

## Practice Advisory – Immigrant Legal Resource Center

The following is important information about the practice of stipulating to the contents of a police report at plea.

**Summary:** The Ninth Circuit held in *Parrilla v. Gonzales*, 414 F.3d 1038 (9th Cir. 2005) that although police reports and complaint applications standing alone may not be considered in a modified categorical analysis, the contents of the documents may be considered if specifically incorporated into the guilty plea or admitted by the defendant. The bottom line is, the practice of pleading nolo contendere and stipulating to the contents of a police report can be extremely harmful to non-citizen defendants. It is far better to plead guilty and leave the police report out of the plea, if that is an option.

For further discussion of the record of conviction, and the modified categorical analysis, see Note: Record of Conviction at the Chart and Notes at [www.ilrc.org/criminal.html](http://www.ilrc.org/criminal.html).

**Discussion:** In this case the Court was considering whether a conviction of Washington Revised Code section 9.68A.090, communicating with a minor for immoral purposes, constituted an aggravated felony as "sexual abuse of a minor." An aggravated felony conviction has the harshest possible immigration penalties. The court found that some parts of the statute constituted sexual abuse of a minor, while others didn't. To determine whether this particular conviction was for sexual abuse of a minor, the court then examined the record of conviction to determine the exact elements of the offense of conviction. The record of conviction that the court relied upon consisted of a form information stating the bare elements of the statute and a guilty plea in which the defendant explicitly stated, "I understand the Court will review the certification for determination of probable cause [CPDC] in determining if there is a factual basis for this plea and for sentencing." The problem with the CPDC was that it detailed the facts of the offense, thereby making it unequivocally clear that defendant's conviction constituted sexual abuse of a minor. The Court concluded that "by explicitly incorporating the CDPC into his guilty plea, Parrilla in context admitted the facts in the CPDC and rendered it judicially noticeable for the purpose of applying the modified categorical analysis."

This case means that defense counsel and defendants should avoid stipulating to facts in police reports or complaint applications, i.e., documents that are outside the "record of conviction" as a factual basis for the guilty plea. Some PDs have informed us that in a no contest plea, the judges require that defendants stipulate to the facts in the police report. On the other hand, a guilty plea does not require such a stipulation. For immigration purposes, a nolo contendere plea offers few if any advantage over a guilty plea. It is thus, preferable that defendants enter a guilty plea rather than a no contest plea, or do whatever is necessary, to avoid stipulating to the facts in the police report where those facts are adverse to the defendant's immigration situation.

NOTE: The "record of conviction" that the judge can consider generally is limited to the statutory definition, charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented. *Shepard v. United States*, 125 S. Ct. 1254, 1257 (2005). Also see "Note: Record of Conviction" at the Chart and Notes at [www.ilrc.org/criminal.html](http://www.ilrc.org/criminal.html).

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