



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 9A.84.030(1)(a-c): Disorderly Conduct<sup>1</sup>

### 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 or staying out of jail. A UP who goes to jail for even one day risks exposure to ICE, with or without a detainer, 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 relief from deportation. There are waivers for some crimes available to LPRs with 7 years of residency, and refugees/asylees who've not yet become LPRs.</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 Is Critical</b> – Obtaining complete criminal history is essential to provide accurate advice.	

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

Immigration Consequences of RCW 9A.84.030 Disorderly Conduct
<b><u>Crime Involving Moral Turpitude (CIMT) or Aggravated Felony (AF):</u></b>
<p>Washington Disorderly Conduct is <b>not a crime involving moral turpitude (CIMT)</b> and <b>does not</b> trigger the CIMT grounds of inadmissibility or of deportation,<sup>2</sup> <b>nor is it ever an Aggravated Felony</b>, regardless of sentence.</p>

<sup>1</sup> Disorderly Conduct is a simple misdemeanor. This advisory does not discuss Disorderly Conduct under RCW 9A.84.030(d). This is intended to be a quick-reference guide for defenders representing noncitizens. Defenders are advised to consult specifically with WDA's Immigration Project on individual cases.

<sup>2</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; c.f. *Matter of G*, 7 I&N Dec. 520 (BIA 1957). **The only cases where disorderly conduct has been considered a CIMT are where the statute penalizes soliciting sex acts or has lewd intent as an element.** See *Rohit v. Holder*, 670 F.3d 1085 (9th Cir.2012), (patronizing prostitute is a CIMT), and, e.g., *Hudson v. Esperdy*, 290 F.2d 879 (2d Cir.), cert. denied, 368 U.S. 918 (1961) (loitering for lewd purposes); *Matter of Alfonso-Bermudez*, 12 I&N Dec. 225 (BIA 1967) (soliciting charge).

### **Crime of Domestic Violence Deportation Ground – (Disorderly Conduct with a DV Designation):**

- ❖ RCW Disorderly Conduct is **not a deportable Crime of Domestic Violence**, even if labeled DV. The use, threat or attempted use of force is not an element of Disorderly Conduct so it cannot be a statutory “crime of DV.”
- ❖ **If Disorderly Conduct is labeled as “DV”** it may be a bar to deferred action (DAPA and DACA) (See below).

### **Deferred Action for Childhood Arrivals (DACA), or Deferred Action for Parents (DAPA) of US citizen (USC) children:**

- ❖ **Disorderly Conduct - DV: An “offense of domestic violence” (one designated as DV)** is classed as a “significant misdemeanor” and is a *per se* bar to **DACA**, or **DAPA**.<sup>3</sup> DACA & DAPA programs grant work permits and temporary status to some UPs who arrived under age 16, or who are parents of USC children and who arrived before a certain date. These non-statutory terms are interpreted broadly and the programs are completely discretionary. *Any misdemeanor labeled DV risks barring eligibility.*
- ❖ **Non-DV Disorderly Conduct** will count as **one “non-significant misdemeanor” for DACA & DAPA**. Three non-significant misdemeanors bar eligibility. Accurate criminal history will be critical.

**Temporary Protected Status (TPS):** *Any felony or second misdemeanor* in the U.S. bars eligibility for TPS.<sup>4</sup>

### **If you MUST plead to Disorderly Conduct**

A plea statement setting forth the elements of the statute gives a sufficient factual basis to make a plea knowing, voluntary and intelligent under WA law.<sup>5</sup> The optimum plea for immigration purposes is always minimal, e.g.: *“I intentionally obstructed vehicular or pedestrian traffic without lawful authority.”*

Elaborating additional specific facts is not required and should be avoided whenever possible. *ALFORD* pleas are inadvisable for non-citizens because making a police report the factual basis for a plea can create additional complications.

- ❖ Deferred sentences are permanent convictions for immigration purposes. Although Disorderly Conduct is a safe offense in most scenarios, an immigration-safe diversion or continuance order will always be preferable.<sup>6</sup>
- ❖ A third, non-significant misdemeanor that otherwise bars DACA or DAPA, or an otherwise significant DV misdemeanor, could be avoided by a successful diversion, even if not “immigration-safe” under the immigration statute and case-law.

**Warning:** Advise *all* noncitizen clients (undocumented and LPRs alike) 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.*

#### **For DACA and DAPA applicants:**

Removing DV label and or seeking a stipulated order of continuance or other deferred adjudication may preserve eligibility.

#### **For applicants for or persons with TPS:**

If it would be a second misdemeanor, an *immigration-safe* diversion or SOC may be the only way to preserve eligibility.

**For other UPs, refugees, work/student visa-holders and LPRs:** all convictions are negative discretionary factors in applications for immigration benefits, including citizenship. Disorderly conduct is otherwise safe in that it is not a trigger for any statutory criminal removal ground.

<sup>3</sup> For eligibility for these programs see related advisories at Immigration Project Resources link at the WDA website.

<sup>4</sup> TPS grants work authorization that is renewed periodically. TPS holders currently include certain groups of Guineans, Liberians, Sudanese, South Sudanese, Sierra Leoneans, Somalis, Salvadorans, Haitians, Hondurans, Nicaraguans, and Syrians. If a client has TPS please get an accurate criminal history and contact WDA’s Immigration Project.

<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 advisory on deferred adjudications and immigration-safe samples -at: <http://www.defensenet.org/immigration-project>.