

## DEFENDING NONCITIZENS CHARGED WITH WASHINGTON HIT AND RUN OFFENSES, RCW 46.52.010 AND .020<sup>1</sup>

This advisory is intended to serve as a quick-reference guide for defenders representing noncitizens and is not a substitute for individualized analysis. [Consult with the WDA Immigration Project](#) for case-specific assistance.

### STEP ONE: IDENTIFY IMMIGRATION STATUS & DEFENSE GOALS<sup>2</sup>

STATUS	GOALS
<b>WARNING:</b> people who are undocumented, or lawfully present but deportable, should seek to <b>avoid DOC custody</b> . <sup>3</sup>	
<b>Undocumented Person (UP)</b> <ul style="list-style-type: none"> <li>Entered without inspection/never had status;</li> <li>Had visa (e.g., student, tourist), now expired; or</li> <li>Applied for status (e.g., asylum); application still pending.</li> </ul>	<ul style="list-style-type: none"> <li>Avoid inadmissibility (to preserve LPR eligibility).</li> <li>Avoid deportability; avoid bars to “good moral character” (GMC) (for “10-year cancellation” eligibility).</li> <li>Asylum seekers must <i>also</i> avoid a “particularly serious crime” (PSC) (for asylum eligibility).</li> </ul>
<b>Lawful Permanent Resident (LPR/green card holder)</b>	<ul style="list-style-type: none"> <li>Avoid deportability (especially for “aggravated felony”).</li> <li>Avoid inadmissibility (to allow travel outside U.S.).</li> <li>Avoid bars to GMC (for U.S. citizenship/naturalization).</li> </ul>
<b>Asylee or Refugee</b> (status already granted)	<ul style="list-style-type: none"> <li>Avoid a “particularly serious crime” (to maintain status).</li> <li>Avoid inadmissibility (to preserve LPR eligibility).</li> </ul>
<b>COFA</b> (present under a Compact of Free Association from the Marshall Islands, Micronesia, or Palau)	<ul style="list-style-type: none"> <li>Avoid deportability; avoid inadmissibility (to enable reentry to U.S., and to preserve LPR eligibility).</li> </ul>
<b>Current Visa Holder</b> (e.g., business, student, temporary employment, tourist) or <b>Visa Waiver Entrant</b>	<ul style="list-style-type: none"> <li>Avoid deportability; avoid inadmissibility (to preserve LPR eligibility); avoid DUIs (to maintain visa).</li> </ul>
<b>DACA:</b> avoid bars to DACA (one felony, one “significant misdemeanor,” or any three misdemeanors); avoid inadmissibility (to preserve LPR eligibility). <b>Temporary Protected Status (TPS):</b> avoid TPS bars (one felony or two misd.); avoid inadmissibility (preserve LPR elig). <b>Noncitizen U.S. Nationals</b> (e.g., American Samoans) not deportable; avoid bars to GMC (preserve elig for citizenship).	

<sup>1</sup> Immigration consequences of crimes vary based on a person’s immigration status, time in that status, dates of entry, conviction and sentencing history, family ties, and other factors. This advisory cannot replace individualized advice. Defenders are urged to submit an intake to WDA’s Immigration Project at: <https://defensenet.org/case-support/wda-immigration-project/wdaip-case-assistance/>. Immigration practitioners may contact us for legal arguments to assist in their cases. **Warning:** Advise all noncitizen clients with a criminal history not to leave the U.S. or apply for LPR status/green card renewal/citizenship/ etc., without first consulting an immigration attorney: <https://defensenet.org/case-support/immigration-attorney-referrals/>.

<sup>2</sup> For information and resources on the various forms of immigration status and relief from deportation available to noncitizens, please visit <https://defensenet.org/resource-category/common-paths-to-lawful-status-and-defenses-against-removal/>.

<sup>3</sup> Keep Washington Working (RCW 10.93.160) prohibits law enforcement agencies, including jails, from sharing information about noncitizens with immigration authorities. There is an exception for those in the *physical* custody of the Department of Corrections (DOC), so noncitizens in DOC custody should expect ICE to be alerted to their location, release date, etc. For undocumented people, avoiding jail altogether will avoid the risk of illegal communication between jail officials and ICE.

## STEP TWO: IDENTIFY IMMIGRATION CONSEQUENCES

### IMMIGRATION CONSEQUENCES OF HIT AND RUN UNATTENDED, RCW 46.52.010

A conviction for Hit and Run Unattended is not a “crime involving moral turpitude” (CIMT). It should not trigger deportability or inadmissibility, or bar lawful status. For safer alternatives and pleading tips, see below.

### IMMIGRATION CONSEQUENCES OF HIT AND RUN ATTENDED (HRA), RCW 46.52.020

**Gross Misdemeanor:** only property damage to vehicle; striking the body of a deceased person.

**Class C Felony:** accident results in injury to any person.

**Class B Felony:** accident results in death.

#### “Crime involving moral turpitude” (CIMT) analysis

- Failure to give identifying info after HRA not a CIMT, regardless of property damage, injury, or death.<sup>4</sup>
- The duties in (3) are means of committing offense, not elements; offense is overbroad and should not be a CIMT regardless of the duty violated, but since there is no case on point, see best plea language below.

#### “Aggravated felony” (AF) analysis

- Crime of violence AF: HRA, even with a sentence of a year or more, should not be an aggravated felony crime of violence because it lacks as an element the use, attempted use, or threatened use of force.
- Obstruction of justice AF: HRA should not be an OOJ AF because it lacks as an element the intent to interfere with the legal process.<sup>5</sup> Safest route is still to avoid a sentence of one year or more.

## STEP THREE: IDENTIFY DEFENSE STRATEGIES

### BEST ALTERNATIVES TO AVOID OR MITIGATE IMMIGRATION CONSEQUENCES

- **Malicious Mischief (any degree).** MM is not a CIMT or an aggravated felony.
- **Assault 3 under negligence prong (d) or (f).** With negligence *mens rea* should not be a CIMT or AF.
- **Disorderly Conduct.**
- **Hit and Run Unattended or Gross Misdemeanor Hit and Run Attended.** (See above.)

**Note:** all convictions are negative discretionary factors in an application for immigration benefits. For that reason, an immigration-safe deferred adjudication will be a better outcome if successfully completed.<sup>6</sup>

### IF YOU *MUST* PLEAD TO HIT AND RUN

**Plead to the minimum conduct.** A plea statement that sets forth the statutory elements provides sufficient factual basis to be knowing, voluntary, and intelligent under WA law.<sup>7</sup> Avoid elaborating additional facts.

**Do not stipulate to the police report, CDPC, or other charging documents** as part of the plea, especially if they contain allegations of gang involvement or drug activity. (This means avoiding *Alford* pleas.)

*Sample plea language for Hit and Run Unattended:* “I failed to stop immediately and leave in a conspicuous place in the vehicle struck a written notice giving my name and address.”

*Sample plea language for Hit and Run Attended:*

- *Either:* “I failed to give my [name], [or address], [or insurance company], [or insurance policy number, or vehicle license number], [or exhibit my driver’s license] to any person attending any vehicle collided with.”
- *Or:* “I failed to satisfy my obligation to fulfill all of the following duties” (and do not specify which duty).

<sup>4</sup> See *Cerezo v. Mukasey*, 512 F.3d 1163 (9th Cir. 2008); *Latu v. Mukasey*, 547 F.3d 1070 (9th Cir. 2008); but see *Conejo-Bravo v. Sessions*, 875 F.3d 890, 893 (9th Cir. 2017) (if fleeing were considered a separate crime, would likely be CIMT).

<sup>5</sup> See *Pugin v. Garland*, 599 U.S. 600, 607 n.2 (2023).

<sup>6</sup> See WDAIP, *Negotiating Immigration-Safe Deferred Adjudication Agreements*, <https://defensenet.org/resources/negotiating-immigration-safe-deferred-adjudication-agreements-e-g-socs/>.

<sup>7</sup> See WDAIP, *Just Say No! To “Real Facts,”* <https://defensenet.org/resources/just-say-no-to-real-facts/>.