

How to Deny Charges of Deportability



The Florence Immigrant & Refugee Rights Project is a nonprofit legal services organization that works with adults and children in immigration custody in Arizona. The staff of the Florence Project prepared and updated this guide for immigrant detainees who represent themselves in their removal proceedings. We do not charge for our services. To see our guides, go to: www.firrp.org.

This guide is not intended to provide legal advice. It is not a substitute for legal counsel.

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Contents

Who Should Read this Guide?	2
For What Reasons Can ICE Have You Deported?	3
Should You Deny the Charges Against You?	4
What Happens Next?	5
What Questions Will the Judge Ask?	6
What Happens at the Next Hearing?	8
What Should You Do if the Judge Asks You for Criminal Documents?	9

Important Words to Know

Immigration law has a lot of technical words. Here is a list of some words you will see in this guide and a short explanation of what they mean.

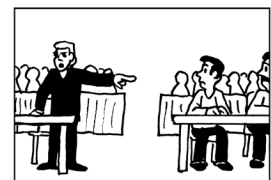
■ **Deportation:** ICE has put you in *deportation proceedings*, which are also called *removal proceedings*. If the judge orders you deported or “removed” from the United States, officials will send you back to the country where you are a citizen. You will not be able to legally return to the U.S. for at least 10 years.



■ **Florence Project:** A group of lawyers and legal assistants who provide free legal help to people who do not have lawyers. The Florence Project wrote this guide to help you understand your case.



■ **Government Attorney:** The lawyer who represents ICE when you go to your court hearings. This lawyer sits at the table next to you and talks to the judge. Government attorneys should see that justice is done. Usually, they ask the judge to order to deport you.



- **Immigration and Customs Enforcement (ICE):** The agency that has put you in deportation proceedings and detained you. ICE is part of the Department of Homeland Security, or *DHS*.



- **Immigration Judge (*judge*):** The person who will decide your case. Judges hold hearings in the courtroom and wear black robes. They should look at the facts of your case and apply the law fairly. Judges do not work for ICE.



Who Should Read this Guide?

For many reasons, Immigration and Customs Enforcement (ICE) can tell the government that they should deport you. This guide from the Florence Project will help you argue against these reasons to keep your rights in court.

This guide will help you if:

- You think that Immigration and Customs Enforcement (ICE) is wrongly accusing you of something in your deportation proceedings.
- You want to fight your case even if it means that you must wait a long time in detention.
- You do not have an attorney to go to court with you. The legal term for people who do not have an attorney on their case is *pro se*. That means you are in charge of your own case before the judge.

For What Reasons Can ICE Have You Deported?



When you go before an immigration judge and you are facing deportation, the judge will consider two important questions:

1. **Have you done something that makes you deportable?** *Charges of deportability* are things the judge may say that you have done in the past, perhaps an illegal activity like robbery, for which the judge thinks you should not be allowed to stay in the United States. In other words, the government thinks that you should be deported because you did something against the law.
2. **Can you apply for some kind of relief under the law that gives you a way to stay in the United States?**

ICE is the agency that tells the government they should deport you. By law, **ICE can charge you with being deportable for many different reasons.** The most common reason is called *entry without inspection*. That typically means that you crossed the border through the desert or water, instead of through an official crossing gate.

But, ICE may say you should be deported for many other reasons. For example, even if you are a *Lawful Permanent Resident*, (that means you have a card that says *Legal Permanent Resident* or a *green card*), ICE may try to deport you because:

- You had past bad conduct, like stealing or fraud.
- You have certain criminal convictions.
- You falsely claimed to be a U.S. citizen when you were not.

- You misrepresented information to obtain an immigration benefit. For instance, you lied on an immigration application or used documents that were not your own.
- You participated in drug trafficking or human smuggling or ICE believes you may have done these things.

This list includes examples only. ICE may try to deport you for other reasons as well.

Should You Deny the Charges Against You?

If ICE is trying to have you deported, denying the charges against you in court might not help you win your case. But if you deny the charges, **government lawyers will be forced to gather evidence to prove that they can deport you.** If they do not have the evidence, then the judge could either end your case or allow you to apply for relief to stay in the United States.

At the beginning of your case, ICE must prove that you can be deported. But they may still be able to deport you if they find enough evidence to prove the charges against you and if you cannot apply for relief from deportation.

When you plan to answer to charges, you must think about how to plead to charges in court. You must decide if you will admit or deny the charges that ICE is claiming against you. Often, the things you say may be the only evidence they have. So, be careful. **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, so you can push the government to prove them.**

Will the judge be upset if you deny something you know you did?

When you deny charges, you push the burden onto ICE to prove the charges. The judge will understand why you are denying things that could be true.

At the beginning of your case, you can safely deny charges against you without breaking any rules or making the judge angry at you. But, if your case moves forward and you apply for relief like *Cancellation of Removal*, then you must be honest with the judge about your criminal record and bad conduct.

What Happens Next?

Your deportation case in court starts when ICE files a document called the *Notice to Appear* and serves you a copy. The *Notice to Appear* 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 using to deport you

Here is an example of what the Notice to Appear might say:

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

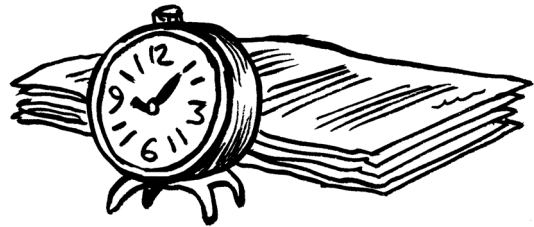
When you go to court for your first time, it is called a *Master Calendar Hearing*. Make sure to bring the *Notice to Appear* with you.

At the master calendar hearing, the judge will speak to the entire group about your rights in court. Then the judge will speak with each person one by one.

What Questions Will the Judge Ask?

Do you want a lawyer?

One of the judge's first questions will be, "Do you want some more time to get a lawyer?"



- If you say "yes," the judge will postpone your hearing to give you more time to try to hire a lawyer to help you with your case.
- If you say "no," the judge will go forward with your case on that same day.

Do you fully understand your rights as I explained them to the group?

Do you feel comfortable going forward with the hearing today and representing yourself?

If you say "yes," the judge will start to ask you specific questions about your case.

How do you plead?

To each charge listed in your *Notice to Appear*, the judge will ask, "How do you plead?" ICE must be able to prove every charge.

Did you received the Notice to Appear?

Whether you go forward that day or continue the hearing a different day, the judge will ask, "Did you received the *Notice to Appear*?"

If you did not receive a copy of the *Notice to Appear* tell the judge.

Do you admit or deny the charge?

The judge will then ask you if you **admit or deny** each of the things that the government says about you.

A Sample Conversation with the Judge

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 can deny every one of the charges if you choose to, including this one.

If you deny this charge, the judge might ask if you are claiming to be a United States Citizen.

If you are or think you may be, then answer “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 can deny all of the charges, even if you know that you are a citizen of Mexico. That said, it is your decision if 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, 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 IMPORTANT to deny every charge 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 do not 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 do not think your actions make you deportable.**

Some immigration violations and criminal convictions 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, you cannot waive most drug-related crimes and you cannot be pardoned. 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 preserve all of your arguments for appeal if you lose your case in front of the judge.

What Happens at the Next Hearing?

Once you deny your charges, the judge will normally schedule another hearing for the government to prove their case. This is called the *prove-up hearing*.

Either before or at this next hearing, the government will submit evidence they think proves the charges against you. This evidence may be birth certifications, police reports, court records, or other documents.

If the government submits evidence at the hearing that you do not recognize, **you can ask the judge for more time to review the documents.** You have the right to review evidence against you before going on with your case.

The judge may give you a few minutes or may schedule your hearing for another day to give you time to review the documents.

After reviewing the documents, you can object to the government's evidence and you can argue 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.

But, 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, with most charges, the government must prove:

- What you did, and
- That you did so intentionally or purposefully.

So, at the prove-up hearing, your best arguments may well be that the government has not submitted proof of **WHAT YOU DID** or that you **DID IT INTENTIONALLY**. Again, the exact arguments that you can make depend on the charges. These two arguments might not work for you, but they are the most common concepts lawyers argue at the prove-up hearing.

At the end of the prove-up hearing, the judge will decide that either:

- You are not deportable,
- You are deportable and might be able to apply for relief, or
- You are deportable and cannot apply for relief.

What Should You Do if the Judge Asks You for Criminal Documents?

Although exceptions exist, it is generally **NOT** a good idea to give the judge any documents from your criminal record at the beginning of your case. The government lawyer will already do this. But 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, try to have a lawyer or the Florence Project review any criminal records that you want to give the judge. Often, these documents can harm your case. Sometimes the judge might even be wrong to ask you to bring bad documents to the court at the early stages of your case.

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.