

VEHICLES

1473.7(a)(1) Defendant has evidence of actual innocence, was unaware of immigration consequences, or motion under Racial Justice Act

Requirements:

- D pleaded guilty or no lo contendere or was found guilty after trial.
- D no longer in criminal custody.
- Failed to meaningfully understand the immigration consequences of a conviction AND conviction has potential or actual immigration consequences (1473(a)(1)) OR
- Presents newly discovered evidence of actual innocence (1473.7(a)(2)) OR
- Charged, convicted, or sentenced on the basis of race, ethnicity, or national origin (1473.7(a)(3)) (note: no BIA or 9th Circuit decisions yet involving this section)
- Make sure the court's order includes the subsection at issue and that the order is clear that the conviction is vacated due to legal error. Best practice is for the order to include a constitutional error.

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

Requirement:

- No record that court gave the mandatory 1016.5 advisement.

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- Show "good cause" plea should be withdrawn, including failure to understand immigration consequences.

Penal Code 236.14, 236.15

Requirement:

- Conviction was the direct result of being a victim of human trafficking or intimate partner or sexual violence.

Petition for Habeas Corpus, conviction is legally invalid

Requirements:

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

VEHICLE

Penal Code 1172.6

Requirement:

- Conviction of felony murder, murder, or manslaughter prior to changes in law where defendant was not actual killer, lacked intent to kill, or was not major participant acting with reckless indifference to life

IMMIGRATION IMPACT

- DHS may argue not effective for immigration purposes. Best practice is to make sure court's order is grounded in constitutional error.

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

- Prop 47 reduction will not be given effect for immigration purposes.
- DHS may argue that 17(b)(3) is not effective for immigration purposes. Be prepared to push back.

VEHICLE

1203.43

Requirement:

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

IMMIGRATION IMPACT

- For 1203.43 (DEJ) 1997-2017: vacate pursuant to 1473.7(a)(1) to avoid DHS challenges on the sufficiency of 1203.43. Note 1473.7(f)(2) sets out presumption that DEJ guilty plea was invalid.
- Note that PC 1000 diversion 2018-present is effective for immigration purposes.

RESENTENCING

FELONY TO MISDEMEANOR REDUCTIONS

CALIFORNIA POST-CONVICTION RELIEF VEHICLES



TEACHING, INTERPRETING,
& CHANGING LAW SINCE 1979

DIVERSION EXPUNGEMENT

VACATURS FOR CAUSE

EXPUNGEMENTS

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. For Penal Code 236.14 and 236.15, charges are dismissed if vacatur is granted.

VEHICLES

1203.4, 1203.41, 1203.4a

Requirement:

- Available after a non-prison sentence.

IMMIGRATION IMPACT

- Eliminates 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.