

Defending Noncitizens Charged With RCW Reckless Endangerment (RE)¹

WARNING: Reckless Endangerment (RE) RCW 9A.36.050, risks being classed as a crime involving moral turpitude (CIMT), that can trigger CIMT inadmissibility or deportability grounds.

I. STEP ONE: IDENTIFY IMMIGRATION STATUS & DEFENSE GOALS

Status	Goals
<p>Undocumented Person (UP):</p> <ul style="list-style-type: none"> Entered without inspection and never had status. Came lawfully with temporary visa (e.g. student or tourist) that has since expired. Identify how long they have been in the U.S. and if they have LPR/USC family. Identify prior deportations & ICE contact. <p><i>Note:</i> Many UPs, especially if without prior deportations, have paths to lawful status.</p>	<ul style="list-style-type: none"> A UP in jail for even a day risks exposure to ICE, having (illegal²) communication with ICE occur, and ending up in ICE custody & removal proceedings. Preserve paths to legal status (relief). There are waivers of deportation for long-term resident UPs who meet certain conditions, including having a qualifying relative.³ Family relationships help identify “qualifying relatives” for relief.
<p>Lawful Permanent Residents (LPR or green card holders); Asylees and Refugees; COFA (Pacific Island Compact nation) residents: Identify how long person has had lawful status.</p>	<ul style="list-style-type: none"> An A4 conviction will not trigger deportation or inadmissibility by itself. For LPRs, preserve “good moral character” for naturalization (US citizenship). LPRs cannot apply for US citizenship while on probation.
<p>Visa Holders (e.g. business, student & tourist visas): If current, goals = LPRs & refugees. If expired, goals = UPs. <i>See above</i></p>	
<ul style="list-style-type: none"> DACA holders: Third misdemeanor is a bar, any GM + “DV” is probably a bar; TPS holder: Second misdemeanor is a bar. 	

¹ This advisory is meant to serve as a quick-reference guide for defenders with noncitizen clients. Defenders are advised to consult specifically with WDA’s Immigration Project on individual cases by completing an intake form online at: <http://www.defensenet.org/immigration-project/case-assistance>.

Immigration attorneys or representatives are encouraged to contact us for possible legal arguments to challenge a removal charge or other immigration consequence. There is as yet no published immigration case on RCW 9A.36.050. When in doubt, don’t concede! (For example of RE charged for act of civil disobedience, see: <https://amazonwatch.org/news/1999/1129-wto-opponents-unfurl-five-story> & https://www.salon.com/1999/11/30/protest_2/)

² See RCW 10.93.160

³ See our advisory on “10-year cancellation of removal,” the principal form of relief, but there can be others: <https://defensenet.org/resource-category/cancellation-of-removal-for-undocumented-persons/>

Criminal History is Critical – Obtaining a complete criminal history, including sentences, is essential to provide accurate advice.

II. STEP TWO: DEFENSE STRATEGIES

RCW RE strongly risks being deemed a “crime involving moral turpitude”(CIMT)⁴
❖ Do a straight plea (not <i>Alford</i> plea) that does not incorporate police reports, or the certification for determination of PC, nor stipulates to such as providing the factual basis (especially if those relate to a more serious, original charge); and
❖ Criminal history is critical , because knowing if this would be the <i>only</i> potential CIMT conviction, rather than potentially a second CIMT, is essential to understanding if it triggers the CIMT removal grounds. For an LPR, or person who entered legally, a <i>single</i> gross misd. CIMT can never trigger the one-CIMT ground of <i>deportability</i> ⁵
❖ Obtain a sentence of 180 days or less , regardless of time suspended. If this could be the only CIMT conviction this is <i>critical</i> to make it fit one-CIMT inadmissibility exception. LPRs who depart the US can become subject to this ground, even if not otherwise deportable.
❖ If any client’s lifetime, aggregate, total of all (non-concurrent) sentences, regardless of suspension, reaches 1825 days (5 years), it will trigger separate criminal inadmissibility.
❖ Following the rule that it is always better to plead to the least culpable conduct under a statute, plead only to the risk of “physical injury,” disjunctive prong (and not “risk of death”).
Safer alternative misdemeanors
❖ Safer (non-triggering) misdemeanor alternatives include: Reckless driving; Criminal Trespass; Obstructing; MalMisch 3; Assault 4.

⁴ *Leal v. Holder*, 771 F.3d 1140, 1149 (9th Cir. 2014) (AZ felony RE is CIMT; “holding rests largely on the grave resulting harm involved. . . a substantial, actual risk of imminent death to another person”) *See also* *Olivas-Motta v. Whitaker*, 910 F.3d 1271, 1275 (9th Cir. 2018), *cert. denied* (2020). *Compare to Lopez-Galicia v. Sessions*, 729 F. App’x 602 (9th Cir. 2018)(unpublished)(Oregon RE, ORS 163.195, is a CIMT & “requires the same culpable mental state, and **although the requisite harm may not be as severe as a substantial risk of imminent death**, the BIA reasonably determined that reckless conduct that creates a substantial risk of serious physical injury is similarly reprehensible.”) ORS 163.195 only requires risk of “serious physical injury,” like RCW 9A.36.050. *Lopez-Galicia* seems to contradict key distinction made by Court in *Leal*.

⁵ After 7/22/11 an RCW misdemeanor is not a crime “for which a sentence of one year may be imposed.”