



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 RCW 46.61.020 Refusal to Give Information or Cooperate (RGIC)

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

Status	Goals
<b>Undocumented Person (UP):</b> <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 in the U.S. and any U.S. citizen or LPR family members. Note: many UPs (if no /prior deportations) have avenues for obtaining lawful status.</li> </ul>	<ul style="list-style-type: none"> <li>Avoid ICE apprehension by getting and 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>
<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.	<ul style="list-style-type: none"> <li>Avoid a conviction that triggers deportation.</li> <li>If this is not possible, preserve path to <i>relief</i> from deportation. There are waivers for some crimes available to LPRs with 7 years of residency, and to refugees/asylees who've not yet become LPRs.</li> </ul>
<b>DACA (Deferred Action for Childhood Arrivals,</b> a 2012 program grants work permits and temporary status to certain UPs who arrived under age 16 and before 6-15-2007. <sup>1</sup>	<ul style="list-style-type: none"> <li>Avoid a "significant misdemeanor" or a third "non-significant" misdemeanor (for DACA).</li> </ul>
<b>TPS (Temporary Protected Status)</b> <sup>2</sup>	<ul style="list-style-type: none"> <li>Avoid any second misdemeanor (for TPS).</li> </ul>
<b>Visa Holders (e.g. student &amp; tourist visas):</b> If current, goals = LPRs & refugees. If expired, goals = UPs. See above.	
<b>Deportation Is Permanent</b> – Once removed, it is virtually impossible to legally obtain/regain lawful immigration status.	
<b>Criminal History Critical</b> – Obtaining complete criminal history is essential to provide accurate advice.	

### STEP TWO: DEFENSE STRATEGIES

#### Immigration Consequences of Refusal to Give Information or Cooperate (RGIC)

Refusal to Give Information or Cooperate is **not a crime involving moral turpitude (CMT), not an aggravated felony** (regardless of sentence), **and does not trigger any other statutory, conviction-based ground of removal (deportation) or of inadmissibility.** It will count as a last misdemeanor for DACA or TPS.

<sup>1</sup> See WDAIP's advisory on DACA at the WDA website <http://www.defensenet.org/immigration-project/immigration-resources>

<sup>2</sup> TPS grants temporary work authorization. TPS holders currently include certain groups of Sudanese, Somalis, Salvadorans, Haitians, Hondurans, Nicaraguans, and Syrians. If client has TPS please get as accurate a criminal history as possible and contact the WDAIP.

### **Deferred Action for Childhood Arrivals (DACA):**

RGIC should **not** be a “significant misdemeanor” that, by itself, bars DACA. **DACA is barred by three “non-significant misdemeanors,”** and RGIC could count as one of the three. DACA is a program created in 2012 which grants work authorization and temporary status to certain UPs who arrived under age 16 and before 6-15-2007.<sup>3</sup>

### **Temporary Protected Status (TPS):**

*Any second misdemeanor* in the U.S. is a bar to TPS.

### **If you must plead to Refusal to Give Information or Cooperate (RGIC)**

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>4</sup> Elaborating additional specific facts is not required and should be avoided. **DO NOT DO AN ALFORD PLEA.** Specifically avoid pleading to RGIC by giving a false name or address, or to a factual basis that stipulates to dishonest, dangerous, threatening, violent or other conduct surplus to the minimum conduct required for conviction.<sup>5</sup>

- ❖ Deferred sentences are **permanent convictions** for all regular immigration purposes; but might not count for DACA *once a dismissal is obtained*.<sup>6</sup>

**Warning!** Advise *all* noncitizen clients (undocumented and LPRs, etc.) not to leave the U.S. or apply for LPR status/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.*

**For DACA applicants:** If it will be a third “non-significant misdemeanor” then NVOL or some kind of diversion<sup>7</sup> are the only alternatives (NVOL qualifies as a “minor traffic offense” for DACA purposes, and does not count as one of the three “non-significant misdemeanors.”<sup>8</sup>)

**For other UPs and LPRs:** all convictions are negative discretionary factors in applications for immigration benefits, including an application for naturalization (US citizenship) by an LPR.

<sup>3</sup> See WDAIP’s advisory on DACA at the WDA website <http://www.defensenet.org/immigration-project/immigration-resources>

<sup>4</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>5</sup> The reason for such extra precaution is that methodology for determining what is a “crime involving moral turpitude” is not settled outside of the Ninth Circuit.

<sup>6</sup> See Citizenship and Immigration Service (USCIS) FAQs at <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions> §V. Q64 “Expunged convictions and juvenile convictions will not automatically disqualify you.”

<sup>7</sup> See n.7, *supra*.

<sup>8</sup> See USCIS FAQs (cited in n. 7) at §V. Q61