

# CALIFORNIA POST-CONVICTION RELIEF VEHICLES



## VACATURS FOR CAUSE

### VEHICLES

- **1473.7** Defendant has evidence of actual innocence and/or was unaware of immigration consequences

*Requirements:*

- D pleaded guilty or *no lo contendere*.
- D no longer in criminal custody.
- Failed to meaningfully understand the immigration consequences of a conviction AND conviction bars immigration relief OR
- Presents newly discovered evidence of actual innocence.

- **1016.5** Court failed to give mandatory statutory advisement about potential immigration consequences

*Requirement:*

- No record that court advised about immigration consequences of a conviction.

- **1018** Motion to withdraw a guilty plea

*Requirements:*

- Filed within 6 months of probation.
- Show “good cause” plea should be withdrawn, including failure to understand immigration consequences.

- **Petition for Habeas Corpus, conviction is legally invalid**

*Requirements:*

- Must be in criminal custody (actual or constructive).
- Any ground of legal invalidity.

### IMMIGRATION IMPACT

- **If motion granted on a ground of legal invalidity, it completely erases the conviction for all immigration purposes**

- D must still answer to charges unless they are dismissed.

## FELONY TO MISDEMEANOR REDUCTIONS

### VEHICLES

- **Prop 47**

*Requirements:*

- No super-strikes.
- Drug possession offense.
- Property crimes where amount is less than \$950.

- **Penal Code 17(b)**

*Requirements:*

- Conviction of a “wobbler”—i.e., a conviction that can be charged as a felony or a misdemeanor—as a felony.
- Sentence to a term consisting of jail/probation (not prison/parole).

### IMMIGRATION IMPACT

- **When reduced to a misdemeanor, under PC 18.5, that new misdemeanor will carry a maximum sentence of 364 days**

- **Reduction to a misdemeanor will help:**

- Lawful permanent residents avoid the 1 crime involving moral turpitude ground of deportability.
- Lawful permanent residents eliminate certain aggravated felonies from their records.
- May help undocumented people establish eligibility for a waiver from removability.

### PROP 64

- *Requirement:*

- Available to reduce some marijuana offenses to misdemeanors or infractions, and vacate others.

- **Immigration Impact**

- Untested.

## EXPUNGEMENTS

### VEHICLES

- **1203.4, 1203.41, 1203.4a**

*Requirement:*

- Available after a non-prison sentence.

### IMMIGRATION IMPACT

- **Eliminate ground of removability for first-time drug possession convictions entered on or before July 14, 2011. Only works in the Ninth Circuit and if there’s no probation violation.**

- **An expunged conviction may not bar Deferred Action for Childhood Arrivals.**

## DIVERSION EXPUNGEMENT

### VEHICLE

- **1203.43**

*Requirement:*

- Received a grant of pre-trial diversion (DEJ), after 1997, and completed the diversion program pursuant to PC 1000.

### IMMIGRATION IMPACT

- Will erase the conviction for all immigration purposes.