

WORKSHEET: CALIFORNIA POST-CONVICTION RELIEF FOR IMMIGRANTS

Table of Contents

WORKSHEET STEP ONE: Obtain Documents and Information; Create a Client Chronology	1
WORKSHEET STEP TWO: Case Analysis	2
APPENDIX I: Resources for Crim/Imm Case Analysis.....	4
APPENDIX II: Finding a California Post-Conviction Relief Vehicle	5

WORKSHEET STEP ONE: Obtain Documents and Information; Create a Client Chronology

- 1. Obtain documents about criminal record history.** Gather and review these.
 - a. Client's FBI and California rap sheet/s, and rap sheets from other states where they have conviction/s. For instructions see ILRC, *How to Check if You Have a Criminal Record* (Nov. 2019).¹
 - b. The complete court file from the convictions you wish to vacate. If the court cannot produce the file, obtain a letter to that effect. For instructions on obtaining the file, contact the clerk of the court where the conviction occurred.
 - c. You will want to obtain the file from the lawyer who handled the criminal case, but consider other PCR factors before approaching the person.
- 2. Complete a good case questionnaire or intake form** with the client that provides biographical information and that checks for possible eligibility for immigration relief, for example the ILRC [Client Questionnaire](#).² Send the completed form to ILRC if we are consulting with you.
- 3. Create a client chronology** using this information. Send this to ILRC if we are consulting with you. This can be bullet points or an outline that sets out in chronological order:
 - Immigration and personal history, e.g., date and place of birth, date entered or admitted to the U.S. (if admitted, with what visa), date and manner of LPR status if applicable, trips outside the U.S., marriage, divorce, birth of children, relatives obtain lawful status, etc.; and
 - Criminal record facts, including county or counties where case/s occurred; date of commission of each offense, arrest, charges, conviction/sentencing if any; disposition of any charges including code section, sentence details, dates and details of any probation violation and further sentence. Identify which conviction/s you want to vacate.

See further information gathering information and creating chronologies at ILRC manual, [California Post-Conviction Relief for Immigrants: Using Criminal Courts to Eliminate Convictions for Immigration](#), Chapter 2.³

¹ Available at <https://www.ilrc.org/resources/how-check-if-you-have-criminal-record>.

² Available at https://www.ilrc.org/sites/default/files/resources/crimimm_questionnaire-20200727v2.pdf.

³ Available at <https://store.ilrc.org/publications/california-post-conviction-relief-immigrants-how-use-criminal-courts-erase-immigration>.

WORKSHEET STEP TWO: Case Analysis

Answer these five questions to create an outline of the PCR case.

For more information, see ILRC manual, California Post-Conviction Relief for Immigrants: How to Use the Criminal Courts to Erase the Immigration Consequences of Crimes (Jan. 2023), cited above, Chapters 2-4. See the advisories and aids listed in **Appendix I: Resources for Case Analysis**.

1. **What conviction/s do you need to vacate?** State offense, date, and sentence for each one.

- This requires a “crim/imm” analysis of the client’s case. Get help if needed.⁴
- Is your client an LPR, or do they have some other status? Are they undocumented? What are their immigration goals? State how each conviction causes harm to these goals. Harm can include making the client deportable, inadmissible, or barred from eligibility to apply for immigration relief for which they otherwise would be eligible.

If the conviction just “looks bad” or is generally bad for discretion, that likely is not enough harm to support PCR.⁵ But if the conviction triggers a specific *higher standard for a grant of discretion*, that may be sufficient harm to support PCR.

Example: Ana was convicted of one DUI during the good moral character (GMC) period, which is a negative factor in discretion. She likely can’t show sufficient harm for PCR.

Bea was convicted of two DUI’s during the GMC period. This triggers a presumption against a finding of GMC as a matter of discretion, under *Matter of Castillo-Perez*. Bea may be able to show sufficient harm to support PCR.

- If the conviction may cause harm not directly related to immigration, e.g., loss of a work license, note that as well.

2. **Will vacating the conviction/s solve your client’s immigration problems?** For example, will they become eligible to apply for some relief, get a better discretionary standard, or save or reclaim their green card? Get expert help on this analysis if needed.

- If PCR won’t entirely solve the client’s problem, describe the other legal obstacles. For example, even after drug trafficking conviction is vacated, a client still might be barred from relief if DHS has “reason to believe” they ever participated in trafficking.

⁴ Ask an expert, and/or see ILRC, [How to Analyze a Crim/Imm Case](#) (2023). If the issue is eligibility for relief, see [N.17 Immigration Relief Toolkit](#) and [N.17A Updated Immigration Relief Chart](#). These all are available at <https://www.ilrc.org/resources/california-quick-reference-chart-and-notes>.

⁵ See, e.g., *People v. Coca*, 96 Cal. App. 5th 451 (2023) (where conviction was not an actual or potential ground of removal or bar to relief for petitioner, it did not qualify for a vacatur under PC § 1473.7(a)(1)).

3. **What PCR vehicle will you use—for example, PC §§ 1016.5, or 1473.7? What are the requirements for that vehicle, and how does your client meet these requirements?**
 - See **Appendix II: Finding a California Post-Conviction Relief Vehicle**, and see ILRC, *Practice Advisory: Overview of California Post-Conviction Relief for Immigrants* (2022).⁶

4. **What facts about the client *at the time of plea or conviction* show that they had strong ties to the United States and would have wanted a criminal case disposition that would avoid deportation?** These facts can show “prejudice” (that the person was harmed by the errors in the criminal case) and support the client’s credibility. “D never would have pled guilty to ____ if he had known it would mean he would be deported and permanently separated from his family. He would have pushed for a different plea, or even gone to trial.” Consider:
 - Client’s ties to the U.S. at the time of the plea, e.g., close family; long time living here; access to medical care; job/ability to support family; safe from persecution; etc.
 - Effect of deportation, e.g., separated from family; unemployed and unable to support self or U.S. family; danger from gangs, cartels, gov’t; few contacts, language barriers, health issues, etc.
 - What is your client doing now? Is your client now a homeowner, employed and has a family; are they or a family member ill and need medical care?

5. **How and when did your client realize they were deportable, inadmissible, or barred from relief?** For example, did they travel outside the U.S., submit an immigration application, or see a lawyer?

6. **Any other information or comments you would like to provide?**

⁶ Available at <https://www.ilrc.org/resources/overview-california-post-conviction-relief-immigrants>. For more in-depth discussion, see the ILRC manual, *California Post-Conviction Relief for Immigrants*, cited above.

APPENDIX I: Resources for Crim/Imm Case Analysis

Unless otherwise stated, the below are ILRC materials available online for free at www.ilrc.org/crimes or www.ilrc.org/chart. Criminal defense and immigration advocates can register for the free *California Chart* at <https://calchart.ilrc.org/registration/>.

California Post-Conviction Relief

See ILRC, [Overview of California Post-Conviction Relief for Immigrants](#) (2022). See the ILRC manual, *California Post-Conviction Relief for Immigrants: How to Use the Criminal Courts to Erase the Immigration Consequences of Crimes* (ILRC Jan. 2023); order from www.ilrc.org/publications. See more materials, including sample briefs, at <https://www.ilrc.org/resources/overview-california-post-conviction-relief-immigrants>.

Crim/Imm Case Analysis, Toolkits

ILRC, [How to Analyze a Crim/Imm Case](#) (March 2023).

ILRC, [§ N.16 Client Questionnaire](#) (July 2020).

ILRC, [§ N.17 Immigration Relief Toolkit](#) (August 2018) and [§ N.17A Immigration Relief Chart](#) (Nov. 2021).

Categorical Approach

ILRC, [§ N.3 How to Use the Categorical Approach Now](#) (October 2021).

NIPNLG, Realistic Probability in Immigration Categorical Approach Cases (June 2021), <https://nipnlg.org/work/resources/realistic-probability-immigration-categorical-approach-cases>.

Immigration Definition of Conviction and Sentence

ILRC, [What Qualifies as a Conviction for Immigration Purposes](#) (April 2019) and ILRC, [Immigration Consequences of Pretrial Diversion and Intervention Agreements](#) (June 2021).

ILRC, [California Sentences and Immigration](#) (November 2020).

Drug Offenses

ILRC, [§ N.8 Controlled Substance](#) (March 2019) and ILRC, [Immigrants and Marijuana](#) (June 2021).

ILRC, [How to Defend Immigrants Charged with Drug Offenses](#) (January 2023).

Crimes Involving Moral Turpitude

ILRC, [All Those Rules About Crimes Involving Moral Turpitude](#) (May 2021).

ILRC, [§ N.7 Crimes Involving Moral Turpitude](#) (October 2018).

Domestic Violence Deportation Ground, Crimes of Violence

ILRC, [2022 Case Update: Domestic Violence Deportation Ground](#) (March 2022).

APPENDIX II: Finding a California Post-Conviction Relief Vehicle

Be sure to seek additional information about each form of relief, for example at ILRC Practice Advisory, [Overview of California Post-Conviction Relief for Immigrants](#) (2022) and ILRC manual, [California Post-Conviction Relief for Immigrants](#) (2023).

1. Did a drug conviction occur on or before July 14, 2011? Was it for possession, possession of paraphernalia, or giving away a small amount of marijuana (but not for being under the influence)?
 - *In immigration proceedings in the Ninth Circuit only*, rehabilitative relief (e.g., PC § 1203.4) gained at any time might eliminate a first minor conviction for all immigration purposes. See ILRC, [Lujan and Nunez](#) (2011) at www.ilrc.org/crimes.
2. Is client applying for DACA? Rehabilitative relief (e.g., PC § 1203.4) eliminates conviction as a bar.
3. Was the case handled under Prop 36 (PC § 1210.1) or the former DEJ (PC § 1000, 1997-2017)?
 - a. *Lujan-Armendariz* for certain pleas on or before July 14, 2011; see above.
 - b. Penal Code § 1473.7(e)(2) creates a presumption of invalidity.
 - c. PC § 1203.43 for DEJ only, but note pushback from ICE.
4. Is there no evidence that the judge gave the PC § 1016.5 advisal (including because court records were destroyed)? PC § 1016.5.
5. Was probation imposed within the last 180 days? PC § 1018.
6. Has the person completed probation or parole? (Or could probation be terminated early, or would DA stipulate to § 1473.7 jurisdiction)? PC § 1473.7.
 - a. Based on error causing immigration harm, § 1473.7(a)(1).
 - b. Based on new evidence of innocence, § 1473.7(a)(2).
 - c. Person was charged, convicted, or sentenced on the basis of race, ethnicity, or national origin (Racial Justice Act), § 1473.7(a)(3).
7. Is the person still in custody or on probation or parole? Habeas Corpus. (To use 1473.7 instead, consider early termination of probation or obtaining DA stipulation to jurisdiction.)
8. Was the person a victim of intimate partner or sexual violence, or of human trafficking, when they committed the offense? Investigate PC §§ 236.14, 236.15. (There is a similar potential *defense* to a criminal charge, at PC §§ 236.23, 236.24.)
9. Could the person obtain a gubernatorial pardon? This avoids the aggravated felony and CIMT deportation grounds, and aggravated felony as a permanent bar to GMC for naturalization.
10. Is the case pending on direct appeal of right on the merits? BIA held it is not a conviction for immigration purposes (but check Ninth Circuit). If the appeal is sustained, it is not a conviction.
11. Would reducing a felony wobbler conviction to a misdemeanor save the immigration case? PC § 17(b)(3). Helps in some CIMT contexts, and also avoids the felony bar to DACA and TPS.