



Washington Defender Association's  
**Immigration Project**  
 www.defensenet.org/immigration-project

**Ann Benson, Directing Attorney**  
 abenson@defensenet.org (360) 385-2538  
**Enoka Herat, Staff Attorney**  
 enoka@defensenet.org (206) 623-4321 x 105  
**Jonathan Moore, Immigration Specialist**  
 jonathan@defensenet.org (206) 623-4321 x. 104

## Defending Noncitizens Charged With Attempting to Elude – RCW 46.61.024<sup>1</sup>

**Attempting to Elude (A2E) is classified as a “Crime of Moral Turpitude” (CIMT) under immigration law. As such, it will trigger both the CIMT inadmissibility and deportation grounds.**

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

Status	Goals
<p><b>Undocumented Person (UP):</b></p> <ul style="list-style-type: none"> <li>Entered illegally and has never had status.</li> <li>Came lawfully with a temporary visa (e.g. student or tourist) that has since expired.</li> <li>Identify how long they have been in the U.S. and any U.S. citizen or LPR family members.</li> </ul> <p>Note: many UPs (except those w/prior deportations) have avenues for obtaining lawful status.</p>	<ul style="list-style-type: none"> <li>Avoid ICE apprehension by getting/staying out of jail. A UP who goes to jail for even one day risks exposure to ICE, getting a detainer imposed, and ending up in ICE custody &amp; removal proceedings.</li> <li>Preserve avenues to obtain lawful status. There are avenues for UPs who are married to US citizens or have been in the U.S. for over 10 years or who entered as children.</li> </ul>
<p><b>Lawful Permanent Residents (LPR or green card holders) &amp; Refugees:</b> Face permanent loss of their lawful status and deportation. Identify how long person has had lawful status.</p>	<ul style="list-style-type: none"> <li>Avoid a conviction that triggers deportation. Even when you do, advise clients not to leave the U.S. or apply for LPR status/citizenship without first consulting an immigration attorney.</li> <li>If this is not possible, preserve avenues for relief from deportation. There are waivers of deportation available to LPRs with 7 years of residency, and refugees/asylees who’ve not yet become LPRs.</li> </ul>
<p><b>Visa Holders (e.g. student &amp; tourist visas):</b> If current, goals = LPRs &amp; refugees. If expired, goals = UPs. See above</p>	
<p><b>Deportation Is Permanent</b> – Once removed, it is virtually impossible to legally obtain/regain lawful immigration status.</p>	
<p><b>Criminal History Critical</b> – Obtaining complete criminal history is essential to provide accurate advice.</p>	

### Immigration Consequences of Attempting to Elude (A2E) – RCW 46.61.024

<u>Crime Involving Moral Turpitude (CIMT)</u>	<u>Aggravated Felony (AF)</u>
<ul style="list-style-type: none"> <li><i>A2E convictions will be classified as CIMTs under current caselaw.<sup>2</sup></i></li> </ul>	<p><b>Aggravated Felony (AF):</b></p> <ul style="list-style-type: none"> <li><b>Crime of violence AF:</b> A2E, even with a 12 month sentence, should not be classified as an AF crime of violence because it lacks as an element the intentional use of force or violence.</li> <li><b>Obstruction of justice AF:</b> It should also not be an Obstruction of Justice AF because it lacks any element of interference with judicial proceedings.</li> </ul>

<sup>1</sup> This advisory is intended to serve as a quick-reference guide for defenders representing noncitizen defendants. Whenever possible, defenders are advised to consult specifically with WDA’s Immigration Project on individual cases.

<sup>2</sup> *Matter of Ruiz-Lopez*, 25 I&N Dec. 551 (BIA 2011).

## Immigration Consequences of Attempting to Elude (A2E) – RCW 46.61.024 cont'd

### CIMT INADMISSIBILITY GROUND

- **LPRs:** Obstacle to applying for citizenship and re-entering the U.S. after travel abroad.
- **UP:** Even a single felony CIMT can bar paths to lawful status.

### CIMT DEPORTATION GROUND

- **LPRs:** *One* CIMT conviction *will not trigger* the CIMT deportation ground for LPRs/Refugees, *unless* the felony offense was committed within 5 years of admission.
- **UPs:** Even a single felony CIMT can bar paths to lawful status.
- Any two CIMTs *will trigger* CIMT deportation grounds for all noncitizen clients.

## If you MUST plead to Attempting to Elude (A2E) – RCW 46.61.024

**Best plea language** (Do NOT do Alford plea): A plea statement setting forth the elements of the statute provides a sufficient factual basis to make the plea knowing, voluntary & intelligent under WA law.<sup>3</sup> Elaborating additional specific facts is not required and should be avoided.

- There is no way to avoid A2E being a CIMT. Therefore, it is *critical*, particularly if your client is undocumented, to plead to an alternative.
- **If you must plead to A2E, simply reiterate the language of the statute – do not add any additional facts.**

## Best Alternatives to Avoid Immigration Consequences

### **Reckless Driving:**

- Consult with WDAIP's *Reckless Driving Advisory* before pleading.

### **Malicious Mischief (MM) (any degree):<sup>4</sup>**

- MM conviction per "physical damage to the property of another" prong is not a CIMT.

### **Assault 3<sup>rd</sup> under the (d) or (f) negligence prongs:<sup>5</sup>**

- Because of negligence *mens rea*, cannot be classified as a CIMT or aggravated felony even with a 12 month+ sentence. *It is critical to NOT plead to an Assault 3rd degree against a police officer.*

### **Obstructing:**

- This will not trigger any grounds of deportation or inadmissibility. Ok to combine with any above convictions.

### **Attempted A2E (GM) with 180 day or less imposed sentence:**

- This is still a CIMT. However, where no CIMT priors, negotiating a 180 day sentence (regardless of suspended time) is key precaution to qualify for the CIMT inadmissibility exception.

### **Reckless Endangerment with 180 day or less imposed sentence:**

- This is a CIMT. However, where no CIMT priors, negotiating a 180 day sentence (regardless of suspended time) is key precaution to qualify for the CIMT inadmissibility exception.

### **Attempted Vehicular Assault per DUI prong (RCW 46.61.522(b)):**

- Contact WDAIP staff if considering pleading to this alternative.
- Note: this is NOT SAFE for UPs.
- For LPR clients: because this has a *mens rea* equivalent to a DUI, it should not be a CIMT. Avoid a plea to being under the influence of "a drug."

### **In re: Barr/Zhao pleas:**

- Barr/Zhao plea to an above alternative can be safe. Critical to consult WDAIP staff and *Barr/Zhao* advisory before pleading.

<sup>3</sup> *In re Personal Rest. of Hews (Hews II)*, 108 Wash.2d 579, 589 (Wash. 1987); *In re Pers. Restraint of Thompson*, 141 Wash.2d 712, 720-721 (Wash. 2000); *State v. Codiga*, 162 Wash.2d 912, 923-924 (Wash. 2008); *State v. Zhao*, 157 Wash.2d 188, 200 (Wash. 2006); *State v. Schaupp*, 111 Wash.2d 34 (Wash. 1988). See also, R.C.W. 9.94A.450(1).

<sup>4</sup> See WDAIP's *Malicious Mischief Advisory*.

<sup>5</sup> See WDAIP's *Felony Assault Advisory*.