

DEFENDING NONCITIZENS CHARGED WITH HARASSMENT UNDER RCW 9A.46.020¹

This advisory is meant as a quick reference guide for defenders representing noncitizens. It is not a substitute for case-specific analysis. For case-specific analysis, please [consult with the WDA Immigration Project](#) or a qualified immigration attorney.¹

MISDEMEANOR HARASSMENT

Non-DV Misdemeanor Harassment should not trigger any criminal removal grounds. As an extra precaution, seek a sentence imposed (including suspended time) of 180 days or less.²

DV-Misdemeanor Harassment will likely³:

- Be charged by the Dep't of Homeland Security (DHS) as a deportable “crime of domestic violence.”
- Be found to bar eligibility for “10-year cancellation of removal,” the most common form of relief for undocumented people in removal proceedings.⁴

Alternative pleas, DV tag okay:

- Criminal Trespass
- Obstructing
- Malicious Mischief
- Assault 4
- Disorderly Conduct

Seek an immigration-safe **Stipulated Order of Continuance**/deferred adjudication agreement:

- Must be a pre-plea agreement that does not contain an admission of guilt or of facts sufficient to warrant a finding of guilt.⁵

FELONY HARASSMENT

Felony Harassment (either DV or non-DV):

- With **any sentence** (even if less than one year), may be charged as a “crime involving moral turpitude” (CMT) if under (b)(ii) (threats to kill) or (b)(iii) and (iv) (threats against criminal justice participant). A recidivist felony under (b)(i) is the safest felony option.
- With **sentence imposed of one year or more** (regardless of time suspended) will be an “aggravated felony” “crime of violence.”⁶ This is true regardless of the subsection.

¹ This advisory is for those currently facing harassment charges. If you have a client with a **prior harassment conviction**, please reach out to us for an analysis of the effect of that prior conviction in light of the December 2023 Ninth Circuit decision finding Washington harassment to be a categorical “crime of violence.” See *Rodriguez-Hernandez v. Garland*, 89 F.4d 742 (9th Cir. 2023).

² A sentence of 180 days or less will ensure the offense falls within the “petty offense” exception to inadmissibility for a “crime involving moral turpitude” (CMT) if it is the person’s only CMT. 8 USC § 1182(a)(2)(A)(ii)(II).

³ There are legal arguments that the WA definition of DV is overbroad as compared to the definition in the Immigration Act because it includes property crimes. Please contact us if you have a client who is in removal proceedings based on a WA harassment conviction.

⁴ 8 USC § 1229b(b).

⁵ See [Practice Advisory on Deferred Adjudications](#).

⁶ 8 USC § 101(a)(43)(F).

DV-Felony Harassment:

- In addition to the other consequences for Felony Harassment listed above, DHS will likely charge it as a deportable “crime of domestic violence,”⁷ (even with a sentence of **less than one year**).

Alternative pleas:⁸

- **Assault 3** under a negligence prong ((d) or (f)); DV tag okay.
- **Malicious Mischief**, any degree, any sentence; DV tag okay.
- **Burglary 2** (should not trigger any removal grounds⁹); DV tag okay.
- **Assault 2** (not a “crime of violence” so not an “aggravated felony” regardless of sentence and not a “crime of domestic violence” even with DV tag; *however*, Assault 2 likely will be charged as a CIME. Thus, while Assault 2 avoids an “aggravated felony” or a removable “crime of DV” conviction, it may not avoid removability.¹⁰)

WARNING

If a **DV no-contact order (DV-VNCO)** is in place, warn your client that *any* violation of a domestic violence protection order/injunction is a deportable offense, even for lawful permanent residents. A DV-VNCO is also a bar to eligibility for 10-year cancellation of removal, one of the most common applications for relief made by undocumented people in removal proceedings.¹¹

HARASSMENT CONSEQUENCES QUICK CHART

	Non-DV Harass (misd.)	DV Harass (misd.)	Non-DV Harass (F) § (b)(i) ¹²	Non-DV Harass (F) §§ (b)(ii); (b)(iii) & (iv) ¹³	DV Harass (F) § (b)(i)	DV Harass (F) §§ (b)(ii); (b)(iii) & (iv)
CIME	no	no	no	ASSUME YES	no	ASSUME YES
Deportable crime of DV	no	YES	no	no	YES	YES
Aggravated felony ¹⁵ “crime of violence”	no	no	YES (if sentence ≥ 1y, incl. susp. time)	YES (if sentence ≥ 1y, incl. susp. time)	YES (if sentence ≥ 1y, incl. susp. time)	YES (if sentence ≥ 1y, incl. susp. time)
Bars “10-year cancellation”	no	YES	no	no	YES	YES

⁷ Washington’s definition of domestic violence arguably is broader than the federal definition. Please contact us if you are an immigration attorney with a client facing removal for a WA harassment conviction.

⁸ If the facts in your case do not support an alternative plea, consider a [plea pursuant to *In re Barr/Zhao*](#).

⁹ See [Burglary in the Second Degree Practice Advisory](#).

¹⁰ If you are considering a plea to Assault 2, please contact the [WDA’s Immigration Project](#) for a case-specific analysis of the immigration impact a CIME will have on your client.

¹¹ See 8 USC § 1227(a)(2)(E)(ii); 8 USC § 1229b(b)(1)(C); [DV-VNCO Practice Advisory](#).

¹² RCW 9A.46.020(1)(b)(i) (recidivist).

¹³ *Id.* at (b)(ii) (threats to kill); (b)(iii) & (b)(iv) (threats against criminal justice participant or elected official).

¹⁵ An “aggravated felony” is *per se* a “particularly serious crime” (PSC) for asylum purposes. 8 USC § 1158(b)(2)(B)(i). An aggravated felony (or felonies) with an aggregate sentence of 5 years or more is *per se* a PSC for withholding of removal. 8 USC § 1231(b)(3)(B).