



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

**Ann Benson, Directing Attorney**  
abenson@defensenet.org (360) 385-2538  
**Enoka Herat, Staff Attorney**  
enoka@defensenet.org (206) 623-4321 x 105  
**Jonathan Moore, Immigration Specialist**  
jonathan@defensenet.org (206) 623-4321 x.104

## Defending Noncitizens Charged With Washington Criminal Trespass (CT) - RCW § 9a.52.070-080<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) that has since expired.</li> <li>Identify how long they have been in the U.S., their criminal history and whether 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 ICE apprehension by getting/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 obtain lawful status. There are waivers of deportation for UPs who have been in the U.S. for over 10 years or who entered as children.</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 CT offense will not trigger deportation or inadmissibility for LPRs and Refugees. But a LPR 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> – Once removed, it is virtually impossible to legally obtain/regain lawful immigration status.</p>	
<p><b>Criminal History Critical</b> – Obtaining complete criminal history is essential to provide accurate advice.</p>	

### STEP TWO: DEFENSE STRATEGIES FOR CT CHARGES

A CT conviction should not trigger any grounds of deportation or inadmissibility for your noncitizen clients. However, any conviction is a negative discretionary factor on an application for immigration benefits (e.g. citizenship, LPR status). As such, counsel should advise their client to comply with all conditions imposed to ameliorate this negative impact on future applications for immigration benefits and to consult with competent immigration counsel prior to submitting any such applications.

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

- **Deferred Action for Childhood Arrivals (DACA)<sup>2</sup>:** If your client is undocumented and was born on/after June 15, 1981, entered the U.S. before their 16th birthday, and has lived in the U.S. since at least June 15, 2007, they may be eligible for DACA. If granted, DACA provides temporary status for 2 years, and allows the person to apply for a work permit. However, *any* felony or *any* three misdemeanor convictions bar this path to status.
- **Temporary Protected Status (TPS):** TPS can be granted to citizens of specific countries designated by the president 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 *any* two misdemeanors.

<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> See WDAIP advisory on DACA at: [http://www.defensenet.org/immigration-project/immigration-resources/WDAIP%20Dreamer%20Deferred%20Action%20Advisory%2009-13-2012\\_final.pdf](http://www.defensenet.org/immigration-project/immigration-resources/WDAIP%20Dreamer%20Deferred%20Action%20Advisory%2009-13-2012_final.pdf).

Therefore, if your client has prior misdemeanor convictions, even CT could render them ineligible for these paths to status.