

# PRO SE GUIDE TO DENYING CHARGES OF DEPORTABILITY

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## Overview

When you are going before an immigration judge and facing deportation, there are two big questions the court will consider:

- 1. Have you done something that makes you deportable?*
- 2. Are you eligible for some kind of relief under the law that gives you a way to stay in the United States?*

Under U.S. Immigration law, Immigration and Customs Enforcement (ICE) can charge you with being deportable for many different reasons. The most common way is called “entry without inspection”, which typically means crossing the border through the desert or the water. However, there are other ways ICE may say you are deportable and this guide helps you be prepared to argue against them to preserve your rights in court.

If you are a Lawful Permanent Resident, ICE may be trying to deport you for bad conduct or for a criminal record. ICE can also try to deport you for things such as false claim to U.S. citizenship, misrepresentation to obtain an immigration benefit, or conduct that gives reason to believe that you have participated in drug trafficking or human smuggling.



You should read through this guide if you think something ICE is alleging against you is wrong or if you want to fight your case even if it means you will have to wait a long time in detention. Denying charges against you in court will not necessarily help you win your case but it pushes the government lawyer to gather the evidence needed to prove that you are

deportable. If she or he does not have the evidence then you may be able to apply for relief to stay in the United States.



In many cases, ICE may be able to deport you if they successfully prove the charges and you may have no ability to apply for relief from deportation. BUT, it is ICE's burden to prove that you can be deported and a lot of times your admissions may be the only evidence that they have to show it. In other words, thinking about how to plead to charges in court is very important.

### ***What Does Pleading to Charges Mean?***

Pleading to charges is basically the question of whether you will **ADMIT** or **DENY** charges ICE is alleging against you in court. It may be helpful to thinking about U.S. criminal court and your ability to plead guilty or not guilty in your case. **If you want to fight your case to stay in the U.S. it may be extremely important to DENY the charges against you, EVEN if you know that they are true.** Below we explain exactly how to do this at your first court hearing.

### ***Won't it Upset the Judge if I Deny Something I Know I Did?***

You may think denying these charges will make the immigration judge angry or think that you are lying, but it is more complicated than that at this stage in your case. Under these circumstances, when you **DENY** charges you are pushing the burden back on ICE to prove them in court. The judge knows that ICE must prove their case against you and will understand why you are denying things that could be true. Again, this process is similar to cases in U.S. criminal courts where the public defender may have you plead "not guilty" even if you know that you committed the crime.



If your case moves forward and you are applying for relief like Cancellation of Removal it is very important to be honest with the judge about your criminal record and bad conduct. But at this early stage of your case you

can safely deny charges against you without breaking any rules or making the judge angry at you.

## ***Where Can I see the Charges Against Me?***

Your deportation case in court starts when ICE files a document called the “**Notice to Appear**” and serves you a copy. This document should say your name, your date of birth, the charges against you, and the section or sections of the U.S. Immigrations Laws that ICE is trying to use to deport you. If you look at the top right hand corner of all of the pieces of paper that you received from ICE, you should find one that says “NOTICE TO APPEAR”. It is **not** the one that says “Record of Inadmissible / Deportable Alien” and **not** the one printed on carbon paper that says “Hearing Notice”.

Once you find the Notice to Appear, make sure to bring it with you to the court because the judge will go over every single charge in the Notice to Appear and ask you how you plead. Here is an example of what the Notice to Appear might say:

1. You are not a native and citizen of the United States.
2. You are a citizen or national of Mexico.
3. On December 1, 1990 you were admitted as a Lawful Permanent Resident.
4. On October 4, 2004 you were convicted of commercial burglary in violation of California Penal Code Section 459.
5. For that offense you were sentenced to 16 months in prison.



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Each of these is a charge against you that you will be asked about in court at your first Master Calendar Hearing and is something ICE has to prove against you.

## ***What Happens in My First Master Calendar Hearing?***

Your first court hearing is called a “**Master Calendar Hearing**” and the judge will go over your Notice to Appear at this time. At this hearing, the judge will start by talking to the group about your right in court. Next, he will speak with each person in the courtroom individually.



**Hiring a Lawyer.** The judge’s first question will be, “Do you want some more time to get a lawyer?” If you answer “yes”, then the judge will postpone your hearing to give you more time to try to hire a lawyer to represent you. If you answer “no”, the judge will keep going with your case on that same day.



**Rights.** The judge will then ask whether you fully understood your rights as he explained them to the group. He’ll ask whether you feel comfortable going forward with the hearing that day and representing yourself. If you say “yes”, then the judge will move on to specific questions about your case and asking you how you plead to the charges in your Notice to Appear.

## ***How Do I Deny Charges at my Master Calendar Hearing?***

If you have told the judge you want to go forward that day, he will ask you whether you received the Notice to Appear. The judge will ask you whether you **ADMIT or DENY** each of the things that the government is saying about you. He will go over each thing in the Notice to Appear with you individually.

The conversation may look like this:

*JUDGE: Sir, the Department alleges that you are not a native or citizen of the United States, do you admit or deny that charge?*

YOU have the option of *denying* every one of the charges if you choose to, including this one.

If you deny this charge, the judge might ask you whether you are claiming to be a United States Citizen. If you are or think you may be, then the answer would be “yes”. If you are not, then you can say “I am exercising my right to deny all of the charges”.



*JUDGE: Sir, the Department says that you are a citizen or national of Mexico, do you admit or deny?*

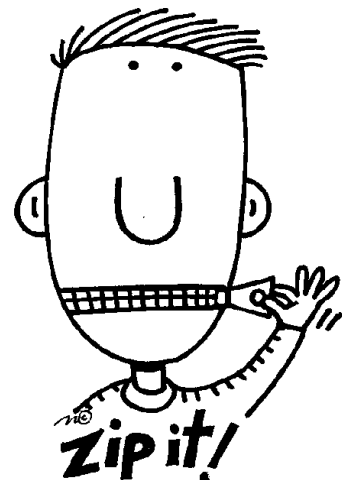
Again, YOU have the option of denying all of the charges, even if you know that you are a citizen of Mexico. That said, it is your decision whether you want to deny all of the charges or just the bad ones.

*JUDGE: Sir, the Notice to Appear says that you presented a birth certificate belonging to a United States Citizen with a different name to gain admission at the Port of Entry on December 1, 2012. Is that true?*

To deny this charge, you can simply say “I deny this is true” or “no” here. **If you want to do everything in your power to fight your case then it is VERY IMPORANT to deny everything that sounds like it is bad for you or could hurt your case, even if it may be true.** Other examples would be charges that you have criminal convictions, that you lied to an immigration official, or that you overstayed the amount of time you were allowed to stay in the US with your visa.

*JUDGE: Sir, the government says that it can deport you under the Immigration and Nationality Act for making a false claim to citizenship, do you admit that charge?*

Here you can say “no, your honor, I deny the charge” or “your honor I don’t think this conduct makes me deportable”. **Even if you**





**have a difficult time in court and you accidentally admit to having done bad things, it is EXTREMELY IMPORTANT that you tell the judge that you don't think your actions make you deportable.**

Some immigration laws make you completely ineligible for any kind of relief from deportation even if you are married to a U.S. citizen and have U.S. citizen children. For example, most drug related crimes cannot be waived and there is no pardon. So, you may not be able to apply for a green card if you admit that you were convicted of possession of methamphetamine. The same is true for making a false claim to citizenship. If you deny any charges about things that you have done or crimes in your record then you are preserving all of your arguments for appeal if you lose your case in front of the judge.

### ***What Happens Next – The Prove-Up Hearing***

Once you deny your charges, the judge will normally schedule another hearing for the government to prove their case. At this next hearing, you can object to the government's evidence and you can make arguments about why you are not deportable as charged. The kinds of arguments that you will want to make will depend on what ICE claims you did, what they bring to prove it, and whether it matches up with an immigration law that makes you deportable. Because there are so many situations that may lead to a person to be deportable, it is impossible to list every potential argument that you might make here.



However, if the government lawyer tries to use **police reports, probation reports, victims statements, arrest warrants, or a complaint**, then it is a good idea to **OBJECT** since none of these documents are actual court records.

Also, most charges require that the government prove 1) **what you did** and 2) that you did so **intentionally** or purposefully. So, at the prove-up hearing, your best arguments may very well be that the government has not submitted proof of **WHAT YOU DID** and/or that you **DID IT INTENTIONALLY**. Again, the exact arguments that you can make will depend on the charges and these



two arguments might not work for you. But they are the most common concepts argued by lawyers at the prove-up hearing.

At the end of the prove-up hearing the judge will either decide that you are not deportable, that you are deportable and might be able to apply for relief, or that you are deportable and cannot apply for relief.

### ***What Should I do if the Judge Asks Me for Criminal Documents?***

Although there are exceptions, it is generally NOT a good idea for you to give the judge any documents from your criminal record because the government lawyer will already be doing this. However, some judges might ask you to get transcripts or a copy of your plea agreement to prove that you are eligible for a pardon to stay in the United States. Before you comply with this kind of request, you should try to have a lawyer or the Florence Project look over any criminal records that you want to give the judge. Often, these documents can be harmful to your case and sometimes the judge might even be wrong to ask you to bring bad documents to the court. Even though it might be hard to say “no” to a judge’s request, this may be the best thing to do in your case. So, it is best to talk to a lawyer before submitting anything to the judge that makes you look bad - even if the judge asked you to.

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*Pro Se Guide to Denying Charges of Deportability* was prepared and updated by the staff of the Florence Immigrant & Refugee Rights Project and was written for immigrant detainees in Arizona who are representing themselves pro se in their removal proceedings. This guide is not intended to provide legal advice or serve as a substitute for legal counsel. The Florence Project is a nonprofit legal services organization and does not charge for its services to immigrant detainees in Arizona. This guide is copyright protected but can be shared and distributed widely to assist indigent immigrants around the country. All of our guides are available to download on our website: [www.firrp.org](http://www.firrp.org). We kindly ask that you give credit to the Florence Project if you are adapting the information in this guide into your own publication.