

Sample Outreach Email to DA's Office Re: Motion to Vacate

In many counties, it is possible to negotiate a stipulated resolution to a motion to vacate a prior conviction either before or after filing the motion. Outreach should always be county, case, and circumstance-specific and should focus on equities and your proposed resolution.

The following sample is just one example of how this can be approached.

I am writing in regards to a motion to vacate that I will be filing in San Joaquin County. I am hoping we can discuss the case before it is filed.

*This matter is time sensitive, as my client has an immigration hearing on **July 23, 2019**. Obtaining immigration counsel for the hearing is contingent on us vacating his convictions. It would be incredibly helpful to know the DA's position on this motion by **July 7, 2019**.*

Summary: Motion to Vacate

My client, -----, is a Lawful Permanent Resident who has lived in the U.S. for 35 years, since his family came as refugees from -----. His nine-year-old son, partner, parents, and siblings are all U.S. citizens. They have a very tight-knit family. Mr. ---- works as an auto mechanic and primary care-taker for his son.

In late 2016, Mr. ---- was stopped at the border after traveling to ----- for his grandmother's funeral and was placed in deportation proceedings based on two 2015 convictions. The convictions are for possession of marijuana for sale (HS 11359(b)) and theft of public utilities (PC 498(d)). These are Mr. ---- only convictions, but they make his deportation and permanent exclusion from the U.S. mandatory and bar any discretionary relief.

After speaking with Mr. ---- and his prior defense counsel, Mr. -----, it is evident that he did not receive accurate advice about the immigration impact of these convictions or the possibility of negotiating an immigration-neutral plea, and that he did not understand the consequences of the plea. On this basis, we are moving to vacate the convictions. I have a signed declaration from Mr. ---- that I have attached to this email.

Proposed Alternative Pleas

Post-conviction relief is Mr. ---- only chance to stay with his family. This is his top priority, and he is willing to re-plea to alternative immigration neutral convictions with similar or even greater exposure, and to stipulate that any restitution still owed would be included in a new plea. On his current convictions, Mr. ----- was sentenced to 9 months in county jail and 5 years probation.

We have identified the following immigration-neutral alternatives with similar exposure:

In place of HS 11359(b), Mr. ---- is willing to plea to

- **misd. PC 32**

In place of PC 498(d), Mr. ---- is willing to plea to

- **misd. PC 496 or PC 459**

Attached please find our motion, supporting declarations, and a proposed order. I would appreciate the chance to have a conversation with you about this case. When would you be available for a brief call?