WASHINGTON DEFENDER ASSOCIATION
PRACTICE ADVISORY | **June 2025** | Immigration Project

Defending Noncitizens Charged with Domestic Violence Protection Order Violations[1]

STEP ONE: IDENTIFY IMMIGRATION STATUS AND DEFENSE GOALS

Immigration Status	Defense Goals
Undocumented Person (UP): • Entered without inspection; never had status. • Entered lawfully with temporary visa (e.g., student, tourist, employment) that expired.	• Avoid jail and risk of ICE enforcement[2] • Preserve paths to lawful status and relief from removal • Avoid inadmissibility grounds[3]
In Lawful Status: • **Lawful Permanent Resident** ("green card") • **COFA** (Pacific Island Compact nation Resident)	• Maintain legal status; avoid deportability[4] • Preserve eligibility for relief from deportation (e.g., "cancellation of removal" for LPRs who have been continuously present in the US for seven years and LPRs for five years)
Asylee, Refugee	• Maintain status, preserve eligibility to become LPR (a waiver is available for asylees and refugees applying to become LPRs) • Avoid grounds of deportability and inadmissibility
Temporary Visa Holder (e.g., student, tourist, employment) **Other status with path to LPR status:** • **VAWA Self-Petitioner** • **Special Immigrant Juvenile** (SIJS) • **T** (trafficked), and **U** (crime victim) visa holders	• Keep/preserve ability to renew status and return with visa • Preserve eligibility for relief from removal • Preserve eligibility to become LPR • Avoid grounds of deportability and inadmissibility
Other statuses without path to LPR status: • **DACA** (Deferred Action for Childhood Arrivals) • **TPS** (Temporary Protected Status)	• Avoid deportability and inadmissibility grounds and criminal status bars (a DV-VNCO will disqualify DACA recipient from renewing) • Preserve future eligibility for LPR status

[1] Referred to throughout as DV-VNCO. This advisory is intended to serve as a quick-reference guide for defenders representing noncitizens. Defenders are advised to seek case-specific information from the WDA's Immigration Project at https://defensenet.org/case-support/wda-immigration-project/wdaip-case-assistance/

[2] *See* RCW § 10.93.160, prohibiting jail employees' compliance with ICE detainer requests.

[3] *Inadmissibility* grounds apply to noncitizens applying for immigration status or seeking admission to the U.S. *Deportability* grounds apply to noncitizens who entered the U.S. lawfully, even if now undocumented (e.g., status expired).

[4] Defenders *must* determine whether clients are LPRs or COFA residents. LPRs and COFA residents generally are not subject to inadmissibility grounds other than criminal inadmissibility grounds, triggered when the person returns to the U.S. after travel abroad. A rarely used public charge ground of deportability—as opposed to inadmissibility—makes a person deportable who enters legally and becomes a public charge within five years of entry from "causes not shown to have arisen since entry."

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Immigration Consequences of the DV-VNCO Determination[5]

LPRs/Lawfully Admitted People:	Refugees/Asylees:	Undocumented People:	DACA Recipients:
• Triggers deportation, so LPR can be placed in removal proceedings; note LPR status renewal and returning from travel abroad can result in LPR coming to ICE's attention.	• Triggers deportation ground, but refugees and asylees can apply for LPR status with a waiver.	• Bars "cancellation of removal" waiver of deportation for UPs, who already are removable simply for being undocumented.	• Bars renewal of DACA status

What Triggers the DV-VNCO Deportation Ground?

- If the protection order was issued under RCW 7.105 or 10.99, a VNCO conviction will trigger the DV-VNCO ground; *but a conviction is unnecessary; any court determination the order was violated* will *trigger the ground*.
- A finding of contempt for violating a DV protection order will trigger the DV-VNCO ground.
- Violating conduct need not be violent, threatening, or harassing; a phone call or invited contact triggers the DV-VNCO ground if the order itself is a DV protection order that prohibits such conduct.[6]

What Does *Not* Trigger the DV-VNCO Deportation Ground?

- If the underlying protection order was issued under RCW 7.40, 9A.46, 9.94A, or 26.09, even if labeled "DV" under 7.105, the conviction *should not* trigger the DV-VNCO ground. Violation of a non-DV anti-harassment order will not trigger the ground.
- **If the originating order *was* under RCW 7.105 or 10.99, but the offer is to plead to a non-DV NCO**, ICE can use any "probative and reliable evidence" in the record to establish that a court "determined" a DV-VNCO occurred.[7] Keeping any reference to originating DV order out of the record might not be sufficient.[8] That, *plus* language "**the defendant understands the court has not determined he engaged in conduct that violated a DV protection order**" in the plea statement would be much more likely to avoid triggering the ground.

If Your Client Must Plead to DV-VNCO

- **If the underlying order was filed under RCW 7.105 or 10.99:** Assume the DV-VNCO ground will be triggered. Avoid stipulating to facts in affidavit of probable cause or police report. In plea, do not identify statute under which the order was issued; state merely that defendant knew an NCO was in place and knowingly violated it. This is likely insufficient if the charging document lists 10.99 or 7.105,[9] but gives an immigration attorney arguments why the conviction should not trigger the DV-VNCO deportation ground.
- **If the underlying order was <u>not</u> filed under RCW 7.105 or 10.99:** The conviction should not trigger the DV-VNCO ground. Explicitly note in plea under which non-7.105/10.99 statute the order was issued (e.g., "D knowingly violated an order issued under 9A.46.").
- **To the extent possible**: Do not plead or stipulate to more than a minimum, non-threatening, non-forceful violation; do not plead to the provisions "prohibiting acts or threats of violence" or stalking.

Best Alternatives to Avoid Immigration Consequences

Criminal Trespass 1-DV, Disorderly Conduct-DV, Malicious Mischief (any degree)-DV, Obstructing, Assault 4-DV should not trigger any conviction-based grounds of deportation or inadmissibility. Plea to non-DV order might work, but only if no mention of or link to an original DV order.

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[5] A DV-VNCO is not: a "crime involving moral turpitude" (offense is strict liability), a "crime of violence" (COV) (so also not a deportable "crime of DV"), or an aggravated felony COV. This is not as clear for felony violation under 7.105.450(4) by assault. *But see State v. Armstrong*, 188 Wash. 2d 333, 340–41, 394 P.3d 373, 377 (2017) (felony violation of court order, which includes a recidivist misdemeanor provision, is an alternative means crime). Therefore, assault is not a required element of the felony.

[6] *Alanis-Alvarado v. Mukasey,* 558 F.3d 833 (9th Cir. 2009); *Szalai v. Holder*, 572 F.3d 975, 982 (9th Cir. 2009). The Board of Immigration Appeals agreed in *Matter of Strydom*, 25 I. & N. Dec 507 (BIA 2011).

[7] *Diaz-Quirazco v. Barr,* 931 F.3d 830 (9th Cir. 2019) (Elements-based, or "categorical," analysis does not apply to this ground); *Matter of Obshatko* 27 I. & N. Dec 173 (BIA 2017) (same).

[8] So a plea under *In Re Barr,* which links to the original charge or CPDC to establish a factual basis, might not work here.

[9] A charge that says only "violated a protection order under RCW 7.105.100" is better, since it includes non-DV orders. The originating order also should not be in anything stipulated to as providing a factual basis for the plea or "real facts" for sentencing.