

Selected Immigration Consequences of Certain Federal Offenses
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on behalf of the Defending Immigrants Partnership

Introduction

- 1. Using the Chart.** The chart analyzes adverse immigration consequences that flow from conviction of the following select federal offenses and suggests how to avoid these consequences. The chart is organized numerically by code section.
- 2. Sending comments about the Chart.** This is the updated edition of the chart, which we first published in 2003. Please contact us if you disagree with an analysis, see a relevant new case, want to suggest other offenses for us to discuss, want to propose other alternate “safer” pleas, want to suggest improvements, or have other comments. Please send your comments to dan@nationalimmigrationproject.org.
- 3. Disclaimer and Note to Users.** Immigration consequences of crimes are a complex, unpredictable, and constantly changing area of law where there are few guarantees. Practitioners should use this chart as a starting point rather than as a substitute for legal research. For a more detailed analysis of offenses and arguments, see *Immigration Law and Crimes* available at: http://west.thomson.com/store/product.asp?product_id=13514773

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
8 U.S.C. § 1324(a)(1)(A)	Harboring, smuggling, and transporting	Yes, under 8 U.S.C. § 1101(a)(43)(N). Statutory exception for first offense for assisting, abetting, or aiding one's spouse, child, or parent. ¹	Unlikely. ²	Yes, under smuggling ground for bringing in offense.	
8 U.S.C. § 1325 (a)	Illegal entry	Yes, under 8 U.S.C. § 1101(a)(43)(O) when person convicted was previously deported for an aggravated felony conviction other than illegal entry or reentry. ³	No.	n/a	
8 U.S.C. § 1326	Illegal reentry	Yes, under 8 U.S.C. § 1101(a)(43)(O) when person convicted was previously deported for an aggravated felony conviction other than illegal entry or reentry.	No. ⁴	n/a	
18 U.S.C. § 3	Accessory after the fact	Yes, under 8 U.S.C. § 1101(a)(43)(S) as an obstruction of justice offense if the defendant	Possibly, if the underlying offense involves moral turpitude. ⁶	Not a controlled substance offense. ⁷	

¹ *Matter of Ruiz-Romero*, 22 I & N Dec. 486 (BIA 1999) (holding that parenthetical reference limiting aggravated felony to only smuggling is “merely descriptive” rather than limiting); *United States v. Galindo-Gallegos*, 244 F.3d 1154 (9th Cir. 2001); *Gavilan-Cuate v. Yetter*, 276 F.3d 418 (8th Cir. 2002); *Patel v. Ashcroft*, 294 F.3d 465 (3d Cir. 2002) (ignoring parenthetical and treating harboring conviction as an aggravated felony); *Castro-Espinoza v. Ashcroft*, 257 F.3d 1130 (9th Cir. 2001) (same).

² *Matter of Tiwari*, 19 I & N Dec. 875 (BIA 1989).

³ *Matter of Alvarado-Alvino*, 22 I & N Dec. 718 (BIA 1998) (holding not an aggravated felony conviction where defendant had no prior conviction); *Rivera-Sanchez v. Reno*, 198 F.3d 545 (5th Cir. 1999) (same).

⁴ *Rodriguez v. Campbell*, 8 F.2d 983 (5th Cir. 1925).

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
		receives a sentence of a year or more. ⁵			
18 U.S.C. § 4	Misprision of felony	No. ⁸	Yes. ⁹	Not a conviction under controlled substance ground even where felony concealed involves drug distribution. ¹⁰	
18 U.S.C. § 111	Assaulting, resisting, or impeding certain officers or employees	Possibly if defendant receives a sentence of a year or more. ¹¹	Very likely. ¹²	n/a	
18 U.S.C. § 201(b)	Bribery of public officials and witnesses	Possibly an aggravated felony under 8 U.S.C. § 1101(a)(43)(S) for commercial bribery where the defendant receives a sentence of a year or more. It is not clear that bribing a public official necessarily	Yes. ¹³	n/a	Try to ensure that the record of conviction does not include any evidence that the bribery was commercial in nature.

⁶ *Cabral v. INS*, 15 F.3d 193 (1st Cir. 1994) (holding that accessory to murder is a crime involving moral turpitude); *Matter of Sanchez-Marin*, 11 I & N Dec. 264 (BIA 1965) (holding that a conviction for accessory to manslaughter is a crime involving moral turpitude).

⁷ *Matter of Batista-Hernandez*, 21 I & N Dec. 955 (BIA 1997) (holding that accessory to drug trafficking offense is not a controlled substance offense).

⁵ *Matter of Batista-Hernandez*, 21 I & N Dec. 955 (BIA 1997) (holding that noncitizen convicted of accessory to drug crime is deportable under obstruction of justice aggravated felony ground). *But see Matter of Espinoza-Gonzalez*, 22 I & N Dec. 889 (BIA 1999) distinguishing, but not overruling *Batista* while holding that misprision conviction does not constitute obstruction of justice aggravated felony).

⁸ *Matter of Espinoza-Gonzalez*, 21 I & N Dec. 291 (BIA 1999).

⁹ *Matter of Robles*, 24 I. & N. Dec. 22 (BIA 2006).

¹⁰ *Matter of Velasco*, 16 I & N Dec. 281 (BIA 1977); *Castaneda De Esper v. INS*, 557 F.2d 79 (6th Cir. 1977) (holding that conviction for 18 U.S.C. § 4 of conspiracy to possess heroin is not conviction relating to possession or traffic in narcotic drugs under former 8 U.S.C. § 1251(a)(11)).

¹¹ In light of the Supreme Court's decision in *Leocal v. Ashcroft*, 543 U.S.1 (2004), there is an argument that this offense lacks sufficient intentionality to be an aggravated felony under 8 U.S.C. § 1101(a)(43)(F).

¹² *Matter of Danesh*, 19 I & N Dec. 669 (BIA 1988).

¹³ *See, e.g., Okabe v. INS*, 671 F.2d 863 (5th Cir. 1982); *Matter of H*, 6 I & N Dec. 358 (BIA 1954).

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		includes a commercial element.			
18 U.S.C. § 287	False, fictitious or fraudulent claims	Offense is divisible. If record of conviction indicates that offense involved fraud or deceit and loss to the victim exceeded \$10,000, then it would be an aggravated felony under 8 U.S.C. § 1101(a)(43)(M)(i). ¹⁴	Probably ¹⁵	n/a	The safest plea would be to a simple false statement, but even that is risky. Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 371	Conspiracy to commit offense or to defraud United States	Divisible offense. If substantive offense is an aggravated felony then a conviction for conspiracy to commit the offense will be an aggravated felony under 8 U.S.C. § 1101(a)(43)(U). ¹⁶ If offense is for defrauding United States, then a	Yes, where underlying offense involves moral turpitude or where offense involves fraud. ¹⁸	Firearm, controlled substance, or other criminal ground where underlying offense would make a noncitizen deportable. ¹⁹	If possible, plead to conspiracy to commit an offense that does not involve fraud or trigger other immigration consequences. Under Supreme Court's decision in

¹⁴ *Li v. Ashcroft*, 389 F.3d 892 (9th Cir. 2004).

¹⁵ There is an argument that a conviction for a simple false statement under 18 U.S.C. §1001(a)(2) is not necessarily a conviction for a crime involving moral turpitude. *See Hirsch v. INS*, 308 F.2d 562 (9th Cir. 1962) (holding that a conviction under predecessor statute 18 U.S.C. § 80 did not necessarily involve moral turpitude because a simple false statement does not necessarily involve fraud); *Matter of Marchena*, 12 I & N Dec. 355 (BIA 1967).

¹⁶ *Kamagate v. Ashcroft*, 385 F.3d 144 (2d Cir. 2004)

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
		conviction will be an aggravated felony under 8 U.S.C. § 1101(a)(43)(M)(i) where loss to the victim exceeds \$10,000. ¹⁷			<i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 373	Solicitation to commit crime of violence offense	Probably crime of violence aggravated felony where defendant receives a sentence of a year or more. ²⁰	Probably.	n/a	
18 U.S.C. § 401(3)	Criminal contempt	Possibly. ²¹	Unlikely.	n/a	
18 U.S.C. § 472	Uttering counterfeit obligations or authorities	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more. ²²	Yes. ²³	n/a	

¹⁸ *Jordan v. De George*, 341 U.S. 223 (1951) (treating as a crime involving moral turpitude any conviction for an offense that has fraud as an essential element).

¹⁹ *See, e.g., Kuhali v. Reno*, 266 F.3d 93 (2d Cir. 2001) (holding that conviction for conspiracy to export firearms is a firearm offense because it involves a conspiracy to commit a firearm offense).

¹⁷ *See, e.g., Kuhali v. Reno*, 266 F.3d 93 (2d Cir. 2001) (regarding conviction for conspiracy to export firearms without a license).

²⁰ Outside of the Ninth Circuit, the BIA treats a conviction for solicitation of a controlled substance as a deportable offense under the controlled substance ground of deportability. *Matter of Corilla-Vidal*, 24 I&N Dec. 768 (BIA 2009). In the Ninth Circuit, *United States v. Rivera-Sanchez*, 247 F.3d 905 (9th Cir. 2001) (holding that solicitation to commit drug trafficking is not an aggravated felony) *Coronado-Durazo v. I.N.S.*, 123 F.3d 1322 (9th Cir. 1997) (holding that solicitation to possess a controlled substance is not a deportable offense) are the controlling cases.

²¹ *Compare United States v. Galin*, 217 F.3d 847 (9th Cir. 2000) (holding that charge under 18 U.S.C. § 401(3) does not require finding of obstruction of justice) *with Alwan v. Ashcroft*, 388 F.3d 507 (5th Cir. 2004) (following BIA analysis in *Matter of Batista-Hernandez*, 21 I & N Dec. 955 (BIA 1997) to hold that a conviction under 18 U.S.C. § 401(3) was an aggravated felony under the obstruction of justice ground).

²² *See Albillo-Figueroa v. INS*, 221 F.3d 1070 (9th Cir. 2000).

²³ *Lozano-Giron v. INS*, 506 F.2d 1073 (7th Cir. 1974); *Matter of Lethbridge*, 11 I & N Dec. 444 (BIA 1965).

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18 U.S.C. § 473	Dealing in counterfeit obligations or securities	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more.	Yes. ²⁴	n/a	
18 U.S.C. § 474	Possessing counterfeit securities	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more.	Not necessarily. ²⁵	n/a	
18 U.S.C. § 485	Possessing counterfeit coins	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more.	Not necessarily. ²⁶	n/a	Divisible statute.
18 U.S.C. § 487	Possessing U.S. coin molds with intent to defraud	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i) as a fraud offense where the loss to the victim exceeds \$10,000 or probably as a counterfeiting offense under 8 U.S.C. § 1101(a)(43)(R) if the defendant receives a sentence of a year or more.	Yes. ²⁷	n/a	Try to plead to 18 U.S.C. § 485 to avoid crime of moral turpitude. Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence

²⁴ *Matter of Martinez*, 16 I & N Dec. 336 (BIA 1977).

²⁵ *Matter of Lethbridge*, 11 I & N Dec. 444 (BIA 1973).

²⁶ *Matter of K*, 7 I & N Dec. 178 (BIA 1956). In order to avoid a crime involving moral turpitude under *Matter of Silva-Trevino*, 24 I&N Dec.687 (A.G. 2008), a defendant should, if possible, affirmatively allocute to the most benign offense under the statute.

²⁷ *Matter of K*, 7 I & N Dec. 178 (BIA 1956).

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					outside of record of conviction in determining loss amount.
18 U.S.C. § 494	Counterfeiting and forgery	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 510	Forging endorsements on Treasury check	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more and under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds \$10,000. ²⁸	Yes. ²⁹		
18 U.S.C. § 513(a)	Securities of the States and private entities	Yes, under 8 U.S.C. § 1101(a)(43)(R) where defendant receives a sentence of a year or more. ³⁰	Possibly.	n/a	
18 U.S.C. § 545	Smuggling goods	Probably under fraud	Possibly. ³¹	Not necessarily	The statute includes

²⁸ *Bobb v. Attorney General of U.S.*, 458 F.3d 213, (3d Cir. 2006) (holding that conviction of 18 U.S.C. §510(b) is an aggravated felony under both forgery and fraud or deceit grounds).

²⁹ Fraud is an element of all offenses included in 18 U.S.C. § 510(a)(1) and (a)(2) so they are crimes involving moral turpitude under Supreme Court's decision in *Jordan v. De George*, 341 U.S. 223 (1951) (treating as a crime involving moral turpitude any conviction for an offense that has fraud as an essential element). There may be an argument that an immigration practitioner could raise that

³⁰ *Kamagate v. Ashcroft*, 385 F.3d 144 (2d Cir. 2004) (holding that conviction of 18 U.S.C. §513(a) is an aggravated felony under the forgery and fraud counterrfeiting ground).

³¹ *Compare Eyoum v. INS*, 125 F.3d 889 (5th Cir. 1997) (holding that conviction for importation of pancake turtles is not a crime involving moral turpitude) *with Matter of D*, 9 I & N Dec. 602 (BIA 1962) (holding that smuggling liquor with intent to defraud U.S. is a crime involving moral turpitude). In order

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	into the U.S.	ground 8 U.S.C. § 1101(a)(43)(M)(i) if loss to the victim exceeds \$10,000.		controlled substance ground where record of conviction does not indicate type of merchandise. ³²	knowingly bringing into the United States any merchandise contrary to law, which appears to be the least likely offense under 18 U.S.C. § 545 to trigger immigration consequences. Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 656	Theft, embezzlement, or misapplication by bank officer or employee	Possibly a fraud offense under 8 U.S.C. § 1101(a)(43)(M)(i) if loss to victim exceeded \$10,000. ³³	Yes. ³⁴	n/a	Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294

to avoid a crime involving moral turpitude under *Matter of Silva-Trevino*, 24 I&N Dec.687 (A.G. 2008), a defendant should, if possible, affirmatively allocute to the most benign offense under the statute.

³² See *U.S. v. Garcia-Paz*, 282 F.3d 1212 (9th Cir. 2002) (holding it is not a requirement that defendant know the type of merchandise defendant is importing).

³³ Compare *Moore v. Ashcroft*, 251 F.3d 919 (11th Cir. 2001) (holding that conviction of misapplication of bank funds constituted an aggravated felony because crime necessarily involved fraud or deceit) with *Valansi v. Ashcroft*, 278 F.3d 203 (3d Cir. 2002) (holding that conviction for embezzling in excess of \$400,000 in cash and checks from bank employer was not an aggravated felony where record was inconclusive regarding intent). The BIA generally distinguishes

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					(2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 751	Escape	Unlikely. ³⁵	Probably. ³⁶	n/a	
18 U.S.C. § 758	High speed flight from immigration checkpoint	Unlikely.	Unlikely.	Yes, separate ground of deportability under 8 U.S.C. § 1227(a)(2)(A)(iv).	
18 U.S.C. § 793	Gathering, transmitting or losing defense information	Yes, under 8 U.S.C. § 1101(a)(43)(L)(i).	Possibly.	Possibly, under national security ground.	
18 U.S.C. § 798	Disclosing classified information	Yes, under 8 U.S.C. § 1101(a)(43)(L)(i).	Probably.	Possibly, under national security ground.	
18 U.S.C. § 842(h)	Offenses related to explosive materials	Yes, under 8 U.S.C. § 1101(a)(43)(E)(i).	Possibly.	Yes, under firearm ground.	
18 U.S.C. §§ 844(d)-(i)	Explosives	Yes, under 8 U.S.C. § 1101(a)(43)(E)(i).	Probably. ³⁷	n/a	
18 U.S.C. § 875	Interstate communications	Yes, under 8 U.S.C. § 1101(a)(43)(H).	Probably.	n/a	

between theft and fraud offenses by examining whether noncitizen acquired property with consent of victim (fraud) or without consent (theft). *Matter of Garcia-Madruga*, 24 I&N Dec. 436 (BIA 2008).

³⁴ *Matter of Batten*, 11 I & N Dec. 271 (BIA 1965).

³⁵ *Salazar-Luviano v. Mukasey*, 551 F.3d 857 (9th Cir. 2008) (holding that a conviction of 18 U.S.C. § 751 did not constitute an aggravated felony under 8 U.S.C. § 1101(a)(43)(S) for obstruction of justice. The Government might, however, argue that conviction for violating 18 U.S.C. § 751 is aggravated felony under 8 U.S.C. § 1101(a)(43)(Q) as an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more.

³⁶ *See Matter of Sloan*, 12 I&N Dec. 840 (A.G. 1966) (holding that a conviction for knowingly harboring a fugitive is a crime involving moral turpitude).

³⁷ There is a small possibility that 18 U.S.C. §§ 844(g) and (h) would not involve moral turpitude. For a person charged with using or carrying an explosive in the commission of a federal felony pursuant to 18 U.S.C. § 844(h), the defendant should plead to committing a felony that does not involve moral turpitude, if possible.

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 876	Mailing threatening communications	Yes, under 8 U.S.C. § 1101(a)(43)(H).	Probably.	n/a	
18 U.S.C. § 877	Mailing threatening communications from foreign country	Yes, under 8 U.S.C. § 1101(a)(43)(H).	Probably. ³⁸	Possibly under international child abduction ground.	
18 U.S.C. § 911	False claim to U.S. citizenship	Unlikely to be an aggravated felony.	Probably. ³⁹	Yes, under false claim to citizenship ground.	
18 U.S.C. § 912	Impersonation	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i) where the loss to the victim exceeds \$10,000. ⁴⁰	Yes. ⁴¹	n/a	Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. §§ 922(g)(1), (2), (3), (4), or (5)(j), (n), (o), (p), (r)	Firearms offenses	Yes, under 8 U.S.C. § 1101(a)(43)(E)(ii).	Depends on section.	Yes, under firearm ground.	
18 U.S.C. § 922(g)(5)	Unlawful possession or transportation of a	Yes, under 8 U.S.C. § 1101(a)(43)(E).	Unlikely.	Yes, under firearm ground.	

³⁸ *Matter of P*, 5 I & N Dec. 444 (BIA 1953) (interpreting conviction under the predecessor statute as a crime involving moral turpitude).

³⁹ Compare *White v. INS*, 6 F.3d 1312 (8th Cir. 1993) (treating conviction as a crime involving moral turpitude) with *Matter of I*, 4 I & N Dec. 159 (BIA 1950) (holding that conviction under former 8 U.S.C. § 746(18) does not involve moral turpitude).

⁴⁰ If loss does not exceed \$10,000, then this would probably not be a theft aggravated felony even if defendant received a sentence of a year or more because theft aggravated felony requires that property taken from victim without consent and elements of impersonation require deception, which involves a voluntary surrender of property. See *Matter of Garcia-Madruga*, 24 I&N Dec. 436 (BIA 2008) (differentiating between theft and fraud or deceit aggravated felony grounds).

⁴¹ *Matter of B*, 6 I & N Dec. 702 (BIA 1955); *Matter of Gonzalez*, 16 I & N Dec. 134 (BIA 1977).

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	firearm by certain noncitizens				
18 U.S.C. §§ 922(j), (n), (o), (p), (r)	Firearms offenses	Yes, under 8 U.S.C. § 1101(a)(43)(E).	Depends on section.	Yes, under firearm ground.	
18 U.S.C. § 924(h)	Transfer of a firearm for certain unlawful purposes	Yes, under 8 U.S.C. § 1101(a)(43)(E).	Yes.	Yes, under firearm ground and possibly also under controlled substance ground.	
18 U.S.C. § 871	Threats against the President	Likely to be a crime of violence if defendant receives a sentence of a year or more.	Likely.	Yes, under miscellaneous crimes ground.	
18 U.S.C. § 960	Expedition against friendly nation	Possibly.	Possibly	Yes, under miscellaneous crimes ground.	
18 U.S.C. § 1001	False statements	Possibly under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds \$10,000. ⁴²	Probably. ⁴³	n/a	There is a possibility that pleading to a simple false, but not fraudulent statement, is not a crime involving moral turpitude, but even a simple misstatement is very risky. Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129

⁴² *Li v. Ashcroft*, 389 F.3d 892 (9th Cir. 2004).

⁴³ There is an argument that a conviction for a simple false statement under 18 U.S.C. §1001(a)(2) is not necessarily a conviction for a crime involving moral turpitude. *See Hirsch v. INS*, 308 F.2d 562 (9th Cir. 1962) (holding that a conviction under predecessor statute 18 U.S.C. § 80 did not necessarily involve moral turpitude because a simple false statement does not necessarily involve fraud); *Matter of Marchena*, 12 I & N Dec. 355 (BIA 1967).

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					S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 1014	False statement on loan application	Yes, under theft offense ground if defendant receives a sentence of a year or more. ⁴⁴	Possibly. ⁴⁵	n/a	If charge bargaining is possible, it would be preferable to plead to a non-material statement under 18 U.S.C § 1014 or 1015, if there is a basis to plead under one of those statutes.
18 U.S.C. § 1028(a)	Fraud and related activity in connection with identification documents and information	Yes, under fraud or deceit where loss exceeds \$10,000.	Yes, for those offenses for which fraud is an essential element.	n/a	Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 1029(a)	Fraud and related	Yes, under 8 U.S.C. §	Yes, all subsections	n/a	Under Supreme

⁴⁴ See *United States v. Dabeit*, 231 F.3d 979 (5th Cir. 2000) (involving conviction under 18 U.S.C. §§ 1014 and 2113(b) for check kiting conspiracy). Section 1014 of 18 U.S.C. may be an aggravated felony under 8 U.S.C. § 1101(a)(43)(M)(i) also.

⁴⁵ In *United States v. Wells*, 519 U.S. 482 (1997), the Supreme Court held that materiality is not an element of the offense. As a result, the offense arguably would not be a conviction for a crime involving moral turpitude. See *Matter of Marchena*, 12 I & N 355 (BIA 1967) (determining that false statement under 18 U.S.C. § 1001, before it had a materiality element, did not necessarily involve moral turpitude).

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	activity in connection with access devices	1101(a)(43)(M)(i), where loss exceeds \$10,000.	involve “intent to defraud.”		Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 1036	Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds \$10,000.	Yes, if defendant admits to using a fraudulent pretense.	n/a	
18 U.S.C. § 1071	Concealing person from arrest	Unlikely.	Yes. ⁴⁶	n/a	
18 U.S.C. § 1111	Murder	Yes, under murder aggravated felony ground.	Yes.	n/a	
18 U.S.C. § 1112	Voluntary manslaughter		Yes. ⁴⁷		If defendant pleads to an offense that involves negligently or recklessly taking life of another, it would not be a crime of violence. ⁴⁸

⁴⁶ *Matter of Sloan*, 12 I & N Dec. 840 (BIA 1966, AG 1968).

⁴⁷ *Matter of Franklin*, 20 I&N 867 (BIA 1994).

⁴⁸ See *Leocal v. Ashcroft*, 543 U.S. 1 (2004) (requiring at least a mental state of recklessness for an offense to be a crime of violence under 18 U.S.C. §16). See also *Lara-Cazares v. Gonzales*, 408 F.3d 1217 (9th Cir. 2005) (holding that California vehicular manslaughter was not a crime of violence because mental state of gross negligence did not satisfy *Leocal* test).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 1112	Involuntary manslaughter	Unlikely since offense does not require intentional mental statement. ⁴⁹	Yes. ⁵⁰	n/a	
18 U.S.C. § 1113	Attempt to commit murder	Yes, under 8 U.S.C. § 1101(a)(43)(U) if defendant convicted of attempted murder.	Yes.	n/a	
18 U.S.C. § 1201	Kidnapping	Yes, under 8 U.S.C. § 1101(a)(43)(H).	Yes.	n/a	
18 U.S.C. § 1202	Ransom proceeds	Yes, under 8 U.S.C. § 1101(a)(43)(H).	Probably.	n/a	
18 U.S.C. § 1341	Mail fraud	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds \$10,000.	Yes.	n/a	Investigate pleading to an offense under 18 U.S.C. § 1342 that involves use of mail for unlawful purpose other than fraud or deceit. Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence

⁴⁹ *Leocal v. Ashcroft*, 543 U.S. 1 (2004) (requiring at least a mental state of recklessness for an offense to be a crime of violence under 18 U.S.C. §16). Since *Leocal*, the circuits have uniformly held that a crime with a recklessness mental state is not sufficiently purposeful to constitute a crime of violence under 18 U.S.C. §16. *United States v. Zuniga-Soto*, 527 F.3d 1110, 1124 (10th Cir. 2008); *United States v. Portela*, 469 F.3d 496, 499 (6th Cir. 2006); *Fernandez-Ruiz v. Gonzales*, 466 F.3d 1121, 1129-31 (9th Cir. 2006) (en banc); *Garcia v. Gonzales*, 455 F.3d 465, 468-69 (4th Cir. 2006); *Oyebanji v. Gonzales*, 418 F.3d 260, 263-65 (3d Cir. 2005).

⁵⁰ *Matter of Franklin*, 20 I&N 867 (BIA 1994).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
					outside of record of conviction in determining loss amount.
18 U.S.C. § 1342	Fictitious name or address	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds \$10,000 and where underlying offense involves fraud or deceit.	Yes, if defendant pleads to section that requires a fraudulent intent. It is possible to commit offense by using mail for an unlawful purpose other than fraud. ⁵¹	n/a	Plead to use of mail for unlawful purpose other than fraud or deceit. Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 1343	Fraud by wire, radio, or television	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i) where loss exceeds \$10,000.	Yes.	n/a	Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.

⁵¹ In order to avoid a crime involving moral turpitude under *Matter of Silva-Trevino*, 24 I&N Dec.687 (A.G. 2008), a defendant should, if possible, affirmatively allocute to the most benign offense under the statute.

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 1344	Bank fraud	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i) where loss exceeds \$10,000.	Yes.	n/a	Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
18 U.S.C. § 1426(b)	Reproduction of naturalization or citizenship papers	Unlikely.	Yes. ⁵²	Possibly, under false claim to citizenship ground.	
18 U.S.C. § 1503	Influencing or injuring officer or juror generally	Yes, under 8 U.S.C. § 1101(a)(43)(S) if defendant receives a sentence of a year or more. ⁵³	Yes. ⁵⁴	n/a	
18 U.S.C. § 1510	Obstruction of justice	Yes, under obstruction of justice ground if defendant receives a sentence of a year or more. ⁵⁵	Probably.	n/a	
18 U.S.C. § 1542	False statement in application and use	Possibly, under 8 U.S.C. § 1101(a)(43)(P) where	Yes. ⁵⁶	Yes, under false claim to citizenship	

⁵² *Matter of Flores*, 17 I&N Dec. 225 (BIA 1980).

⁵³ *See Matter of Batista-Hernandez*, 21 I & N Dec. 955 (BIA 1997) (treating offenses like those labeled obstruction of justice under 8 U.S.C. §§ 1501-1518 as aggravated felonies); *Alwan v. Ashcroft*, 388 F.3d 507 (5th Cir. 2004) (same).

⁵⁴ *Knoetze v. U.S. Dept. of State*, 634 F.2d 207 (5th Cir. 1981).

⁵⁵ *See Matter of Batista-Hernandez*, 21 I & N Dec. 955 (BIA 1997) (treating offenses comparable to 18 U.S.C. §§ 1501-1518 as obstruction of justice offenses); *Alwan v. Ashcroft*, 388 F.3d 507 (5th Cir. 2004) (same).

⁵⁶ *Bisaillon v. Hogan*, 257 F.2d 435 (9th Cir. 1958); *Matter of B*, 7 I & N Dec. 342 (BIA 1956).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
	of passport	defendant receives a sentence of a year or more.		ground. ⁵⁷	
18 U.S.C. § 1543	Forgery or false use of passport	Aggravated felony under 8 U.S.C. § 1101(a)(43)(P) where defendant receives a sentence of a year or more.	Probably.	Possibly, under false claim to citizenship ground.	The statute creates an exception for a first offense in which a noncitizen aided only his or her spouse, child, or parent. If applicable, ensure that the record of conviction reflects that crime relates to family member covered by exception. Consider a possible plea under 18 U.S.C. § 1542, which is not enumerated as an aggravated felony offense under 8 U.S.C. § 1101(a)(43)(P).
18 U.S.C. § 1546(a)	Fraud and misuse of visas, permits, and other documents	Yes, under § 1101(a)(43)(P) where sentence imposed is at least one year.	Yes. ⁵⁸	A conviction for violating 18 U.S.C. § 1546(a) is a separate ground of deportability under 8 U.S.C. §	The aggravated felony definition creates an exception for a first offense in which a noncitizen aided only his or her

⁵⁷ *Matter of Barcenas-Barrera*, 25 I&N Dec. 40 (BIA 2009).

⁵⁸ *See Matter of Serna*, 20 I & N Dec. 579 (1992) (holding that offense involves moral turpitude only if record of conviction reflects that defendant intended to use the document).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
				1227(a)(3)(B)(iii).	spouse, child, or parent. If applicable, ensure that the record of conviction reflects that crime relates to family member covered by exception.
18 U.S.C. § 1581	Peonage	Yes, under ground “relating to peonage, slavery, and involuntary servitude.”	Yes.	n/a	
18 U.S.C. § 1582	Vessels for slave trade	Yes, under ground “relating to peonage, slavery, and involuntary servitude.”	Yes.	n/a	
18 U.S.C. § 1583	Enticement into slavery	Yes, under ground “relating to peonage, slavery, and involuntary servitude.”	Yes.	n/a	
18 U.S.C. § 1584	Sale into involuntary servitude	Yes, under ground “relating to peonage, slavery, and involuntary servitude.”	Yes.	n/a	
18 U.S.C. § 1585	Seizure, detention, transportation or sale of slaves	Yes, under ground “relating to peonage, slavery, and involuntary servitude.”	Yes.	n/a	
18 U.S.C. § 1588	Transportation of slaves from United States	Yes, under ground “relating to peonage, slavery, and involuntary servitude.”	Yes.	n/a	
18 U.S.C. § 1621	Perjury generally	Yes, under 8 U.S.C. § 1101(a)(43)(S) if	Yes.	n/a	Consider plea to 18 U.S.C. § 1001 if

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
		defendant receives a sentence of a year or more.			possible.
18 U.S.C. § 1622	Subornation of perjury	Yes, under 8 U.S.C. § 1101(a)(43)(S) if defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 1708	Theft or receipt of stolen mail matter generally	Yes, under 8 U.S.C. § 1101(a)(43)(G) where defendant receives a sentence of a year or more. ⁵⁹	Yes. ⁶⁰	n/a	Consider a plea to delay of mail under 18 U.S.C. § 1703.
18 U.S.C. § 1952	Interstate and foreign travel or transportation in aid of racketeering enterprises	Yes, under drug trafficking ground where record of conviction established that underlying offense involved distribution of a controlled substance. ⁶¹	Probably.	Possibly, under controlled substance ground where record of conviction establishes that underlying conduct involved a controlled substance. ⁶²	If possible, have record of conviction reflect that underlying offense did not involve distribution of a controlled substance.
18 U.S.C. § 1955	Prohibition of illegal gambling businesses	Yes, under 8 U.S.C. § 1101(a)(43)(J) where potential sentence of one year exists.	Probably.	n/a	
18 U.S.C. § 1956(a)(1)(A)	Laundering of money instruments	Yes, under money laundering grounds if	Probably.	n/a	Investigate whether there is a factual

⁵⁹ *Randhawa v. Ashcroft*, 298 F.3d 1148 (9th Cir. 2002).

⁶⁰ *Okoroha v. INS*, 715 F.2d 380 (8th Cir. 1983); *Matter of F*, 7 I & N Dec. 386 (BIA 1957) (holding that comparable state statute involved moral turpitude).

⁶¹ *Urena-Ramirez v. Ashcroft*, 341 F.3d 51 (1st Cir. 2003); *United States v. Rodriguez-Duberney*, 326 F.3d 613 (5th Cir. 2003).

⁶² *Urena-Ramirez v. Ashcroft*, 341 F.3d 51 (1st Cir. 2003); *Johnson v. INS*, 971 F.2d 340 (9th Cir. 1992) (holding that conviction under 18 U.S.C. § 1952 was a controlled substance offense).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
		amount of funds exceeds \$10,000. ⁶³			basis to plead to structuring transactions to avoid a reporting requirement in violation of 31 U.S.C. § 5322(b).
18 U.S.C. § 1957	Engaging in monetary transactions in property derived from specified unlawful activity	Yes, under 8 U.S.C. § 1101(a)(43)(D) when amount of funds exceeds \$10,000.	Probably.	Possibly depending on underlying activity.	
18 U.S.C. § 1962	Racketeer influenced corrupt organizations (RICO) offenses	Yes, under 8 U.S.C. § 1101(a)(43)(J) where the potential sentence is one year or more.	Probably.	Possibly, depending on underlying offense.	
18 U.S.C. § 2113(b)	Bank robbery and incidental crimes	Yes, under 8 U.S.C. § 1101(a)(43)(G) as a theft or crime of violence ground if defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 2114	Mail theft	Yes, under 8 U.S.C. § 1101(a)(43)(G) if defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 2241	Aggravated sexual abuse	Yes, under 8 U.S.C. § 1101(a)(43)(A) (rape) regardless of sentence. Also a crime of violence	Yes.	n/a	

⁶³ *Chowdhury v. INS*, 249 F.3d 970 (9th Cir. 2001) (rejecting government attempt to include restitution amount as measure of funds laundered).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
		under 8 U.S.C. § 1101(a)(43)(F) if the defendant receives a sentence of a year or more.			
18 U.S.C. § 2242	Sexual abuse	Yes, under 8 U.S.C. § 1101(a)(43)(A) as a rape offense. Also a crime of violence under 8 U.S.C. § 1101(a)(43)(F) if the defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 2251	Sexual exploitation of children	Yes under sexual abuse of minor ground regardless of sentence imposed, and under trafficking ground. 8 U.S.C. § 1101(a)(43)(I).	Yes.	Yes, under 8 U.S.C. § 1247(a)(2)(E).	
18 U.S.C. § 2251A	Selling or buying of children	Yes, under sexual abuse of minor ground aggravated felony, regardless of sentence imposed, and under trafficking ground. 8 U.S.C. § 1101(a)(43)(I).	Yes.	Yes, under 8 U.S.C. § 1247(a)(2)(E).	
18 U.S.C. § 2252	Certain activities relating to material involving the sexual exploitation of minors	Yes, under 8 U.S.C. § 1101(a)(43)(I) as an offense related to child pornography regardless of sentence imposed.	Yes.	Yes, under 8 U.S.C. § 1247(a)(2)(E).	
18 U.S.C. §§ 2261	Interstate domestic	Possibly, crime of	Yes. ⁶⁴	Yes, under 8 U.S.C.	

⁶⁴ See *Matter of Tran*, 21 I. & N. Dec. 291 (BIA 1996).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
	violence	violence under 8 U.S.C. § 1101(a)(43)(F), if defendant receives a sentence of a year or more.		§ 1247(a)(2)(E).	
18 U.S.C. §§ 2262	Interstate violation of protection order	Possibly, crime of violence under 8 U.S.C. § 1101(a)(43)(F), if defendant receives a sentence of a year or more.	Probably.	Yes, under 8 U.S.C. § 1247(a)(2)(E).	
18 U.S.C. § 2312	Transportation of stolen vehicles	Yes, under 8 U.S.C. § 1101(a)(43)(G) as a conviction for receipt of stolen property.	Yes.	n/a	
18 U.S.C. § 2313	Sale or receipt of stolen vehicles	Probably under 8 U.S.C. § 1101(a)(43)(G) as a receipt of stolen property theft offense if the defendant receives a sentence of a year or more	Likely, depending on the crime committed.	n/a	
18 U.S.C. § 2314	Transportation of stolen goods	Yes, under 8 U.S.C. § 1101(a)(43)(G) if the defendant receives a sentence of a year or more.	Yes, where fraud is element of the offense. ⁶⁵	n/a	The offense that is least likely to trigger immigration consequences under 18 U.S.C. § 2313 would be transporting a falsely made security knowing the same to be a false security

⁶⁵ See *United States v. Castro*, 26 F.3d 557 (5th Cir. 1994).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
					that is made with an unlawful intent.
18 U.S.C. § 2381	Treason	Yes, under 8 U.S.C. § 1101(a)(43)(L)(i).	Yes.	Yes, under national security grounds.	
18 U.S.C. § 2382	Misprision of treason	Yes, under 8 U.S.C. § 1101(a)(43)(L)(i).	Yes.	Yes, under national security grounds.	
18 U.S.C. § 2421	Transportation of minors, generally	Yes, under 8 U.S.C. § 1101(a)(43)(K)(ii) if defendant committed offense for commercial advantage. ⁶⁶	Yes.	Yes, under domestic violence ground.	Under dictum in Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining whether offense involved "commercial advantage."
18 U.S.C. § 2422	Coercion and enticement of minors	Yes, under 8 U.S.C. § 1101(a)(43)(K)(ii) if defendant committed offense for commercial advantage. ⁶⁷	Yes.	Yes, under domestic violence ground.	Under dictum in Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can

⁶⁶ *Matter of Gertsenshteyn*, 24 I&N Dec. 111 (BIA 2007) (permitting evidence outside of record of conviction to establish that defendant committed the offense for "commercial advantage." The Second Circuit, however, requires that the record of conviction establish "commercial advantage." *Gertsenshteyn v. U.S. Dept. of Justice*, 544 F.3d 137 (2d Cir. 2008).

⁶⁷ *Matter of Gertsenshteyn*, 24 I&N Dec. 111 (BIA 2007) (permitting evidence outside of record of conviction to establish that defendant committed the offense for "commercial advantage." The Second Circuit, however, requires that the record of conviction establish "commercial advantage." *Gertsenshteyn v. U.S. Dept. of Justice*, 544 F.3d 137 (2d Cir. 2008).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
					examine evidence outside of record of conviction in determining whether offense involved "commercial advantage."
18 U.S.C. § 2423	Transportation of minors	Yes, under 8 U.S.C. § 1101(a)(43)(K)(ii) if defendant committed offense for commercial advantage. ⁶⁸	Yes.	Yes, under domestic violence ground.	Under dictum in Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining whether offense involved "commercial advantage."
18 U.S.C. § 2701(a)(1)	Unlawful access to stored communication	Possibly a theft offense under 8 U.S.C. § 1101(a)(43)(G) if the defendant receives a sentence of a year or more.	Probably not.	n/a	
18 U.S.C. § 3146	Penalty for failure to appear	Yes, under 8 U.S.C. § 1101(a)(43)(T) if the crime for which the	Probably not.	n/a	

⁶⁸ *Matter of Gertsenshteyn*, 24 I&N Dec. 111 (BIA 2007) (permitting evidence outside of record of conviction to establish that defendant committed the offense for "commercial advantage." The Second Circuit, however, requires that the record of conviction establish "commercial advantage." *Gertsenshteyn v. U.S. Dept. of Justice*, 544 F.3d 137 (2d Cir. 2008).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
		defendant did not appear is a felony punishable by two years or more.			
18 U.S.C. § 3607	First Offender Act.	No.	No.	No.	
18 U.S.C. § 5031-5042	Juvenile Delinquency	No.	No.	No.	
19 U.S.C. § 1593	Smuggling merchandise	Probably not.	Yes. ⁶⁹	n/a	
20 U.S.C. § 1097(a)	Student loan fraud	Yes, under 8 U.S.C. § 1101(a)(43)(M) fraud offense if loss to the victim exceeds \$10,000.	Yes, where fraud is element of offense. ⁷⁰	n/a	Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
21 U.S.C. § 333(b)	Prescription drug marketing violations	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes. ⁷¹	Yes, under controlled substance ground.	
21 U.S.C. § 841(a)	Manufacture, distribution, or possession with intent to distribute	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes. ⁷²	Yes, under controlled substance ground.	
21 U.S.C. § 841(c)	Offenses involving	Yes, under 8 U.S.C. §	Possibly. ⁷³	Yes, under controlled	

⁶⁹ *Matter of De S*, 1 I & N Dec. 553 (BIA 1943).

⁷⁰ *Kabongo v. INS*, 837 F.2d 753 (6th Cir. 1988) (holding conviction for offense is a crime involving moral turpitude); *Izedonmwun v. INS*, 37 F.3d 416 (8th Cir. 1994) (same).

⁷¹ *Matter of P*, 6 I & N Dec. 795 (BIA 1955).

⁷² *See, e.g., Matter of Khourn*, 21 I & N Dec. 293 (BIA 1992).

⁷³ *See Matter of Khourn*, 21 I & N Dec. 293 (BIA 1992).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
	listed chemicals	1101(a)(43)(B) as a drug trafficking offense.		substance ground.	
21 U.S.C. §§ 841(f)(1), (2)	Wrongful distribution or possession of listed chemicals	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly. ⁷⁴	Yes, under controlled substance ground.	
21 U.S.C. § 842(b)	Manufacture of a controlled substance	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 843(b)	Communication facility	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense. ⁷⁵	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 846	Attempt or conspiracy to violate controlled substance laws.	If the principal offense is an aggravated felony, then an attempt or conspiracy conviction would also be an aggravated felony.	If the principal offense involved distribution or trafficking in a controlled substance, than an attempt or conspiracy conviction for that offense would be a crime involving moral turpitude.	Yes, under controlled substance ground.	
21 U.S.C. § 849(b)	Distribution or possession for sale within 1,000 feet of a truck stop or rest area	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 854(a)	Investment of illicit drug profits	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly.	Yes, under controlled substance ground.	

⁷⁴ In order to avoid a crime involving moral turpitude under *Matter of Silva-Trevino*, 24 I&N Dec.687 (A.G. 2008), a defendant should, if possible, affirmatively allocute to the most benign offense under the statute.

⁷⁵ *United States v. Orihuela*, 320 F.3d 1302 (11th Cir. 2003).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
21 U.S.C. § 856	Establishment of manufacturing operations	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly. ⁷⁶	Yes, under controlled substance ground.	
21 U.S.C. § 859	Distribution to persons under age twenty-one	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 860	Distribution or manufacturing in or near schools and colleges	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 860(c)	Employing children to distribute drugs near schools or playgrounds	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 861	Employment or use of persons under 18 years of age in drug operations	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly. ⁷⁷	Yes, under controlled substance ground.	
21 U.S.C. § 861(a)(3)	Receipt of a controlled substance from a person under 18 years of age.	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly. ⁷⁸	Yes, under controlled substance ground.	
21 U.S.C. § 861(f)	Distribution of controlled substance to pregnant individual	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 863(a)	Trafficking in drug paraphernalia	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Possibly. ⁷⁹	Yes, under controlled substance ground.	

⁷⁶ See *Matter of Khourn*, 21 I & N Dec. 293 (BIA 1992).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
21 U.S.C. § 952(a)	Importation of controlled substances	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Probably.	Yes, under controlled substance ground.	
21 U.S.C. § 953(a)	Exportation of controlled substances	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 959(a)	Possession, manufacture, or distribution of controlled substance	Yes, under 8 U.S.C. § 1101(a)(43)(B) as a drug trafficking offense.	Yes, if offense involves distribution. ⁸⁰	Yes, under controlled substance ground.	
26 U.S.C. § 2803(a)	Conspiracy to transport spirits without tax stamps	No.	No. ⁸¹	No.	
26 U.S.C. § 5861	Firearm offenses	Yes, under 8 U.S.C. § 1101(a)(43)(E)(iii).	Probably not.	Yes, under firearm ground.	
26 U.S.C. §7206 (1)	Willfully making and subscribing to a false statement on a tax return.	Yes, under 8 U.S.C. § 1101(a)(43)(M)(ii) where the loss to the government exceeds \$10,000. ⁸²	Yes.	n/a	In the Third Circuit, this offense is not an aggravated felony. ⁸³
26 U.S.C. §7206 (2)	Aiding and assisting in the preparation of a false tax return	Yes, under 8 U.S.C. § 1101(a)(43)(M)(ii) where the loss to the	Yes.	n/a	In the Third Circuit, this offense is not an aggravated felony. ⁸⁵

⁸⁰ *Id.* In order to avoid a crime involving moral turpitude under *Matter of Silva-Trevino*, 24 I&N Dec.687 (A.G. 2008), a defendant should, if possible, affirmatively allocute to the most benign offense under the statute.

⁸¹ *Matter of G*, 7 I & N Dec. 114 (BIA 1956).

⁸² *Kawashima v. Holder*, 593 F.3d 979 (9th Cir. 2010) (rejecting argument that Congress intended for 26 U.S.C. § 7201 to be only tax crime that qualified as an aggravated felony); *Arguelles-Olivares v. Mukasey*, 526 F.3d 171 (5th Cir. 2008) (same); but see *Ki Se Le v. Ashcroft*, 36 F.3d 218 (3d Cir. 2004) (holding that 26 U.S.C. § 7201 is the only tax offense that can constitute an aggravated felony).

⁸³ *Ki Se Le v. Ashcroft*, 36 F.3d 218 (3d Cir. 2004) (holding that 26 U.S.C. § 7201 is the only tax offense that can constitute an aggravated felony).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
		government exceeds \$10,000. ⁸⁴			
31 U.S.C. § 5322	Criminal violation of banking regulations	No.	No. ⁸⁶	n/a	
31 U.S.C. § 5324	Structuring financial transactions to evade reporting requirement and related offenses	Unlikely.	No. ⁸⁷	n/a	
42 U.S.C. § 408	Reporting false Social Security number	Yes, as a fraud or deceit crime under 8 U.S.C. § 1101(a)(43)(M)(i) when the loss to the victim exceeds \$10,000. ⁸⁸	Possibly. ⁸⁹ (See comment column).	n/a	A plea to possession 42 U.S.C. § 408(a)(7)(C) for “knowingly possesses a social security card with intent to alter for any purpose” reduces possibility that the offense will be a crime involving moral turpitude.

⁸⁵ *Ki Se Le v. Ashcroft*, 36 F.3d 218 (3d Cir. 2004) (holding that 26 U.S.C. § 7201 is the only tax offense that can constitute an aggravated felony).

⁸⁴ *Kawashima v. Holder*, 593 F.3d 979 (9th Cir. 2010) (rejecting argument that Congress intended for 26 U.S.C. § 7201 to be only tax crime that qualified as an aggravated felony); *Arguelles-Olivares v. Mukasey*, 526 F.3d 171 (5th Cir. 2008) (same); but see *Ki Se Le v. Ashcroft*, 36 F.3d 218 (3d Cir. 2004) (holding that 26 U.S.C. § 7201 is the only tax offense that can constitute an aggravated felony).

⁸⁶ *Goldeshtein v. INS*, 8 F.3d 645 (9th Cir. 1993) (conviction under 31 U.S.C. §§ 5322(b), 5324(a)(3) not a crime involving moral turpitude.); *Matter of L-V-C-*, 22 I & N Dec. 594 (BIA 1999) (same).

⁸⁷ *Matter of L-V-C*, 22 I & N Dec. 594 (BIA 1999).

⁸⁸ *St. John v. Ashcroft*, 43 Fed. Appx. 281 (10th Cir.2002) (rejecting argument that restitution amount was not equivalent to loss to victim).

⁸⁹ Compare *Matter of Adetiba*, 20 I & N Dec. 506 (BIA 1992) (finding that conviction involves moral turpitude) *Lateef v. DHS*, 592 F.3d 926 (8th Cir. 2010) (rejecting Ninth Circuit’s reasoning and determining that 42 U.S.C. § 408(a)(7) is a crime involving moral turpitude) with *Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir. 2000) (relying on limited statutory amnesty for people who present false social security cards to conclude that the offense is not a conviction for a crime involving moral turpitude).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
					Under Supreme Court's decision in <i>Nijhawan v. Holder</i> , 557 U.S. ___, 129 S.Ct. 2294 (2009), a factfinder can examine evidence outside of record of conviction in determining loss amount.
50 U.S.C. § 421	Revealing identity of certain United States undercover intelligence officers, agents, informants, and sources	Yes, under 8 U.S.C. §§ 1101(a)(43)(L)(ii), (iii).	Probably.	n/a	
50 U.S.C. App. § 462	Evading draft	No.	Not a crime involving moral turpitude. ⁹⁰	n/a	
50 U.S.C.A. § 1705	Unlawful export of technology	No.	Yes. ⁹¹		

⁹⁰ *Matter of S*, 5 I & N Dec. 425 (BIA 1953).

⁹¹ *Gao v. Holder*, 595 F.3d 549 (4th Cir. 2010) (accepting BIA determination without discussion).