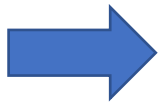




If I Have Immigration Status, Can ICE Deport Me Because of My Conviction?

If you are an immigrant lawfully living in the United States, not all criminal convictions are grounds for removal. Depending on your criminal history and the reasons ICE is trying to remove you, you may be able to argue that ICE does not have a legal basis to deport you, even if you do have a criminal conviction.



The Following Convictions Could Lead to Deportation:

- ❖ Any conviction relating to a **controlled substance** (not including alcohol or tobacco) except a single conviction of possession of 30 grams or less of marijuana
- ❖ **High-speed flight** from an immigration checkpoint (under federal law)
- ❖ Failure to **register as a sex offender** (under federal law)
- ❖ (Almost) any conviction relating to a **firearm**
- ❖ Conviction relating to **espionage, treason, or sabotage**
- ❖ Crime of **domestic violence, stalking, or child abuse, neglect, or abandonment**
- ❖ **Violation of a protection order**
- ❖ One conviction of a “**crime involving moral turpitude**” within the first five years of admission to the U.S. that carries a possible sentence of one year or more
- ❖ Two or more convictions of “**crimes involving moral turpitude**” at any time (not involving the same incident)
- ❖ “**Aggravated felony**”



Challenging Deportability: Denying the Charges in the Notice to Appear or Filing a Motion to Terminate



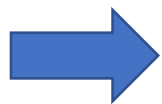
If you think ICE is trying to deport you for a conviction that they cannot deport you for under the immigration laws, you can deny the charges in your Notice to Appear (charging document) when the judge reads them to you at your Master Calendar hearing. If you admit the charges, then you are admitting that the government can deport you, so it is always best to consult with an attorney before admitting the charges, or if you cannot, you can deny them to be safe. Remember that it is the government's job to prove that you are deportable, and so if you do not admit it, they need to convince the judge and are not always able to do so.

Another way to challenge that the government can deport you is by filing a **Motion to Terminate** with the Immigration Court. A Motion to Terminate requests that the Immigration Judge terminate your removal proceedings and let you keep your green card or other status in the U.S. In this motion, you will need to argue why your conviction does not fit into one of the categories listed in the immigration laws. This is usually a complicated legal argument and so it is best to consult with an attorney if you are able.

What is a “Crime Involving Moral Turpitude”?

A “**crime involving moral turpitude**” does not have a clear definition and is not explained anywhere in the immigration laws.

In general, a “crime involving moral turpitude” is a crime that is committed with **knowledge, intent, or recklessness**, and usually involves **fraud, theft, or harm to others**.



The Following Offenses are Generally “Crimes Involving Moral Turpitude”:

- ❖ Murder
- ❖ Voluntary and (in some cases) involuntary manslaughter
- ❖ Rape and other sex offenses
- ❖ Spousal or child abuse



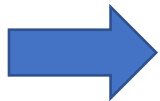
- ❖ Certain assault or reckless endangerment offenses
- ❖ Certain theft or robbery offenses
- ❖ Fraud

If you are unsure if your conviction might be a “crime involving moral turpitude,” you should speak with an immigration attorney. To find out if the crime that you were convicted of is a crime involving moral turpitude, you need to know the exact crime that you were convicted of and in which state. A lawyer will need to read the law to see exactly what the crime you were convicted of says that you did. If that crime in that state is the same as what the immigration laws say is a crime involving moral turpitude, the judge may be able to find that your crime is one.

What is an “Aggravated Felony”?

Through this approach, attorneys must analyze the specific statute of conviction (usually under state law) and compare this statute with the federal definition of the offense. If the statute of conviction includes conduct that goes outside the federal definition, then the conviction cannot be considered a “crime involving moral turpitude.” If, however, the statute matches or is within the federal definition, then the conviction is a “crime involving moral turpitude.”

The immigration laws contain a long list of offenses that are considered to be “aggravated felonies.” Contrary to what you might think, “aggravated felonies” under the immigration laws are not always felonies and do not need to be aggravated.



The Following Offenses are “Aggravated Felonies”:

- ❖ Murder, rape, or sexual abuse of a minor
- ❖ Drug trafficking
- ❖ Firearm trafficking
- ❖ Money laundering
- ❖ Certain firearm offenses
- ❖ “Crime of violence” with a sentence of one year or more
- ❖ Theft or burglary with a sentence of one year or more



- ❖ Demand or receipt of ransom
- ❖ Child pornography
- ❖ Organized crime or gambling with a possible sentence of one year or more
- ❖ Offenses relating to prostitution
- ❖ Offenses relating to sabotage, treason, etc.
- ❖ Fraud or tax evasion where loss to the victim or government is more than \$10,000
- ❖ Smuggling immigrants (other than a spouse, child, or parent)
- ❖ Altering a passport (other than on behalf of a spouse, child, or parent) with a possible sentence of one year or more
- ❖ Failure to appear for a felony charge that carries a sentence of two years or more
- ❖ Failure to appear for any other charge carrying a sentence of five years or more
- ❖ Bribery, counterfeiting, forgery, or trafficking in vehicles with a possible sentence of one year or more
- ❖ Obstruction of justice, perjury, or bribery of a witness with a sentence of one year or more
- ❖ An attempt or conspiracy to commit any of the above offenses

If you are unsure if your conviction might be an “aggravated felony,” you should speak with an immigration attorney.

To determine whether your crime is an “aggravated felony,” you need to know the exact crime you were convicted of and in which state. Then, a lawyer needs to read the law to determine exactly what you were convicted of doing. If what you were convicted of doing matches the immigration law’s definition of an “aggravated felony,” then the judge may be able to find that your crime is one.