

## Can An Immigrant Be Deported For A DUI?

When you live in the US you are expected to obey the laws. Failure to obey the laws has consequences from the criminal justice system. And if you're an immigrant, failure to obey the laws can also result in consequences regarding your immigration status. If an immigrant is caught drinking and driving, the immigration consequences will depend on the underlying crimes the immigrant is convicted of and whether it triggers criminal liability under immigration laws. A DUI conviction – even one where someone was seriously injured or killed – does not usually meet the criminal requirements for deportation. However, there may be other attendant circumstances that taken together with the DUI conviction could result in deportation.

## Crimes that May Trigger Deportation under Federal Immigration Laws

Immigration laws specify that immigrants can be deported for conviction of any crime involving 'moral turpitude' or that is an 'aggravated felony' as defined by immigration statutes.

- Crimes involving moral turpitude – [Moral turpitude crimes must involve 'both reprehensible conduct and a culpable mental state](#), such as specific intent, deliberateness, or recklessness'.
- Aggravated felonies - [More than 20 types of conduct are considered aggravated felonies](#). One aggravated felony that has been the subject of interpretation by the courts is a 'crime of violence'. Courts have determined that a crime of violence is one that has 'use of force' as a requirement for proving it. Crimes of violence can also include offenses where there is a 'substantial risk that force will be used'.

A DUI conviction is not generally considered a crime of moral turpitude. And driving while under the influence of alcohol is not listed as an aggravated felony. But in the case of a motor vehicle accident involving serious bodily injury where an immigrant was convicted of DUI, could that conviction be a crime of violence and thus an aggravated felony? The question was answered by the US Supreme Court in *Leocal vs. Ashcroft*.

## A DUI is Not a Crime of Violence

In [Leocal vs. Ashcroft](#), the US Supreme Court decided that DUI offenses are accidental and do not require a person to use or anticipate using force so they do not violate federal immigration laws.

Leocal was convicted of a DUI that caused serious bodily injury in an accident. Deportation proceedings were initiated under immigration laws categorizing the DUI as a 'crime of violence' and thus an aggravated felony. The Court determined that a crime of violence was one where the nature of the crime itself suggests that force toward a person or property will be used or will very likely be necessary in order to commit the crime. Although the consequences of a DUI can result in force being used against another person or property, the use of force is not contemplated in order to commit the crime. A DUI can be committed without the use of force. Therefore, it is not a violent crime for immigration purposes.

## How a DUI Can Affect Immigration Status

Under current immigration laws, getting a DUI should not result in deportation. But getting a DUI in combination with other illegal conduct just might. DUI convictions can be evidence of the quality of a person's character. And you still have to follow the rules even though immigration laws may have changed in your favor regarding an old DUI.

DUI that involves other criminal conduct – If a DUI includes driving while impaired by a controlled substance – such as marijuana – it results in a deportable crime. If a DUI includes the illegal possession of a firearm, it is a deportable crime. If a DUI includes driving on a suspended license, it is a deportable crime.

Good moral character – In 2019, US Citizen and Immigration Services (USCIS) adopted as policy the Attorney General's opinion in [Matter of Castillo-Perez](#). When an immigrant is applying for an immigration benefit that requires good moral character, having 2 or more DUIs creates a presumption that the person does not have good moral character. The presumption must be overcome by the immigrant showing evidence of good moral character or the immigration benefit will be denied.

Invalid removal does not justify illegal re-entry – For the immigrants deported for a DUI prior to Leocal vs. Ashcroft, it will not be a defense to illegal re-entry that your removal order is now invalid. The US Supreme Court recently decided in [United States vs. Palomar-Santiago](#) that an invalid removal order does not negate the need to go through the prescribed process to challenge the validity of the original deportation.

## Get Legal Advice if You Get a DUI

Getting a DUI as an immigrant can still seriously impact your immigration status. How the crime is charged and your prior criminal history can affect your eligibility to obtain future immigration benefits. Good legal advice and representation will be critical to effectively dealing with both state criminal laws and federal immigration laws. The resolution of your DUI can have significant consequences on your immigration status both currently and in the future.