

## Defending Noncitizens Charged with Disorderly Conduct (DC)<sup>1</sup>

**Disorderly Conduct (DC), RCW 9A.84.030, should not by itself trigger any conviction-based ground of inadmissibility or deportation, even with a DV designation.**

### STEP ONE: IDENTIFY IMMIGRATION STATUS & DEFENSE GOALS

Status	Goals
<p><b>Undocumented Person (UP):</b></p> <ul style="list-style-type: none"> <li>Entered without inspection and never had status.</li> <li>Came lawfully with temporary visa (e.g. student or tourist) that has since expired.</li> <li>Identify how long they have been in the U.S. and if they have LPR/USC family.</li> <li>Identify prior deportations &amp; ICE contact.</li> </ul> <p><i>Note:</i> Many UPs, especially if no prior deportations, have paths to lawful status.</p>	<ul style="list-style-type: none"> <li>A UP who goes to jail for even a day risks exposure to ICE, having (illegal<sup>2</sup>) communication with ICE occur, and ending up in ICE custody &amp; removal proceedings.</li> <li>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.<sup>3</sup> Family relationships help identify “qualifying relatives” for relief.</li> </ul>
<p><b>Lawful Permanent Residents (LPR or green card holders); Asylees and Refugees; COFA (Pacific Island Compact nation) residents:</b> Identify how long person has had lawful status.</p>	<ul style="list-style-type: none"> <li>A DC conviction will not trigger deportation or inadmissibility by itself.</li> <li>For LPRs, preserve “good moral character” for naturalization (US citizenship). LPRs cannot apply for US citizenship while on probation.</li> </ul>
<p><b>Visa Holders (e.g. business, student &amp; tourist visas):</b> If current, goals = LPRs &amp; refugees. If expired, goals = UPs. <i>See above</i></p>	
<ul style="list-style-type: none"> <li><b>DACA holders:</b> Third misdemeanor is a bar; Any misd. + “DV” probably a bar;</li> <li><b>TPS holder:</b> Second misdemeanor is a bar.</li> </ul>	

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

<sup>1</sup> **RCW 9A.84.030(1)(a-c):** DC is a simple misdemeanor. This advisory does not discuss RCW 9A.84.030 (d)(disrupting a funeral) (but we think it is an alternate means and not a separate crime.). This is meant to be a quick-reference guide for defenders with noncitizen clients. Defenders should consult specifically with WDA’s Immigration Project on individual cases.

<sup>2</sup> See RCW 10.93.160

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

## **STEP TWO: DEFENSE STRATEGIES FOR DISORDERLY CONDUCT CHARGES**

### **Immigration Consequences of RCW 9A.84.030 Disorderly Conduct (DC)**

**DC is not a crime involving moral turpitude (CIMT),**<sup>4</sup> nor by itself does it trigger other conviction-based grounds of removal or statutory bars to relief. It is not an aggravated felony, regardless of sentence.” Use, threat or attempted use of violent force is not element of DC so it cannot be statutory deportable “crime of DV.”

**Aggregate sentence inadmissibility:** If client’s lifetime total of all (non-concurrent) sentences, regardless of suspension, reaches 1825 days (5 years), it triggers criminal inadmissibility. This affects even LPRs who depart the US, & so become subject to inadmissibility grounds.

### **If the client has DACA or TPS:**

**Deferred Action for Childhood Arrivals (DACA):** An “offense of DV” is a “significant misdemeanor” and a bar to DACA.<sup>5</sup> A *misd. labeled “DV” risks barring eligibility. Non-DV DC will count as a “non-significant misdemeanor” for DACA.* 3 “non-significant” misds. bar eligibility. A 3rd non-significant misd. that bars DACA, or a “significant” DV misd., might be avoided by an SOC, or DS, even if not otherwise “immigration-safe.”

**Temporary Protected Status (TPS):** Any felony or 2nd misdemeanor in U.S. bars TPS.<sup>6</sup> If a 2nd misdemeanor, an *immigration-safe* diversion or SOC may be way to preserve eligibility.

### **If you must plead to Disorderly Conduct, as best practice:**

A plea statement setting forth elements of statute gives sufficient factual basis to make a plea knowing, voluntary and intelligent under WA law.<sup>7</sup> Optimum plea for immigration is always minimal, e.g.: “*I intentionally obstructed vehicular or pedestrian traffic without lawful authority.*” Elaborating additional specific facts to be avoided if possible. Do straight plea (not *Alford* plea) that does not incorporate or stip to police reports/CDPC as factual basis (especially if related to more serious original charge). Deferred sentences are permanent convictions for immigration purposes. Although DC is “safe” in most cases, an immigration-safe diversion or continuance order is normally preferable.<sup>8</sup>

### **“Safe” (non-triggering) misdemeanor alternatives, include:**

Criminal trespass, disorderly conduct, malicious mischief, obstructing, attempted A4.

<sup>4</sup> See *Matter of R*, 2 I&N Dec. 633 (BIA 1946); *Matter of E*, 2 I&N Dec. 134 (BIA, AG 1944) n.13; *Matter of FR*, 6 I&N Dec. 813 (BIA 1955) n.1,2; **DC has only been deemed a CIMT where statute penalized soliciting sex or had lewd intent element.** See e.g., *Matter of Alfonso-Bermudez*, 12 I&N Dec. 225 (BIA 1967) (soliciting charge).

<sup>5</sup> For eligibility for these programs see related advisories at Immigration Project Resources link at the WDA website.

<sup>6</sup> TPS grants work permit that can be renewed periodically. See <https://www.uscis.gov/humanitarian/temporary-protected-status> for list of who has TPS. If client has TPS get accurate criminal history and contact WDA’s Immigration Project .

<sup>7</sup> *In re Pers. Restraint of Thompson*, 141 Wash.2d 712, 720-721 (2000) (citing *In re Personal Rest. of Hews (Hews II)*, 108 Wash.2d 579, 589 (1987)). *State v. Codiga*, 162 Wash.2d 912, 923-924 (2008); *State v. Zhao*, 157 Wash.2d 188, 200 (2006); *In re Pers. Restraint Hews*, 108 Wash.2d at 590-591. *State v. Schaupp*, 111 Wash.2d 34 (1988). See also, RCW. 9.94A.450(2).

<sup>8</sup> See advisory at: <https://defensenet.org/resource-category/deferred-adjudication-agreements-e-g-socs-and-other-deferred-dispositions/>