

Simple Criminal Motions to Help Noncitizen Clients

Motion to Early Terminate Probation

Useful for clients who want to naturalize or vacate a conviction

Samples available in Toolkit

Client is a Lawful Permanent Resident and wants to become a Citizen

A person cannot naturalize while on probation. You can ask the court to terminate probation to allow a client to apply for citizenship.

Client is on probation for a conviction otherwise eligible for PC 1473.7

To seek PC 1473.7 vacatur, a person must no longer be in criminal custody, which includes probation. The alternative, habeas corpus, is a slower, narrower remedy. A motion to early terminate probation can be filed before or alongside PC 1473.7 motion to vacate.

PC 1203.43 Dismissal

Useful for clients with successfully completed DEJ plea

Client entered a deferred entry of judgment plea to drug-related charges

Even if a client successfully completed a DEJ program and the case was "dismissed," this can still be a conviction for immigration purposes if they entered a no contest or guilty plea at any point. A dismissal under PC 1203.43 *should* remedy this as a "dismissal based on legal invalidity," but there is litigation pending on this issue. Until resolved, it is safer to use PC 1473.7(e)(2), which provides a presumption of legal invalidity in this situation.

Felony to Misdemeanor Reductions

Useful for some felony convictions

See ILRC advisories in Toolkit

Client has a conviction eligible for reduction under PC 17(b) or Prop 47

Case-specific research required. Many convictions impact immigration status whether a felony or misdemeanor. A reduction can help where the felony classification bars relief, e.g., DACA or TPS. It could put a client in a more advantageous position to pursue a vacatur, although some courts are hostile to multiple post-conviction motions. A reduction could be helpful where the impact of a CIMT conviction turns on potential sentence.

PC 1203.4 Expungements

Limited usefulness: use with caution

An expungement will typically NOT erase a conviction for immigration purposes. It can be helpful for *some* DACA cases and *some* first-time simple possession convictions. Seek additional information and consider a pardon as an alternative where other options not available.

See related ILRC resources linked in Toolkit