



OPTIONS FOR SURVIVORS OF DOMESTIC VIOLENCE AND HUMAN TRAFFICKING

How to assert a complete defense to a crime in court or erase your prior conviction for immigration purposes

JANUARY 2024

You should not be found guilty of a crime if you were forced or coerced to do it. California law offers relief to survivors of human trafficking and domestic or sexual violence in the form of:

- ▶ A full and complete legal defense for someone charged with a crime but is not yet convicted.
- ▶ A way to eliminate or erase criminal convictions off your record, called a **vacatur**, for those who have already been convicted.

Criminal convictions can have serious consequences on peoples' lives—especially non-citizens who wish to stay in the United States. Many immigration benefits have criminal bars meaning that certain convictions will prevent you from getting a lawful immigration status, such as a green card. If you are a lawful permanent resident, a criminal conviction can lead to your deportation.

NOTE

WHAT IS A VACATUR? A VACATUR IS A LEGAL TOOL SOMEONE CAN USE TO “VACATE” THEIR CONVICTION FOR IMMIGRATION PURPOSES. VACATE MEANS THE OFFENSE IS TREATED LIKE IT NEVER HAPPENED—ALL RECORDS OF THE CONVICTION ARE DESTROYED AND THE CONVICTION IS REMOVED FROM YOUR RECORD. THIS IS DIFFERENT FROM AN EXPUNGEMENT BASED ON REHABILITATION, WHICH IS NOT RECOGNIZED FOR IMMIGRATION PURPOSES.

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Getting legal defense or vacatur can eliminate any criminal bars or grounds of deportation related to the offense.

For example, any drug-related conviction will likely make a non-citizen, including a lawful permanent resident vulnerable to deportation, and ineligible for most types of immigration benefits including a green card. Knowing that these defenses and vacaturs are available to survivors is crucial to both preventing and addressing the harmful consequences that convictions can have on one's ability to live and stay in the United States.

WHO IS ELIGIBLE?

The defense and vacatur are available for all nonviolent offenses. These remedies are not available for violent felonies such as murder, rape, kidnapping, and armed robbery.

WHO IS A SURVIVOR OF DOMESTIC OR SEXUAL VIOLENCE?

California offers relief to survivors of domestic or sexual violence whose charge or conviction was the result of being coerced, forced, threatened to act by their abuser or attacker. Domestic violence is a pattern of abusive behavior in an intimate relationship—physical, sexual, or emotional—that intimidates, threatens, or wounds someone. A survivor of domestic violence is the target of this abuse, which can look like receiving threats of violence, hitting, slapping, punching, or kicking.

WHO IS A SURVIVOR OF HUMAN TRAFFICKING?

Under California law, human trafficking is when one person deprives or violates the liberty of another person with the intent to obtain forced labor or services. A survivor of human trafficking is someone whose liberty, or freedom to go and do as they please, is restricted so that they would continue working in some way (labor, sexual acts, drug dealing).

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NOTE

WHAT IS A COERCION? CA LAW DEFINES COERCION AS ANY PLAN OR PATTERN INTENDED TO CAUSE A PERSON TO BELIEVE THAT NOT DOING SOMETHING WOULD RESULT IN:

- ▶ SERIOUS HARM TO SOMEONE ELSE;
- ▶ PHYSICAL RESTRAINT AGAINST SOMEONE ELSE;
- ▶ THE ABUSE OR THREATENED ABUSE OF THE LEGAL PROCESS; OWING A DEBT TO SOMEONE;
- ▶ GIVING DRUGS TO IMPAIR THE PERSON'S JUDGMENT.

Some examples of deprivation

of liberty are: withholding travel documents like a passport, physically confining someone to a space, withholding a house key, violence or threats of violence to the person or family members if the person leaves. The trafficker keeps the other person under their control through force, fear, fraud, deceit, coercion, violence, or threats of injury.

Examples of a perpetrator of trafficking are: a boss/ employer, a romantic partner, a kidnapper, or relative.

Consider these questions if you think you or someone you know is a survivor of human trafficking:

- ▶ Was your work unpaid?
- ▶ Were you threatened with violence if you did not continue working?
- ▶ Were you physically harmed by your employer?
- ▶ Was your movement restricted by your employer? Were you prevented from leaving and entering the house by yourself? Did you feel unable to leave your job?
- ▶ Did your employer keep your identification documents such as your passport?

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If you answered **yes** to any of these questions, you may be a survivor of human trafficking. Note that these questions are not exhaustive, only some examples of what human trafficking can look like. **Consult with a lawyer if you think you are a survivor of human trafficking.**

SOLUTIONS

If you believe you fit into either of the two categories described above, there are two remedies available depending on the status of your case.

THE DEFENSE - IF YOUR CASE IS ONGOING AND YOU HAVE NOT YET BEEN CONVICTED:

If your case is ongoing, and you were forced or coerced to commit a crime as a result of being a victim of human trafficking or of domestic or sexual violence, you have a full and complete legal defense to the charge pending against you.

If you were forced to commit a nonviolent crime by someone who was abusing you as described above, and you feared that this abuser would further harm you if you did not commit the offense, you may have a full defense to a charge against you or be able to vacate your conviction if the case is already over. If you believe this applies to you, you should tell your defense attorney.

Example: *Emma was dating Ben. After a couple months of living together, Ben began threatening to hurt Emma every time he got upset. Sometimes he would hit or throw things at Emma. One day, he blamed Emma for spending all their money. He told her she had to rob a local store to pay him back. He threatened to hurt her if she didn't do it. She was afraid of what he would do to her, so she did it. She now has two criminal charges against her: theft and burglary. Emma has DACA and will not be able to renew it if she gets a burglary conviction. Luckily, she explained her situation to her attorney and they were able to get her the full defense because she is a survivor of domestic violence and was coerced to act by*

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her abuser. She walked away with no convictions and her DACA is no longer in jeopardy.

THE VACATUR - IF YOUR CASE IS OVER AND YOU HAVE A CONVICTION:

Certain laws provide relief tools for survivors of human trafficking, which allows a court to vacate a prior arrest, conviction, or juvenile adjudication for “any nonviolent offense”.

This tool remains available even if a conviction was a long time ago. A survivor of human trafficking can bring this vacatur action at any time after the person has ceased to be a victim of human trafficking or at any time after they seek services for being a victim of trafficking. The right to this vacatur does not expire.

To get a conviction vacated, one must show:

- 1.** That they were a victim of human trafficking, intimate partner violence, or sexual violence at the time the nonviolent crime was committed;
- 2.** That the victim committed the crime as a direct result of being a victim of human trafficking or domestic/sexual violence
- 3.** That the victim tried to distance themselves from the trafficker; **and**
- 4.** Vacating the conviction is in the best interest of justice.

Example: *Paula was homeless and undocumented in Los Angeles. Chris approached her and offered her a place to live if she worked for him. Hungry and desperate, she accepted the offer without asking many questions. She soon found out his “work” was selling drugs. She was never paid for working for him, only given the bare necessities to live. She tried to leave but Chris showed his gun and threatened to hurt her and to call ICE if she did not continue working for him. One day, the police came to Chris’ house and arrested everyone there. Her public defender did not*

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realize Paula was a survivor of human trafficking so Paula got a drug trafficking conviction and could not apply for a lawful immigration status. But now, Paula has spoken with an attorney who advises her that she can vacate her conviction because Chris subjected to her labor trafficking and coerced her to sell drugs. The court approves her vacatur petition—she now has no criminal record and can more easily apply for a lawful immigration status.

If you are not sure whether you qualify, consult with an attorney. Situations of trafficking and abuse look differently for everyone and do not always look like the examples provided.

WHERE CAN I GET HELP?

Help with the defense: If you have an ongoing criminal case, you should have a defense attorney or public defender already. Let the defender know you are interested in exploring whether you meet the requirements for a complete defense as a survivor of human trafficking or domestic violence.

Help with the vacatur: If you have a conviction related to your status as a survivor that you would like to vacate, you should consult with an attorney. Many counties in California have post-conviction relief units that can help with petitions such as this vacatur. Contact the public defender’s office where the conviction occurred to learn whether they can help.

Help with immigration status: The Immigration Legal Services Directory directs you to nonprofits that serve clients from different counties in California. Go [here](#) for California agencies or visit ilrc.me/gethelp to search for help near you.

- Scroll to “Refine Search” at the bottom of the page, where you can select your county under “Counties Served.”
- You also can select filters such as “Areas of Immigration Legal Assistance” that



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can narrow the search to agencies that specialize in certain types of cases, e.g., T or U visas, asylum, or VAWA.

Lastly, if you are not comfortable telling your story, you can still pursue these forms of relief by having your attorney hire a psychologist in your case—these professionals have experience and training to work with survivors of trauma and can help you tell your story in a safe environment. The evaluation of a psychologist will make your case stronger.

The ILRC would like to thank the following law students who contributed significantly to this Community Explainer: Chloe Fearey, Yuxi Han, Dan Coa, and Kristen Fan.

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