

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 selected federal offenses and suggests how to avoid the 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, or want to propose other alternate “safer” pleas, want to suggest improvements, or have general 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	Possibly, if the underlying offense	Not a controlled	Consider a plea to misprision of felony,

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
		obstruction of justice offense. ⁵	involves moral turpitude. ⁶	substance offense. ⁷	if possible.
18 U.S.C. § 4	Misprision of felony	No. ⁸	Possibly. 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	Yes. ¹³	n/a	Try to ensure that the record of conviction does not include any evidence that the bribery was commercial in nature.

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).

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).

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

⁹ *Compare Itani v. Ashcroft*, 298 F.3d 1213 (11th Cir. 2002) (holding conviction under 18 U.S.C. § 4 is a crime involving moral turpitude); *Matter of Giraldo-Valencia*, A26 520 954 (BIA Index Dec. Oct 22, 1992) (distinguishing between common law and statutory misprision offenses in holding that federal misprision under 18 U.S.C. § 4 is a crime involving moral turpitude) *with Matter of S-C-*, 3 I & N Dec. 350 (BIA 1949) (holding that common law crime of misprision of felony is not a crime involving moral turpitude).

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. ___, 125 S. Ct. 377 (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).

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
		clear that bribing a public official necessarily 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	Possibly. ¹⁵	n/a	
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 conviction will be an aggravated felony under 8 U.S.C. §	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.

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

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
		1101(a)(43)(M)(i) where loss to the victim exceeds \$10,000. ¹⁷			
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 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	Yes, under 8 U.S.C. §	Not necessarily. ²⁵	n/a	

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

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).

²⁰ Although solicitation to commit a controlled substance offense is not a drug trafficking aggravated felony in the Ninth Circuit, it is not clear that reasoning would apply to the crime of violence ground. See *United States v. Rivera-Sanchez*, 247 F.3d 905 (9th Cir. 2001).

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).

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

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
	counterfeit securities	1101(a)(43)(R) where defendant receives a sentence of a year or more.			
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 fraud ground if loss to victim exceeds \$10,000 or probably under counterfeiting ground 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.
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. § 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. ²⁸	Possibly.	n/a	

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

²⁶ *Matter of K*, 7 I & N Dec. 178 (BIA 1956).

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

²⁸ *Kamagate v. Ashcroft*, 385 F.3d 144 (2d Cir. 2004) (holding that violation of 18 U.S.C. §513(a) is an aggravated felony under the counterfeiting ground).

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
18 U.S.C. § 545	Smuggling goods into the U.S.	Probably under fraud ground if loss to the victim exceeds \$10,000. The offense is possibly an aggravated felony under the theft ground if the defendant receives a sentence of a year or more.	Possibly. ²⁹	Not necessarily controlled substance ground where record of conviction does not indicate type of merchandise. ³⁰	The statute includes 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.
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 or a theft offense if the defendant receives a sentence of a year or more. ³¹	Yes. ³²	n/a	<i>See Valansi v. Ashcroft</i> , 278 F.3d 203 (3d Cir. 2002) for possible strategy to avoid treatment as an aggravated felony.
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	Yes, under 8 U.S.C. § 1101(a)(43)(L)(i).	Possibly.	Possibly, under national security	

²⁹ Compare *Eyoun 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).

³⁰ 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).

³¹ 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). See *Nugent v. Ashcroft*, 367 F.3d 162 (3d Cir. 2003)(imposing distinct requirements when offense involves both fraud and theft aggravated felony grounds).

³² *Matter of Batten*, 11 I & N Dec. 271 (BIA 1965).

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
	defense information			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. ³³	n/a	
18 U.S.C. § 875	Interstate communications	Yes, under 8 U.S.C. § 1101(a)(43)(H).	Probably.	n/a	
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. ³⁴	Possibly under international child abduction ground.	
18 U.S.C. § 911	False claim to U.S. citizenship	Unlikely to be an aggravated felony.	Probably. ³⁵	Yes, under false claim to citizenship ground.	
18 U.S.C. § 912	Impersonation	Yes, under theft ground if defendant receives a sentence of a year or more or under fraud ground if loss to the victim exceeds \$10,000.	Yes. ³⁶	n/a	
18 U.S.C. §§ 922(g)(1), (2), (3),	Firearms offenses	Yes, under 8 U.S.C. § 1101(a)(43)(E)(ii).	Depends on section.	Yes, under firearm ground.	

³³ 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.

³⁴ *Matter of P*, 5 I & N Dec. 444 (BIA 1953) (interpreting conviction under the predecessor statute as a crime involving moral turpitude).

³⁵ *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).

³⁶ *Matter of B*, 6 I & N Dec. 702 (BIA 1955); *Matter of Gonzalez*, 16 I & N Dec. 134 (BIA 1977).

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(4), or (5)(j), (n), (o), (p), (r)					
18 U.S.C. § 922(g)(5)	Unlawful possession or transportation of a firearm by certain noncitizens	Yes, under 8 U.S.C. § 1101(a)(43)(E).	Unlikely.	Yes, under firearm ground.	
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).	Possibly if record specifies unlawful purpose and unlawful purpose involves moral turpitude.	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.	Not necessarily.	Yes, under miscellaneous crimes ground.	
18 U.S.C. § 1001	False statements	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). ³⁷	Probably. ³⁸	n/a	Pleading to a simple false. But not fraudulent statement is the least likely to trigger adverse immigration consequences.

³⁷ *Li v. Ashcroft*, 389 F.3d 892 (9th Cir. 2004).

³⁸ 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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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
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. ³⁹	Possibly. ⁴⁰	n/a	Pleading to a false non-material statement is the least likely to be a crime involving moral turpitude.
18 U.S.C. § 1028(a)	Fraud and related activity in connection with identification documents and information	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds \$10,000.	Yes, for those offenses for which fraud is an essential element.	n/a	Divisible statute.
18 U.S.C. § 1029(a)	Fraud and related activity in connection with access devices	Yes, under 8 U.S.C. § 1101(a)(43)(M)(i), where loss exceeds \$10,000. Depending on the subsection, an offense may constitute an aggravated felony theft offense if defendant receives a sentence of a year or more.	Yes, all subsections involve “intent to defraud.”	n/a	
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	Unlikely.	Yes. ⁴¹	n/a	A plea to misprision

³⁹ 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.

⁴⁰ Since materiality is not an element of the offense, a false statement that is not material 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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	from arrest				of felony might be less likely to involve moral turpitude. ⁴²
18 U.S.C. § 1111	Murder	Yes, under murder aggravated felony ground.	Yes.	n/a	
18 U.S.C. § 1112	Manslaughter	Possibly a crime of violence if a defendant receives a sentence of a year or more. ⁴³	Yes. ⁴⁴	n/a	If defendant pleads to an offense that involves negligently taking life of another, it would not be a crime of violence. ⁴⁵
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	Yes.	n/a	Investigate pleading to an offense under

⁴¹ *Matter of Sloan*, 12 I & N Dec. 840 (BIA 1966, AG 1968).

⁴² *See Matter of S-C-*, 3 I & N Dec. 350 (BIA 1949) (holding that common law crime of misprision of felony is not a crime involving moral turpitude) *Compare Itani v. Ashcroft*, 298 F.3d 1213 (11th Cir. 2002) (holding conviction under 18 U.S.C. § 4 is a crime involving moral turpitude) *with Matter of Giraldo-Valencia*, A26 520 954 (BIA Index Dec. Oct 22, 1992) (distinguishing between common law and statutory misprision offenses in holding federal misprision under 18 U.S.C. § 4 is a crime involving moral turpitude).

⁴³ *See Leocal v. Ashcroft*, 543 U.S. ___, 125 S. Ct. 377 (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*, __ F.3d __, 2005 U.S. App. LEXIS 9349 (9th Cir. May 23, 2005) (holding that California vehicular manslaughter was not a crime of violence because mental state of gross negligence did not satisfy *Leocal* test).

⁴⁴ *Matter of Franklin*, 20 I&N 867 (BIA 1994).

⁴⁵ *See Leocal v. Ashcroft*, 543 U.S. ___, 125 S. Ct. 377 (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*, __ F.3d __, 2005 U.S. App. LEXIS 9349 (9th Cir. May 23, 2005) (holding that California vehicular manslaughter was not a crime of violence because mental state of gross negligence did not satisfy *Leocal* test).

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		loss exceeds \$10,000.			18 U.S.C. § 1342 that involves use of mail for unlawful purpose other than fraud or deceit.
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.	n/a	Plead to use of mail for unlawful purpose other than fraud or deceit.
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	
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	See <i>Chang v. INS</i> , 307 F.3d 1185 (9th Cir. 2002) for discussion on calculating “loss to victim.”
18 U.S.C. § 1426(b)	Reproduction of naturalization or citizenship papers	Unlikely.	Yes. ⁴⁶	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	Yes. ⁴⁸	n/a	

⁴⁶ *Matter of Flores*, 17 I&N Dec. 225 (BIA 1980).

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		sentence of a year or more. ⁴⁷			
18 U.S.C. § 1510	Obstruction of justice	Yes, under obstruction of justice ground if defendant receives a sentence of a year or more. ⁴⁹	Probably.	n/a	Consider plea to misprision of felony.
18 U.S.C. § 1542	False statement in application and use of passport	Possibly, under 8 U.S.C. § 1101(a)(43)(P) where defendant receives a sentence of a year or more.	Yes. ⁵⁰	Possibly, if it is under false claim to citizenship ground.	
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.

⁴⁷ 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).

⁴⁸ *Knoetze v. U.S. Dept. of State*, 634 F.2d 207 (5th Cir. 1981).

⁴⁹ 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).

⁵⁰ *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
					§ 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. ⁵¹	A conviction for violating 18 U.S.C. § 1546(a) is a separate ground of deportability under 8 U.S.C. § 1227(a)(3)(B)(iii).	The aggravated felony definition 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.
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	Yes.	n/a	

⁵¹ 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
		servitude.”			
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 defendant receives a sentence of a year or more.	Yes.	n/a	Consider plea to 18 U.S.C. § 1001 if 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. ⁵²	Yes. ⁵³	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	Yes, under drug trafficking ground where	Probably.	Possibly, under controlled substance	If possible, have record of conviction

⁵² *Randhawa v. Ashcroft*, 298 F.3d 1148 (9th Cir. 2002).

⁵³ *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).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
	transportation in aid of racketeering enterprises	record of conviction established that underlying offense involved distribution of a controlled substance. ⁵⁴		ground where record of conviction establishes that underlying conduct involved a controlled substance. ⁵⁵	reflect that underling 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 amount of funds exceeds \$10,000. ⁵⁶	Probably.	n/a	Investigate whether there is a factual 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 potential sentence of one year exists.	Probably.	Possibly, depending on underlying offense.	

⁵⁴ *Urena-Ramirez v. Ashcroft*, 341 F.3d 51 (1st Cir. 2003); *United States v. Rodriguez-Duberney*, 326 F.3d 613 (5th Cir. 2003).

⁵⁵ *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).

⁵⁶ *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
18 U.S.C. § 2113(b)	Bank robbery and incidental crimes	Yes, under theft ⁵⁷ or crime of violence ⁵⁸ ground if defendant receives a sentence of a year or more.	Yes.	n/a	
18 U.S.C. § 2114	Mail theft	Yes, under theft ground if defendant receives a sentence of a year or more. ⁵⁹	Yes.	n/a	
18 U.S.C. § 2241	Aggravated sexual abuse	Yes, under rape ground. ⁶⁰ Also a crime of violence if the defendant receives a sentence of a year or more. ⁶¹	Yes.	n/a	
18 U.S.C. § 2242	Sexual abuse	Yes, under rape ground. ⁶² Also a crime of violence ⁶³ 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 domestic violence ground.	

⁵⁷ 8 U.S.C. § 1101(a)(43)(G).

⁵⁸ 8 U.S.C. § 1101(a)(43)(F).

⁵⁹ 8 U.S.C. § 1101(a)(43)(G).

⁶⁰ 8 U.S.C. § 1101(a)(43)(A).

⁶¹ 8 U.S.C. § 1101(a)(43)(F).

⁶² 8 U.S.C. § 1101(a)(43)(A).

⁶³ 8 U.S.C. § 1101(a)(43)(F).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
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 domestic violence ground.	
18 U.S.C. § 2252	Certain activities relating to material involving the sexual exploitation of minors	Yes, under sexual abuse of minor ground aggravated felony, regardless of sentence imposed, under 8 U.S.C. § 1101(a)(43)(I).	Yes.	Yes, under domestic violence ground.	
18 U.S.C. §§ 2261	Interstate domestic violence	Possibly crime of domestic violence if defendant receives a sentence of a year or more.	Probably. ⁶⁴	Yes, under domestic violence ground.	
18 U.S.C. §§ 2262	Interstate violation of protection order	Possibly crime of domestic violence if defendant receives a sentence of a year or more.	Probably.	Yes, under domestic violence ground.	
18 U.S.C. § 2312	Transportation of stolen vehicles	Yes, under receipt of stolen property ground.	Yes.	n/a	
18 U.S.C. § 2313	Sale or receipt of stolen vehicles	Probably an aggravated felony under the theft ground if the defendant receives a sentence of a year or more or under the fraud or deceit ground if the loss to the victim	Likely, depending on the crime committed.	n/a	

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
		exceeds \$10,000			
18 U.S.C. § 2314	Transportation of stolen goods	Yes, if loss to victim exceeds \$10,000, and under theft ground if 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 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).	Very likely.	Yes, under national security grounds.	
18 U.S.C. § 2421	Transportation of minors, generally	Yes, under ground relating to transportation for the purpose of prostitution if committed for commercial advantage. ⁶⁶	Yes.	Yes, under domestic violence ground.	Try to avoid finding in record that offense involved commercial advantage.
18 U.S.C. § 2422	Coercion and enticement of minors	Yes, under ground relating to transportation for the purpose of prostitution if committed for commercial advantage.	Yes.	Yes, under domestic violence ground.	Try to avoid finding in record that offense involved commercial advantage.
18 U.S.C. § 2423	Transportation of minors	Yes, under ground relating to transportation	Yes.	Yes, under domestic violence ground.	Try to avoid finding in record that offense

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

⁶⁶ See 8 U.S.C. § 1101(a)(43)(K)(ii).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
		for the purpose of prostitution if committed for commercial advantage.			involved commercial advantage.
18 U.S.C. § 2701(a)(1)	Unlawful access to stored communication	Possibly a theft offense if 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 defendant did not appear is a felony punishable by two years or more.	Probably not.	n/a	
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. ⁶⁷	n/a	
20 U.S.C. § 1097(a)	Student loan fraud	Yes, fraud offense if loss to the victim exceeds \$10,000 or under theft ground where sentence is a year or more.	Yes, where fraud is element of offense. ⁶⁸	n/a	
21 U.S.C. § 333(b)	Prescription drug marketing violations	Yes, under drug trafficking ground.	Yes. ⁶⁹	Yes, under controlled substance ground.	
21 U.S.C. § 841(a)	Manufacture, distribution, or possession with	Yes, under drug trafficking ground.	Yes. ⁷⁰	Yes, under controlled substance ground.	

⁶⁷ *Matter of De S*, 1 I & N Dec. 553 (BIA 1943).

⁶⁸ *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).

⁶⁹ *Matter of P*, 6 I & N Dec. 795 (BIA 1955).

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
	intent to distribute				
21 U.S.C. § 841(c)	Offenses involving listed chemicals	Yes, under drug trafficking ground.	Possibly. ⁷¹	Yes, under controlled substance ground.	
21 U.S.C. §§ 841(f)(1), (2)	Wrongful distribution or possession of listed chemicals	Yes, under drug trafficking ground.	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 842(b)	Manufacture of a controlled substance	Yes, under drug trafficking ground.	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 843(b)	Communication facility	Yes, under drug trafficking ground. ⁷²	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 846	Attempt and conspiracy to violate controlled substance laws.	Depends on the law of the circuit. ⁷³	Possibly, depending on the subsection that the defendant violated.	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 drug trafficking ground.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 854(a)	Investment of illicit drug profits	Yes, under drug trafficking ground.	Possibly.	Yes, under controlled substance ground.	
21 U.S.C. § 856	Establishment of manufacturing operations	Yes, under drug trafficking ground.	Possibly. ⁷⁴	Yes, under controlled substance ground.	
21 U.S.C. § 859	Distribution to persons under age twenty-one	Yes, under drug trafficking ground.	Yes.	Yes, under controlled substance ground.	

⁷⁰ See, e.g., *Matter of Khourn*, 21 I & N Dec. 293 (BIA 1992).

⁷¹ See *Matter of Khourn*, 21 I & N Dec. 293 (BIA 1992).

⁷² *United States v. Orihuela*, 320 F.3d 1302 (11th Cir. 2003).

⁷³ Compare *Matter of Yanez*, 23 I & N Dec. 390 (BIA 2002) with *Gerbier v. Holmes*, 280 F.3d 297 (3d Cir. 2002).

⁷⁴ 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
21 U.S.C. § 860	Distribution or manufacturing in or near schools and colleges	Yes, under drug trafficking ground.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 860(c)	Employing children to distribute drugs near schools or playgrounds	Yes, under drug trafficking ground.	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 drug trafficking ground.	Possibly. ⁷⁵	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 drug trafficking ground.	Possibly. ⁷⁶	Yes, under controlled substance ground.	
21 U.S.C. § 861(f)	Distribution of controlled substance to pregnant individual	Yes, under drug trafficking ground.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 863(a)	Trafficking in drug paraphernalia	Yes, under drug trafficking ground.	Possibly. ⁷⁷	Yes, under controlled substance ground.	
21 U.S.C. § 952(a)	Importation of controlled substances	Yes, under drug trafficking ground.	Probably.	Yes, under controlled substance ground.	
21 U.S.C. § 953(a)	Exportation of controlled substances	Yes, under drug trafficking ground.	Yes.	Yes, under controlled substance ground.	
21 U.S.C. § 959(a)	Possession, manufacture, or distribution of controlled substance	Yes, under drug trafficking ground.	Yes, if offense involves distribution. ⁷⁸	Yes, under controlled substance ground.	

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

Selected Immigration Consequences of Certain Federal Offenses

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	SUGGESTIONS
26 U.S.C. § 2803(a)	Conspiracy to transport spirits without tax stamps	No.	No. ⁷⁹	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.	
31 U.S.C. § 5322	Criminal violation of banking regulations	No.	No. ⁸⁰	n/a	
31 U.S.C. § 5324	Structuring financial transactions to evade reporting requirement and related offenses	Unlikely.	No. ⁸¹	n/a	
42 U.S.C. § 408	Reporting false Social Security number	Yes, under fraud or deceit ground when loss to the victim exceeds \$10,000. ⁸²	Possibly. ⁸³	n/a	
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. ⁸⁴	n/a	

⁷⁸ *Id.*

⁷⁹ *Matter of G*, 7 I & N Dec. 114 (BIA 1956).

⁸⁰ *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).

⁸¹ *Matter of L-V-C*, 22 I & N Dec. 594 (BIA 1999).

⁸² *St. John v. Ashcroft*, 43 Fed. Appx. 281 (10th Cir.2002) (rejecting argument that restitution amount was not equivalent to loss to victim).

⁸³ Compare *Matter of Adetiba*, 20 I & N Dec. 506 (BIA 1992) (finding that conviction involves 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

⁸⁴ *Matter of S*, 5 I & N Dec. 425 (BIA 1953).