



Washington Defender Association's  
Immigration Project  
[www.defensenet.org/immigration-project](http://www.defensenet.org/immigration-project)

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## Immigration Consequences of Negligent Driving 1<sup>st</sup> Degree in Washington<sup>1</sup>

### 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 never had status; or came lawfully with temporary visa (e.g. student or tourist) that has since expired.</li> <li>Identify how long 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 lawful status for, e.g., UPs who are married to U.S. citizens or have been in 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.</li> <li>If this is not possible, preserve path to relief from deportation. There are waivers 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>	

### STEP TWO: IMMIGRATION CONSEQUENCES AND DEFENSE STRATEGIES

Immigration Consequences of RCW 46.61.5249 Negligent Driving 1st	
<p><b><u>Crime Involving Moral Turpitude (CIMT):</u></b></p> <p>Negligent Driving is not a crime involving moral turpitude (CIMT) and does not trigger the CIMT ground of inadmissibility or the CIMT ground of deportation.</p>	<p><b><u>Aggravated Felony (AF) crime of violence:</u></b></p> <p>Negligent driving is not an AF, regardless of sentence.</p>
<p><b><u>Crime relating to a controlled substance:</u></b></p> <ul style="list-style-type: none"> <li>❖ Conviction of a law “relating to a controlled substance” (CS) triggers deportation &amp; inadmissibility. A CS crime makes both LPRs &amp; UPs removable and inadmissible.</li> <li>❖ Marijuana <u>is</u> a Controlled Substance.</li> <li>❖ ND1 for exhibiting the effects of a “drug” that is <i>not</i> a scheduled CS will not trigger the ground.<sup>2</sup></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. As an infraction, RCW 46.61.525 Negligent Driving 2<sup>nd</sup> Degree is not a conviction for immigration purposes.

## DACA & TPS Bars:

- ❖ ND 1st conviction may prevent approval of DACA (Deferred Action for Childhood Arrivals)<sup>3</sup> It is not clear whether ND 1 is being treated as a barring “significant misdemeanor” or not. In addition, a 3rd “non-significant misdemeanor is a bar to DACA.
- ❖ Any second misdemeanor in the U.S. is a bar to Temporary Protected Status (TPS).<sup>4</sup>

## **If you plead to ND 1st**

Note that 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>5</sup> Elaborating additional specific facts is not required and should be avoided. DO NOT DO *ALFORD* PLEAS FOR NON-CITIZENS.

- ❖ **Alcohol related:** This is safe *unless* your client is a DACA applicant.
- ❖ **Drug-related:** If possible, plead to alcohol ND. Otherwise, pleading to “exhibits effects” of an over-the counter or *non-CS* prescribed drug is safest; or state “any drug.”
- ❖ Avoid pleading to marijuana or a CS, or “inhaled or ingested any chemical . . . for its intoxicating or hallucinatory effects.”

**Warning!** advise *all* noncitizen clients (undocumented and LPRs, etc.) not to leave the U.S. or apply for LPR status or US citizenship without first consulting an immigration attorney.

## **Best Alternatives to Avoid Immigration Consequences**

*Viability of any alternative depends upon defendant’s specific immigration status & criminal history.*

- ❖ **Negligent Driving 2** infraction is not a conviction for immigration purposes; & no “exhibits effect” element.
- ❖ **No-valid operator’s license (NVOL) & Driving with license suspended (DWLS)** are safe, as are Failure to obey, Obstructing, and Malicious Mischief 3.
- ❖ Reckless Driving may be safer for UPs & non-LPR: we recommend pleading to “disregard of property” only; and seeking a sentence of 180 days or less regardless of suspension.<sup>6</sup>

<sup>2</sup> See RCW 46.61.540: The word “drugs,” as used in RCW 46.61.500 through 46.61.535, shall **include but not be limited to** those drugs and substances regulated by chapters 69.41 and 69.50 RCW and any chemical inhaled or ingested for its intoxicating or hallucinatory effects.

<sup>3</sup> A DUI is a *per se* “significant misdemeanor” for **DACA**. Anecdotal evidence as of 2/2014 is that ND 1 convictions have been used as a basis for some DACA denials, but it is not clear if these are denied for a “significant misdemeanor” or by discretion.

<sup>4</sup> TPS holders include certain groups of Sudanese, Somalis, Salvadorans, Haitians, Hondurans, Nicaraguans, and Syrians.

<http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status#Countries> Currently Designated for TPS . If client has TPS please get as accurate a criminal history as possible and contact the WDAIP.

<sup>5</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(1).

<sup>6</sup> See the WDAIP *Reckless Driving Advisory*, and *Negotiating 180-day Sentences for Gross Misdemeanors Advisory*.