



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

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## Defending Noncitizens Charged With Washington RCW 46.20.005 – No Valid Operator’s License (NVOL)<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.</li> <li>• Came lawfully with a temporary visa (e.g. student or tourist) but overstayed.</li> <li>• Identify how long they have been in the U.S., criminal history and if they have LPR/USC family.</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 removal proceedings by getting or staying out of jail. A UP in jail for even one day risks going to ICE custody and removal proceedings.</li> <li>• Preserve avenues to lawful status. There are waivers of deportation for some UPs who have been in the U.S. for over 10 years, who entered under 16, or survived DV.</li> </ul>
<p><b>Lawful Permanent Residents (LPR or green card holders) &amp; Refugees:</b> Identify how long person has had lawful status.</p>	<ul style="list-style-type: none"> <li>• A NVOL conviction will not trigger deportation or inadmissibility for LPRs and Refugees. LPRs can't apply for citizenship while on probation.</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> –It is virtually impossible to legally obtain/regain lawful immigration status afterwards.</p>	
<p><b>Criminal History Critical</b> – Obtaining complete criminal history is essential to provide accurate advice.</p>	

### STEP TWO: DEFENSE STRATEGIES FOR NVOL CHARGES

A NVOL misdemeanor will not trigger any ground of deportation or inadmissibility. Any conviction is a negative discretionary factor on applications for an immigration benefit (e.g. citizenship, LPR status). Advise clients to comply with all conditions imposed to ameliorate impact on future applications, and to consult competent immigration counsel prior to submitting an application. A NVOL *infraction* is not a conviction for immigration purposes.<sup>2</sup>

**Warning!** These paths to lawful status for undocumented clients can be barred due to misdemeanor convictions.

- **Deferred Action for Childhood Arrivals (DACA):** An undocumented person born on/after 6/15/81, who entered the US before age 16 and before 6/15/ 07, may be eligible for DACA. If granted it gives temporary status for 2 years, and allows a work permit. *Any* felony or 3 misdemeanor convictions bar DACA. According to DHS a “minor traffic offense will not be considered a misdemeanor” for DACA. **Therefore NVOL should not count as a DACA misdemeanor.** But, the “entire offense history can be considered” in deciding a DACA application.<sup>3</sup>
- **Temporary Protected Status (TPS):** TPS can be granted to some groups of citizens of specific countries designated by the DHS as being unsafe for return due to civil strife or natural disasters. If granted, TPS permits otherwise undocumented persons to remain lawfully in the U.S. and obtain a work permit. TPS status will be denied or revoked if a noncitizen has been convicted of *any* felony or two misdemeanors. NVOL will count as a misdemeanor for TPS,<sup>4</sup>

<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> RCW 46.20.015; see *Matter of Eslamizar*, 23 I&N Dec. 684(BIA 2004)

<sup>3</sup> <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions#criminal-convictions>

<sup>4</sup> 8 CFR 244.1

so getting an NVOL infraction instead of a misdemeanor could be critical.