

DEFENDING NONCITIZENS CHARGED WITH NO VALID OPERATOR’S LICENSE¹

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 GOALS²

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

¹ 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.

² 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/>.

³ Keep Washington Working (RCW 10.93.160) prohibits law enforcement agencies, including jails, from sharing nonpublic information about noncitizens with immigration authorities (e.g., ICE). A carveout for those in the *physical* custody of the Department of Corrections (DOC) allows for information sharing, so noncitizens in DOC custody should expect that ICE will be alerted to their presence in DOC, and to other sensitive details (e.g., their date of release). Despite KWW, undocumented people should avoid jail time altogether, if possible, to avoid the risk of illegal communication between jail officials and ICE.

STEP TWO: IDENTIFY IMMIGRATION CONSEQUENCES

IMMIGRATION CONSEQUENCES OF NVOL

An NVOL misdemeanor will not trigger any ground of deportability or inadmissibility. However, any conviction is a negative discretionary factor in an application for an immigration benefit (e.g., citizenship, LPR status). To mitigate this impact, clients should comply with all conditions imposed by the court. Advise clients to consult competent immigration counsel before submitting any application to federal immigration authorities.

- **DACA:** According to the Department of Homeland Security, a “minor traffic offense will not be considered a misdemeanor” for purposes of the three-misdemeanor bar to DACA. However, an applicant’s “entire offense history can be considered” in deciding a DACA application.⁴
- **TPS:** NVOL *will* count as a misdemeanor for purposes of the two-misdemeanor bar to TPS, and may lead to TPS being denied or revoked if it is your client’s second misdemeanor conviction.

STEP THREE: IDENTIFY DEFENSE STRATEGIES

BEST ALTERNATIVES TO AVOID OR MITIGATE IMMIGRATION CONSEQUENCES

An NVOL *infraction*⁵ is not considered a conviction for immigration purposes, so it is a safe alternative for any noncitizen, especially individuals with (or seeking) TPS.⁶

OBTAINING A DRIVER’S LICENSE AS CONDITION OF DISMISSAL

Prosecutors will sometimes offer to dismiss a NVOL charge if a defendant presents proof that they have obtained a driver’s license. Your client may wish to seek a license for this reason, or one (or more) of the many other reasons that a license can be useful.

However, clients should be made aware that if they submit their personal, biographic information to the Washington State Department of Licensing (DOL), there is some risk that their information may be shared with federal immigration authorities.⁷

An individual charged with NVOL and offered this type of dismissal deal should undertake their own risk-benefit analysis regarding whether to seek a driver’s license, understanding both the potential consequences of a NVOL conviction, and the risk of information sharing between DOL and immigration authorities.

⁴ USCIS, *DACA Frequently Asked Questions*, Q. 71, https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions#criminal_convictions (last visited March 6, 2026).

⁵ RCW 46.20.015.

⁶ See *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004).

⁷ See University of Washington Center for Human Rights, *Roadside Assist: Washington State’s Continued Sharing of Drivers’ Information with Federal Immigration Enforcement*, <https://jsis.washington.edu/humanrights/2026/01/08/roadside-assist-washington-states-continued-sharing-of-drivers-information-with-federal-immigration-enforcement/>.