U.S. V. LOPEZ: NINTH CIRCUIT HOLDS CAL. PEN. CODE § 273.5 NOT A CRIME OF VIOLENCE

By ILRC Attorneys

I. Summary

On July 28, 2026, the Ninth Circuit ruled that Cal. Pen. Code § 273.5 (corporal injury to a spouse or cohabitant) is not a crime of violence. *United States v. Lopez*, __ F.4th __ (9th Cir. 2026), 2026 WL 2165840. The ruling involves a straight categorical analysis and not a divisibility question, so all § 273.5 convictions are overbroad relative to a federal crime of violence under 18 USC § 16(a).

The government has 45 days to petition for a rehearing, or until September 11, 2026. The government could also potentially petition for writ of certiorari to the Supreme Court and has 90 days to do so or until October 26, 2026.

1) *Criminal defenders:* This is not secure yet. This is a panel decision that just came out and could be appealed or reheard by the court. Do not plead anyone to PC § 273.5 until the periods for a rehearing petition and certiorari petition have expired.

2) *Removal defense*: PC § 273.5 is not a deportable crime of domestic violence for immigration purposes, nor an aggravated felony with a year or more sentence.
   a) For cases with final removal orders, consider filing a motion to reopen or reconsider. Motions can be equitably tolled based on change of law.
   b) Motions to reconsider a decision should be filed within 30 days of the *Lopez* decision, on or before August 27, 2026.
   c) Motions to reopen based solely on the *Lopez* decision should be filed on or before October 26, 2026.
   d) *See* Section IV *below for more information on motions to reopen, reconsider, or remand.*

3) *Crime Involving Moral Turpitude (CIMT)*: PC § 273.5 is still risky as a CIMT, which carries its own independent set of immigration consequences. The *Lopez* ruling did not mention CIMTs at all.
   a) However, Ninth Circuit precedent holds that § 273.5 is *divisible* as a CIMT, depending on the victim – corporal injury against a spouse is a CIMT, but against a cohabitant is not. Thus, a criminal record that specifically identifies the offense as a battery committed against a cohabitant is not a CIMT.
   b) Also, misdemeanors may fall under the petty offense exception, and thus the person could be admissible and/or eligible for non-LPR cancellation.

Mandatory detention: § 273.5 remains a basis for mandatory detention if the person is deportable or inadmissible for CIMT(s). (Deportable crime of domestic violence is not a mandatory detention ground to begin with).

II. Description of the Case and Reasoning

The *Lopez* case arose in the context of federal sentencing based on the defendant's prior PC § 273.5 convictions. Lopez argued that prior Ninth Circuit case law holding Cal. Pen. § 273.5 to be a crime of violence ("COV") was wrong after *United States v. Borden*, 593 U.S. 420 (2021), and *United States v. Gomez*, 165 F.4th 1199 (9th Cir. 2026) (en banc), because its mens rea is overbroad relative to the federal definition of a COV under 18 USC § 16(a). Under federal law, a COV requires an intentional act, such as a purposeful or knowing mens rea, both as to the use of force sufficient to cause pain or injury and "the use of force *directed at another person*."[1] In contrast, "r[]eckless conduct is not aimed in that prescribed manner."[2]

The Ninth Circuit panel noted that California has not adopted the Model Penal Code and instead has unique state definitions for some offenses and mens rea. The California Supreme Court has held that California assault "does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur."[3] California assault and battery - a completed assault - are considered "general intent" crimes. In other words, the person must have intended to commit the act but need not have intended to cause an injury.

The panel then reiterated that PC § 273.5 is a battery offense that arises in a domestic context when an injury arises. Despite the statute appearing at face value to require intentional injury, California courts consistently have found that a conviction requires that the person had an intent to commit the act likely to result in bodily harm, but not that they also intended to cause any injury. To illustrate this, the panel highlighted an example of a court decision affirming a conviction for slamming a door on someone's hand, despite the defendant's insistence that he did not intend to harm the other person and did not know her hand was in the door. Therefore, the Ninth Circuit agreed that § 273.5 is overbroad relative to a federal COV, and overruled its prior precedents.

A. Implications to Other Statutes and Cases

The Ninth Circuit directly overruled some prior cases that failed to distinguish between the mens rea required for the initial act of force versus the mens rea of directing that force at someone else, including *United States v. Laurico-Yeno*, 590 F.3d 818 (9th Cir. 2010), *Banuelos-Ayon v. Holder*, 611 F.3d 1080 (9th Cir. 2010), *United States v. Ayala-Nicanor*, 659 F.3d 744 (9th Cir. 2011), and *United States v. Walker*, 953 F.3d 577 (9th Cir. 2020).

---

[1] *Lopez*, 2026 WL 2165840 at *1. *Lopez* noted that *United States v. Begay*, 33 F.4th 1081, 1093–95 (9th Cir. 2022) held that a "depraved heart" or "extreme recklessness" could still meet the standard for COVs after *Borden*, but no one argued that § 273.5 has a mens rea between recklessness and knowledge. *Id.* at *3 n.4.
[2] *Borden v. United States*, 593 U.S. at 429.
[3] *People v. Williams*, 26 Cal. 4th 779, 790 (2001).

Additionally, the *Lopez* ruling potentially calls other cases into question for wrongly interpreting California law in the past. Some COV cases that may be overruled based on this holding include:

1. *U.S. v. Perez*, 32 F.3d 782 (9th Cir. 2019) - held that PC § 243(d) (aggravated battery) was a COV.
2. *Olea-Serefina v. Garland*, 34 F.4th 856 (9th Cir. 2022) - held that PC § 273d (child abuse) was a COV (note that this case is specifically cited in *Lopez* footnote 7 for failure to consider *Borden* or distinguish between the mens rea as to the use of force versus directing the force against someone else).

III. Changes to Immigration Consequences of PC § 273.5 after *Lopez*

A. PC § 273.5 is not a Crime of Domestic Violence

To be a crime of domestic violence, the underlying offense must be a crime of violence. INA § 237(a)(2)(E)(i). Because PC § 273.5 is not a COV, it cannot be a crime of domestic violence—regardless of the identity of the victim.

B. Expansion Beyond PC § 273.5

As mentioned above, arguably this holding should alleviate the immigration consequences of other statutes that were previously held to be COVs, including § 243(d) and § 273d.

C. Argument that a Violation of PC § 273.5 is also not a CIMT (Removal Defense Only)

While there is Ninth Circuit precedent holding that a violation of PC § 273.5 is divisible as a CIMT, it is not clear if that holding withstands the Ninth Circuit's decision in *Lopez*. Advocates in removal proceedings may argue that PC § 273.5 is overbroad as a CIMT based on the enumerated victims in the statute and the *Lopez* holding on mens rea. This argument could be based on the following framework:

1. § 273.5 is overbroad as a CIMT and is not divisible.

The Ninth Circuit has previously held that PC § 273.5 is divisible as a CIMT. It is a CIMT if the battery was committed against a spouse, but not a CIMT if the battery was against a cohabitant.[4]

Although the Ninth Circuit concluded that PC § 273.5 is divisible as a CIMT, those decisions were issued prior to the Supreme Court clarifying what divisibility means and how it should be

[4] *Cervantes v. Holder*, 772 F.3d 583, 588 (9th Cir. 2014) ("Our precedents make clear that although § 273.5(a) is not categorically a CIMT, it is a divisible statute for which a conviction under one portion of the statute (corporal injury against a spouse) will qualify as a CIMT, while conviction under other subsections (for example, corporal injury against a cohabitant) will not."); *accord Morales-Garcia v. Holder*, 567 F.3d 1058 (9th Cir. 2009).

analyzed in *Mathis v. United States*, 579 U.S. 500 (2016). Under *Mathis*, a statute is divisible when its alternately phrased portions reflect *elements* of the offense, not merely different means of committing the same crime. Section 273.5 is divisible between the different victims only if, in order to find the defendant guilty, in every case a jury must unanimously agree as to the type of relationship. The Ninth Circuit did not consider this when it ruled in *Cervantes* and *Morales-Garcia*. Arguably § 273.5 is not divisible as to the type of relationship. The jury instructions in CALCRIM 840 do not require unanimity as to the type of relationship.

2. § 273.5 is overbroad to the generic definition of a CIMT, because it can have a lesser mens rea.

After *Lopez*, we now have an additional argument that PC § 273.5 cannot be a CIMT because of the mens rea (level of intent) required. The mens rea of § 273.5 is overbroad because it encompasses lesser levels of intent then the generic definition of a CIMT. Although *Lopez* did not discuss CIMTs at all, the court acknowledged that PC § 273.5 is a general intent crime that "'requires only the mens rea of intending to do the assaultive act,' and does not require intent, or knowledge, that the use of force is directed at another." 2026 WL 2165840 at *6 (quoting *People v. Thurston*, 71 Cal.App.4th 1050, 1055 (4th Dist. 1999). This is arguably not enough specific intent to be a CIMT.

The BIA has held that a negligent mens rea is not sufficient to be a CIMT, but a crime with a less than purposeful mens rea (e.g. what many jurisdictions call reckless) can amount to a CIMT if there is a "conscious disregard of a substantial and unjustifiable risk." *Matter of Perez-Contreras,* 20 I&N Dec. 615, 618-19 (BIA 1992); *see also Borden* (defining "reckless" as conduct requir[ing] that an individual "'consciously disregard[] a substantial and unjustifiable risk'").

But PC § 273.5 does not require such conscious disregard or a subjective awareness of the risk of force or injury. In California, the mens rea necessary for conviction of both assault and battery is not related to the goal or result. "[T]he fact that a use of force results in a physical injury does not necessarily elevate a particular battery to a crime requiring specific intent to inflict trauma." *Thurston*, 71 Cal.App.4th at 1054. "[T]he defendant's present *willful conduct* alone suffices to establish the necessary mental state *without inquiry as to an intent to cause further consequences*." *Id. (emphasis in original).* Thus, there is no requirement of reckless disregard as to the risk of injury, as required for a CIMT.

Put another way, if simple assault or battery is not a CIMT because it lacks sufficient intent to harm, then battery that results in an injury but without any additional intent attached to that result cannot be a CIMT. "[T]here must be some minimum level of reprehensibility *both* as to mens rea and as to actus reus." *Safaryan v. Barr*, 975 F.3d 976, 982 (9th Cir. 2020). "[W]here no conscious behavior is required, there can be no finding of moral turpitude, regardless of the resulting harm." *Id.* (*quoting In Re Solon*, 24 I&N Dec. 239, 242 (BIA 2007)).

Moreover, PC § 273.5 expressly requires that the result of the battery must be a "traumatic condition." However, case law interpreting the statute has noted that even a minor injury is sufficient to satisfy the definition of a traumatic condition. *See, e.g. Estrada v. County of Los Angeles*, 91 Fed.Appx. 28 (9th Cir. 2004) ("Intentionally grabbing another's arm is sufficient to constitute battery, regardless of whether a layperson would consider it likely to result in bodily harm.").

IV. Motions to Reconsider, Reopen, or Remand

A client who has a removal order based on a PC § 273.5 conviction may be able to file a motion to reopen or a motion to reconsider based upon the *Lopez* decision. Whether a motion to reconsider or motion to reopen is the appropriate vehicle after a change in law has been the subject of much debate. While the BIA states that a motion to reconsider is appropriate where there has been a "change in law," see BIA Practice Manual Ch. 4.7(a), the regulations do not specify one type of motion over the other. The Fifth Circuit has found that a motion to reconsider is required for a change in law (or a reinterpretation of a law) that takes place after the final decision in a case (*see Gonzalez Hernandez v. Garland*, 9 F.4th 278 (5th Cir. 2021)), but other circuits have not. Arguably, a change in law after a final decision is a new fact that necessitates a motion to reopen.

Both motions to reopen and reconsider are subject to numerical and time limits, discussed below. While all circuits have held that the deadline for motions to reopen are subject to equitable tolling, not all circuits have extended this rule to reconsideration. Equitable tolling is a legal principle that allows adjudicators to pause or "toll" a filing deadline where the delay is due to circumstances beyond the litigant's control, and where the litigant has acted diligently in pursuing their rights. Several circuits have explicitly held that equitable tolling is appropriate for "a change in law that invalidates the original basis for removal,"[5] though some circuits apply this principle differently to reconsideration than to reopening.[6] Across the board, courts and the BIA have put great weight on acting diligently in cases requiring equitable tolling, which can complicate arguments, particularly in older cases. *See Ventura-De Martinez v. Bondi*, 2025 WL 3540855 (9th Cir. 2025). Advocates will need to balance the risk factors of filing a motion in cases where considerable time has passed since the final order in their case.

A note on "Compound Motions." Depending on the circumstances and applicable circuit law in your case, it may not always be clear whether to file a motion to reconsider, or reopen, or both. Many practitioners will choose to file a compound motion seeking reconsideration and reopening in the alternative, or vice versa. Both the BIA and Immigration Court Practice Manuals acknowledge that this type of compound motion may be appropriate, although compound motions are generally disfavored at the immigration court level, and the adjudicator will apply the time- and number-limitations to each remedy requested.[7] If a compound motion may be appropriate in your case, check with colleagues to understand immigration judge preferences in the court where you will be filing, and address the standards for both remedies

---

[5] *Lona v. Barr*, 958 F.3d 1225, 1230 (9th Cir, 2020); *see also Lugo-Resendez v. Lynch*, 831 F.3d 337, 344-45 (5th Cir. 2016); *Gonzalez Hernandez v. Garland*, 9 F.4th 278 (5th Cir. 2021); *Williams v. Garland*, 59 F.4th 620, 643 (4th Cir. 2023).

[6] *See, e.g., Acevedo-Guallpa v. Att'y Gen.*, 2023 WL 7122576 at *2 (3d Cir. Oct. 30, 2023) ("We have not held that motions to reconsider are subject to equitable tolling.").

[7] *See* Immigration Court Practice Manual (ICPM) Ch. 4.4; BIA Practice Manual (BIA PM) Ch. 4.3

you are seeking, including any need for equitable tolling. If filing separate motions, a filing fee or fee waiver will be required for each.

A. Motion to Reconsider

A motion to reconsider asks the deciding authority—Immigration Judge (IJ) or Board of Immigration Appeals (BIA)—to review its prior decision based on mistakes of law or fact. 8 CFR §§ 1003.2(b)(1), 1003.23(b)(2). Reconsideration can also be based on a new legal interpretation or "change in law," that could cause the BIA or IJ to change its decision, under the theory that the prior decision was based on an error in law. While the Board has suggested this is the proper motion after a change in law, the statute indicates that reconsideration is for errors of law *in the previous order* (yet if the change in law occurs after the final order, the adjudicator arguably did not commit error at the time).[8]

If the noncitizen or DHS appealed the IJ's decision and the BIA entered an order of removal, the motion to reconsider should be filed with the BIA, since jurisdiction vested with the BIA. 8 CFR § 1003.23(b)(1). If the client did not appeal the IJ's decision to the BIA, then the motion to reconsider should be filed with the IJ. *Id.*

Motions to reconsider are numerically and time barred—as general rules, a party may file only one motion to reconsider, and must do so within 30 days of the final administrative order. 8 CFR §§ 1003.2(b)(2), 1003.23(b)(1). Advocates should argue that the fundamental change in law equitably tolls the filing deadline, restarting the 30-day filing period as of the date of the change in the law.[9] **Under this theory, the tolled deadline to file a motion to reconsider based on the change in law under *Lopez* is August 26, 2026.** The requirements for filing a motion to reconsider with the BIA are found at Chapter 4.7 of the BIA Practice Manual. The requirements for filing a motion to reconsider with the IJ are found at Chapter 4.8 of the Immigration Court Practice Manual. Generally, motions to reconsider must comply with the requirements for filing a motion—they must be a) clearly captioned ["Motion to Reconsider"], b) in writing, signed, and served on all parties, c) accompanied by a copy of the underlying order, d) accompanied by a copy of the application for relief.[10] See below for filing fee information.

Practice Tip: If you can file within 30 days (either of the *Lopez* decision, or of your removal order if less than 30 days ago but before *Lopez*), then file a motion to reconsider, framing the *Lopez* decision as a fundamental change in law that amounts to legal error in the prior decision. But if not, consider filing it as a motion to reopen, framing the *Lopez* decision as a new material fact, within 90 days. These recommendations may vary depending on the applicable circuit law, so it is important to understand the law of your circuit when deciding how to frame your motion. If you do file a motion to reconsider, re-assess whether to file a motion to reopen as well, before the 90-day period after the removal order or the 90-day period after the *Lopez* decision expires (if the motion to reconsider has not been adjudicated and granted).

---

[8] INA § 240(b)(6).
[9] *See Lona v. Barr*, 958 F.3d 1225, 1230 (9th Cir. 2020).
[10] BIA PM Ch. 4.2, 4.7; ICPM Ch. 4.8(b) and 4.2.

Example A-1: Johann, a long-time lawful permanent resident, was convicted of felony PC § 273.5 and placed in removal proceedings as a deportable aggravated felon. The IJ found him deportable and ineligible for relief and ordered removal. He appealed to the BIA, and the BIA dismissed his appeal in 2025. Johann should file a motion to reconsider with the BIA by August 26, 2026, arguing that, after *Lopez*, he is no longer removable as charged, so his proceedings should be terminated and his green card restored. Johann should assert that the 30-day filing deadline was equitably tolled until the *Lopez* decision (or when he learned of the decision) because it was a fundamental change in law that renders him no longer removable.

Example A-2: Now let's say that the IJ just ordered Johann removed on July 20, 2026, based on the same facts. Johann should file a motion to reconsider with the immigration judge by August 26, 2026. If possible, he should file it even earlier, by August 19, 2026, which would be within 30 days of the IJ's order.

Important Note: Remember that PC § 273.5 may also be found to be a crime involving moral turpitude under Ninth Circuit and BIA case law. For LPRs, a single CIMT can cause deportability if it was committed within 5 years of the person's admission and carries a potential sentence of one year or more. INA § 237(a)(2)(A)(i). (Since January 1, 2015, California misdemeanors carry a potential sentence of only 364 days. CA PC § 18.5). Two or more CIMT convictions that are not part of a single scheme of conduct will also be grounds for deportation. INA § 237(a)(2)(A)(ii). Thus, if Johann's conviction occurred within 5 years of his admission to the United States, he may still be deportable. For more details about CIMTs and their immigration consequences, see Section III above and https://www.ilrc.org/sites/default/files/resources/all_those_rules_cimt_june_2021_final.pdf.

Example B: Pyotr overstayed his B2 visa in 2010 and was convicted of misdemeanor PC § 273.5 in 2021, sentenced to 90 days in jail, and placed in removal proceedings. He was charged as deportable for having been convicted of a crime of domestic violence. The IJ sustained the charge and found that Pyotr could not apply for non-LPR cancellation of removal because of his conviction, and ordered removal. Assuming Pyotr meets the other requirements for non-LPR cancellation of removal, Pyotr may file a motion to reconsider by August 26, 2026, arguing that he is no longer barred from seeking that relief after *Lopez* and that equitable tolling paused his filing deadline until the *Lopez* decision (or when he learned of the decision). While his PC § 273.5 conviction could be a CIMT under current law, in this case it falls within the petty offense exception at INA § 212(a)(2)(A)(ii)(II), so it no longer makes him ineligible for non-LPR cancellation of removal. After *Lopez*, the conviction is no longer a crime of domestic violence under INA 237(a)(2)(E), so it is not a bar to cancellation. Pyotr should expect, however, that the IJ will still consider this conviction to assess good moral character and discretion.

B. Motion to Reopen

A motion to reopen asks the IJ or BIA to reopen the case to review new material facts that were unavailable or unable to be discovered at the previous hearing. 8 CFR §§ 1003.23(b)(3), 1003.2(c)(1). Depending on the law of your circuit, if you cannot file a motion to reconsider by

August 26, 2026, or if you plan to assert additional arguments based on new facts, your client can bring a motion to reopen.[11] A motion to reopen should assert that the *Lopez* decision is a new material fact and therefore your client is no longer deportable as charged or is newly eligible for relief based on a change in law. Motions to reopen are subject to a 90-day filing deadline, and practitioners can argue that this is subject to equitable tolling until the date of the change in law. 8 CFR §§ 1003.23(b)(1), 1003.2(c)(2). Consider a motion to reopen both for those that are beyond the 30-day deadline for reconsideration but still within 90 days from the final decision in their immigration case, as well as for those past 90 days from the decision in their case (but hopefully within 90 days since the Ninth Circuit issued its decision in *Lopez*.) If more than 90 days have passed since the final agency order, you will need to assert that equitable tolling justifies an exception to the 90-day filing deadline.

If the client has multiple bases for a motion to reopen, they should brief both the change in law and any other change in facts in the client's case (for example, post-conviction relief or change in personal circumstances) in addition to any equitable tolling arguments (why they could not have filed until now). If your client has a PC § 273.5 conviction and a removal order from outside the Ninth Circuit (particularly the Fifth Circuit), you must check that circuit case law before pursuing a motion to reopen.

Second, ask the adjudicator to exercise *sua sponte* authority to reopen the case in the alternative. Courts have used their *sua sponte* authority to grant motions to reopen where there has been a fundamental change in law that renders the noncitizen no longer removable or newly eligible for relief.[12]

Third, ask the adjudicator to construe the motion to reopen as a motion to reconsider in the alternative, subject to equitable tolling beyond 30 days based on extraordinary circumstances, in addition to the change in law (such as ineffective assistance of counsel). This argument will also be important to those that are filing within 90 days of the decision in their case, but want to preserve arguments that, even if a motion to reconsider is required, their motion should be construed as timely based on the doctrine of equitable tolling.

> **Example C-1:** Alex, a long-time LPR, was convicted of PC § 273.5 and sentenced to 16 months in state prison. He was transferred to ICE custody, placed in proceedings, and ordered removed. He remains in ICE custody while ICE tries to secure travel documents. Alex is unrepresented, so he does not learn of the *Lopez* decision until he consults with a volunteer attorney, after the 30-day window for a motion to reconsider has passed but still within 90 days. Alex should file a motion to reopen. Since the BIA favors motions to reconsider for changes in law, Alex should also consider asking for

---

[11] The Fifth Circuit is the only circuit which has explicitly held that a motion to reconsider, not a motion to reopen, must be filed in order to raise a change in law that has occurred after the entry of a final order of removal. *Gonzalez Hernandez v. Garland*, 9 F.4th 278 (5th Cir. 2021).

[12] See *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999) (discussing that the Board can invoke its *sua sponte* authority to reopen or reconsider a case following fundamental changes in law); *but see Matter of Herrera-Nunez*, 29 I&N Dec. 695 (BIA 2026) (concluding that the respondent did not establish exceptional circumstances for sua sponte reopening where his equities were acquired years after the final removal order; but note that this case did not involve a change in law).

reconsideration, either in a separate motion or in the alternative, and argue that the 30-day filing deadline is subject to equitable tolling.

C. Motion to Remand

If a case is currently on appeal with the BIA (because the noncitizen was charged or denied relief based on a finding that a PC § 273.5 conviction was a crime of violence), the proper vehicle is a motion to remand. A motion to remand asks the BIA to return jurisdiction to the IJ either because there is new evidence that has come to light or the noncitizen has become newly eligible for relief, such as because of a change in the law, for which they were not eligible when their proceedings were pending before the IJ. *See* BIA PM Ch. 4.8(a). If the noncitizen erroneously files a motion to reconsider while the case is on direct appeal to the BIA, the BIA will treat the motion to reconsider as a motion to remand the proceedings to the IJ. 8 CFR § 1003.2(b)(1). Motions to remand, unlike motions to reconsider or reopen, are not numerically or time barred. BIA PM Ch. 4.8(c). This eliminates the need to prove timeliness and avoids using up a noncitizen's one-time shot at a motion to reconsider. If a need later arises for a motion to reconsider, the noncitizen will generally be numerically barred if they previously filed a motion to reconsider instead of a motion to remand. Motions to remand are subject to the same substantive requirements as motions to reopen. *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992).

Example C-2: Now imagine that Alex (example C-1 above) appealed the removal order to the BIA and the appeal is pending. Alex should file a motion to remand based on *Lopez*. Although there is no filing deadline for a motion to remand, Alex should file as soon as possible to ensure that the motion is filed before the BIA issues a decision on his appeal.

Example D-1: Angel had TPS for many years before he was convicted of felony PC 273.5 and sentenced to 16 months. He lost his TPS and was placed in removal proceedings, where he applied for asylum. The IJ found that his conviction was categorically a particularly serious crime because it was an aggravated felony, pretermitted his asylum application, and denied withholding and CAT, finding it was not sufficiently likely that he would suffer persecution or torture in his country of origin. Angel's appeal is pending at the BIA. Angel should file a motion to remand as soon as possible, arguing that the conviction is no longer *categorically* a PSC after *Lopez* since it is no longer an aggravated felony. The conviction may still be found to be a PSC, but after *Lopez*, this is a factual inquiry that the IJ must assess in the first instance.

Example D-2: Now imagine that the BIA already dismissed Angel's appeal and he has a petition for review pending in the Ninth Circuit. Angel cannot file a motion to remand, because the agency has already issued a final decision. However, Angel can still (1) file a motion to reconsider or reopen with the BIA, and/or (2) raise the *Lopez* issue in his arguments at the Ninth Circuit. He might also ask the government to join in a request to remand to the agency based on this change in law.

D. Filing Fees

A motion to reconsider, a motion to remand, and a motion to reopen filed with the BIA require a $1,030.00 payment, while these motions filed with the immigration court require a $1,065.00 payment. Payment can be made through the Executive Office for Immigration Review's (EOIR) Payment Portal at https://epay.eoir.justice.gov/index. A copy of the payment must be included with the motion. Fee waivers are not prohibited at the BIA or immigration court. There is a presumption that any non-detained respondent who is represented by private counsel is ineligible for a fee waiver. *Matter of Garcia-Martinez*, 29 I&N Dec. 169 (BIA 2025).

At the time of writing, advocates are reporting that the BIA and many IJs are denying requests for fee waivers in many cases where a waiver previously would have been granted. If a motion is filed with a request for fee waiver but the fee waiver is denied, the regulations establish a 15-day grace period during which the filer may re-file their motion with the fee or a new fee waiver request, and any applicable filing deadline will be tolled during this time. 8 CFR §§ 1003.8(a)(3), 1003.24(d). However, if a motion is filed without any fee or request for waiver, it will be rejected and there is no grace period to re-file.

V. Conclusion

Criminal defenders should still avoid pleading to PC § 273.5, if possible, until after October 26, 2026, when the period for filing a petition for certiorari with the Supreme Court has ended, or when the decision is otherwise settled law. Meanwhile, criminal defenders should still presume that a conviction for PC § 273.5 is a crime involving moral turpitude.

Immigration advocates should be filing motions to reconsider or to remand in any case where a client has been ordered deported for having been convicted of PC § 273.5. The deadline for a motion to reconsider is August 26, 2026; but advocates can file motions to reopen within 90 days of a final removal order. In immigration court proceedings, advocates should be arguing that no California conviction for PC § 273.5 is 1) an aggravated felony COV with a year or more sentence, or 2) a deportable crime of domestic violence. Additionally, advocates should explore the argument that 273.5 is also not a CIMT, because the mens rea required is less than the mens rea required for a CIMT.

The full opinion is available here: *U.S. v. Lopez*, No. 24-3268 (9th Cir. July 28, 2026), https://cdn.ca9.uscourts.gov/datastore/opinions/2026/07/28/24-3268.pdf.

San Francisco
t: 415.255.9499
f: 415.255.9792

Washington D.C.
t: 202.777.8999
f: 202.293.2849

Houston

San Antonio

www.ilrc.org

About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.