



SEPTEMBER 2020

§ 1473.7 MOTIONS TO VACATE A CONVICTION OR SENTENCE IN CALIFORNIA

WHAT IS § 1473.7?

California Penal Code § 1473.7 allows you to vacate an old California conviction or sentence. § 1473.7 became part of the California law in 2017 and may be able to help you win post-conviction relief.

I HAVE A CRIMINAL CONVICTION THAT I WOULD LIKE TO FIX. SHOULD I THINK ABOUT A § 1473.7 MOTION?

Yes. If you have a California criminal conviction and are no longer in criminal custody or on probation or parole you should consider whether you qualify.

WHAT DO I HAVE TO PROVE TO WIN MY § 1473.7 MOTION?

There are two ways to qualify. First, you can qualify if your lawyer did not tell you about the immigration consequences of your plea, if your lawyer did not defend you from those consequences by plea bargaining for an alternative, or if you didn't understand the immigration consequences. Second, you can qualify if you have new evidence of actual innocence.

CAN § 1473.7 HELP WITH MY IMMIGRATION CASE?

Yes. A successful § 1473.7 motion will vacate the conviction or sentence for immigration purposes. However, it is important to be aware that while the conviction is eliminated, this does not result in an automatic dismissal. The result is an open case and the prosecutor may bring the charges again. Therefore, you will need to negotiate a case resolution that avoids adverse immigration consequences.

HOW DO I FILE A § 1473.7 MOTION?

Your local public defender office may be able to help you or you could hire a private attorney. Alternatively, you could file a motion on your own using the Judicial Counsel of California's pro se form: www.courts.ca.gov/documents/cr187.pdf.

IS THERE A TIME LIMIT FOR FILING?

You can file any time after you are released from custody (including probation or parole) on the conviction. The motion will be considered timely if it is filed without undue delay.

WHAT HAPPENS AFTER I FILE A § 1473.7 MOTION?

The court will schedule a hearing. If you can show a good reason for why you cannot attend the hearing, a lawyer will be appointed to represent you and the court can have the hearing without you being there.

HOW CAN I LEARN MORE?

There are resources like this one available to learn more about this important law: www.ilrc.org/helping-immigrant-clients-post-conviction-legal-options-guide-legal-services-providers.

DO I HAVE TO BE IN REMOVAL PROCEEDINGS TO QUALIFY?

No.