trespass (see above, PL 140.05); if these are not possible <i>and</i> if client has no prior CIMT, consider alternative offense of <i>attempt</i> (PL 110.00) to commit PL 210.05, which as a B misdemeanor will not trigger deportability as "1 CIMT within 5 years of admission." Tip for immigration lawyers: 1. Argue NOT CIMT because materiality is not a required element for conviction. See, e.g., <i>Matter of R</i> , 2 I&N Dec. 819 (BIA 1947), <i>Matter of H</i> , 1 I&N Dec. 669 (BIA 1943).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Perjury, 2 nd degree Class E felony	210.10	If term of imprisonment imposed is one year or more, might be "perjury" AF.	Yes.		Tip for defense lawyers: 1. To avoid "perjury" AF, avoid sentence imposed of one year (get 364 days or less) if possible. 2. To decrease CIMT risk, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20), Trespass (see above, PL 140.05) or Perjury 3 rd (see above, PL 210.05).
Perjury, 1 st degree Class D felony	210.25	If term of imprisonment imposed is one year or more, might be "perjury" AF.	Yes		Tip for defense lawyers: 1. To avoid "perjury" AF, avoid sentence imposed of one year (get 364 days or less) if possible.
Making a punishable false written statement Class A misdemeanor	210.45	Probably NOT.	Maybe.		Tip for defense lawyers: 1. To avoid CIMT risk, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20) or Trespass (see above, PL 140.05). If these are not possible <i>and</i> if client has no prior CIMT, consider alternative offense of <i>attempt</i> (PL 110.00) to commit PL 210.45, which as a B misdemeanor will not trigger deportability as "1 CIMT within 5 years of admission."
Criminal contempt, 2nd degree Class A misdemeanor	215.50	No, unless term of imprisonment imposed is one year, in which case might be "obstruction of justice" AF.	Maybe.	If conviction involves violation of a protection order, might trigger deportability under CODV clause regarding "violators of protection orders."	Tip for defense lawyers: 1. To avoid AF, avoid sentence imposed of one year (get 364 days or less). 2. If allegation involves violation of protection order, to avoid deportability as a "violator of protection order," avoid subsection (6) and consider alternative offenses such as Disorderly Conduct (see below, PL 240.20), Criminal Nuisance (see below, PL 240.45) or Criminal Trespass (see above, PL 140.15); 3. To decrease CIMT risk deportability, consider alternative offenses such as Disorderly Conduct (see below, PL 240.20), Resisting Arrest (see above, PL 205.30) or Criminal Trespass (see above, PL 140.15).
Bail jumping, 3rd degree Class A	215.55	Might be "bail jumping" AF if record of conviction	No.		

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
misdemeanor		establishes that defendant failed to appear in connection with any felony charge, OR that defendant failed to appear for <i>service of a sentence</i> if the underlying offense is punishable by imprisonment for a term of 5 years or more.			
Bail jumping, 2nd degree Class E felony	215.56	Is "bail jumping" AF.	No.		
Bail jumping, 2nd degree Class D felony	215.57	Is "bail jumping" AF.	No.		
Failing to respond to an appearance ticket Violation	215.58	Probably NOT.	No.		

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal contempt, 1st degree Class E felony	215.51	If term of imprisonment imposed is one year or more, might be "obstruction of justice" AF. If term of imprisonment imposed is one year, subsections b(i), b(ii), (b)(v) and (b)(vi) probably are "crime of violence" AF, and subsections (b)(iii), (b)(iv), (c), and (d) might be "crime of violence" AF.	Maybe.	If conviction involves violation of a protection order, might trigger deportability under CODV clause regarding "violators of protection orders." Subsection (b)(i) is FO if record of conviction establishes that offense involved a firearm.	Tip for defense lawyers: 1. To avoid "obstruction of justice" or "crime of violence" AF, avoid sentence imposed of one year or more (get 364 days or less) if possible. 2. If firearm use is alleged, to minimize FO risk avoid subsection (b)(i) and consider alternative offenses that do not have firearms as an element of the crime, such as subsections (1) or (2) of Attempted Assault, 3 rd Degree (see above, PL 110/120.00(1) or (2)). If pleading to subsection (b)(i) cannot be avoided, try to keep out of record of conviction that the weapon was a firearm. 3. If allegation involves violation of protection order, to avoid deportability as a "violator of protection order," avoid subsections (b), (c) and (d) and consider alternative offenses such as Disorderly Conduct (see below, PL 240.20), Criminal Nuisance (see below, PL 240.45), Criminal Trespass (see above, PL 140.15) or subsections (1) or (2) of Attempted Assault, 3 rd Degree (see above, PL 110/120.00(1) or (2)).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
CPCS, 7 th degree Class A misdemeanor	220.03	NO if this is a first drug offense, unless record of conviction (ROC) shows possession of more than 5 grams of crack or any amount of flunitrazepam, in which case probably is "drug trafficking" AF. If this is a subsequent drug offense, ROC establishes a controlled substance as defined in 21 USC 802 and the government establishes a prior drug conviction, might be "drug trafficking" AF (see App. G, § 1.b).	Probably NOT.	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of CSO, if possible consider alternative offenses such as Disorderly Conduct (see below, PL 240.20), Criminal Nuisance (see below, PL 240.45), or Hindering Prosecution, 3rd Degree (see above, PL 205.55); or possibly to decrease risk of CSO consider alternative offenses such as Criminally Possessing a Hypodermic Instrument (see below, PL 220.45), Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 2. If pleading to this offense cannot be avoided, if possible, keep out of record of conviction identification of the controlled substance involved. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT "drug trafficking" AF based on arguments that remain available after the Supreme Court's decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b). 2. Argue NOT CSO if government failed to prove that the controlled substance involved is one defined in 21 USC 802.
CPCS, 5th degree Class D felony	220.06	Conviction under "intent to sell" subsection (1) probably is "drug trafficking" AF if	Subsection (1) requiring "intent to sell" might be CIMT. Subsections (2) through (8)	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of "drug trafficking" AF or CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of "drug trafficking" AF, avoid subsection (1) in particular. 3. To avoid risk of CSO, if possible consider

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips
		<p>record of conviction (ROC) establishes a controlled substance as defined in 21 USC 802. If this is a first drug offense, any other subsection is NOT a “drug trafficking” AF, unless ROC shows possession of more than 5 grams of crack or any amount of flunitrazepam, in which case probably is “drug trafficking” AF. If this is a subsequent drug offense, ROC establishes a controlled substance as defined in 21 USC 802 and the government establishes a prior drug conviction, any</p>	<p>probably are NOT CIMT.</p>		<p><i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i></p> <p>alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminally Possessing a Hypodermic Instrument (see below, PL 220.45), Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08).</p> <p>4. If pleading to this offense cannot be avoided, if possible avoid subsection (1) and keep out of record of conviction identification of the controlled substance involved.</p> <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT “drug trafficking” AF based on arguments that remain available after the Supreme Court’s decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b). 2. Argue NOT CSO if government failed to prove that the controlled substance involved is one defined in 21 USC 802.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
		such other subsection might be “drug trafficking” AF (see App. G, § 1.b).			
CPCS, 4th degree Class C felony	220.09	Conviction under “intent to sell” subsection (13) probably is “drug trafficking” AF. If this is a first drug offense, any other subsection is NOT a “drug trafficking” AF, unless ROC shows possession of more than 5 grams of crack or any amount of flunitrazepam, in which case probably is “drug trafficking” AF. If this is a subsequent drug offense, ROC establishes a controlled substance as defined in 21	Subsection (13) requiring “intent to sell” might be CIMT. All other subsections probably are NOT CIMT because they do not require “intent to sell”.	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of “drug trafficking” AF or CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of “drug trafficking” AF, avoid subsection (13) in particular. 3. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 4. If pleading to this offense cannot be avoided, if possible avoid subsection (13) and keep out of record of conviction identification of the controlled substance involved. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT “drug trafficking” AF based on arguments that remain available after the Supreme Court’s decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b). 2. Argue NOT CSO if government failed to prove that the controlled substance involved is one defined in 21 USC 802.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
		USC 802 and the government establishes a prior drug conviction, any such other subsection might be “drug trafficking” AF (see App. G, § 1.b).			
CPCS, 3rd degree Class B felony	220.16	Conviction under “intent to sell” subsections (1) through (7) probably is “drug	Subsections (1) through (7) requiring “intent to sell” might be CIMT. Subsections (8) through (13)	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	Tip for defense lawyers: 1. To avoid risk of “drug trafficking” AF or CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of “drug trafficking” AF, avoid subsections (1) through (7) in particular. 3. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
		<p>trafficking" AF if record of conviction (ROC) establishes a controlled substance as defined in 21 USC 802. If this is a first drug offense, any other subsection is NOT a "drug trafficking" AF, unless ROC shows possession of more than 5 grams of crack or any amount of flunitrazepam, in which case probably is "drug trafficking" AF. If this is a subsequent drug offense, ROC establishes a controlled substance as defined in 21 USC 802 and the government establishes a prior drug</p>	<p>probably are NOT CIMT because they do not require "intent to sell".</p>		<p>above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08).</p> <p>4. If pleading to this offense cannot be avoided, if possible avoid subsections (1) through (7) and keep out of record of conviction identification of the controlled substance involved.</p> <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT "drug trafficking" AF based on arguments that remain available after the Supreme Court's decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b). 2. Argue NOT CSO if government failed to prove that the controlled substance involved is one defined in 21 USC 802.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
		conviction, any such other subsection might be "drug trafficking" AF (see App. G, § 1.b).			

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
CPCS, 2nd degree Class A-II felony	220.18	If this is a first drug offense, it is NOT a “drug trafficking” AF, unless record of conviction (ROC) establishes possession of more than 5 grams of crack or of any amount of flunitrazepam, in which case probably is “drug trafficking” AF. If this is a subsequent drug offense, ROC establishes a controlled substance as defined in 21 USC 802 and the government establishes a prior drug conviction, might be “drug trafficking” AF (see App. G, § 1.b).	Probably NOT.	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of “drug trafficking” AF or CSO, if possible negotiate diversion without a guilty plea. 2. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 3. If pleading to this offense cannot be avoided, if possible keep out of record of conviction identification of the controlled substance involved. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT “drug trafficking” AF based on arguments that remain available after the Supreme Court’s decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b). 2. Argue NOT CSO if government failed to prove that the controlled substance involved is one defined in 21 USC 802.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
CPCS, 1st degree Class A-I felony	220.21	If this is a first drug offense, it is NOT a “drug trafficking” AF, unless record of conviction (ROC) establishes possession of more than 5 grams of crack or of any amount of flunitrazepam, in which case probably is “drug trafficking” AF. If this is a subsequent drug offense, ROC establishes a controlled substance as defined in 21 USC 802 and the government establishes a prior drug conviction, might be “drug trafficking” AF (see App. G, § 1.b).	Probably NOT.	Would be CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of “drug trafficking” AF or CSO, if possible negotiate diversion without a guilty plea. 2. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 3. If pleading to this offense cannot be avoided, if possible keep out of record of conviction identification of the controlled substance involved. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT “drug trafficking” AF based on arguments that remain available after the Supreme Court’s decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b). 2. Argue NOT CSO if government failed to prove that the controlled substance involved is one defined in 21 USC 802.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Use of a Child to Commit a Controlled Substance Offense E Felony	220.28	Probably is “drug trafficking” AF if record of conviction establishes a controlled substance as defined in 21 USC 802.	Probably.	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802. Might be CAC.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of “drug trafficking” AF and CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of “drug trafficking” AF and CIMT, if at all possible avoid this drug offense altogether and consider alternative offense of CPCS, 7th degree, or subsections (2) – (8) of CPCS, 5th degree (see above, PL 220.03 & 220.06) or offenses described in Tip 3 below. 3. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminally Possessing a Hypodermic Instrument (see below, PL 220.45), Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 4. If pleading to this offense cannot be avoided, if possible keep out of record of conviction identification of the controlled substance involved. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT CSO or AF if government failed to prove that the controlled substance involved is one defined in 21 USC 802.
CSCS, 5th degree Class D felony	220.31	Is “drug trafficking” AF if record of conviction establishes a controlled substance as defined in 21 USC 802.	Probably.	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of “drug trafficking” AF and CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of “drug trafficking” AF and CIMT, if at all possible avoid this drug offense altogether and consider alternative offense of CPCS, 7th degree, or subsections (2) – (8) of CPCS, 5th degree (see above, PL 220.03 & 220.06) or offenses described in Tip 3 below. 3. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminally Possessing a Hypodermic Instrument (see below, PL 220.45), Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
					<p>115.08).</p> <p>4. If pleading to this offense cannot be avoided, if possible keep out of record of conviction identification of the controlled substance involved.</p> <p>Tip for immigration lawyers:</p> <p>1. Argue NOT CSO or AF if government failed to prove that the controlled substance involved is one defined in 21 USC 802</p>
CSCS, 4th degree Class C felony	220.34	Is “drug trafficking” AF if record of conviction establishes a controlled substance as defined in 21 USC 802.	Probably.	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	<p>Tip for defense lawyers:</p> <p>1. To avoid risk of “drug trafficking” AF or CSO, if possible negotiate diversion without a guilty plea.</p> <p>2. To decrease risk of “drug trafficking” AF, if at all possible avoid this drug offense altogether and consider alternative offenses described in Tip 3 below.</p> <p>3. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08).</p> <p>4. If pleading to a felony controlled substance offense cannot be avoided, to preserve possible argument against AF or CIMT, if at all possible plead instead to subsection (2) through (8) of CPCS, 5th degree (see above, PL 220.06) or to subsections (1) through (12) or (14) to (15) of CPCS 4th degree (see above, PL 220.09).</p> <p>5. If pleading to this offense cannot be avoided, if possible keep out of record of conviction identification of the controlled substance involved.</p> <p>Tip for immigration lawyers:</p> <p>1. Argue NOT CSO or AF if government failed to prove that the controlled substance involved is one defined in 21 USC 802</p>

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
CSCS, 3rd degree Class B felony	220.39	Is “drug trafficking” AF if record of conviction establishes a controlled substance as defined in 21 USC 802.	Probably.	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of “drug trafficking” AF or CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of “drug trafficking” AF, if at all possible avoid this drug offense altogether and consider alternative offenses described in Tip 3 below. 3. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 4. If pleading to a felony controlled substance offense cannot be avoided, to preserve possible argument against AF or CIMT, if at all possible plead instead to subsection (2) through (8) of CPCS, 5th degree (see above, PL 220.06), to subsections (1) through (12) or (14) to (15) of CPCS 4th degree (see above, PL 220.09), or to subsections (8) through (13) of CPCS, 3rd degree (see above, PL 220.16). 5. If pleading to this offense cannot be avoided, if possible keep out of record of conviction identification of the controlled substance involved. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT CSO or AF if government failed to prove that the controlled substance involved is one defined in 21 USC 802

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
CSCS, 2nd degree Class A-II felony	220.41	Is “drug trafficking” AF if record of conviction establishes a controlled substance as defined in 21 USC 802.	Probably.	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of “drug trafficking” AF or CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of “drug trafficking” AF, if at all possible avoid this drug offense altogether and consider alternative offenses described in Tip 3 below. 3. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 4. If pleading to a felony controlled substance offense cannot be avoided, to preserve possible argument against AF or CIMT, if at all possible plead instead to subsection (2) through (8) of CPCS, 5th degree (see above, PL 220.06), to subsections (1) through (12) or (14) to (15) of CPCS 4th degree (see above, PL 220.09), to subsections (8) through (13) of CPCS, 3rd degree (see above, PL 220.16), or to any subsection of CPCS, 2nd degree (see above, PL 220.18). 5. If pleading to this offense cannot be avoided, if possible keep out of record of conviction identification of the controlled substance involved. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT CSO or AF if government failed to prove that the controlled substance involved is one defined in 21 USC 802

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
CSCS, 1st degree Class A-I felony	220.43	Is "drug trafficking" AF if record of conviction establishes a controlled substance as defined in 21 USC 802.	Probably.	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of "drug trafficking" AF or CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of "drug trafficking" AF, if at all possible avoid this drug offense altogether and consider alternative offenses described in Tip 3 below. 3. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 4. If pleading to a felony controlled substance offense cannot be avoided, to preserve possible argument against AF or CIMT, if at all possible plead instead to subsection (2) through (8) of CPCS, 5th degree (see above, PL 220.06), to subsections (1) through (12) or (14) to (15) of CPCS 4th degree (see above, PL 220.09), to subsections (8) through (13) of CPCS, 3rd degree (see above, PL 220.16), to any subsection of CPCS, 2nd or 1st degree (see above, PL 220.18 & 220.21). 5. If pleading to this offense cannot be avoided, if possible keep out of record of conviction identification of the controlled substance involved. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT CSO or AF if government failed to prove that the controlled substance involved is one defined in 21 USC 802

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
<p>CSCS in or near school grounds</p> <p>Class B felony</p>	220.44	Is “drug trafficking” AF if record of conviction establishes a controlled substance as defined in 21 USC 802.	Probably.	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of “drug trafficking” AF or CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of “drug trafficking” AF, if at all possible avoid this drug offense altogether and consider alternative offenses described in Tip 3 below. 3. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 4. If pleading to a felony controlled substance offense cannot be avoided, to preserve possible argument against AF or CIMT, if at all possible plead instead to subsection (2) through (8) of CPCS, 5th degree (see above, PL 220.06). 5. If pleading to this offense cannot be avoided, if possible keep out of record of conviction identification of the controlled substance involved. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT CSO or AF if government failed to prove that the controlled substance involved is one defined in 21 USC 802
<p>Criminally possessing a hypodermic instrument</p> <p>Class A misdemeanor</p>	220.45	No.	Probably NOT.	Might NOT be CSO.	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal injection of a narcotic drug Class E felony	220.46	If this is a first offense, it is probably NOT a "drug trafficking" AF, unless record of conviction (ROC) establishes possession of more than 5 grams of crack or of any amount of flunitrazepam, in which case probably is "drug trafficking" AF. If this is a subsequent offense, ROC establishes a controlled substance as defined in 21 USC 802 and the government establishes a prior drug conviction, might be "drug trafficking" AF (see App. G, § 1.b).	Maybe.	Is CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of "drug trafficking" AF or CSO, if possible negotiate diversion without a guilty plea. 2. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminally Possessing a Hypodermic Instrument (see below, PL 220.45), Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 3. If pleading to this offense cannot be avoided, if possible keep out of record of conviction identification of the controlled substance involved. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT "drug trafficking" AF based on arguments that remain available after the Supreme Court's decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b). 2. Argue NOT CSO if government failed to prove that the controlled substance involved is one defined in 21 USC 802.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminally using drug paraphernalia, 2nd degree Class A misdemeanor	220.50	Might be “drug trafficking” AF.	Maybe.	Probably is CSO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of CSO, if possible consider alternative offenses such as Disorderly Conduct (see below, PL 240.20), Criminal Nuisance (see below, PL 240.45), or Hindering Prosecution, 3rd Degree (see above, PL 205.55); or possibly to decrease risk of CSO consider alternative offenses such as Criminally Possessing a Hypodermic Instrument (see above, PL 220.45), Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 2. If none of the strategies in Tip 1 above is possible, to decrease risk of “drug trafficking” AF consider alternative offense of CPCS, 7th degree (see above, PL 220.03). <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT “drug trafficking” AF based on arguments that remain available after the Supreme Court’s decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b).
Criminally using drug paraphernalia, 1st degree Class D felony	220.55	Probably is “drug trafficking” AF.	Maybe.	Probably is CSO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of “drug trafficking” AF and CIMT, if possible negotiate diversion without a guilty plea. 2. To decrease risk of “drug trafficking” AF, if at all possible, avoid this felony drug offense altogether and consider alternative offense of CPCS, 7th degree, or subsections (2) – (8) of CPCS, 5th degree (see above, PL 220.03 & 220.06) or offenses described in Tip 3 below. 3. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminally Possessing a Hypodermic Instrument (see below, PL 220.45), Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). <p>Tip for immigration lawyers:</p>

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
					<p>1. Argue NOT “drug trafficking” AF based on arguments that remain available after the Supreme Court’s decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b).</p>
<p>Criminal possession of precursors of CS</p> <p>Class E felony</p>	220.60	Probably is “drug trafficking” AF.	Maybe.	Probably is CSO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of “drug trafficking” AF or CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of “drug trafficking” AF, if at all possible, avoid this drug offense altogether and consider alternative offense of CPCS, 7th degree, or subsections (2) – (8) of CPCS, 5th degree, or subsections (2) – (8) of CPCS, 5th degree (see above, PL 220.03 & 220.06) or offenses described in Tip 3 below. 3. To avoid risk of CSO, if possible consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); or possibly to decrease risk of CSO consider alternative offenses such as Criminally Possessing a Hypodermic Instrument (see below, PL 220.45), Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT “drug trafficking” AF based on arguments that remain available after the Supreme Court’s decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b).
<p>Criminal possession of methamphetamine manufacturing material, 2nd degree</p> <p>Class A</p>	220.70	Might be “drug trafficking” AF.	Maybe.	Probably is CSO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid CSO or AF risks, if possible consider alternative offenses such as Disorderly Conduct (see below, PL 240.20), Criminal Nuisance (see below, PL 240.45), or Hindering Prosecution, 3rd Degree (see above, PL 205.55)

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
misdemeanor					
Criminal possession of methamphetamine manufacturing material, 1 st degree Class E felony	220.71	Probably is drug trafficking AF.	Maybe	Probably is CSO.	Tip for defense lawyers: 1. To avoid CSO or AF risks, if possible consider alternative offenses such as Criminal Nuisance (see below, PL 240.45), or Hindering Prosecution, 3 rd Degree (see above, PL 205.55). 2. If Tip 1 is not possible, to avoid CSO or AF risks, if possible negotiate diversion without a guilty plea. 3. If Tips 1 and 2 are not possible, to decrease risk of “drug trafficking” AF, avoid this drug offense altogether and consider alternative offense of CPCS, 7 th (see above, PL 220.03) if possible.
Criminal possession of precursors of methamphetamine, 1 st degree Class E felony	220.72	Probably is drug trafficking AF.	Maybe.	Probably is CSO.	Tip for defense lawyers: 1. To avoid CSO or AF risks, if possible consider alternative offenses such as Criminal Nuisance (see below, PL 240.45), or Hindering Prosecution, 3 rd Degree (see above, PL 205.55). 2. If Tip 1 is not possible, to avoid CSO or AF risks, if possible negotiate diversion without a guilty plea. 3. If Tips 1 and 2 are not possible, to decrease risk of “drug trafficking” AF, avoid this drug offense altogether and consider alternative offense of CPCS, 7 th (see above, PL 220.03) if possible.
Unlawful manufacture of methamphetamine, 3 rd degree Class D felony	220.73	Is “drug trafficking” AF.	Maybe.	Is CSO.	Tip for defense lawyers: 1. To avoid CSO or AF risks, if possible negotiate diversion without a guilty plea. 2. If Tip 1 is not possible, to decrease risk of “drug trafficking” AF, avoid this felony drug offense altogether and consider alternative offense of CPCS, 7 th degree, or subsections (2) – (8) of CPCS, 5 th degree (see above, PL 220.03 & 220.06) if possible.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Unlawful manufacture of methamphetamine, 2 nd degree Class C felony	220.74	Is "drug trafficking" AF.	Maybe.	Is CSO.	
Unlawful manufacture of methamphetamine, 1 st degree Class B felony	220.75	Is "drug trafficking" AF.	Maybe.	Is CSO.	
Unlawful disposal of methamphetamine laboratory material Class E felony	220.76	Probably NOT		Is CSO.	
Unlawful possession of marihuana Violation	221.05	NO if this is a first drug offense. If this is a subsequent drug offense and the government establishes a prior drug conviction, might be "drug trafficking" AF (see App. G, § 1.b).	Probably NOT.	Is CSO for inadmissibility purposes; however, for deportability purposes, is CSO only if record of conviction establishes possession of more than 30 grams of marihuana, or if more than one offense involving possession of 30 grams or less of marihuana.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> To avoid risk of CSO altogether, if possible consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct (see below, PL 240.20) or Trespass (See above, PL 140.05). If pleading to this offense cannot be avoided, establish in plea colloquy that amount of marijuana involved is less than 30 grams. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> Argue NOT "drug trafficking" AF based on arguments that remain available after the Supreme Court's decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal possession of marihuana (CPM), 5th degree Class B misdemeanor	221.10	NO if this is a first drug offense. If this is a subsequent drug offense and the government establishes a prior drug conviction, might be “drug trafficking” AF (see App. G, § 1.b).	Probably NOT.	Is CSO for inadmissibility purposes; however, for deportability purposes, is CSO only if record of conviction establishes possession of more than 30 grams of marihuana, or if more than one offense involving possession of 30 grams or less of marihuana.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of CSO altogether, if possible consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct (see below, PL 240.20), Trespass (See above, PL 140.05), or Criminal Nuisance (see below, PL 240.45). 2. If pleading to a marijuana offense cannot be avoided, to decrease risk of CSO deportability consider alternative plea to UPM (see above, PL 221.05) and establish in plea colloquy that amount of marijuana involved is less than 30 grams. 3. If pleading to this offense cannot be avoided, to decrease risk of CSO deportability establish in plea colloquy that amount of marijuana involved is less than 30 grams. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT “drug trafficking” AF based on arguments that remain available after the Supreme Court’s decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b).
CPM, 4th degree Class A misdemeanor	221.15	NO if this is a first drug offense. If this is a subsequent drug offense and the government establishes a prior drug conviction, might be “drug trafficking” AF (see App. G, § 1.b).	Probably NOT.	Is CSO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of CSO altogether, if possible consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct (see below, PL 240.20), Trespass (See above, PL 140.05), or Criminal Nuisance (see below, PL 240.45). 2. If pleading to a marijuana offense cannot be avoided, to decrease risk of CSO deportability consider alternative plea to UPM or to CPM, 5th degree (see above, PL 221.05 & 221.10), and in either case establish in plea colloquy that amount of marijuana involved is less than 30 grams. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT “drug trafficking” AF based on arguments that remain available after the Supreme

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
					Court's decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b).
CPM, 3rd degree Class E felony	221.20	NO if this is a first drug offense. If this is a subsequent drug offense and the government establishes a prior drug conviction, might be "drug trafficking" AF (see App. G, § 1.b).	Probably NOT.	Is CSO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of "drug trafficking" AF or CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of "drug trafficking" AF or CSO, avoid this drug offense altogether and consider alternative offense such as Hindering Prosecution (see above, PL 205.55-205.65); Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT "drug trafficking" AF based on arguments that remain available after the Supreme Court's decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
CPM, 2nd degree Class D felony	221.25	NO if this is a first drug offense. If this is a subsequent drug offense and the government establishes a prior drug conviction, might be “drug trafficking” AF (see App. G, § 1.b).	Probably NOT.	IS CSO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of “drug trafficking” AF or CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of “drug trafficking” AF or CSO, avoid this drug offense altogether and consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT “drug trafficking” AF based on arguments that remain available after the Supreme Court’s decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b).
CPM, 1st degree Class C felony	221.30	NO if this is a first drug offense. If this is a subsequent drug offense and the government establishes a prior drug conviction, might be “drug trafficking” AF (see App. G, § 1.b).	Probably NOT.	Is CSO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of “drug trafficking” AF or CSO, if possible negotiate diversion without a guilty plea. 2. To decrease risk of “drug trafficking” AF, avoid this drug offense altogether and consider alternative offenses such as Hindering Prosecution (see above, PL 205.55-205.65); Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT “drug trafficking” AF based on arguments that remain available after the Supreme Court’s decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
CSM, 5th degree Class B misdemeanor	221.35	Probably NOT if this is a first drug offense. If this is a subsequent drug offense and the government establishes a prior drug conviction, might be "drug trafficking" AF (see App. G, § 1.b).	Maybe.	Is CSO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of CSO altogether, if possible consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct (see below, PL 240.20), Trespass (see above, PL 140.05), or Criminal Nuisance (see below, PL 240.45). 2. If pleading to a marijuana offense cannot be avoided, to decrease risk of CSO deportability consider alternative offense of UPM or to CPM, 5th degree (see above, PL 221.05 & 221.10), and in either case establish in plea colloquy that amount of marijuana involved is less than 30 grams. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT "drug trafficking" AF based on arguments that remain available after the Supreme Court's decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b). See also <i>Steele v. Blackman</i>, 36 F.3d 130 (3d Cir. 2001).
CSM, 4th degree Class A misdemeanor	221.40	If record of conviction (ROC) establishes transfer for remuneration, probably is "drug trafficking crime" AF. If this is a first drug offense and ROC does not establish transfer for remuneration, probably is NOT a "drug trafficking crime" AF. If	Probably.	Is CSO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid risk of CSO altogether, if possible consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct (see below, PL 240.20), Trespass (See above, PL 140.05), or Criminal Nuisance (see below, PL 240.45). 2. If pleading to a marijuana offense cannot be avoided, to decrease risk of CSO deportability consider alternative offense of UPM or to CPM, 5th degree (see above, PL 221.05 & 221.10), and in either case establish in plea colloquy that amount of marijuana involved is less than 30 grams. 3. If Tips 1 and 2 are not possible, to decrease risk of "drug trafficking" AF consider alternative offense of CPM, 5th or 4th degrees (see above, PL 221.10 & 221.15), or CSM, 5th degree (see above, PL 221.35). 4. If pleading to this offense cannot be avoided, leave out of record of conviction any evidence that the transfer

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
		this is a subsequent drug offense and the government establishes a prior drug conviction, might be “drug trafficking” AF even if ROC does not establish transfer for remuneration (see App. G, § 1.b).			of marijuana was effected for remuneration. Tip for immigration lawyers: 1. Argue NOT “drug trafficking” AF based on arguments that remain available after the Supreme Court’s decision in <i>Lopez v. Gonzales</i> (see App. G, § 1.b). See also <i>Steele v. Blackman</i> , 36 F.3d 130 (3d Cir. 2001).
CSM, 3rd degree Class E felony	221.45	Probably is “drug trafficking” AF.	Probably.	IS CSO.	Tip for defense lawyers: 1. To avoid risk of CSO altogether, if possible consider alternative offenses such as Criminal Nuisance (see below, PL 240.45). 2. If pleading to a marijuana offense cannot be avoided, to decrease risk of CSO deportability consider alternative offense of CPM, 5 th degree (see above, PL 221.10), and in either case establish in plea colloquy that amount of marijuana involved is less than 30 grams. 3. If Tips 1 and 2 are not possible, to decrease risk of “drug trafficking” AF avoid this offense altogether and consider alternative offense of CSM, 5 th degree (see above, PL 221.35). 4. If Tip 3 is not possible, to decrease risk of “drug trafficking” AF avoid this offense altogether and consider alternative offense of CPM, 4 th (see above, PL 221.15), or CSM, 4 th degree (see above, PL 221.40) and leave out of record of conviction any evidence that the transfer of marijuana was effected for remuneration. 5. If pleading to a felony marijuana offense cannot be avoided, to preserve possible argument against AF or

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
					CIMT, plead instead to CPM, 3 rd degree (see above, PL 221.20).
CSM, 2nd degree Class D felony	221.50	Probably is "drug trafficking" AF.	Probably.	Is CSO. Might be CAC.	Tip for defense lawyers: 1. To decrease risk of CSO if possible consider alternative offenses such as Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 2. To decrease risk of "drug trafficking" AF avoid this offense altogether and consider alternative offense of CPM, 4 th (see above, PL 221.15), or CSM, 4 th degree (see above, PL 221.40) and leave out of record of conviction any evidence that the transfer of marijuana was effected for remuneration. 3. If pleading to a felony marijuana offense cannot be avoided, to preserve possible argument against AF or CIMT, plead instead to CPM, 3 rd or 2 nd degrees (see above, PL 221.20 & 221.25).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
CSM, 1st degree Class C felony	221.55	Probably is “drug trafficking” AF.	Probably.	CSO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To decrease risk of CSO if possible consider alternative offenses such as Criminal Solicitation (see above, PL 100.00-100.13) or Criminal Facilitation (see above, PL 115.00-115.08). 2. To decrease risk of “drug trafficking” AF avoid this offense altogether and, if at all possible, consider alternative offense of CSM, 4th degree (see above, PL 221.40) and leave out of record of conviction any evidence that the transfer of marijuana was effected for remuneration. 3. If pleading to a felony marijuana offense cannot be avoided, to preserve possible argument against AF or CIMT, plead instead to CPM, 3rd, 2nd or 1st degrees (see above, PL 221.20, 221.25 & 221.30).
Promoting gambling, 2nd degree Class A misdemeanor	225.05	Might be “gambling” AF if record of conviction shows that offense is one “described in” 18 U.S.C. § 1955.	No.	Might be “commercialized vice” inadmissibility.	<p>Tips for defense lawyers:</p> <ol style="list-style-type: none"> 1. If pleading to gambling offense cannot be avoided, to avoid AF risk, keep record clear of facts satisfying elements of 18 U.S.C. § 1955. 2. If pleading to gambling offense cannot be avoided, to avoid AF risk, plead to attempt (B misd.). 3. This offense might trigger a bar to the good moral character (GMC) requirement for citizenship, as there is a GMC bar for “one whose income is derived principally from illegal gambling activities.” Also, a second or subsequent Art. 225 offense would probably trigger the separate GMC bar for persons convicted of two or more gambling offenses if both offenses were committed during the relevant GMC period. To avoid GMC and

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
					<p>admissibility bars, (a) make a record that client's income not principally derived from gambling and that client did not come to U.S. for purpose of engaging in commercialized vice; and (b) keep record clear of information on whether client "profit[ed] from" or "advanc[ed]" activity.</p> <p>Tips for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue that offense is not "described in" 18 USC § 1955 and is therefore not AF because NY statute lacks substantive, non-jurisdictional elements contained in federal statute 2. Where record of conviction does not specify whether offense involved "profit" or "advanc[ing]", argue that offense is not "gambling offense" for purposes of GMC and does not show income derived from gambling because it punishes merely "advanc[ing]" gambling activity (see PL 225.00(4)).
<p>Promoting gambling, 1st degree</p> <p>Class E felony</p>	<p>225.10</p>	<p>Might be "gambling" AF if record of conviction shows that offense is one "described in" 18 U.S.C. § 1955.</p>	<p>Probably NOT.</p>	<p>Might be "commercialized vice" inadmissibility.</p>	<p>Tips for defense lawyers:</p> <ol style="list-style-type: none"> 1. If pleading to gambling offense cannot be avoided, to avoid any risk of AF, keep record clear of facts satisfying elements of 18 U.S.C. § 1955. 2. If pleading to gambling offense cannot be avoided, to avoid risk of AF plead to attempted 225.05 (B misd.). 3. This offense might trigger a bar to the good moral character (GMC) requirement for citizenship, as there is a GMC bar for "one whose income is derived principally from illegal gambling activities." Also, a second or subsequent Art. 225 offense would probably trigger the separate GMC bar for persons convicted of two or more gambling offenses if both offenses were committed during the relevant GMC period. To avoid GMC and admissibility bars, make a record that client's income not principally derived from gambling and that client did not come to U.S. for purpose of engaging in commercialized vice. <p>Tips for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue that offense is not "described in" 18 USC §

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
					<p>1955 and is therefore not AF because NY statute lacks non-jurisdictional elements contained in federal statute</p> <p>2. Argue that offense is not GMC bar under “income derived” provision b/c it does not require profit for conviction.</p>
<p>Possession of gambling records, 2nd degree</p> <p>Class A misdemeanor</p>	225.15	<p>Might be “gambling” AF if record of conviction shows that offense is one “described in” 18 U.S.C. § 1955.</p>	Probably NOT.	<p>Might be “commercialized vice” inadmissibility.</p>	<p>Tips for defense lawyers:</p> <ol style="list-style-type: none"> 1. If pleading to gambling offense cannot be avoided, to avoid any risk of AF, keep record clear of facts satisfying elements of 18 U.S.C. § 1955. 2. If pleading to gambling offense cannot be avoided, to avoid risk of AF, plead to attempt (B misd.). 3. This offense might trigger a bar to the good moral character (GMC) requirement for citizenship, as there is a GMC bar for “one whose income is derived principally from illegal gambling activities.” Also, a second or subsequent Art. 225 offense would probably trigger the separate GMC bar for persons convicted of two or more gambling offenses if both offenses were committed during the relevant GMC period. To avoid GMC and admissibility bars, make a record that client’s income not principally derived from gambling and that client did not come to U.S. for purpose of engaging in commercialized vice. <p>Tips for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue that offense is not “described in” 18 USC § 1955 and is therefore not AF because NY statute lacks substantive, non-jurisdictional elements contained in federal statute 2. Argue that offense is not GMC bar under “income derived” provision b/c it does not require profit for conviction

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Possession of gambling records, 1st degree Class E felony	225.20	Might be "gambling" AF if record of conviction shows that offense is one "described in" 18 U.S.C. § 1955.	No.	Might be "commercialized vice" inadmissibility.	Tips for defense lawyers: 1. If pleading to gambling offense cannot be avoided, to avoid any risk of AF, keep record clear of facts satisfying elements of 18 U.S.C. § 1955(b). 2. If pleading to gambling offense cannot be avoided, to avoid risk of AF, plead to attempt (B misd.). 3. This offense might trigger a bar to the good moral character (GMC) requirement for citizenship, as there is a GMC bar for "one whose income is derived principally from illegal gambling activities." Also, a second or subsequent Art. 225 offense would probably trigger the separate GMC bar for persons convicted of two or more gambling offenses if both offenses were committed during the relevant GMC period. To avoid GMC and admissibility bars, make a record that client's income not principally derived from gambling and that client did not come to U.S. for purpose of engaging in commercialized vice. Tips for immigration lawyers: 1. Argue that offense is not "described in" 18 USC § 1955 and is therefore not AF because NY statute lacks substantive, non-jurisdictional elements contained in federal statute 2. Argue that offense is not GMC bar under "income derived" provision b/c it does not require profit for conviction.
Prostitution Class B misdemeanor	230.00	No.	Yes.	Probably is "prostitution" inadmissibility.	Tip for defense lawyers: 1. To avoid "prostitution" inadmissibility risk (and, if client has prior CIMT, to avoid CIMT deportability or inadmissibility), if possible consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct (see below, PL 240.20) or Trespass (see above, PL 140.05). 2. If Tip 1 is not possible, to avoid "prostitution" inadmissibility risk, consider alternative offense such as Criminal Nuisance (see below, PL 240.45). Tip for immigration lawyer:

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
					<p>1. The BIA has held that to “engage in” prostitution, one must have engaged in a regular pattern of behavior or conduct. See <i>Matter of T</i>, 6 I&N Dec.474 (BIA 1955) (holding that the noncitizen who was twice convicted for committing acts of prostitution was not excludable); <i>Matter of R</i>, 2 I&N Dec. 50 (BIA 1944) (single act for gain under circumstances showing prostitution).</p>
<p>Patronizing a prostitute, 4th degree Class B misdemeanor</p>	230.03	Probably NOT, but if record of conviction establishes that prostitute was a minor might be “sexual abuse of a minor” AF.	Probably.	If prostitute is minor, might be CAC.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid CIMT deportability or inadmissibility risk if client has prior or future CIMT, consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct (see below, PL 240.20) or Trespass (See above, PL 140.05) if possible; 2. .If Tip 1 above is not possible and prostitute might be minor, to decrease “sex abuse of minor” AF risk consider alternative offense such as Criminal Nuisance (see below, PL 240.45) and keep out of record of conviction reference to the age of victim. 3. If pleading to this offense cannot be avoided and prostitute might be minor, to decrease risk of “sex abuse of minor” AF and CAC, try to keep out of record of conviction reference to the age of the prostitute. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue that conviction is categorically NOT “sex abuse of minor” AF, even if the victim in fact was minor, because the minority of the victim is not an element of the crime. IJ may not look to the underlying record of conviction to hold to the contrary. See, e.g., <i>Singh v. Ashcroft</i>, 383 F.3d 144 (3rd Cir. 2004).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Patronizing a prostitute, 3rd degree Class A misdemeanor	230.04	Might be "sexual abuse of a minor" AF.	Probably.	Might be CAC.	Tip for defense lawyers: 1. To avoid "sexual abuse of a minor" AF or CIMT risks, consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct (see below, PL 240.20) or Trespass (See above, PL 140.05) if possible. 2. .If Tip 1 above is not possible and prostitute might be minor, to decrease "sex abuse of minor" AF risk consider alternative offense such as Criminal Nuisance (see below, PL 240.45), or Patronizing a Prostitute, 4 th (see above, 230.03), and in either case keep out of record of conviction reference to the age of victim.
Patronizing a prostitute, 2nd degree Class E felony	230.05	Might be "sexual abuse of a minor" AF.	Probably.	Might be CAC.	Tip for defense lawyers: 1. To avoid risk of "sexual abuse of a minor" AF or CIMT, if possible consider an alternative offense such as Disorderly Conduct (see below, PL 240.20) or Trespass (See above, PL 140.05). 2. If Tip 1 above is not possible and prostitute might be minor, to decrease risk of "sex abuse of minor" AF and CAC consider alternative offense such as Criminal Nuisance (see below, PL 240.45), or Patronizing a Prostitute, 4th degree (see above, 230.03), and in either case keep out of record of conviction reference to the age of victim.
Patronizing a prostitute, 1st degree Class D felony	230.06	Might be "sexual abuse of a minor" AF.	Probably.	Might be CAC.	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Promoting prostitution, 4th degree Class A misdemeanor	230.20	Might be "prostitution business" AF. If record of conviction establishes that prostitution promoted was of a minor, might also be "sexual abuse of a minor" AF.	Probably.	Might be "prostitution" inadmissibility. If prostitute is minor, might be CAC.	Tip for defense lawyers: 1. To avoid "prostitution business" AF or "prostitution" inadmissibility risks, consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct (see below, PL 240.20), Trespass (see above, PL 140.05) or Criminal Nuisance (see below, PL 240.45) if possible. 2. If Tip 1 above is not possible, to decrease "prostitution business" AF risk, consider alternative offense of Permitting Prostitution (see below, PL 230.40) or Patronizing a Prostitute, 4 th (see above, PL 230.03 and accessory liability under PL 20.00) and, if prostitute might be minor, leave out of record of conviction reference to the age of the prostitute. 3. If pleading to this offense cannot be avoided, keep out of record of conviction reference to the age of the prostitute.
Promoting prostitution, 3rd degree Class D felony	230.25	Probably is "prostitution business" AF. If record of conviction establishes that prostitution promoted was of a minor, might also be "sexual abuse of a minor" AF.	Probably.	Might be "prostitution" inadmissibility. If prostitute is minor, might be CAC.	Tip for defense lawyers: 1. To avoid "prostitution business" AF or "prostitution" inadmissibility risks, consider alternative offense such as Disorderly Conduct (see below, PL 240.20), Trespass (see above, PL 140.05) or Criminal Nuisance (see below, PL 240.45) if possible. 2. If Tip 1 above is not possible, to decrease "prostitution business" AF risk, consider alternative offense of Permitting Prostitution (see below, PL 230.40) or Patronizing a Prostitute, 4 th (see above, PL 230.03 and accessory liability under PL 20.00) and, if prostitute might be minor, leave out of record of conviction reference to the age of the prostitute.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Promoting prostitution, 2nd degree Class C felony	230.30	Probably is "prostitution business" AF. If record of conviction establishes that prostitution promoted was of a minor, might also be "sexual abuse of a minor" AF. If term of imprisonment imposed is one year or more, subsection (1) might also be "crime of violence" AF, particularly if record of conviction shows compulsion by force (as opposed to intimidation).	Probably.	Might be "prostitution" inadmissibility. If prostitute is minor, might be CAC.	
Promoting prostitution, 1st degree Class B felony	230.32	Probably is "prostitution business" AF. Might also be "sexual abuse of a minor" AF.	Probably.	Might be "prostitution" inadmissibility.	
Permitting prostitution Class B misdemeanor	230.40	Probably NOT.	Maybe.	Might be "prostitution" inadmissibility.	Tip for defense lawyers: 1. To avoid "prostitution" inadmissibility and CIMT risk, consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct (see below, PL 240.20) or Trespass

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
					(see above, PL 140.05) if possible.
Disorderly conduct Violation	240.20	No.	No.		
Harassment, 1st degree Class B misdemeanor	240.25	No.	Maybe.	If the victim was a current or former spouse or similarly situated individual, might be CODV in some jurisdictions outside 2 nd Circuit. Might also trigger deportability under CODV clause regarding "crime of stalking."	Tip for defense lawyers: 1. To avoid CIMT risk, consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct or Trespass (see above, PL 240.20 & 140.05). 2. To minimize CODV risk, keep age/ relationship of victim out of record of conviction.
Harassment, 2nd degree Violation	240.26	No.	Maybe.	If the victim was a current or former spouse or similarly situated individual, subsection (1) might be CODV. Subsections (2) and (3) might trigger deportability under CODV clause regarding "crime of stalking."	Tip for defense lawyers: 1. To avoid CIMT risk, consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct or Trespass (see above, PL 240.20 & 140.05). 2. To minimize CODV risk, keep age/ relationship of victim out of record of conviction.
Aggravated harassment, 2nd degree Class A misdemeanor	240.30	No, unless term of imprisonment imposed is one year, in which case subsections (3) and (4) might be "crime of violence" AF.	Maybe.	If the victim was a current or former spouse or similarly situated individual, subsections (3) or (4) might be CODV. A conviction might trigger deportability under CODV clause regarding "crime of stalking."	Tip for defense lawyers: 1. To avoid "crime of violence" AF, avoid sentence of one year (get 364 days or less). 2. To avoid CIMT risk or CODV, consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct or Trespass (see above, PL 240.20 & 140.05).
Aggravated harassment, 1st degree Class E felony	240.31	If term of imprisonment imposed is one year or more, might be "crime of violence" AF.	Probably.	If the victim was a current or former spouse or similarly situated individual, might be CODV. A conviction might also trigger deportability under CODV clause regarding "crime of stalking."	Tip for defense lawyers: 1. To avoid "crime of violence" AF, avoid sentence of one year or more (get 364 days or less) if possible. 2. To avoid CIMT risk or CODV, if possible consider alternative offense such as Disorderly Conduct or Trespass (see above, PL 240.20 & 140.05). 3. If Tip 2 is not possible, consider alternative offense of Harassment, 1 st or 2 nd (see above, PL 240.25 &

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
					240.26) and, if that also is not possible, Aggravated Harassment, 2 nd (see above, PL 240.30).
Loitering Violation	240.35	No.	Convictions under subsections (2) and (3) might be CIMT.		Tip for defense lawyers: 1. To avoid CIMT risk, avoid subsections (2) and (3).
Loitering, 1st degree Class B misdemeanor	240.36	No.	Might be CIMT.	Might be CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	Tip for defense lawyers: 1. To avoid CSO or CIMT risks, consider obtaining an adjournment in contemplation of dismissal (ACD) or alternative offenses such as Disorderly Conduct, Trespass or Loitering (see above, PL 240.20, 140.05 & 240.35). 2. If pleading to this offense cannot be avoided, if possible, keep out of record of conviction identification of the controlled substance involved.
Loitering for the purpose of engaging in a prostitution offense Violation Class B misdemeanor Class A misdemeanor	240.37	No.	Maybe.	Might trigger "prostitution" inadmissibility.	Tip for defense lawyers: 1. To avoid risk of "prostitution" inadmissibility (and, if client has prior CIMT, to avoid CIMT deportability or inadmissibility), if possible consider obtaining an adjournment in contemplation of dismissal (ACD) or an alternative offense such as Disorderly Conduct, Trespass or Loitering (see above, PL 240.20, 140.05 & 240.35). Tip for immigration lawyer: 1. Argue that just one or a few loitering convictions cannot trigger "prostitution" inadmissibility. The BIA has held that to "engage in" prostitution, one must have engaged in a regular pattern of behavior or conduct. See <i>Matter of T</i> , 6 I&N Dec.474 (BIA 1955) (holding that the noncitizen who was twice convicted for committing acts of prostitution was not excludable); <i>Matter of R</i> , 2 I&N Dec. 50 (BIA 1944) (single act for gain under circumstances showing prostitution).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Appearance in public under influence of drug other than alcohol Violation	240.40	No.	Probably NOT.	Might be CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	Tip for defense lawyers: 1. To avoid CSO risk, consider obtaining an adjournment in contemplation of dismissal (ACD) or alternative offenses such as Disorderly Conduct, Trespass or Loitering (see above, PL 240.20, 140.05 & 240.35). 2. If pleading to this offense cannot be avoided, if possible, keep out of record of conviction identification of the controlled substance involved.
Criminal nuisance, 2nd degree Class B misdemeanor	240.45	No.	Maybe.		Tip for defense lawyers: 1. To avoid CIMT risk, if possible consider obtaining an adjournment in contemplation of dismissal (ACD) or alternative offenses such as Disorderly Conduct, Trespass or Loitering (see above, PL 240.20, 140.05 & 240.35).
Criminal nuisance, 1st degree Class E felony	240.46	Might be “drug trafficking” AF.	Maybe.	Might be CSO if record of conviction establishes a controlled substance as defined in 21 USC 802.	Tip for defense lawyers: 1. To avoid “drug trafficking” AF or CSO risks, if possible consider alternative offenses such as Disorderly Conduct (see above, PL 240.20), Criminal Trespass (see above, PL 140.15), Loitering (see above, PL 240.35), or Criminal Nuisance, 2 nd degree (see above, PL 240.25). 2. If pleading to this offense cannot be avoided, if possible, keep out of record of conviction identification of the controlled substance involved.
Endangering the welfare of a child Class A misdemeanor	260.10	Probably NOT.	Subsection (1) probably is CIMT. Subsection (2) might be CIMT.	Might be CAC.	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal possession of a weapon, 4th degree Class A misdemeanor	265.01	Probably NOT unless record of conviction establishes subsection (4) or an offense akin to one described in 18 U.S.C. 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. 924 (b) or (h), or 26 U.S.C. 5861, in which case might be "firearm offense" AF.	Subsection (2) and (8) probably are CIMT. All other subsections probably are NOT CIMT.	Subsections (1) through (6) are FO if record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 USC 921(a). Subsections (7) and (8) are NOT FO.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid FO and CIMT, consider alternative offense such as Criminal Trespass (see above, PL 140.15) or subsection (7) of 265.01, if possible. 2. If Tip 1 is not possible, to avoid FO consider subsection (8) or alternative offenses that do not require as an element the use or possession of a firearm, or, if client pleads to subsection (1) or (2) instead, keep out of record of conviction that weapon was a firearm. 3. To avoid CIMT, avoid subsections (2) and (8), <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue even subsection (4) categorically is NOT "firearm offense" AF. <i>See U.S. v. Sandoval-Barajas</i>, 206 F.3d 853 (9th Cir. 2000) (conviction under state statute that applies to all non-citizens is not an offense 'described in' the enumerated federal statute, which applies only to those illegally in the U.S.). 2. Argue NOT FO if government fails to prove that client was convicted under one of subsections (1) through (6); if government proves conviction under subsections (1) or (2), argue NOT FO if government fails to prove that record of conviction established that weapon used was a firearm.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips
Criminal possession of a weapon, 3rd degree Class D felony	265.02	If term of imprisonment imposed is one year or more, might be "crime of violence" AF. If record of conviction establishes an offense akin to one described in 18 U.S.C. 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. 924 (b) or (h), or 26 U.S.C. 5861, might also be "firearm offense" AF.	Probably if convicted under subsection (1) (when referencing CPW, 4th degree, subsection (2)).	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	<i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i> Tip for defense lawyers: <ol style="list-style-type: none"> 1. To avoid "crime of violence" AF, avoid sentence of one year or more (get 364 days or less) if possible. 2. To avoid FO, consider alternative offenses that do not require as an element the use or possession of a firearm. 3. To avoid CIMT, keep out of record of conviction reference to subsection (1) (when referencing CPW, 4th degree, subsection (2)).

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal possession of a weapon, 2nd degree Class C felony	265.03	If term of imprisonment imposed is one year or more, probably is "crime of violence" AF. If record of conviction establishes an offense akin to one described in 18 U.S.C. 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. 924 (b) or (h), or 26 U.S.C. 5861, might also be "firearm offense" AF.	Probably.	FO.	Tip for defense lawyers: 1. To avoid "crime of violence" AF risk, avoid this offense altogether, consider CPW, 4 th or 3 rd (see above, PL 265.01 & 265.02), and get sentence of 364 days or less. 2. To avoid FO, consider alternative offenses that do not require as an element the use or possession of a firearm.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Criminal possession of a dangerous weapon, 1st degree Class B felony	265.04	If term of imprisonment imposed is one year or more, probably is "crime of violence" AF. If record of conviction establishes an offense akin to one described in 18 U.S.C. 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. 924 (b) or (h), or 26 U.S.C. 5861, might be "firearm offense" AF.	Probably.	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYPL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Child (CAC) Dom. Violence (CODV) etc. Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
<p>Criminal Sale of a Firearm, 3rd degree</p> <p>Class D felony</p>	265.11	<p>Probably “firearm trafficking” AF, especially if record of conviction established sale or intent to sell <i>for remuneration</i> (as opposed to giving or disposing without remuneration). If term of imprisonment imposed is one year or more, might also be “crime of violence” AF. If record of conviction establishes an offense akin to one described in 18 U.S.C. 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. 924 (b) or (h), or 26 U.S.C. 5861, might also be “firearm offense” AF.</p>	Maybe.	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid “firearm trafficking” AF or FO risk, avoid this offense altogether and consider alternative offenses that do not require as an element the use or possession of a firearm. 2. If Tip 1 is not possible, .to avoid “firearm trafficking” AF risk, consider CPW, 4th or 3rd (see above, PL 265.01 & 265.02), and get sentence of 364 days or less. 3. If pleading to this offense cannot be avoided, to preserve argument that it is not a “firearm trafficking” AF, plead to subsection (1) and keep out of record of conviction reference to sale <i>for remuneration</i> (it may be better to establish giving or disposing without remuneration). 4. To avoid FO, consider alternative offenses that do not require as an element the use or possession of a firearm. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT “firearm trafficking” AF if government fails to prove that client was convicted of transfer of firearm <i>for remuneration</i>. See <i>Kuhali v. Reno</i>, 266 F.3d 93 (2d Cir. 2001).

NEW YORK VEHICLE AND TRAFFIC LAW OFFENSES

Offense	NYVTL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Children (CAC) Domestic Violence, etc. (CODV) Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips
Aggravated unlicensed operation of a vehicle, 3rd degree Misdemeanor	511(1)	No.	Probably NOT.		<i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Aggravated unlicensed operation of a vehicle, 2nd degree Misdemeanor	511(2)	No.	Maybe.		
Aggravated unlicensed operation of a vehicle, 1st degree Class E felony	511(3)	No.	Subsection (a)(i) probably is CIMT.	Might be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. 802.	
Facilitating aggravated unlicensed operation of a vehicle, 3rd degree Traffic infraction	511a-(1)	No.	Probably NOT.		

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYVTL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Children (CAC) Domestic Violence, etc. (CODV) Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Facilitating aggravated unlicensed operation of a vehicle, 2nd degree Misdemeanor	511a-(3)	No.	Probably NOT.		
Facilitating aggravated unlicensed operation of a vehicle, 1st degree Class E Felony	511a-(4)	No.	Probably NOT.		
Operation while registration or privilege is suspended or revoked. Misdemeanor	512	No.	Probably NOT.		
Leaving scene of an incident without reporting Class A and B misdemeanor Class E and D felony	600	Probably NOT.	Probably NOT		

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYVTL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Children (CAC) Domestic Violence, etc. (CODV) Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Driving while ability impaired Traffic infraction Misdemeanor	1192(1)	No.	Probably NOT.		
Driving while intoxicated; per se Misdemeanor Class E felony	1192(2)	No.	Probably NOT		
Driving while intoxicated Misdemeanor Class E felony	1192(3)	No.	Probably NOT.		
Driving while ability impaired by drugs Misdemeanor Class E felony	1192(4)	No.	Probably NOT.	Might be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid CSO risk, consider alternative offenses that do not have drugs as an element of the offense. 2. If pleading to this offense cannot be avoided, if possible keep out of record of conviction identification of the controlled substance involved. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT CSO if government failed to prove that the controlled substance involved is one defined in 21 USC 802.

APPENDIX A: QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF COMMON NEW YORK OFFENSES

Offense	NYVTL Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds?: Controlled Substance (CSO) Crime Against Children (CAC) Domestic Violence, etc. (CODV) Firearm Offense (FO) Prostitution Commercialized Vice	Comments, Strategies & Tips <i>These are by no means an exhaustive list of strategies and tips advocates may pursue. For additional defense lawyer strategies, see Chapter 5. For additional immigration lawyer strategies, see Appendix K.</i>
Driving while ability impaired by the combined influence of drugs and alcohol Class A and B misdemeanor	1192 (4-a)	No.	Probably NOT	Might be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. 802.	<p>Tip for defense lawyers:</p> <ol style="list-style-type: none"> 1. To avoid CSO risk, consider alternative offenses that do not have drugs as an element of the offense. 2. If pleading to this offense cannot be avoided, if possible keep out of record of conviction identification of the controlled substance involved. <p>Tip for immigration lawyers:</p> <ol style="list-style-type: none"> 1. Argue NOT CSO if government failed to prove that the controlled substance involved is one defined in 21 USC 802.
Aggravated driving while intoxicated Class A and B misdemeanor	1192-a	No.	Probably NOT		
Reckless driving Misdemeanor	1212	No.	Probably NOT.		

