

QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES OF SELECTED CALIFORNIA OFFENSES

Feb-11

CALIFORNIA CODE SECTION	OFFENSE	AGGRAVATED FELONY	CRIME INVOLVING MORAL TURPITUDE-- These findings are questionable	OTHER DEPORTABLE, INADMISSIBLE GROUNDS	ADVICE AND COMMENTS
Business & Professions §4324	Forgery of prescription, possession of any drugs	May be divisible as CS or forgery AF; see Advice.	Might be divisible: forgery is CMT but poss of forged drug possibly not.	Deportable, inadmissible for CS conviction if ROC of conviction identifies the CS.	To avoid CS and AF conviction, avoid ID'ing specific CS in ROC. See also Advice for H&S 11173(a). To avoid AF conviction as forgery, avoid sentence of 1 yr or more. See Notes "Safer Pleas" and "Drug Offenses"
Business & Professions §25658(a)	Selling liquor to a minor	Not AF.	Shdn't be CMT.	No.	
Business & Professions §25662	Possession, purchase, or consumption of liquor by a minor	Not AF.	Shdn't be CMT.	No, except multiple convictions could be evidence of alcoholism, which is an inadmissibility grnd and bar to "good moral character."	
Health & Safety Code § 11173(a)	Prescription for controlled substance (CS) by fraud	Might be drug AF, forgery AF, or possibly fraud with \$10k loss to victim/s (insurance?). See Advice.	May be divisible, e.g. 11173(b) not CMT	Deportable, inadmissible for CS conviction if ROC ID's specific CS.	To avoid CS AF and deportability under CS ground, plead to straight forgery, false personation, etc. or other non-CS alternative. Or, to avoid CS AF, plead to straight possession. Or, to avoid all CS consequences, do not plead to specific CS on record; see H&S 11350 Advice. To avoid forgery AF, avoid one-year sentence imposed. If insurance lost \$10,000 consult Notes.

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H&S §11350(a), (b)	Possession of controlled substance	Possession (with no drug prior) is not AF unless the CS is flunitrazepam or more than 5 grams of cocaine base. See Advice re poss <i>with</i> a prior as an AF, and re effect of DEJ, 1203.4 etc. on a FIRST simple poss. Also, avoid CS consequences entirely by not ID'ing specific CS on ROC.	No.	Deportable, inadmissible for CS conviction. Wherever possible, do not let ROC identify a specific CS. See Advice. See advice column re effect of DEJ, 1203.4, etc. on a FIRST simple poss.	Seek alternate plea such as PC 32, or take this plea with the following in mind. 1. <u>DEJ and Post-con relief</u> : First simple possession, with no drug priors and no prior pre-plea diversion, is eliminated by withdrawal of plea under, e.g., DEJ, 1203.4, Prop 36; this is not available if probation was violated. See Lujan-Armendariz (9th 2002). If client will remain incarcerated because of imm detainer, see if can possibly complete probation, DEJ or Prop 36 requirements while in custody. 2. <u>Poss with drug prior as an AF</u> : Not an agg felony as long as court does not make formal finding of the drug prior for recidivist purposes; Carachuri v. Holder (U.S. S.Ct. 2010), Matter of Carachuri (BIA 2007). Don't permit prior to be pled or proved; take additional time some other way, or plead down to PC 11365 or 11550, which can take a recidivist sentence without being an agg felony. 3. <u>Controlled substance not identified in the ROC</u> : Ruiz-Vidal, 473 F3d 1072 (9th 2007) held that because 11377 has CS's not on the federal CS list, the conviction is not a CS offense for imm purposes unless ROC specifies a federally listed CS. See also Esquivel v. Holder (9th Cir. Jan 2010) same holding on H&S 11350. Potential issues with inadmissibility: Gov't may argue that when the question is inadmissibility or eligibility for relief, immigrant has burden of proving a federal CS was involved; strong arguments against this. Second, immigrant shd not admit to immigration judge what the substance was, to avoid a possible inadmissible "formal admission" of a CS
H&S §11351	Possession for sale	Yes AF as CS trafficking conviction; see Advice Column. This is not the case if controlled substance not ID'd on ROC. See 11350 Advice Column. See Note: Drug Offenses	Yes CMT as CS trafficking offense	Deportable, inadmissible for CS conviction if CS ID'd on ROC of conviction. (Inadmissible even without conviction if police report gives DHS "reason to believe" involved in trafficking a CS). See 11350 Advice.	To avoid AF attempt to plead down to simple poss (see H&S 11350), or H&S 11365, 11550; or consider pleading up to offer to sell, see advice in H&S 11352. Or plead to PC 32 with less than 1 yr sentence to avoid AF, deportability and perhaps inadmissibility. To avoid having a drug conviction do not create ROC that ID's specific controlled substance. See 11350 Advice, see also Notes "Record of Conviction," "Drug Offenses" and "Safer Pleas."

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H&S §11351.5	Possession for sale of cocaine base	Yes AF	Yes CMT as CS trafficking offense	Deportable, inadmissible for CS conviction	See advice on H&S 11351 and Note "Drug Offenses." Try to plead to 11351 or 11378 with no CS ID'd on ROC to avoid any CS consequences, or to 11379 or 11352 solicitation or transportation to at least avoid CS AF. Note first simple poss of 5 gram or more cocaine base is an agg felony; see Note: Drug Offenses.
H&S §11352(a)	Sell/Transport or Offer to Sell/Transport controlled substances	Divisible: A plea to transportation for personal use, and plea to offering to commit any offense is not AF; but plea to sell, distribute is AF. May avoid all issues if specific CS is not ID'd on the ROC (11379 might be better for this). See Advice	Yes CMT as CS trafficking offense (except transport for personal use)	This is deportable and inadmissible CS conviction, unless the specific CS is not ID'd on the reviewable record; in that case see H&S 11350 Advice. Transportation plea will not give "reason to believe" trafficking inadmissibility, but other pleas will.	See discussion in Note "Drug Offense." Transportation for personal use is not an AF but is a deportable and inadmissible drug conviction. Same results with offering to commit a drug offense, but this has a key disadvantage: it may give the gov't "reason to believe" the person trafficked and therefore is inadmissible regardless of conviction, plus this defense is not accepted outside the 9th Cir. To avoid all consequences: PC 32 with less than 1 yr prevents agg felony and deportability. An ROC that does not ID a specific CS may avoid all consequences; see H&S 11350 Advice.
H&S §11357	Marijuana, possession	See H&S 11350. (But mj is a federally listed CS, so it is not possible to make the Ruiz-Vidal defense with an unspecified CS).	Not CMT	Deportable, inadmissible for CS conviction, except see discussion first poss. 30 gms or less mj or hash, next box	See H&S 11377 as alternate plea -- if can obtain ROC where no CS is specified). Or, single simple possession of less than 30 gms mj or hash is not a deportable CS conviction, and may be eligible for inadmissibility waiver under INA 212(h). See Note: Drug Offenses
H&S §11358	Marijuana, Cultivate	Yes, controlled substance AF	Might be held CMT if ROC shows intent to sell; see Advice	Deportable and inadmissible for CS conviction	Plead to a simple possession (see H&S 11350); plead up to offer to sell (see H&S 11360); to accessory with less than 1-yr imposed (see PC 32); to non-drug offense. See Notes "Safer Pleas" and "Drug Offenses." Under Silva-Trevino, imm judge may ask D whether intended to sell for CMT purposes.
H&S §11359	Possession for sale marijuana	Yes	Yes	Deportable and inadmissible as CS offense	See advice at 11351. Do not plead to this if immigration concerns are important. Plead down to 11357, up to 11360, or plead to another offense in which the controlled substance is not specified.

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H&S §11360	Marijuana - (a) sell, transport, give away, offer to; (b) same for 28.5 gms or less	Divisible: Transport, or offer to commit drug offense is not AF. Giving away a CS usually is an AF; however giving away a small amount of mj arguably is not and a first offense to do this might qualify for Lujan benefit. See Note: Drug Offenses	Yes CMT as CS trafficking offense (except transport for personal use, and probably giving away a small amount). See Advice re Silva-Trevino	Deportable and inadmissible for CS. First offense give away small amount or offer to give may qualify for Lujan benefit.	See Note "Drug Offense." Transportation for personal use is not an AF but is a deportable and inadmissible drug conviction. Same with offering to commit a drug offense. Sale or offering to sell also makes the person inadmissible by giving gov't "reason to believe" person has been drug trafficker. PC 32 with less than 1 yr prevents agg felony and CS deportability. Giving away a small amount of marijuana <i>might</i> have advantages: may not be an AF, and a first conviction may be treatable under Lujan-Armendariz. Best plea: 1st poss of less than 30 gms marijuana under H&S 11357(b); or any offense relating to an unspecified controlled substance e.g. 11377, because that is not a controlled substance offense. Under Silva-Trevino for CMT purposes only, imm judge may take testimony on transport v. sale.
H&S §11364	Possession of drug paraphernalia	Not AF (sale of paraphernalia might be).	Not CMT	Deportable, inadmissible for CS conviction	A first conviction is eliminated through withdrawal of plea under DEJ, Prop 36, PC 1203.4 by Lujan-Armendariz. See H&S 11350 and Notes "Drug Offenses" and "Safer Pleas"
H&S §11365	Presence where CS is used	Not AF.	Not CMT	Deportable, inadmissible for CS conviction	See advice on H&S 11364 and 11350, and Notes "Drug Offenses." Assume that this will be a CS conviction even if specific CS is not ID'd on ROC. First offense might be eliminated by DEJ, 1203.4, etc. under Lujan-Armendariz
H&S 11366.5	Maintain place where drugs are sold	Assume this is an AF	Assume it is CMT	Deportable, inadmissible for CS conviction	Try to avoid this plea. See H&S 11379, public nuisance offenses. Assume that this will be a CS conviction even if specific CS is not ID'd on ROC. See Note: Drug Offenses
H&S §11368	Forged prescription to obtain narcotic drug	Assume it is CS AF. Also, forgery with 1-yr sentence is AF.	May be divisible as CMT	Deportable and inadmissible for CS conviction	See advice for H&S 11173. Assume this is AF; better Might be divisible as a CMT since fraud intent not element of forged prescription. Better to plead to poss of a drug plus a separate straight forgery with 364 days or less. In any event, avoid 1-yr sentence for forgery; see Note "Sentence."

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H&S §11377	Possession of controlled substance	See Advice Column here and H&S 11350.	Not CMT	Deportable, inadmissible for CS conviction -- but see Advice re having no specific CS ID'd on the ROC.	See Advice in H&S 11350 re when possession with a drug prior is an AF, and when withdrawal of plea eliminates a first poss conviction. See 11350 Advice for the effect when a specific CS is not ID'd on the record, which is a disposition that will avoid all or most consequences.
H&S §11378	Possession for sale CS	Yes, unless specific drug not ID'd on ROC. See Ruiz-Vidal and 11377, supra.	Yes CMT as CS trafficking offense	Deportable, inadmissible for CS conviction, unless specific drug not ID'd on ROC; see 11377 and Ruiz-	See advice on H&S 11351 and Note "Drug Offenses." Avoid consequences by not identifying specific CS on the ROC, or better by pleading to transportation or offering in 11379 and not ID'ing specific CS.
H&S §11379	Sale, give, transport, offer to, controlled substance	Divisible: see H&S 11352 and Advice.	Divisible, see H&S 11352 and Advice.	See H&S 11352. See benefits if specific drug is not ID'd, discussed at 11350 Advice.	Divisible statute in that transportation and offering to commit an offense is not an AF, while sale or distribute is. Avoid consequences by not identifying specific CS on the ROC; see 11350, 11352 Advice and Note "Drug Offenses."
H&S §11550	Under the influence controlled substance (CS)	Under influence not AF. Felony 11550(e) 'with gun' with 1 yr might be AF as COV. Avoid 1 yr or 'with gun.'	Not CMT	Deportable, inadmissible for CS conviction, at least if specific CS is ID'd on the ROC. H&S 11550(e) also deportable for firearms offense.	For 11550(a)-(c). Not an AF, even with a drug prior. While no case on point, it ought to get Lujan-Armendariz benefit and be eliminated by DEJ, 1203.4, Prop 36. Imm counsel will argue that it is not a CS offense if specific CS is not ID'd in ROC, but gov't may oppose. To avoid firearms offense avoid ROC showing 11550(e) is conviction. To avoid threat of felony 11550(e) as Agg Felony, reduce to misd under PC 17 and/or avoid 1-yr sentence.
Penal §31	Aid and abet	AF if underlying offense is.	Yes if underlying offense is	Yes if underlying offense is	No immigration benefit. However see accessory after the fact PC 32.
Penal §32	Accessory after the fact	Only if 1 yr sentence imposed. See Advice for preparing ROC.	Unclear; currently being litigated. See Note: Safer Pleas	Accessory does not take on character of principal offense, so avoids consequences	To avoid agg felony, avoid 1 yr sentence imposed. If that is not possible, have record indicate conduct was to help the principal avoid initial arrest, rather than ongoing proceeding; if that is not possible, leave the record open to that possibility. Except for that and the possible CMT, this is an excellent plea to avoid e.g. drug, violence, firearms conviction. For further discussion see Note "Safer Pleas"

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Penal §92	Bribery	Yes AF if a sentence of 1-yr or more is imposed.	Yes CMT.	No.	
Penal §118	Perjury	Yes AF if a sentence of 1-yr or more is imposed.	Yes CMT	No.	
Penal §136.1(b)(1)	Nonviolently try to persuade a witness not to file police report, complaint	Shd not be AF, but because DHS might charge as obstruction of justice, try to obtain sentence of 364 or less for any single count. See Advice.	If plea as directed, shd not be CMT. IJ may interview person under Silva-Trevino, however.	Let ROC reflect no violence or threat of violence to avoid COV. If not COV, then not a DV offense even if DV-type victim.	Appears to be a good substitute plea with no imm consequences, but a strike w/ high exposure. For that reason can substitute for more serious charges. If sentence of 1 yr or more is imposed, have ROC show persuasion was not to file police report, as opposed to interfere with ongoing proceeding, so it is not obstruction of justice. See Note "Safer Pleas." See also PC 32, 236, not a strike. Note for CMT purposes only imm judge may consider testimony under Silva-Trevino.
Penal §140	Threat against witness	Assume AF if 1-yr sentence imposed	Yes CMT	If COV, a domestic violence offense if committed against DV type victim	To avoid AF avoid 1-yr sentence for any one count; see Note "Sentence." To avoid AF and DV deportability ground see PC 136.1(b)(1), 236, 241(a).
Penal §148	Resisting arrest	Divisible: 148(a)(1) is not AF, but felony 148(b)-(d) w/ 1-yr or more imposed might be.	148(a)(1) is not CMT, 148(b)-(c) are at least divisible ("reasonably should have known" police)	Sections involving removal of firearm from officer may incur deportability under firearms ground. See Note "DV, Firearms Grounds"	Plead to 148(a)(1). If plea to (b)-(d), avoid possible AF as a crime of violence by obtaining misdo conviction, reducing felony to misdo, and/or obtaining sentence less than 1 yr; see Note "Sentence."
Penal §182	Conspiracy	If principal offense is AF, conspiracy is. If principal requires 1-yr sentence to be AF, conspiracy does.	If principal offense is CMT, conspiracy is	Conspiracy takes on character of principal offense, e.g. CS, firearm. Exception may be DV ground.	Same consequence as principal offense. Imm counsel will argue that the domestic violence deport ground does not include conspiracy to commit a misdemeanor crime of violence, or conspiracy to commit child abuse, because neither 18 USC 16(a) nor the deportation ground include attempt or conspiracy.
Penal §187	Murder (first or second degree)	Yes AF	Yes CMT	A COV is domestic violence offense if committed against DV type victim	See manslaughter

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Penal §192(a)	Manslaughter, voluntary	Yes AF as COV, only if 1-yr or more sentence imposed	Yes CMT	A COV is domestic violence offense if committed against DV type victim	To avoid AF, avoid 1-yr sentence imposed; see Note "Sentence." To avoid CMT see PC 192(b).
Penal §192(b)	Manslaughter, involuntary	Divisible: a COV if ROC shows more than reckless intent. Avoid 1 yr where possible.	Traditionally held not to be a CMT	If a COV, it is DV offense if committed against DV type victim	Not a crime of violence under Fernandez-Ruiz (9th Cir. 2006)(en banc) if ROC shows only reckless intent. However, where possible obtain sentence of less than a year for any single count.
Penal §203	Mayhem	Yes AF only if 1-yr or more sentence imposed	Yes CMT	A COV is domestic violence offense if committed against DV type victim	Avoid 1-yr sentence to avoid AF; see Note "Sentence." See also PC 236, 243(a) and (e), 136.1(b) and Note "Safer Pleas"
Penal §207	Kidnapping	Yes AF only if 1-yr or more sentence imposed.	Yes CMT	A COV is domestic violence offense if committed against DV type victim	See advice for PC 203. If victim is under 18, conviction may block a citizen or permanent resident's ability to immigrate family members, under Adam Walsh Act. See Note 11.
Penal §211	Robbery (first or second degree) by means of force or fear	Yes AF if 1-yr or more sentence imposed	Yes CMT	A COV is domestic violence offense if committed against DV type victim	See advice for PC 203.
Penal §220	Assault, with intent to commit rape, mayhem, etc.	Assault to commit rape may be AF regardless of sentence; other offenses are AF only if 1-yr or more sentence imposed	Yes CMT	A COV is domestic violence offense if committed against DV type victim	Intent to commit rape may be treated as attempted rape, which is an AF regardless of sentence. To avoid an AF, see PC 243.4 w/ less than 1 yr on any single count. For other offenses avoid 1-yr sentence to avoid AF; see Note "Sentence." See also PC 236 and 136.1(b); to possibly avoid CMT see 243(d) (with less than 1 yr sentence), and see Note "Safer Pleas."
Penal §236, 237	False imprisonment (felony)	May be divisible as a COV. Try to avoid 1 yr sentence; see Advice.	Yes CMT, except possibly if committed by deceit.	A COV is domestic violence offense if committed against DV type victim	Committed with fraud or deceit, this shd not be held a COV; with violence or menace it will. Attempt to have ROC identify deceit; if that is not possible, at least leave ROC vague. To avoid CMT, see misdemeanor false imprisonment. Note that if victim is under 18, conviction may block a citizen or permanent resident's ability to immigrate family members, under Adam Walsh Act. See Note 11.

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Penal §236, 237	False imprison (misdo)	Not an AF	Shdn't be held CMT, but keep record vague; see Advice	Not a COV, therefore not a domestic violence offense.	Appears to be good substitute plea to avoid crime of violence in DV cases. See discussion in Note: "Safer Pleas." Possibly gov't wd charge as crime of child abuse if ROC showed minor victim. Re COV, currently Silva-Trevino permits wide-ranging questioning about offense so it's conceivable would be CMT if fraud, force involved. If victim is under 18, conviction may block a citizen or permanent resident's ability to immigrate family members, under Adam Walsh Act. See Note 11.
Penal 240(a)	Assault	Not an AF because no 1-year sentence	Divisible because can be committed with de minimus violence, but see Advice and see Notes: Domestic Violence, Safer Pleas	Assault is not a COV unless committed with actual rather than de minimus violence.	Re <u>COV</u> , Plead to attempted de minimus touching, or to the language of the statute and do not let ROC show attempted use of violent force. Simply because there is clear case law on it in immigration context, a better plea may be to battery or attempted battery, with an ROC that shows de minimus touching or is vague. See 243(a), (e) . Re <u>CMT</u> , unless the ROC specifies that only de minimus violence used, under Silva-Trevino the immigration judge may take evidence to see if actual violence was used. See Notes: Domestic Violence, Safer Pleas
Penal §243(a)	Battery, Simple	Not an AF because no 1-year sentence	Divisible because can be committed with de minimus violence, but see Advice at 240(a) and see Note: Safer Pleas.	See Advice to ensure conviction is not a crime of domestic violence or crime of child abuse.	Re <u>COV</u> , Plead to de minimus touching, or to the language of the statute and do not let ROC show use of violent force. Re <u>CMT</u> , unless the ROC specifies that only de minimus violence used, under Silva-Trevino the immigration judge may take evidence to see if actual violence was used. See Notes: Domestic Violence, Safer Pleas. Re <u>crime of child abuse</u> , keep ROC clear of evidence that victim was under 18.
Penal §243(b), (c)	Battery on a peace officer, fireman etc.	To be safe obtain sentence of less than one year. See Advice re plea content.	243(b) not CMT if offensive touching, 243(c) (with injury) may be.	No.	Avoid 1-yr sentence to avoid AF; see Note "Sentence." Even with 1 yr sentence, avoid AF by avoiding a COV. Section (b) is not COV if ROC indicates de minimus touching, or at least does not indicate actual violence. Keep ROC vague between (b) and (c) to avoid COV. Reduce (c) to a misdo to help avoid COV.

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Penal §243(d)	Battery with serious bodily injury	Yes AF as COV if it is a felony and 1-yr or more sentence imposed. If it is a misdo with 1 yr sentence, see Advice.	See Advice. May be held divisible, as not a CMT if ROC indicates that only de minimus force used. If instead ROC is vague, imm judge may take testimony re underlying facts under Silva-Trevino.	A COV is domestic violence offense if committed against DV type victim	See further discussion in Notes: Safer Pleas, Domestic Violence. To avoid agg fel get less than 365 days for any one count. If that's not possible, imm counsel can argue <i>misdo</i> 243(d) is not a COV if the ROC indicates only de minimus touching, or at least does not indicate actual violence (e.g., eggshell plaintiff situation). To try to avoid CMT, make specific record of de minimus touching w/out intent to harm. If instead record is left vague, under Silva Trevino imm judge might make broad inquiry re underlying facts). There's no guarantee the de minimus arguments will win. See also PC 236, 136.1(b)(1), misdo 243(a), (e).
Penal §243(e)(1)	Battery against spouse, former date, etc.	Obtain 364 days or less. This is not a COV if done with de minimus touching; see Advice.	See Advice. Has been held divisible with de minimus force not CMT.	A DV offense only if this is a COV. A vague ROC, or better a plea specifically to de minimus touching, is not a COV.	See Notes: Domestic Violence, Safer Pleas. <u>To avoid COV</u> , and therefore AF and DV, plead specifically to de minimus force or at least keep ROC clear of info that battery was beyond de minimus touching. In that case, can accept DV counseling requirement, stay-away order, etc. without becoming deportable under DV ground. <u>To avoid CMT</u> , plead specifically to de minimus force; this might prevent broad inquiry into facts under Silva-Trevino. See Advice PC 243(a).
Penal §243.4	Sexual battery	Felony is AF as COV if 1-yr sentence. Misdo is divisible; for misdo, obtain less than 1 yr sentence or see Advice.	Yes CMT	A COV is domestic violence offense if committed against DV type victim. Felony is COV; see Advice for misdo	See cites and discussion in Note: Safer Pleas. Misdo is divisible because restraint need not be by force. If ROC indicates restraint was not by force, or at least does not indicate it was by force, shd not be COV. See PC 243(d), (e) to try to avoid CMT, but under Silva-Trevino testimony may be taken for CMT purposes only. See PC 136.1(b)(1), 236, 243(e) to avoid CMT and COV.
Penal §245	Assault with a deadly weapon (firearms or other) or force likely to produce great bodily harm	Yes AF as COV if 1-yr or more sentence imposed.	Shd be divisible as CMT because includes intoxicated, incapacitated, having no intent to harm. See Advice.	A COV is domestic violence offense if committed against DV type victim. Section 245(a)(2) and others involving firearms bring deportability under firearms ground.	<u>To avoid firearms grnd</u> , keep ROC of conviction clear of evidence that offense was 245(a)(2); see also PC 12020, 236, 243(d) and 136.1(b) and Notes Safer Pleas, Firearms, DV. <u>Re CMT</u> : The 9th Cir has held 245 divisible for CMT because it can be committed with general intent, e.g. while drunk. Under Silva-Trevino the immigration judge may go into actual circumstances, however. See additional discussion in Note: Safer Pleas

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Penal §261	Rape	Yes AF, regardless of sentence imposed.	Yes CMT	A COV is domestic violence if committed against DV type victim.	See PC 243(d) (not CMT) and 243.4 (both not Agg Felonies if less than 1 yr sentence), 236, 136.1(b)(1) (can support 1 yr sentence); misdo 243.4 is divisible as COV. See Note "Safer Pleas".
Penal §261.5 (c) and (d)	Consensual sex with a minor	261.5(c) is not AF. Estrada-Espinoza (9th Cir. 2008) 261.5(d) is divisible based on age of victim, egregious factors. See Advice	Law developing; see Advice	Likely to be charged under DV deport ground as child abuse; imm counsel have arguments against this for older teens.	<u>Re agg felony as sexual abuse of minor</u> : No conviction of 261.5(c) is AF as sexual abuse of a minor. Same applies to 286(b)(1), 288a(b)(1), and 289(h). Section 261.5(d) may be AF if ROC shows victim is 'younger child' which may mean less than 15. Same applies to 286(b)(2), 288a(b)(2), 289(i). <u>Re CMT</u> , current BIA rule is that immigration judge may take evidence to see if D knew or should have known V was under-age. Silva-Trevino. Ninth Circuit rule was 261.5(d) is divisible; Court has not considered BIA rule yet. See also PC 243(a), 243(d), 243.4, 236, 136.1(b)(1) and Note: Sex Offenses.
Penal §262	Spousal Rape	Yes AF, regardless of sentence imposed.	Yes CMT	Deportable under DV ground.	See PC 243(d), 243.4, 236, 136.1(b)(1) and Note "Safer Pleas."
Penal §270	Failure to provide for child	Not AF.	Unknown	Assume this is deportable under DV ground for child neglect.	Until courts define deportable "crime of child neglect," it is hard to predict if this offense causes deportability under that ground; counsel shd assume conservatively that it does.
Penal §272	Contributing to the delinquency of a minor	Not AF, but to be conservative keep ROC free of lewd act	Divisible: may be CMT if lewdness	Might be charged under DV ground for child abuse, especially if lewd act.	Keep ROC clear of reference to lewd act. <u>Deportable child abuse</u> . Currently imm authorities are broadly charging child abuse. However, 272 does not require actual harm, just possible minor harm. See Advice 273a(b). Counsel should plead to, e.g., omission that caused possible harm rather than actual harm. <u>CMT</u> . To try to restrict a broad factual inquiry under Silva-Trevino, plead to specific innocuous facts.

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Penal §273a(a), (b)	Child injury, endangerment	Divisible as a COV: infliction of physical pain may involve use of force but other actions, including placing a child where health is endangered, do not. A COV with 1-yr sentence imposed is an AF.	Divisible: inflicting pain is CMT, but unreasonably risking child's health under (b) is not. See disc. in P v. Sanders (1992) 10 Cal.App.4th 1268 (as state CMT case, not controlling but informative).	Divisible as crime of child abuse: Exposing child to non-serious risk under (b) is not crime of child abuse; (a) may be categorical crime of child abuse. Fregozo v. Holder, 576 F.3d 1030, 1037-38 (9th Cir. 2009).	To avoid agg felony, avoid 1-yr sentence, and/or indicate in ROC that only negligence or recklessness used, or at least leave open the possibility. To avoid CMT indicate in ROC of (b) that it was merely unreasonable action; see Note "Record of Conviction." If this arose from traffic situation (lack of seatbelts, child unattended etc.), defendant can plead to unreasonable behavior under (b) or seek alternatively plead to traffic etc. offense without element involving minors and take counseling and other requirements as a condition of probation, without the offense acquiring immigration consequences. See Note: DV/Child Abuse
Penal §273d	Child, Corporal Punishment	Yes AF as COV if 1-yr sentence imposed	Yes CMT	Deportable under DV ground for child abuse	To avoid agg felony, avoid 1-yr sentence on any single count; see Note "Sentence."
Penal §273.5	Spousal Injury	Yes, AF as a COV if 1-yr or more sentence imposed	Assume it is CMT, unless can plead specifically to de minimus touching where the victim and defendant had an attenuated relationship.	Deportable under DV ground regardless of sentence.	To avoid AF avoid 1-yr sentence imposed. To avoid AF and DV plead to non-COV such as PC 243(e), 236, 136.1(b)(1); can accept batterer's program probation conditions on these. See 243(e)(1) and "Note: Domestic Violence." These also may avoid CMT; it is possible that PC 243(d) will do the same. Further, Morales-Garcia, 567 F.3d 1058 (9th Cir) held 273.5 not automatic CMT because relationship can be attenuated and touching only battery, but unless you plead specifically to this, under Silva-Trevino imm judge may conduct factual inquiry for CMT purposes.
Penal §273.6	Violation of protective order	Not AF	Unclear	273.6 "pursuant to" Calif. Family Code §§ 6320 and 6389 is deportable as a violation of DV protection order.	See instructions in Note: Domestic Violence and ways to deal with the record for 273.6 conviction. Plead to new offense that is not DV (e.g., 243(e) with good ROC) instead of pleading to 273.6, or possibly 166(a) with a vague ROC;
Penal §281	Bigamy	Not AF	Yes CMT	No	Case law added element of guilty knowledge so it is a CMT

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Penal §§ 286(b), 288a, 289	Sexual conduct with a minor	See Advice. Some behavior never is AF, some depends on ROC	CMT under Matter of Silva-Trevino, only if IJ finds D knew or should have known V was under-age	Will be charged as crime of child abuse; imm counsel has defenses	<u>Agg Felony</u> . 286(b)(1), 288a(b)(1), and 289(h) (consensual conduct with D under age 18) have same consequences as 261.5(c): they are never AF as sexual abuse of a minor. In contrast 286(b)(2), 288a(b)(2), 289(i) are same as 261.5(d): can be AF if ROC shows that V was "younger" child (probably under 15, perhaps under 14) or that harm occurred. Test for <u>crime of child abuse</u> is harm; ID V as older teen/child in the ROC where possible, do not ID age if younger V. See Advice column for 288(a) for other possible pleas.
Penal §288(a)	Lewd act with child	Yes AF as sexual abuse of a minor, regardless of sentence.	Yes CMT	Deportable under the DV ground for child abuse	This is an automatic AF, no physical contact is required. Consider PC 243.4 with less than 1-yr, 314, 136.1(b) (a strike), felony 236 by deceit or fraud, all without age of victim in ROC if that is possible (to avoid child abuse charge and further CMT problems), 647.6(a) with clear record of conviction. See 286, 288a, 289 offenses without further defining age of the V in the ROC. See Notes "Sex Offenses" and "Safer Pleas."
Penal §290	Failure to register as a sex offender	Not AF	Will be charged as CMT, see Advice	Can be charged with a new federal offense, 18 USC 2250, for failing to register as required under state law; will become deportable if convicted under 2250.	Avoid the plea if possible. New deport ground, at 8 USC §1227(a)(2)(A)(v), is based on conviction under 18 USC §2250 for failure to register as a sex offender under state law. See Defending Immigrants in the Ninth Circuit, Chapter 6, § 6.22. Re CMT: there is a conflict between the Ninth Circuit (not CMT) and BIA (CMT) published opinions, but Ninth has said in general it will defer on CMT issues to published BIA decisions, so it might reverse itself in future.
Penal §314(1)	Indecent exposure	Not AF, even if V is a minor, because this is age-neutral offense -- but to avoid confusion, keep age of a minor victim out of ROC).	See Advice; conservatively assume it is CMT.	Keep any reference to minor V out of ROC to avoid charge of child abuse	Ninth Circuit held this is not categorically CMT; see Ocegueda-Nunez v. Holder (9th Cir. 2/10/2010) but there still is risk of expanded Silva-Trevino inquiry into CMT. See disturb peace, trespass, loiter. If the victim was a minor, keep evidence of age out of the ROC or ICE will charge it as a crime of child abuse. Despite exposure to CMT (or if minor's age is in ROC, to a DV charge), this is useful to avoid agg felony offenses such as 288(a).

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Penal §403	Disturbance of public assembly	Not AF.	Not CMT.	No.	
Penal §415	Disturbing the peace	Not AF.	Probably not CMT	No.	
Penal § 416	Failure to disperse	Not AF	Not CMT	No.	
Penal §422	Criminal threats (formerly terrorist threats)	Yes AF as COV if 1-yr sentence imposed. Rosales-Rosales, 347 F.3d 714 (9th Cir. 2003)	Yes CMT	As COV, is a deportable domestic violence offense if ROC shows committed against DV type victim	Avoid AF by avoiding 1-yr sentence. See Note "Sentence." To avoid COV see PC 243(e), 236 or 136.1(b)(1), or 241(a) with no info regarding violence. See Note "Safer Pleas." See Note: DV for possible expanded rules on what evidence gov't can use to prove domestic relationship for deportable DV offense.
Penal § 451, 452	Arson, Burning	Divisible: This is a COV unless ROC indicates, or leaves open, that D only burned own property. COV is AF if 1-yr or more sentence imposed	Yes CMT	Gov't might charge as DV, if ROC shows person hurt;	Avoid AF by avoiding 1-yr sentence; see Note "Sentence." See vandalism. May avoid COV if ROC leaves open possibility that only own property intended and affected. See Jordison, 501 F.3d 1134 (9th Cir. 2007)(452(c) not COV). If own property burned for insurance fraud, don't show \$10,000 loss to insurance co. See Note: Fraud.
Penal §459, 460	Burglary	Avoid AF by avoiding sentence of 1 yr or more. Otherwise see Advice.	Divisible; see Advice.	Where felony burglary is a COV (if it is of a dwelling or its yard) and there is DV type victim, likely charged as DV offense.	<u>Agg Felony</u> : If sentence is less than 1 yr, it is not an AF. If sentence of 1 yr or more is imposed, see detailed instructions for pleading to 460(b) at Note: Burglary. <u>Re CMT</u> : Unlawful entry into a dwelling is a CMT, entry with intent to commit a CMT is a CMT; at least plead to a vague offense ("larceny or any felony"), and if possible, to avoid expanded inquiry under Silva-Trevino, plead specifically to non-CMT (see Chart for non-CMT's that may fit fact situation).

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Penal § 466	Poss burglary tools with intent to enter, altering keys, making or repairing instrument	Not AF.	Probably not CMT, unless ROC shows intent to commit CMT (felonious entry alone is not CMT) Altering, repairing instruments are not CMT, but see Advice	No.	Because Silva-Trevino permits wide range of evidence on CMT, best course is to plead specifically to something other than CMT (e.g., repairing instruments), which may cut off the inquiry.
Penal §470	Forgery	Yes AF if 1-yr sentence imposed. If this also constitutes fraud, may be AF if \$10,000 loss to victim	Yes CMT.	No.	Avoid AF by avoiding 1-yr sentence; see Note: Sentence. See P.C. 529(3) and Note "Safer Pleas." If \$10,000 loss to victim of fraud, see advice for PC 476(a).
Penal §476(a)	Bad check with intent to defraud	Yes if loss to the victim/s was \$10,000 or more; if offense also is forgery, AF if 1-yr sentence imposed.	Yes CMT	No	If there was \$10k loss to the victim/s, but sentence can be 364 or less for any single count, plead to theft to avoid an AF. Supreme Court has expanded evidence gov't permitted to use to prove \$10k loss; be sure to read Note "Burglary, Theft and Fraud." See PC 529(c) to possibly avoid a CMT. Avoid 1-yr sentence to avoid possible AF as forgery.

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Penal §484 et seq., §487	Theft (petty or grand)	Divisible: Theft w/ 1 yr sentence is AF, but theft of labor is not "theft" for AF purposes. See Advice re theft by fraud or deceit.	Yes CMT.	No	See Notes "Theft, Fraud" and "CMT." <u>To avoid Agg Felony as "theft,"</u> avoid 1-yr sent; see Note "Sentence." If 1-yr or more imposed, identify theft of services rather than property in the ROC, or leave vague between property and services. <u>To avoid Agg Felony as "fraud":</u> If loss to victim/s exceeded \$10,000, a plea to theft by fraud, embezzlement, etc. is an agg felony. Gov't can use wide range of evidence to prove \$10k loss. Avoid the problem by ID'ing straight theft (or if that is not possible, leaving ROC vague) and avoiding 1 yr sentence on any one count. <u>Re CMT:</u> To avoid CMT, and if 1-yr sentence not imposed, consider plea to PC 496(a) specifically with intent to temporarily deprive. If you must plead to 484, which is a CMT: to qualify for petty offense exception to inadmissibility grd, reduce felony to misdo and/or plead petty theft. To avoid deportability plead petty theft or <i>attempted</i> misd grand theft to keep maximum possible sentence under 1 yr. Petty with a prior is an AF if 1 yr sentence imposed.
Penal §490.1	Petty theft (infraction)	Not AF.	Yes CMT, but might be held not to be a "conviction."	No.	There is a good argument, but no guarantee, that a Calif. infraction is not a "conviction" at all for imm purposes. See Note: Def of Conviction. Since there's no guarantee, this is a better plea than theft, but avoid if necessary to not have CMT.
Penal §496	Receiving stolen property	Yes AF if 1-yr sentence imposed	Divisible: plead to intent to temporarily deprive to avoid CMT, see Advice	No	<u>To avoid AF</u> avoid 1-yr sentence; see Note "Sentence." If will receive 1-yr sentence, consider plea to PC 484 and plead to, or leave ROC open to, theft of services. See Note: Theft. <u>Re CMT:</u> PC 496(a) is not CMT if with only temporary intent to deprive owner. Castillo-Cruz 581 F.3d 1154 (9th Cir. 2009). Plead to that specifically to try to forestall Silva-Trevino factual inquiry on CMT. See Note: CMT

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Penal Code §529(3)	False personation	Can take 1 yr sentence with good ROC, but do not use if loss to victim/s exceeds \$10,000. See Advice	See Advice.	No	<u>Agg Felony</u> . Not categorical forgery, counterfeit, so can take 1 yr sentence if ROC does not show these. However, if there is a loss to the victim/s exceeding \$10,000, assume it will be AF as a fraud/deceit offense; plead to PC 484 straight theft instead. <u>CMT</u> . While under categorical approach this shd avoid CMT with a clear ROC, under Silva-Trevino imm judge may conduct broad inquiry into facts for CMT purposes; try to forestall this with a very specific plea, but this may not work. See Note: Safer Pleas and P. v. Rathert (2000) 24 Cal.4th 200.
Penal §550(a)	Insurance fraud	Yes AF if offense involves fraud where victim lost \$10,000 or more; or AF if forgery and 1-yr sentence imposed.	Yes CMT because fraudulent intent.	No.	See Note "Burglary, Theft, Fraud." If \$10k loss, try to plead to grand theft with a sentence less than a year. See PC 529(3) to possibly avoid CMT. If forgery involved, avoid 1-yr sentence to avoid charge of AF as forgery.
Penal §594	Vandalism	Possible AF as COV if violence employed and 1 yr sentence imposed.	Not CMT, except perhaps in case of severe costly damage.	If COV, possible DV if property belonged to DV type victim, but imm counsel will argue this applies only to COV against persons not property.	Relatively minor cases should not be held COV and therefore not have consequences. See e.g. Rodriguez-Herrera, 52 F3d 238 (9th Cir. 1995) (Wash. statute not CMT) and US v Landeros-Gonzalez, 262 F.3d 424 (5th Cir 2001) (graffiti not COV). Avoid 1-yr sentence; see Note "Sentence."
Penal §602	Trespass misd (property damage, unlawful presence, etc.)	Not AF (even if COV, 1-yr sentence not possible)	Perhaps divisible. See Advice.	See PC 594	Keep ROC of conviction clear to avoid possible CMT. See PC 602.5. Some malicious destruction of prop offenses might be CMT; see cases in Advice to PC 594.
Penal §602.5	Trespass (unauthorized entry)	Not AF.	Not CMT.	No.	

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Penal §646.9	Stalking	Avoid AF by avoiding 1 yr sentence. Divisible as COV because harassing from a long distance, recklessness, not COV. See Malta, Advice Column.	May be divisible	Deportable under the DV ground as "stalking" even if it is not a COV. Note that a court finding of violation of protective order also is DV deportable even absent conviction; see Note "DV"	Avoid AF by avoiding 1-yr sentence. If that's not possible, indicate, or leave open, in the ROC that offense involved harassment from a long distance, or reckless act. Malta-Espinoza v. Gonzales, 478 F.3d 1080 (9th 2007). For alternate plea to avoid CMT and DV deportation ground for stalking, see PC 243(e), 243(a), 236, 136.1(b)(1), 241(a) with no info regarding violence. See Notes "Safer Pleas."
Penal §647(a)	Disorderly: lewd or dissolute conduct in public	Not AF, but to avoid possible wrongful charge as sexual abuse of minor don't let ROC show involvement with minor	Held CMT, although imm counsel will argue against. See Advice. Avoid ROC showing homosexual actions.	No, unless possibly if a minor is involved and it is construed as child abuse.	Keep ROC of conviction clear of info that person under 18 was participant or observer. See "Note Record of Conviction." See 647(c), (e), (h). For CMT, older decisions based on anti-gay bias shd be discredited. However, Nunez-Garcia, 262 F. Supp. 2d 1073 (CD Cal 2003) affirmed these cases wout comment, so may be held CMT. See 314.
Penal §647(b)	Disorderly: Prostitution	Not AF.	Yes CMT for a prostitute. DHS might also charge customer as CMT; no case on point yet.	Yes, prostitution inadmissibility ground (based on conduct), see Advice.	"Engaging in prostitution" is inadmissibility ground; requires sexual intercourse, not lewd conduct, for money; does not require conviction but conviction can serve as evidence. Customer not at risk under prostitution ground, but BIA has put off deciding if customer is CMT. See 647(c), (e) and (h). See Note: Sex Offenses
Penal §647(c), (e), (h)	Disorderly: Begging, loitering	Not AF.	Not CMT.	No.	
Penal §647(f)	Disorderly: Under the influence of drugs or alcohol	Not AF.	Not CMT.	May be deportable and inadmissible for CS offense; see Advice	Best plea is to alcohol, or if necessary "alcohol or CS." If these are not possible, plead to a non-controlled substance; in any case do not plead to a specific CS.
Penal §647(i)	Disorderly: "Peeping Tom"	Not AF.	See Advice.	Might be charged as child abuse if V is minor; keep age out of ROC	This should not be held a CMT because the offense requires no intent to commit a crime; it is completed by peeking. In re Joshua M., 91 Cal. App. 4th 743 (Cal. App. 4th Dist. 2001). However, under Matter of Silva-Trevino imm judge might make broad inquiry to see if any lewd intent for CMT purposes.

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Penal §647.6(a)	Annoy, molest child	Divisible, with less serious acts not AF as 'sexual abuse of a minor.' US v Pallares-Galan, 359 F.3d 1088 (9th 2004).	Divisible, see Advice.	Some actions might not constitute child abuse. ID most minor action, or keep record vague.	<u>Re CMT.</u> This should be divisible, especially if ROC specifically ID's non-egregious behavior and intent, but might be charged as CMT. Under Silva-Trevino broad factual inquiry might focus on whether D knew or shd have known V was under-age. <u>Agg fel:</u> Plead specifically to non-egregious (not explicitly sexual) behavior or at least leave ROC vague. Best option: Plead to offense that doesn't combine age and sex like 243(a) with minimal touching, 236, etc. See further discussion and plea suggestions in Notes: Sex Offenses and Safer Pleas.
Penal 653f	Solicitation to commit variety of offenses	Divisible: 653f(a) and (c) are AF as COV's if one-year sentence is imposed; but 653f(d) is not drug trafficking AF	Soliciting violence is a CMT; soliciting possession of drugs pursuant to 653f(d) is not to the extent D is buyer, not seller.	653f(a) and (c) are COV's, and therefore DV if V is DV. 653f(d) is not a deportable conviction "relating to" a CS	653f(a) and (c) are COV, per Prakash v. Holder, 579 F.3d 1033 (9th Cir. 2009). But 653f(d), soliciting possession per commission of H&S C 11352, 11379, 11379.5, 11379.6, or 11391, a 6 month misdo, is valuable: it is not an agg felony, and unlike solicitation pursuant to 11353, etc., it does not cause deportability as a drug offense. Mielewczyk v. Holder, 575 F.3d 992, 998 (9th Cir. 2009).
Penal §666	Petty theft with a prior	AF as theft if sentence of 1-yr or more, unless ROC shows theft of labor or is vague; see Advice.	Yes CMT.	No.	<u>Re 1-yr sentence.</u> Prior beneficial Ninth Circuit case was overruled, and recidivist penalty counts as 1-yr sentence. <u>Re agg felony as theft.</u> Theft of property is theft, theft of labor is not. See 484 and Note: Theft. <u>Re: CMT:</u> Receipt stolen property is divisible for CMT (but an agg felony w/ 1 yr imposed); see PC 496(a).
Penal §§1320(a)	Failure to appear for misdemeanor	This is obstruction of justice, but requires 1 yr sentence to be AF	Shd not be CMT, but unclear.	No	While this appears to constitute obstruction of justice (see Renteria-Morales v. Mukasey, 2008 U.S. App. LEXIS 27382 (9th Cir. Dec. 12, 2008)), replacing 551 F.3d 1076 (9th Cir. 2008)), it requires a one-year sentence imposed. 8 USC 1101(a)(43)(S). Might be held CMT on obstruction theory.

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Penal §§1320(b), 1320.5	Failure to appear for felony	Divisible. With a 1-yr sentence imposed, this is AF as obstruction of justice. Without 1-yr sentence it's divisible, see Advice.	Shd not be CMT, but unclear.	No.	1320(b), 1320.5 is an agg felony as obstruction of justice, if a sentence of 1 yr or more is imposed. See Renteria-Morales, supra. Even without a 1 yr sentence, 1320(b) and 1320.5 are divisible as the agg felony " <u>Failure to Appear.</u> " Failure to appear to answer a felony charge with a potential 2-year sentence, or to serve a sentence if the offense is punishable by 5 years or more, is an agg felony, regardless of the sentence imposed for the FTA itself. See 8 USC 1101(a)(43)(Q), (T) and Renteria Morales, supra.
Penal §12020	Possession, manufacture, sale of prohibited weapons; carrying concealed dagger	Divisible: trafficking in firearms or explosives is AF; other offenses are not	Not CMT except maybe illegal trafficking in weapons.	Offenses relating to firearms cause deportability under that grnd. Other weapons, e.g. brass knuckles (a)(1), dagger (a)(4), don't.	With careful ROC, this is an alternate plea to avoid deportable or agg felony conviction relating to firearms and destructive devices (explosives). To avoid deportability designate a non-firearms weapon, or at least keep ROC of conviction vague re whether weapon is firearm or other. To avoid agg fel designate an offense that does not involve non-trafficking in firearms, or keep the ROC vague. See Notes "Safer Pleas" and "DV, Firearms"
Penal §12021(a), (b)	Possession of firearm by drug addict or felon	12021(a)(1) appears divisible as AF because includes possession of firearm by a misdemeanor	Probably not CMT.	Deportable under the firearms ground.	See PC 12020, 245(a), 243(d), Note "Safer Pleas."
Penal §§12025(a)(1), 12031(a)(1)	Carrying firearm	Not AF.	Not CMT.	Deportable under the firearms ground.	To avoid deportable for firearms, see PC 12020 and Note "DV, Firearms."
Vehicle §20	False statement to DMV	Not AF	Possibly divisible, with knowingly conceal material fact a CMT	No.	To avoid CMT, keep ROC of conviction vague as to knowing concealment of material fact
Vehicle 14601.1 14601.2	Driving on suspended license with knowledge	Not AF	Not CMT	No	
Vehicle §2800.1	Flight from peace officer	Not AF	Probably not CMT	No.	

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Vehicle §2800.2	Flight from peace officer with wanton disregard for safety	May be divisible for COV. See Advice.	May be divisible: wanton disregard only by prior traffic violations not CMT, other wanton disregard may be CMT.	No.	Re Agg Felony as COV. Intent by 3 prior violations is not categorical COV. 9th Cir held other wanton intent is COV, but this is open to challenge. Avoid AF by doing any of the following: reducing to a misdemeanor; obtaining sentence less than a year; pleading to 2800.1; or having ROC prove or leave open the possibility that intent based on 3 prior traffic violations (Penuliar, 9th Cir 2008).
Vehicle §10801-10803	Operate Chop Shop; Traffic in vehicles with altered VINs,	Divisible as a theft offense and as a vehicle with altered number offense. Avoid 1-yr sentence and will not have AF; see Advice for plea with 1 yr	Yes CMT	No.	An offense relating to trafficking in vehicles with altered VIN's is an AF with a 1 yr sentence, as is an offense relating to theft or receipt of stolen property with 1 yr sentence. 10801 is divisible for theft because cd involve fraud rather than theft, see Carrillo-Jaime, 572 F3d 747 (9th Cir. 2009). 10801 appears divisible for VIN because activity is not limited to VIN. If cannot avoid 1-yr sentence, plead to 10801 leaving open possibility that car obtained by fraud and that altering VIN was not the chop shop activity. 10802, 10803 may not be divisible for VIN; avoid 1 yr sentence. Consider plea to 10851 with vague record re accessory after the fact, or 10852.
Vehicle §10851	Vehicle taking, temporary or permanent	Divisible as AF theft if one-year sentence is imposed, because offense includes accessory after the fact which is not AF. US v Vidal (9th Cir en banc 2007).	Divisible: CMT if permanent intent, not CMT if temporary intent.	No.	To be sure to avoid agg felony, avoid 1-yr sentence. Otherwise indicate or at least leave open the possibility offense was accessory after the fact, but this issue may go to Supreme Court again on Agg Fel question. To avoid CMT, plead to temporary intent; if that is not possible keep ROC vague, but imm judge can make factual inquiry for CMT purposes under Silva-Trevino.
Vehicle §10852	Tampering with a vehicle	Not AF but see Advice.	Appears not CMT.	No.	To avoid possible AF charge, don't let ROC show that tampering involved altering VIN.
Vehicle §12500	Driving without license	Not AF.	Not CMT.	No.	

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CALIFORNIA CODE SECTION	OFFENSE	AGGRAVATED FELONY	CRIME INVOLVING MORAL TURPITUDE-- These findings are questionable	OTHER DEPORTABLE, INADMISSIBLE GROUNDS	ADVICE AND COMMENTS
Vehicle §§20001, 20003	Hit and run (felony)	Not AF	Divisible, but see Advice	No.	9th Cir found divisible for CMT b/c can be violated be, e.g., by providing ID info but not registration info. Cerezo, 512 F.3d 1163. Best to plea to that or similar level offense; if instead ROC is kept vague, under Silva-Trevino imm judge might make factual inquiry for CMT purposes. See Note: Safer Pleas.
Vehicle §20002(a)	Hit and run (misd)	Not AF.	Not CMT	No.	See Vehicle 20001
Vehicle §23110(b)	Throw object into traffic	Yes AF as COV if 1-yr sentence imposed	Yes CMT.	No.	Avoid AF by avoiding 1-yr sentence imposed.
Vehicle §23152	Driving under the influence (felony)	Not AF now but CAUTION: Legislation could change. Obtain 364 or less.	Not CMT.	No except multiple convictions can show evidence of alcoholism, a ground of inadmissibility.	See Note: Safe Pleas, DUI
Vehicle §23153	Driving under the influence causing bodily injury	See Vehicle 23152	Not CMT.	See Vehicle 23152	See Vehicle 23152
W & I §10980(c)	Welfare fraud	Yes AF if loss to gov't is \$10,000 or more. Note critical new law; see Advice.	Yes CMT.	No.	See Note "Burglary, Theft, Fraud." Fraud or deceit where loss to the victim/s exceeds \$10,000 is agg felony. Nijhawan (S.Ct. 2009) expands evidence permissible to prove \$10,000. See instructions in Note: Theft, Fraud, Burglary. If possible, plead to offense that does not involve deceit along with this offense, and put loss on the second offense. This offense probably is not theft and therefore OK to take 1 yr sentence, unless offense constituted perjury or counterfeit. To avoid CMT, see possibly PC 529(3).

AF = Aggravated Felony
 COV = Crime of Violence
 CMT = Crime Involving Moral Turpitude

CS = Controlled Substance
 DV = Domestic Violence
 ROC = Record of Conviction