



BIA REJECTS RETROACTIVE APPLICATION OF CAL PEN C 18.5(A), 364-DAY MISDEMEANOR LAW MATTER OF VELASQUEZ-RIOS

By Kathy Brady and Rose Cahn, ILRC

On October 4, 2018, the Board of Immigration Appeals (BIA) issued *Matter of Velasquez-Rios*, 27 I&N Dec. 470 (BIA Oct. 4, 2018), <https://www.justice.gov/eoir/page/file/1098611/download>, limiting the applicability of Penal Code § 18.5(a) to convictions that occurred on or after January 1, 2015. While advocates plan to challenge this in the courts of appeals, it is now binding law. This advisory will summarize the case, provide advice to defenders and immigrant advocates about its implementation, and suggest arguments to raise on appeal.

A. Summary

In *Matter of Velasquez-Rios*, 27 I&N Dec. 470 (BIA Oct. 4, 2018), the BIA refused to give effect to the retroactive application of California Penal Code § 18.5(a), which provides that the maximum *potential* sentence for a California misdemeanor is 364 days rather than one year. Section 18.5 became effective on January 1, 2015. Under *Velasquez-Rios* the BIA will consider California misdemeanor convictions from that date forward to have a maximum possible sentence of 364 days, while convictions from before that date (or arguably, that were not final on that date) still will have maximum possible sentence of a year -- despite § 18.5(a)'s language specifying it shall apply retroactively. Applying this rule, the Board found that Mr. Velasquez-Rios was not eligible to apply for non-LPR cancellation, INA § 240A(b)(1), because his 2003 conviction for a misdemeanor crime involving moral turpitude, for which he was actually sentenced to 12 days in jail, had a potential sentence of one year rather than 364 days.

The three-member panel appeared to set out a new rule regarding the effect of state action on prior convictions. It stated that the CIMT deportation ground "calls for a backward-looking inquiry into the maximum possible sentence the alien *could have received* for his offense *at the time of his conviction*." *Velasquez-Rios*, 27 I&N Dec. at 472 (emphasis in original). Because Mr. Velasquez-Rios' conviction had a potential sentence of a year in 2003, the BIA deemed it to have a potential sentence of a year now, despite Pen C § 18.5(a).

Note: *Velasquez-Rios* does not change how immigration law treats an actual sentence imposed for a conviction; it only addresses potential sentence. The BIA acknowledged that immigration effect *is* given to post-conviction relief that reduces the actual sentence imposed. See *Velasquez-Rios*, 27 I&N Dec. at n. 9. This means that *Velasquez-Rios* does not affect provisions such as Pen C § 18.5(b), which provides a vehicle to reduce an imposed sentence from one year to 364 days, or motions to vacate sentences made under, e.g., Pen C § 1473.7.

Advocates will appeal *Matter of Velasquez-Rios* and we believe that we have a strong case. However, that will take time, and meanwhile immigration authorities will consider California misdemeanor convictions from before

January 1, 2015 to have a potential sentence of one year rather than 364 days. Immigration advocates and criminal defenders can consider the following steps:

- The one year/364-day difference is only important if the offense is a crime involving moral turpitude (“CIMT”). Seek post-conviction relief to vacate a CIMT from before January 1, 2015, if it will hurt your client if it is deemed to have a potential sentence of a year rather than 364 days. This can arise in two main contexts: a lawful permanent resident (LPR) with a single misdemeanor conviction for a CIMT that occurred within five years of admission, or an undocumented person with a single misdemeanor conviction of a CIMT who is seeking to obtain non-LPR cancellation of removal.¹ See Part B.
- Criminal defenders should warn defendants who are at risk because they have a CIMT conviction from before January 1, 2015 that could cause a consequence described in the paragraph above. Advise defendants that they *must* consult with an immigration advocate before contacting immigration authorities or leaving the United States. In analyzing prior convictions, conservatively assume that the *Velasquez-Rios* rule will apply to these convictions.
- If you will reduce a California felony to a misdemeanor for any purpose, including eligibility for the petty offense exception to the CIMT inadmissibility ground, and if you can choose between reclassification vehicles, consider using Pen C § 17(b)(3) rather than Prop 47. See Part B.
- If the felony was or will be reclassified as a misdemeanor under Prop 47 rather than Pen C § 17(b)(3), advocates should be prepared to explain to immigration authorities that Prop 47 reductions must be given immigration effect under *Velasquez-Rios* as long as the offense is a California “wobbler.” See Part D.
- Immigration advocates who receive an adverse ruling based on *Matter of Velasquez-Rios* should preserve the issue on appeal so that your client can take advantage of any future positive decision. See Part C for suggestions for arguments on appeal.
- Immigration advocates should be prepared to explain to authorities that *Velasquez-Rios* did *not* change, and did accept, the rule that immigration authorities must give effect to a court order (a) that vacates or reduces the actual sentence that was imposed on a prior conviction, and/or (b) that changes a “wobbler” offense from a felony to misdemeanor. It also did not change the rule that a court order that eliminates or reduces a sentence in these ways need not be based on any legal defect in order to be given immigration effect (unlike a court order vacating a conviction, which does have to be based on legal defect). The only change that *Velasquez-Rios* made was to hold that a California misdemeanor conviction from before January 1, 2015 (or, one assumes, a felony conviction from before January 1, 2015 that later is reduced to a misdemeanor) will have a potential sentence of one year rather than 365 days for immigration purposes. See Part B.

¹ In rare circumstances, it also can affect an applicant for § 212(c) relief who has two CIMT convictions. Under AEDPA amendments to the former INA § 212(c), 8 USC § 1182(c), a permanent resident who was convicted of two CIMTs, both of which had a *potential* sentence of a year or more, cannot apply for § 212(c) relief if the convictions occurred between April 24, 1996 and April 1, 1997.

B. How Might This Affect my Client? Misdemeanors and Crimes Involving Moral Turpitude

Misdemeanor with a potential sentence of 364 days: Pen C § 18.5(a) and the CIMT deportation ground and bar to non-LPR cancellation. Conviction of a crime involving moral turpitude (CIMT) can cause two main penalties if it carries a *potential* sentence of a year. First, a noncitizen is deportable if convicted of a single CIMT that carries a maximum possible sentence of a year or more, if the person committed the offense within five years after the date of admission.² Second, the BIA has held that a single CIMT conviction is a bar to eligibility for “10-year” non-LPR cancellation, if the offense has a maximum possible sentence of a year or more, or a sentence of more than six months was imposed (although some parts of this ruling are contested).³

In many states, a misdemeanor is punishable by a sentence of one year or less. Therefore, a single misdemeanor conviction of a CIMT can trigger these severe penalties. To prevent residents’ lives from being destroyed by a single misdemeanor, the states of Washington, Nevada, and California have amended their state definitions of “misdemeanor” to carry a maximum possible punishment of 364 days rather than one year. Other states are considering doing this to protect their noncitizen residents.

California has misdemeanors with varying maximum sentences, but the highest possible sentence has been up to one year. Effective January 1, 2015, Pen C § 18.5 provided that California misdemeanors that previously had a potential sentence not to exceed one year, now would have a potential sentence not to exceed 364 days. This also applies to felonies that are reduced to misdemeanors.⁴

Section 18.5 helped people going forward, but it did not specify that it should apply retroactively. Therefore, effective January 1, 2017, the Legislature amended Pen C § 18.5 to specifically apply the 364-day maximum retroactively to all past convictions. Currently Pen C § 18.5(a) provides:

18.5(a) Every offense which is prescribed by any law of the state to be punishable by imprisonment in a county jail up to or not exceeding one year shall be punishable by imprisonment in a county jail for a

² INA § 237(a)(2)(A)(i), 8 USC § 1227(a)(2)(A)(i).

³ In *Matter of Cortez*, 25 I&N Dec. 301 (BIA 2010), *Matter of Pedroza*, 25 I&N Dec. 312 (BIA 2010), the BIA interpreted INA § 240A(b)(1)(C), 8 USC § 1229b(b)(1)(C) to create the current bar, a unique combination of the CIMT deportation ground and the petty offense exception. The Ninth Circuit questioned this interpretation of the statute, because it did not include a requirement that the conviction was committed within five years of admission or entry. *Lozano-Arredondo v. Sessions*, 866 F.3d 1082, 190 (9th Cir. 2017). The BIA then reaffirmed its interpretation, disagreeing with *Lozano*, and asserted that the Ninth Circuit must defer to it. *Matter of Ortega-Lopez*, 27 I&N Dec. 382, 391-398 (BIA 2018). When these issues are appealed, the Ninth Circuit could decide not to defer to *Ortega-Lopez* and instead to insist that the test must address the five-year requirement. That would not change the requirement that the CIMT must have a potential sentence of less than one year. It could, however, help some clients qualify for non-LPR cancellation if they did not commit the CIMT within their first five years in the United States. If that distinction might help a particular client, advocates should preserve the *Lozano/Ortega-Lopez* issue on appeal as well as the *Velasquez-Rios* issue, while at the same time investigating the possibility of obtaining post-conviction relief.

Note that this bar to non-LPR cancellation is slightly different from the petty offense exception, in that the bar requires a potential sentence of less than a year, while the exception requires a potential sentence of a year or less.

⁴ See Form CR-181 at <http://www.courts.ca.gov/documents/cr181.pdf> and see generally ILRC, *Clean Slate For Immigrants: Reducing Felonies to Misdemeanors Using Penal Code § 18.5, Prop 47, Penal Code § 17(b)(3), & Prop 64* (2018) at www.ilrc.org/crimes.

period not to exceed 364 days. This section shall apply retroactively, whether or not the case was final as of January 1, 2015.

In *Velasquez-Rios*, the BIA held that while California can retroactively change the maximum possible sentence for a prior conviction for *state* purposes, it cannot change the *federal* effect. It held that for immigration purposes, pre-January 1, 2015 misdemeanor convictions still have a potential sentence of up to one year. Therefore, a CIMT misdemeanor from before that date still can trigger the above immigration consequences, according to the BIA.

Misdemeanor with a potential sentence of one year: the petty offense exception. A noncitizen who is subject to the grounds of inadmissibility, and who is convicted of or admits committing one CIMT (that is not a “purely political” offense) is inadmissible unless they come within a statutory exception like the so-called “petty offense” exception. This exception applies when: (1) the person committed only one CIMT; (2) the actual sentence imposed was not more than six months; and (3) the offense carries a maximum possible sentence of *no more than one year*.⁵ To qualify for the petty offense exception, the potential sentence may be one year, and a potential sentence of 364 days is not required. Therefore, for purposes of the petty offense exception, the offense must be a misdemeanor but it does not need Pen C § 18.5(a) to apply.

Reducing a felony to a misdemeanor under California law. A California *felony* conviction of a CIMT can trigger all of the above consequences, because it has a maximum possible sentence of more than a year. California has two main ways⁶ to change a felony to a misdemeanor. Under Pen C § 17(b)(3), if an offense is an alternative felony/misdemeanor (“wobbler”) and the defendant’s sentence included probation, a judge has the discretion to reduce a felony to a misdemeanor. Under Proposition 47 (“Prop 47”), a judge must redesignate certain felony convictions (most of which are wobblers) to be misdemeanors, for a qualifying defendant. Pen C § 1170.18. Today, reducing a felony to a misdemeanor under either law brings the maximum possible sentence down to 364 days, regardless of the date of the original conviction, pursuant to Pen C § 18.5. Before January 1, 2015, the felony reduced to a misdemeanor would have had a potential sentence of one year.

Velasquez-Rios addresses two questions. First, when do immigration authorities accept that the felony was reduced to a misdemeanor at all? *Velasquez-Rios* articulates a new rule, which is that the offense had to have the potential to be a misdemeanor at the time of conviction. In California terms, that means that the offense had to be an alternative felony/misdemeanor or “wobbler.” Second, when do immigration authorities accept that the new misdemeanor has a potential sentence of 364 days rather than one year? Again, *Velasquez-Rios* asserts that the 364-day sentence had to be available at the time of the original conviction. Therefore, immigration authorities likely will hold that if a felony conviction that occurred before January 1, 2015 is reduced to a misdemeanor, the misdemeanor will have a potential sentence of one year. If the felony conviction occurred on or after January 1, 2015 (or arguably, was not final as of that date), it will be reduced to a 364-day misdemeanor.

For the purposes of establishing eligibility for the petty offense exception, under *Velasquez-Rios* immigration authorities should continue to give full faith and credit to the reduction of any wobbler offense, regardless if

⁵ INA § 212(a)(2)(A)(ii)(II), 8 USC § 1182(a)(2)(A)(ii)(II).

⁶ One can also apply to reduce certain marijuana-related felonies to misdemeanors under Proposition 64, Cal H&S C § 11361.8(e)-(h), but whether a drug offense is a felony or misdemeanor is not relevant for immigration consequences.

that conviction occurred before or after the effective date of Pen C § 18.5. See above discussion of the petty offense exception.

For more on reducing a felony to a misdemeanor, see ILRC, *Clean Slate for Immigrants: Reducing Felonies to Misdemeanors Using Penal Code § 18.5, Prop 47, Penal Code § 17(b)(3), & Prop 64* (2018), and other resources at www.ilrc.org/immigrant-post-conviction-relief. For more on the immigration effect of CIMT convictions, see ILRC, *All Those Rules About Crimes Involving Moral Turpitude* (2017) and ILRC, *Note: CIMTs* (2018).⁷

C. Analysis and Arguments

The following is a very preliminary examination of *Matter of Velasquez-Rios* with suggestions for arguments, for cases that need them immediately. We will post a brief at www.ilrc.org/crimes as soon as it is created.

1. Plain language, no Chevron deference owed. The BIA states that its ruling is based on the plain meaning of the deportation ground. It does not state that the statutory language is ambiguous. *Velasquez-Rios* at 472. Therefore, the Ninth Circuit does not owe *Chevron* deference⁸ to the BIA's interpretation, but is free to make its own statutory interpretation, which will control.

2. Ignores existing BIA authority. *Matter of Velasquez-Rios* fails to address the basic principle that immigration law will give effect to a state action that alters the actual or potential sentence of a prior conviction. See, e.g., *Matter of Cota-Vargas*, 23 I&N Dec. 849 (BIA 2005) (distinguishing sentencing changes from vacatur of convictions which must contain a ground of legal invalidity to be valid for immigration purposes); *Matter of Song*, 23 I&N Dec. 173 (BIA 2001) (holding that the newest sentence on the reduction of a sentence determines the immigration consequences); *Matter of Martin*, 18 I&N Dec. 226 (BIA 1982) (same). The Board fails to acknowledge that it is departing from precedent and announcing a new rule.

The BIA acknowledged without comment that a *state court's* reduction of a sentence that was *actually imposed* on a prior conviction is given immigration effect, citing *Matter of Cota-Vargas, supra*. *Velasquez-Rios* at n. 9. The Board did not discuss why, then, a *state legislature's* reduction of a *potential* sentence of a prior conviction under Pen C § 18.5(a) would not similarly be given immigration effect.

3. Unprecedented rationale contradicts Ninth Circuit cases. In *Velasquez-Rios*, the BIA acknowledged that when a prior conviction is reduced from a felony to a misdemeanor under Pen C § 17(b)(3), the reduction does have immigration effect; for example, it can bring the conviction within the petty offense exception to the CIMT inadmissibility ground. The Board then had to explain why it must give effect to § 17(b)(3) (which lowers the maximum possible sentence by reclassifying the prior felony as a misdemeanor), but must not give effect to § 18.5(a) (which also lowers the maximum possible sentence of a prior conviction). It asserted that § 17(b)(3) cases are given immigration effect only because the offense (known as a "wobbler") had the potential to be a misdemeanor at the time of conviction.

⁷ Go to <https://www.ilrc.org/all-those-rules-about-crimes-involving-moral-turpitude> and https://www.ilrc.org/sites/default/files/resources/n.7-crimes_involving_moral_turpitude-20180813.pdf, respectively.

⁸ For an introduction to deference issues, see ILRC, *Who Decides: Overview of Chevron, Brand X, and Mead Principles* (2011) at www.ilrc.org/sites/default/files/resources/overview_of_chevron_mead_brand_x.pdf

By its plain terms, [INA § 237(a)(2)(A)(i)] is concerned with whether an alien has been convicted of a crime involving moral turpitude for which a sentence of 1 year or longer ‘*may be imposed.*’ (Emphasis added.) In other words, it calls for a backward-looking inquiry into the maximum possible sentence the alien *could have received* for his offense *at the time of his conviction.*

Velasquez-Rios at 472 (emphasis in original) and see n. 6. This is a critical part of the BIA’s decision, and its justification to not give effect to Pen C § 18.5(a). However, it appears that the panel simply made up this rationale. The Ninth Circuit decisions that require Pen C § 17(b)(3) reductions to be given immigration effect are not based on the fact that a wobbler offense had the potential to be a misdemeanor at the time of conviction. Rather, they are based on the principle that “a state court order to classify an offense or modify a sentence ... is clearly construing the nature of the conviction pursuant to state law.” *Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 846 (9th Cir. 2003), overruled in part by *Ceron v. Holder*, 747 F.3d 773, 778 (9th Cir. 2014) (en banc); see also *Lafarga v. INS*, 170 F.3d 1213, 1216 (9th Cir. 1999). Furthermore, the federal cases upon which the BIA relies in *Velasquez-Rios* also do not use or mention this rationale. See next section.

4. Relied on inapposite line of cases. The Board largely based its ruling on two federal sentence enhancement cases, both of which are distinguishable. In *McNeill v. United States*, 563 U.S. 816 (2011), the Supreme Court declined to find that a prior conviction for a North Carolina drug offense for which the defendant had been sentenced to ten years should be considered to be a lesser offense for sentence enhancement purposes, because North Carolina had subsequently reduced the maximum possible sentence for the offense. However, North Carolina *had not made that change retroactive to past convictions*. The Court noted that “North Carolina’s revised sentencing scheme does not apply to crimes committed before October 1, 1994.” The Court specifically stated that “this case does not concern a situation in which a State subsequently lowers the maximum penalty applicable to an offense and makes that reduction available to defendants previously convicted and sentenced for that offense.... We do not address whether or under what circumstances a federal court could consider the effect of that state action.” *Id.* at n. 1. This, of course, is the very question presented by *Velasquez-Rios*’ treatment of Pen C § 18.5(a). The Board acknowledged this without comment in n.8.

The BIA also relied on *United States v. Diaz*, 838 F.3d 968 (9th Cir. 2016). There the Ninth Circuit analyzed a criminal sentence enhancement at 21 USC § 841(b)(1)(A), which imposes a mandatory life sentence on a defendant who “commits [a violation of § 841] after two or more prior convictions for a felony drug offense have become final.” The defendant’s prior felony drug conviction had been reclassified as a misdemeanor under California’s Proposition 47. The Ninth Circuit refused to give effect to the change to a misdemeanor for purposes of the enhancement. However, the court’s analysis was based on law governing federal sentence enhancements in general, and the wording of this statute in particular. The court emphasized that:

§ 841 is a “backward-looking” inquiry requiring only that a defendant have committed his federal crime “after two or more prior convictions for a felony drug offense *have become final*,” 21 U.S.C. § 841(b)(1)(A) (emphasis added). The statute tells us what event triggers the enhancement: two state convictions that are “final.”

Id. at 973 (emphasis in original, internal citations not supplied).

The Board did not cite the language of 21 USC § 841(b)(1)(A), or acknowledge the *Diaz* court's direct reliance on the specific terms of the statute. Instead it cited general statements by the court that federal law, not state law, would govern for this federal purpose.

Arguably the Board erred in *Velasquez-Rios* when it found that *Diaz* supports or requires its conclusion. The CIMT deportation ground is different from § 841(b)(1)(A). It applies to a person who "is convicted of a crime for which a sentence of one year or longer may be imposed." It has no express element regarding finality and no cut-off when another event occurs. In fact, in *Garcia-Lopez, supra*, the Ninth Circuit gave effect to a § 17(b)(3) reduction to a misdemeanor that was applied for and granted *after* removal proceedings had begun.

Moreover, the Board's interpretation appears to bring *Diaz* into direct conflict with existing Ninth Circuit immigration law precedent. The Ninth Circuit has held that reducing a prior conviction from a felony to a misdemeanor under Pen C § 17(b)(3) is entitled to immigration effect, for purposes of the CIMT inadmissibility ground. See discussion of *Garcia-Lopez, Ceron, and Lafarga* in Subsection 3, above. However, the court in *Diaz* clearly would *not* have given effect to a § 17(b)(3) reduction for purposes of 21 USC § 841(b)(1)(A), because it found, based on the language of § 841(b)(1)(A), that the sole criteria was whether the prior felony convictions were "final" when the defendant committed the new offense. The Board asserts that *Diaz* illustrates a general "federal" rule that also governs federal immigration cases, but in fact *Diaz* would reach the opposite result that *Garcia-Lopez* and *Lafarga* did, and it cannot be reconciled.

D. Ways to limit the impact BIA's holding

Although this holding presents challenges, it is important to recognize its limitations.

- 1. *Velasquez-Rios* only affects immigration consequences that depend upon a *potential* 364-day sentence, like the CIMT ground of deportation and bars to cancellation of removal for non-permanent residents. Modifications of an *actual* sentence imposed will still be given full effect.**

As described above, when the immigration consequence is the result of the *actual sentence imposed*, then a sentence modification under Pen C § 18.5(b) alone or in conjunction with a reduction under Pen C § 17(b) and/or Prop 47 still must be given full faith and credit. For example, if the sentence imposed on a "crime of violence" is reduced from one year to 364 days under § 18.5(b), the conviction will no longer be of an aggravated felony for immigration purposes.⁹

- 2. *Velasquez-Rios* only affects California misdemeanor convictions from before January 1, 2015. Misdemeanor convictions after that date have a potential sentence of 364 days for immigration purposes. Also, a potential sentence of one year is sufficient to qualify for the petty offense exception.**

Velasquez-Rios only objected to the *retroactive* effect of Pen C § 18.5(a), which took effect on January 1, 2015. It will give effect to convictions that occurred after that date. Counsel can argue that convictions that occurred before 2015 but that were not yet final, or where probation had not yet been completed, as of January 1, 2015 also should get the benefit of § 18.5(a) for immigration purposes.

⁹ A "crime of violence" is an aggravated felony only if a sentence of one year or more is imposed. INA § 101(a)(43)(F), 8 USC § 1101(a)(43)(F).

Remember that if the issue is the petty offense exception to the CIMT inadmissibility ground (as opposed to the CIMT deportation ground or bar to non-LPR cancellation), a potential sentence of one year is sufficient to qualify, so it does not matter whether Pen C § 18.5(a) is given retroactive effect. See Part B.

3. Most Prop 47 reductions must be given immigration effect under *Velasquez-Rios*, because the offenses are wobblers

A court order reclassifying a felony as a misdemeanor under California Proposition 47 (“Prop 47”) should be given immigration effect under *Velasquez-Rios*, just like a reduction under Pen C § 17(b)(3). Like § 17(b)(3), Prop 47 provides a way for qualifying persons to have certain prior felony convictions changed to a misdemeanor. See Pen C § 1170.18. The Prop 47-eligible offenses are California theft (including Pen C § 666), forgery, passing bad checks, receipt of stolen property, burglary, and possession of a controlled substance. Significantly, all but one of the Prop 47-eligible offenses (H&S C § 11350(a)) are wobblers, meaning that they all had the potential to be punished as a misdemeanor at time of conviction. Therefore, under the same reasoning that compelled the Board to recognize a Pen C § 17(b)(3) reduction, it must recognize the Prop 47 reduction of these felonies to misdemeanors. See *Velasquez-Rios* at 472 (emphasis in original) (the test is “the maximum possible sentence the alien *could have received* for his offense *at the time of his conviction.*”)

Counsel should be prepared to explain this to immigration authorities. Authorities are familiar with Pen C § 17(b)(3), but they may not be familiar with either Prop 47 in general, the fact that almost all Prop 47 offenses are wobblers, or the rationale set out in *Velasquez-Rios*. ICE attorneys may assert that because *Velasquez-Rios* cited only to § 17(b)(3), and because *Diaz*, the sentence enhancement case that the BIA discussed, did not give effect to a Prop 47 reduction, Prop 47 orders should not be honored. There is a strong answer to this, but to avoid having to address the issues in the first place it may be better to reduce a felony under Pen C § 17(b)(3) rather than Prop 47, when that choice is available.

Remember that maximum possible sentence is only relevant to the CIMT removal grounds, and of the six Prop 47 offenses, only theft, forgery, and passing bad checks should be held to be CIMTs. Special issues may be presented by Prop 47 treatment of a prior felony conviction of Pen C § 666 (petty theft with certain prior convictions).¹⁰

¹⁰ Under Prop 47, a qualifying prior Pen C § 666 felony can be redesignated as a six-month misdemeanor theft. See Pen C §§ 490, 666. Argue that the reduction must be given immigration effect under *Velasquez-Rios*. The six-month sentence was not available before the passage of Prop 47 on November 4, 2014, but § 666 is a wobbler, so the potential sentence of one year (or 364 days) was available. Note that if the prior conviction for a § 666 was a CIMT, such as a prior Pen C § 484 theft, then the person now has *two* CIMT convictions and the potential sentence issue may be irrelevant. But if the prior was not a CIMT, such as Pen C § 496 or Veh C § 10851, and the new petty theft is the first CIMT, the § 666 reduction may be very important. See Part B.