

IMMIGRATION CONSEQUENCES OF SELECTED TEXAS OFFENSES

A QUICK REFERENCE CHART

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*A Texas deferred adjudication is always a conviction for immigration purposes. *Madriz-Alvarado v. Ashcroft*, 383 F.3d 321 (5th Cir. 2004).

** In some instances, a Texas pre-trial intervention agreement may qualify as a conviction for immigration purposes. *Matter of Mohamed*, 27 I. & N. Dec. 92, 92 (BIA 2017).

*** Defense counsel is constitutionally required to investigate and advise the noncitizen client about the possible immigration consequences of a plea before the client decides whether to accept the plea. *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473 (2010). We advise all defense counsel to seek a *Padilla* letter from an immigration attorney experienced in analyzing the immigration consequences of Texas convictions to satisfy that constitutional requirement.

Offense under the Texas Penal Code	Elements of Offense	Aggravated Felony	Relating to Controlled Substance	Crime Involving Moral Turpitude (“CIMT”)	Domestic Viol., Child Abuse, Fraud Firearms, Etc.	Alternate Pleas and Practice Tips
1. Murder § 19.02 First-Degree or Second-Degree Felony	A person commits an offense if he: (1) intentionally or knowingly causes the death of an individual; (2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or (3) commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or	Yes, per INA § 101(a)(43)(A), 8 U.S.C. § 101(a)(43)(A)	N/A	Murder is a CIMT.	Murder may be a Crime of Violence (“COV”) if the use of force is a necessary element of the offense. <i>See</i> 18 U.S.C. § 16(a) and Tex. Pen. Code Ann. § 19.02(b)(2).	Plead to §19.05 if possible, requiring only negligent conduct and less than one-year underlying sentence. Plead to a specific offense that does not involve moral turpitude, or an offense that requires intent of negligence or less, and ideally a six-month maximum possible sentence.

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	attempts to commit an act, clearly dangerous to human life that causes the death of an individual.					
2. Manslaughter § 19.04 Second Degree Felony	A person commits an offense if he recklessly causes the death of an individual.	Manslaughter is not specifically listed under INA §101(a)(43)(F)	N/A	Manslaughter is a CIMT.	Manslaughter is not a COV.	Plead to §19.05 if possible, requiring only negligent conduct and less than one-year underlying sentence. Plead to a specific offense that does not involve moral turpitude or an offense that requires intent of negligence or less, and ideally a six-month maximum
3. Criminally Negligent Homicide § 19.05 State Jail Felony	A person commits an offense if he causes the death of an individual by criminal negligence.	Criminally Negligent Homicide is not specifically listed under INA §101(a)(43)(F)	N/A	Negligence falls below recklessness so arguably not a CIMT.	Criminally Negligent Homicide is not a COV.	Obtain underlying sentence of less than 1year (preferably less than 180 days underlying sentence if possible).
4. Unlawful Restraint, § 20.02 Class A Misdemeanor	(a)(1) A person commits an offense if he/she Intentionally; or Knowingly (2) Restrains (Restricts a person's movement w/o consent)	No. Not a COV because force is not a necessary element of the offense. <i>See 18 U.S.C. § 16(a).</i>	N/A	Statute does not require turpitudinous conduct, so not a CIMT. Also, although knowledge is an element, statute does not require exposing another to serious bodily injury, which has been held to be CIMT.	Not a COV, so not a crime of domestic violence.	Unlawful restraint can be an alternate plea if the noncitizen faces kidnapping charges.

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5. Unlawful Restraint, §20.02(c)(1) State Jail Felony	20.02(a) elements and (3) Person restrained was a child younger than 17 years of age.	No. Not a COV because force is not a necessary element of the offense. <i>See 18 U.S.C. § 16(a).</i>	N/A	May be CIMT if the court finds that restraining an individual under 17 is turpitudinous.	Not a COV, so not a crime of domestic violence.	Alternate plea if noncitizen faces kidnapping charges. <u>Safety Note:</u> obtain sentence of less than 1 year.
6. Unlawful Restraint, § 20.02(c)(2) Third Degree Felony	20.02(a) elements, and: (4) Recklessly exposes victim to bodily injury or, (5) Knows that the victim is on-duty public servant, or (6) While in custody, restrains another individual.	No. Not a COV because force is not a necessary element of the offense. <i>See 18 U.S.C. § 16(a).</i>	N/A	Subsection 4 may be a CIMT because of the reckless exposure of another to a substantial risk of serious bodily injury. Argue low degree of harm is offset by a less culpable mental state. <i>Gomez-Perez</i> , 829 F.3d 323, 325, 328 (5th Cir. 2016); <i>Diaz Esparza v. Garland</i> , 23 F.4th 563 (5th Cir. 2022).	Not a COV, so not a crime of domestic violence.	Alternate plea could be unlawful restraint under 20.02(a)(1), i.e., offense that does not require a finding of bodily injury.
7. Kidnapping, §20.03 Third Degree Felony	(1) Intentionally; or Knowingly (2) Abducts – restrain person with intent to prevent his liberation by either (a) secreting or holding in a place where he is not likely to be found; or (b) using or threatening to use deadly force.	May not be a COV because the use or threatened use of deadly force is not an element, but a manner/means by which to abduct. <i>See Uddin v. State</i> , 503 S.W.3d 710, 716 (Tex. App. 2016) (“[A] person can be abducted by either of the two methods provided in the definition.”); <i>see also</i> <i>Robinson v. State</i> , 568 S.W.3d 718, 724 (Tex. App. 2019) (“The phrase ‘using or threatening to use	N/A	Generally held to be CIMT. <i>But see Hamdam v. INS</i> , 98 F.3d 183 (5th Cir. 1996) (Hamdan held that a LA conviction for simple kidnapping was not a CIMT) However, the TX statute is not as broad.	Is not likely a COV, so not a crime of domestic violence.	Keep factors unspecified on record if facing an aggravated kidnap charge. Divis. statute: could support argument that it is not a COV under 16(a) or (b).

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		<p>deadly force does not describe a conduct element but is, instead, a description of the ‘two alternative components of the specific intent element.’”)</p> <p>If it is not an element, the statute is not divisible and would not be categorically a COV because it includes nonviolent force.</p>				
8. Indecency with a Child, § 21.11 Second or Third Degree Felony	<p>1) Child younger than 17</p> <p>2) Engages in sexual conduct or causes the child to engage in said conduct,</p> <p>3) With the intent to arouse or gratify the sexual desire of any person.</p> <p>a) Exposes anus, any part of genitals, knowing the child is present or</p> <p>b) causes child to expose anus or any part of the genitals</p>	<p>No, because the offense is “categorically broader than the generic federal definition of ‘sexual abuse of a minor.’” <i>United States v. Sanchez-Arvizu</i>, 893 F.3d 312, 315 (5th Cir. 2018) (“[T]he Supreme Court in <i>Esquivel-Quintana v. Sessions</i> held that ‘in the context of statutory rape offenses focused solely on the age of the participants, the generic federal definition of ‘sexual abuse of a minor’ ... requires the age of the victim to be less than 16’”)</p>	N/A	<p>Not likely to be a CIMT. See <i>Matter of Silva-Trevino</i>, 26 I. & N. Dec. 826, 836 (BIA 2016) (“Because section 21.11(a)(1) is broad enough to punish behavior that is not accompanied by the defendant’s knowledge that the victim was a minor, the offense does not necessarily involve moral turpitude.”)</p>	<p>Not a COV, so not a crime of domestic violence.</p>	N/A

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9. Assault, § 22.01 (simple) Class C misdemeanor through Second Degree Felony	<p>1) Intentionally, knowingly, or recklessly</p> <p>a) Causes bodily injury to another</p> <p>2) Intentionally or knowingly</p> <p>a) Threatens another with imminent bodily injury; or</p> <p>3) intentionally or knowingly</p> <p>a) Causes physical contact with another when person knows or should reasonably believe that the other will regard the contact as offensive or provocative</p>	<p>Force is not a necessary element under 22.01(a)(1) and (b)(2) so not a COV. <i>See United States v. Greer</i>, 20 F.4th 1071, 1075 (5th Cir. 2021) (Not a COV because offense includes mens rea of recklessness, which is not "use" of force).</p>	N/A	<p>22.01(a)(1) not a CIMT because the statute is not divisible and can be committed by mere reckless conduct. <i>See Gomez-Perez</i>, 829 F.3d 323, 325, 328 (5th Cir. 2016)</p>	<p>22.01(a)(1), (b)(2) not a COV, so not a crime of domestic violence.</p> <p>22.01(a)(2) may be a crime of domestic violence as threatened use of force is an element and is considered a COV. <i>United States v. Clark</i>, 49 F.4th 889, 891 (5th Cir. 2022) ("Under Texas Penal Code § 22.01(a)(2), this offense can only be committed intentionally or knowingly. We have held that intentionally or knowingly threatening another with imminent bodily injury is a [COV] under 18 U.S.C. § 16(a).")</p>	<p>Alternate plea could be offensive touching under 22.01(a)(3) because the offense does not require a finding of bodily injury and it is a ticketed offense with no jail time.</p>
10. Sexual Assault, § 22.011 Second Degree Felony	<p>Detailed elements.</p> <p>22.011(a)(1) is not an aggravated felony. <i>United States v. Rodriguez-Flores</i>, 25 F.4th 385, 389–90 (5th Cir. 2022); <i>See also Rodriguez v. Holder</i>, 705 F.3d 207 (5th Cir. 2013)</p> <p>22.011 (a)(2) is not a crime of sexual abuse of a minor</p>	<p>22.011(a)(1) is not an aggravated felony. <i>United States v. Rodriguez-Flores</i>, 25 F.4th 385, 389–90 (5th Cir. 2022); <i>See also Rodriguez v. Holder</i>, 705 F.3d 207 (5th Cir. 2013)</p> <p>22.011 (a)(2) is not a crime of sexual abuse of a minor</p>	N/A	<p>Forcible, nonconsensual sexual physical contact is held to be a CIMT.</p> <p>22.011 (a)(2) may not be a CIMT because it criminalizes sexual contact between a minor 16 years old or younger. <i>See</i></p>	<p>22.011 is not likely a COV, so not a crime of domestic violence.</p> <p>22.011(a)(2) is considered a crime of child abuse. <i>Garcia v. Barr</i>, 969 F.3d 129 (5th Cir. 2020)</p>	<p>N/A</p> <p>.</p>

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		because the statute is broader than the generic federal definition. <i>United States v. Hernandez-Avila</i> , 892 F.3d 771, 773 (5th Cir. 2018) ("Because § 22.011(a)(2) criminalizes sexual intercourse with a victim under 17, rather than a victim under 16, and does so "based solely on the age of the participants," it is categorically overbroad under Esquivel-Quintana.")	.	<i>Matter of Silva-Trevino</i> , 26 I & N Dec. 826, 836 (BIA 2016); <i>see also Matter of Jimenez-Cedillo</i> , 27 I& N Dec. 1, 5 (BIA 2017) ("We therefore clarify our decision in <i>Matter of Silva-Trevino</i> and now hold that a sexual offense in violation of a statute enacted to protect children is a crime involving moral turpitude where the victim is particularly young--that is, under 14 years of age--or is under 16 and the age differential between the perpetrator and victim is significant, or both, even though the statute requires no culpable mental state as to the age of the child.")		
11. Aggravated Assault, § 22.02 First or Second Degree Felony	Elements in 22.01 and 1) Causes serious bodily injury to another, or 2) Uses or exhibits deadly weapon during the commission of an assault	Not a COV because the use of force not a necessary element. <i>United States v. Gomez Gomez</i> , 23 F.4th 575 (5th Cir. 2022)	N/A	Most likely a CIMT under both the serious bodily injury element and deadly weapon element.	Not a COV, so not a crime of domestic violence.	N/A

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12. Aggravated Sexual Assault, § 22.021	Detailed elements.	<p>Likely an aggravated felony under INA 101(a)(43)(A) (rape) and 101(a)(43)(F) (use of force involved).</p> <p>Also likely a crime of sexual abuse of a minor if charged with 22.021(f) because an element of the offense includes the victim being younger than 14 or younger than 6.</p>	N/A	<p>Forcible, nonconsensual sexual physical contact is held to be a CIMT.</p>	<p>Not likely a crime of domestic violence because a domestic relationship is not an element of the offense.</p> <p>Likely considered a crime of child abuse because it has the elements in 22.011(a)(2) and more aggravating elements. <i>See Garcia v. Barr</i>, 969 F.3d 129 (5th Cir. 2020)</p>	N/A
13. Injury to a Child, Elderly Individual, or Disabled Individual, § 22.04 First, Second, Third degree felony, State jail felony	<p>(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual:</p> <ol style="list-style-type: none"> 1) Serious bodily injury; 2) Serious mental deficiency, impairment; or injury 3) or bodily injury. 	<p>No, not an aggravated felony because force is not a necessary element of the offense. <i>See</i> 18 U.S.C. § 16(a).</p>	N/A	<p>May be classified as a CIMT because even though the injury may occur by omission, the omitted act may be deemed contrary to accepted social morals and standards; however, criminally negligent injury may not constitute a CIMT.</p>	<p>May be classified as a crime of child abuse and removable under INA sec. 237(a)(2)(E)(i).</p>	<p>Pre-trial diversion with no admission of guilt when dismissal not possible. Plea to negligence when possible and less than 180 days underlying sentence.</p>

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14. Abandoning or Endangering a Child, § 22.041 First, Second, Third degree felony, State jail felony	<p>(a) In this section, “abandon” means to leave a child in any place without providing reasonable and necessary care for the child, under circumstances under which no reasonable, similarly situated adult would leave a child of that age and ability.</p> <p>(b) A person commits an offense if, having custody, care, or control of a child younger than 15 years, he intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm.</p> <p>(c) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or</p>	No, not an aggravated felony because force is not a necessary element of the offense. <i>See</i> 18 U.S.C. Sec. 16(a).	Has the meaning assigned by TPC sec. 1.07.	Abandonment has been classified as a CIMT where willfulness is required on the part of the parent, the potential destitution of the child, and the potential exposure of the child to an unreasonable risk of harm.	May be classified as a crime of child abuse and removable under INA sec. 237(a)(2)(E)(i).	Pre-trial diversion with no admission of guilt when dismissal not possible. Plea to negligence when possible and less than 180 days underlying sentence.

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	<p>mental impairment.</p> <p>(d) Except as provided by Subsection (e), an offense under Subsection (b) is:</p> <p>(1) a state jail felony if the actor abandoned the child with intent to return for the child; or</p> <p>(2) a felony of the third degree if the actor abandoned the child without intent to return for the child.</p> <p>(e) An offense under Subsection (b) is a felony of the second degree if the actor abandons the child under circumstances that a reasonable person would believe would place the child in imminent danger of death, bodily injury, or physical or mental impairment.</p> <p>(f) An offense under Subsection (c) is a state jail felony.</p>					
15. Terroristic Threat, §22.07(a)(1) or 22.07(a)(2).	(a)(1) Threatens to commit any offense involving violence to any person or	If classified as a COV under 18 U.S.C. Sec. 16(a), the Class A misdemeanor would be an aggravated felony COV if a sentence	N/A	May be classified as a CIMT if the threat of violence against a person(s) or property is found to rise to	If classified as a COV, could also likely be a crime of domestic violence.	Pre-trial diversion with not admission of guilt where dismissal not possible. Plea to Class B or C misdemeanor

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Class B Misdemeanor (a)(1). An offense under Subsection (a)(2) is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the offense: (1) is committed against a member of the person's family or household or otherwise constitutes family violence; or (2) is committed against a public servant.	property with the intent to (a)(2) Cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies OR (a)(3) Place any person in fear of imminent serious bodily injury.	of confinement imposed is one year or more. The Class B misdemeanor COV would not be classified as an aggravated felony because the maximum term of confinement is 180 days.		a level of vile, base, or depraved behavior not accepted by societal standards.		with least culpable mens rea possible and any underlying sentence of confinement less than 180 days. When possible and helpful, specify predicate offense.
16. Terroristic Threat, § 22.07(a)(3) Class A Misdemeanor Unless the loss is greater than \$1,500 or more to the owner of the building, room place, or conveyance, in which event the offense is a state jail felony.	A person commits an offense if he (a) threatens to commit any offense involving violence to any person or property with intent to: (3) prevent or interrupt the occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile, or other form of conveyance, or	If classified as a COV under 18 U.S.C. Sec. 16(a), this would be an aggravated felony if a sentence of confinement imposed is one year or more.	N/A	May be classified as a CIMT if the threat of violence against a person(s) or property is found to rise to a level of vile, base, or depraved behavior not accepted by societal standards.	If classified as a COV, could also likely be a crime of domestic violence.	Pre-trial diversion with no admission of guilt where dismissal not possible. Plea to a Class B or C misdemeanor with least culpable mens rea possible and any underlying sentence of confinement less than 180 days. When possible and helpful, specify predicate offense.

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	other public place.					
17. Terroristic Threat, § 22.07(a)(4), (a)(5), (a)(6) Third Degree Felony	A person commits an offense if he (a) threatens to commit any offense involving violence to any person or property with intent to (4) cause impairment or interruption of public communications , public transportation, public water, gas or power supply or other public service (5) place the public or a substantial group of the public in fear of serious bodily injury; or (6) influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state.	If classified as a COV under 18 U.S.C. Sec. 16(a), this would be an aggravated felony if a sentence of confinement imposed is one year or more.	N/A	May be classified as a CIMT if the threat of violence against a person(s) or property is found to rise to a level of vile, base, or depraved behavior not accepted by societal standards.	If classified as a COV, could also likely be a crime of domestic violence.	Pre-trial diversion with no admission of guilt where dismissal not possible. Plea to Class B or C misdemeanor with least culpable mens rea possible and any underlying sentence of confinement less than 180 days. When possible and helpful, specify predicate offense.
18. Criminal Nonsupport, § 25.05 State Jail Felony	A person commits the offense if he/she intentionally and knowingly 1) fails to provide child support for the individual's child under 18 or for the individual's	Not an aggravated felony.	N/A	Not a CIMT. The statute does not require the child to be in destitute circumstances, in need of the support of the parent, likely to become a public charge, or that the health or life	Not a crime of DV. The offense does not require the use, attempted use, or threatened use of physical force.	Aim for sentence less than a year or some sort of pre-trial diversion

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	child who is the subject of a court order requiring the individual to support the child.			of the child has been impaired.		
19. Violation of Protective or Magistrate's Order, § 25.07 Class A Misdemeanor	A person commits the offense if he/she knowingly or intentionally: (1) commits family violence; (2) communicates: (a) directly with a protected individual or a member of the family of household in a threatening or harassing manner; (b) a threat through any person to a protected individual or a member of the family or household; or (c) in any manner with the protected individual or a member of the family of household except through the person's attorney or a person appointed by the court; (3) goes to or near any of the places described in the order (4); possesses a firearm; (5) harms, threatens, or interferes with	Not an aggravated felony.	N/A	Yes. However, the statute is divisible. The section describing family violence or threats to a protected individual would most likely constitute a CIMT. The section describing going to a particular place is arguably not a CIMT because of lack of evil intent. However, intentional and knowing <i>mens rea</i> may defeat this argument	Commission of offense under this section fits under the removability grounds listed at 8 U.S.C. § 1227(a)(2)(E)(ii) for protective order violators.	N/A

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	the care, custody, or control of a pet, companion animal, that is possessed by a person protected by the order; or (6) removes, attempts to remove, or otherwise tampers with the functioning of a GPS.					
20. Arson, § 28.02 Second Degree Felony (under subsection a) First Degree Felony (if bodily injury or death was suffered or property intended to be damaged or destroyed was a habitation or place of assembly or worship) State Jail Felony (under subsections a-1 and a-2)	A person commits the offense if he/she (a) starts a fire, or causes an explosion with intent to destroy or damage: (1) vegetation, fence, or structure on open-space land; or (2) any building, habitation, or vehicle: (A) knowing that it is within the limits or an incorporated city or town; (B) knowing that it is insured against damage or destruction; (C) knowing that it is subject to a mortgage or other security interest; (D) knowing that it is located on property belonging to another; (E) knowing that it has located within it property	Yes, under 8 U.S.C. § 1101(a)(43)(E)(i), because courts take a broad view of what "offense described in" means, under 18 U.S.C. §§ 844 (f), (i). <i>Matter Of Bautista</i> , 25 I&N Dec. 616 (BIA 2011).	N/A	Yes. Arson generally has been found to constitute a CIMT because of evil or malicious intent. <i>Vubanovic v. U.S. Attorney General</i> , 439 F.3d 1308 (11th Cir. 2006)	N/A	N/A

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	<p>belonging to another; or (F) when the person is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.</p> <p>(a-1) A person commits an offense if the person recklessly starts a fire or causes an explosion while manufacturing or attempting to manufacture a controlled substance and the fire or explosion damages any building, habitation, or vehicle.</p> <p>(a-2) A person commits an offense if the person intentionally starts a fire or causes an explosion and in so doing: (1) recklessly damages or destroys a building belonging to another; or (2) recklessly causes another person to suffer bodily injury or death.</p>					

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21. Criminal Mischief, § 28.03 Depending on the amount of loss and damage, an offense under this section is a Class C, B, and A Misdemeanor; State Jail Felony; 1 st Degree Felony	a) A person commits an offense if, without effective consent of the owner; 1) he intentionally or knowingly damages or destroys tangible property of the owner, or 2) he intentionally or knowingly tampers w/ tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person 3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on tangible property of the owner.	Not an aggravated felony b/c not a COV; not a violation of 18 U.S.C §16(a) Defendant's conviction for violation of Texas "criminal mischief" statute was not a "COV" for the purposes of sentencing guidelines, <i>U.S v. Landeros-Gonzales</i> , 262 F.3d 424 (5 th Cir. 2001)	N/A	Arguably not a CIMT for lower-level misdemeanors; however, intentionally and knowingly causing damage to the property of another could rise to the level of a CIMT classification where the damage is significant.	Not a crime of domestic violence.	When possible, pre-trial diversion without an admission of guilt; or, plead to the lowest level misdemeanor possible with the lowest sentence possible, preferably less than 180 days.
22. Reckless Damage, or destruction § 28.04 An offense under this section is a Class C Misdemeanor	1) without the effective consent of the owner, 2) he recklessly damages or destroys the property of the owner.	Not an aggravated felony.	N/A	Not likely to be a CIMT because the mens rea requirement is reckless, not intentional harm to a person or property of another.	N/A	When possible, pre-trial diversion without an admission of guilt; or, a sentence of less than 180 days.

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23. Graffiti, § 28.08 Class C, B, and A misdemeanor if damage is less than \$2,500. State jail felony if damage is less than \$30,000 but more than \$2,500.	(a) A person commits an offense if, without the effective consent of the owner, the person intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner with: (1) paint; (2) an indelible marker; or (3) an etching or engraving device.	Not an aggravated felony.	N/A	Arguably not a CIMT for lower-level misdemeanors; however, intentionally and knowingly causing damage to the property of another could rise to the level of a CIMT classification where the damage is significant.	N/A	When possible, pre-trial diversion without an admission of guilt; or, plead to the lowest level misdemeanor possible with the lowest sentence possible, preferably less than 180 days.
24. Robbery, § 29.02 Second Degree Felony	A person commits the offense if he/she: 1) in the course of committing theft; 2) with intent to obtain or maintain control of the property of another, perpetrator 3) intentionally, knowingly, or recklessly causes bodily injury to another; or 4) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.	Aggravated felony under INA §§ 101(a)(43)(F), (G). However, under both sections, the sentence to a term of imprisonment has to be at least one year to be an aggravated felony. Deferred adjudication for this offense would NOT be an aggravated felony (nor would any term of imprisonment less than one year constitute an aggravated felony).	N/A	Offense is a CIMT. See <i>Matter of Martin</i> , 18 I&N Dec. 226 (BIA 1982).	N/A	N/A

Offense under the Texas Penal Code	Elements of Offense	Aggravated Felony	Relating to Controlled Substance	Crime Involving Moral Turpitude ("CIMT")	Domestic Viol., Child Abuse, Fraud Firearms, Etc.	Alternate Pleas and Practice Tips
25. Aggravated Robbery, § 29.03 First Degree Felony	A person commits the offense if he/she commits robbery, as defined in §29.02, and the perpetrator: (1) Causes bodily injury to another; (2) uses or exhibits a deadly weapon; or (3) causes bodily injury to another person or threatens or places another in fear of imminent bodily injury or death, if the victim is: (a) 65 years of age or older; or (b) a disabled person	Aggravated felony under INA §§ 101(a)(43)(F), (G). However, under both sections, the sentence to a term of imprisonment has to be at least one year to be an aggravated felony. Deferred adjudication for this offense would NOT be an aggravated felony (nor would any term of imprisonment less than one year constitute an aggravated felony). <i>See Rodriguez Gonzalez v. Garland</i> , No. 22-60091 (5th Cir. 2023).	N/A	Offense is a CIMT. <i>See Matter of Martin</i> , 18 I&N Dec. 226 (BIA 1982).	N/A	Aggravated Robbery, § 29.03 First Degree Felony
26. Burglary, § 30.02 First and Second Degree Felony, State Jail Felony	A person commits the offense if he/she: 1) without the effective consent of the owner, 2) enters a habitation, or a building (or any portion of a building) not then open to the public, 3) with intent to commit a felony, theft, or an assault, or; 4) remains concealed, with intent to commit a felony, theft, or any assault, in a building or habitation; or 5) enters a building or habitation and commits, or attempts to	Aggravated felony under INA § 101(a)(43)(G), as long as a one-year sentence is imposed. <i>See United States v. Herrold</i> , 941 F.3d 173 (5th Cir, 2019); <i>United States v. Wallace</i> , 964 F.3d 386 (5th Cir. 2020), <i>cert. denied</i> , 141 S. Ct. 910 (2020); <i>United States v. Hutchinson</i> , 27 F.4th 1323 (8th Cir. 2022); <i>United States V. Pena</i> , 952 F.3d 503 (4th Cir. 2020). Texas burglary of a habitation under § 30.02 meets the generic burglary definition, as such, it is a violent felony	N/A	Not categorically a CIMT. The statute is indivisible, as one could commit burglary for purposes of either theft or another named felony, and the jury does not have to specifically find one or the other, as either would suffice. Texas state law supports this in full. <i>See Gonzales v. State</i> , 517 S.W.2d 785, 786 (Tex. Crim. App. 1975); <i>Day v. State</i> , 532 S.W.2d 302, 305 (Tex.	N/A	N/A

Offense under the Texas Penal Code	Elements of Offense	Aggravated Felony	Relating to Controlled Substance	Crime Involving Moral Turpitude (“CIMT”)	Domestic Viol., Child Abuse, Fraud Firearms, Etc.	Alternate Pleas and Practice Tips
	commit a felony, theft, or an assault.	for ACCA purposes. <i>See U.S. v. Jackson</i> , 30 F.4th 269 (5th Cir.), <i>cert. denied</i> , 214 L. Ed. 2d 87, 143 S. Ct. 252 (2022)		Crim. App. 1976); <i>Davila v. State</i> , 547 S.W.2d 606, 608 (Tex. Crim. App. 1977).		
27. Burglary of Vehicles, § 30.04 Class A Misdemeanor through Third Degree Felony Detailed elements as to punishment range.	1) A person without effective consent of owner; 2) Breaks into or enters a vehicle or any part of vehicle 3) With intent to commit any felony or theft	Not an aggravated felony under INA 101(a)(43)(G). <i>See Lopez-Elias v. Reno</i> , 209 F.3d 788 (5th Cir. 2000) Not a COV. <i>See United States v. Rodriguez-Guzman</i> , 56 F.3d 18, 20 (5th Cir. 1995), <i>overruled on other grounds as recognized in United States v. Turner</i> , 305 F.3d 349, 350-51 (5th Cir. 2002) (“To obtain a conviction under the two pertinent Texas burglary statutes, the state need not prove the use, attempted use, or threatened use of physical force against the person or property of another. Therefore, neither of Rodriguez’s burglary convictions is a COV as defined in subsection (a) of 18 U.S.C. § 16.”)	N/A	Burglary of a vehicle with intent to commit theft could be a CIMT if committed after <i>Matter of Diaz-Lizarraga</i> . See “theft” below. However, some unpublished Board cases have found that the statute is not divisible and can be committed with “intent to commit a felony” some of which are not CIMTs. <i>See Edgar William Perez Ayala</i> , A029 308 742 (BIA June 29, 2018).	N/A	Burglary of Vehicles, § 30.04 Class A Misdemeanor through Third Degree Felony Detailed elements as to punishment range.
28. Criminal Trespass, § 30.05	1) enters or remains on or in property of another, including residential land, agricultural land, a recreational	Not an aggravated felony.	N/A	Likely not a CIMT as does not require evil/malicious intent.	N/A	Criminal Trespass, § 30.05

Offense under the Texas Penal Code	Elements of Offense	Aggravated Felony	Relating to Controlled Substance	Crime Involving Moral Turpitude (“CIMT”)	Domestic Viol., Child Abuse, Fraud Firearms, Etc.	Alternate Pleas and Practice Tips
	vehicle park, a building, a general residential operation operating as a residential treatment center, or an aircraft or other vehicle, 2) without effective consent and 3) had notice that the entry was forbidden; or 5) received notice to depart but failed to do so.					
29. Theft § 31.03 Class C Misdemeanor through Second Degree Felony Detailed elements as to punishment range.	1) unlawfully appropriates property 2) with intent to deprive the owner of property.	Aggravated felony under INA § 101(a)(43)(G) if sentenced to at least one year. <i>See Matter of Deang</i> , 27 I. & N. Dec. 57, 57 (BIA 2017) (finding that an essential element of an aggravated felony under INA 101(a)(43)(G), is that an offender must receive property with the “knowledge or belief” that it has been stolen,” and noting that 31.03 requires proof that the stolen property was either “knowingly” or “intentionally” received, or that a violator had received such property “knowing” that it had been stolen.)	N/A	Theft offenses may be CIMTS if committed after <i>Matter of Diaz-Lizarraga</i> . <i>See Monteon-Camargo v. Barr</i> , 918 F.3d 423 (5th Cir. 2019) (holding a non-citizen’s Texas theft conviction was not categorically a CIMT as it included theft offenses that, prior to <i>Matter of Diaz-Lizarraga</i> , fell outside of theft offenses that were less than permanent or total takings. The modified categorical approach was not applicable because the theft statute was not divisible).	N/A	N/A