

Using Penal Code § 1473.7 Motion to Vacate for Immigration-Related Grounds of Invalidity

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1) Summary

On Sept. 28, 2016, Governor Brown signed into law Cal. Penal Code § 1473.7, which creates a motion to vacate a criminal conviction or sentence based on two independent grounds: (1) legal invalidity due to a prejudicial error damaging the defendant's ability to knowingly accept or defend against the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere, or (2) newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice. Motions under this statute may be filed when the person is no longer in actual or constructive custody. There is a due diligence requirement, but the time begins to run only after a final order or deportation has been issued.

2) Introduction

This article will describe the post-conviction motion to vacate, its uses, the claims to which it applies, the procedure, and a way of evaluating the chances of success in using this remedy to vacate a criminal conviction or sentence. This legislation creates a motion to vacate convictions and sentences on immigration grounds. It may be filed at any time after criminal custody has ended, so long as the defendant acts with due diligence to file the motion after federal deportation proceedings have become final. If no final order of deportation has been issued, the motion should be considered timely.

Although this new procedure establishes a new vehicle for post-conviction relief, it does not create any new grounds for relief. To succeed in winning this relief, it is necessary to establish (1) a ground under which the conviction or sentence is legally invalid; (2) a "safe haven" disposition that should have been sought during the original criminal proceedings and that can provide an alternative conviction now if one is necessary to obtain the prosecution's support; and (3) sufficient equities to persuade the court to grant the necessary relief.

Because the federal immigration authorities can begin deportation proceedings at any time after a conviction has occurred, and frequently does so many years after that point, many noncitizen defendants may first realize the need to vacate legally invalid convictions only after the custody requirements or deadlines for filing traditional forms of post-conviction relief have expired. The California Supreme Court has declined to expand those remedies to address this injustice. In doing so, it said: "Because the Legislature remains free to enact further statutory remedies for those in defendant's position, we are disinclined to reinterpret the historic writ of error *coram nobis* to provide the remedy he seeks. Indeed, by specifying in which court a person should file a petition for a writ of error *coram nobis*,¹ the Legislature has impliedly recognized the existence of the common law writ and can modify it should it so desire."² For a fuller description of the historical background of this new legislation, see Rose Cahn, Immigrant Legal Resource Center, Practice Advisory, [How to Use New California Law Penal Code § 1473.7 to Vacate Legally Invalid Convictions \(October 2016\)](#).

In enacting Cal. Penal Code § 1473.7, the Legislature accepted that invitation, and brought California into line with the vast majority of U.S. jurisdictions, including 44 other states, by providing a motion to vacate convictions and sentences for immigrants who were denied the opportunity to understand and accept or defend against the adverse immigration consequences of a conviction. It has also provided this mechanism for claims of newly discovered evidence of actual innocence where the discovery came after expiration of the time limits for habeas corpus or other existing post-conviction remedies.

¹ *People v. Perez*, 19 Cal. App. 5th 818, 823, 228 Cal. Rptr. 3d 95, 98 (Ct. App. 2018), *reh'g denied* (Feb. 9, 2018), *reh'g denied* (Feb. 9, 2018), *reh'g denied* (Feb. 9, 2018), *reh'g denied* (Feb. 9, 2018).

² *People v. Kim*, 45 Cal. 4th 1078, 1107, 202 P.3d 436 (2009).

3) Effective Date

Governor Brown signed Cal. Penal Code § 1473.7 into law on Sept. 28, 2016, and it became effective on January 1, 2017. Criminal defendants can now file a statutory motion to vacate under this legislation seeking to invalidate convictions and sentences that occurred at any time. This is because the express intent of the statute is to provide a new remedy available after the custody requirements and time limits of pre-existing post-conviction remedies have expired.^{3 4}

4) Effect of Relief

Relief granted under this motion will vacate a California criminal conviction or sentence as legally invalid on a ground relating to unknown immigration consequences of the conviction, (a)(1), or on newly discovered evidence of actual innocence, (a)(2).

a. Criminal Effects

This relief eliminates the existing conviction or sentence and provides: “If the court grants the motion to vacate a conviction or sentence obtained through a plea of guilty or nolo contendere, the court shall allow the moving party to withdraw the plea.”⁵ It thus eliminates all California criminal consequences of the conviction or sentence.

b. Immigration Effects

This motion is only available if based on a ground of legal invalidity. Therefore, relief under either branch of this statute automatically eliminates the immigration consequences of the conviction or sentence, along with all criminal consequences.^{6 7 8} This is true even where the claim of legal invalidity relates to the immigration consequences of the conviction.^{9 10} Vacating the judgment will also eliminate the immigration effect of any sentence or imprisonment resulting from the conviction. An extraordinary writ may be brought simply for purposes of vacating the original sentence and obtaining a fresh sentencing hearing.¹¹ A new sentence imposed by the judge will be the one considered by the immigration authorities, even if the defendant has already completed serving the original sentence.¹²

5) Grounds for Relief

This statute provides that a criminal defendant can file a motion to vacate a criminal conviction or sentence on any grounds of “prejudicial error that damages the defendant’s ability to meaningfully understand the immigration consequences of the conviction or sentence, defend against them, or knowingly accept them.” § 1473.7(a)(1). The motion can also be filed on grounds of newly

³ *Perez*, 19 Cal. App. 5th at 823, *reh'g denied* (Feb. 9, 2018).

⁴ See also Legislative Counsel’s Digest, Cal. Penal Code § 1473.7, Appendix A, below.

⁵ *In Re Cota-Vargas*, 23 I. & N. Dec. 849 (BIA 2005).

⁶ *In Re Pickering*, 23 I. & N. Dec. 621 (BIA 2003).

⁷ *In Re Cota-Vargas*, 23 I. & N. Dec. 849.

⁸ *United States v. Castro-Taveras*, 841 F.3d 34 (1st Cir. 2016).

⁹ *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010) (convictions vacated on grounds of immigration-related ineffective assistance of counsel).

¹⁰ *In Re Adamiak*, 23 I. & N. Dec. 878 (BIA 2006) (conviction vacated on grounds of violation of court’s statutory duty to advise defendant of potential immigration consequences at time of plea, similar to *In Re Cota-Vargas*, 23 I. & N. Dec. 849).

¹¹ *People v. Barocio*, 216 Cal. App. 3d 99, 264 Cal. Rptr. 573 (Ct. App. 1989).

¹² *In Re Cota-Vargas*, 23 I. & N. Dec. 849.

discovered evidence of actual innocence that requires the conviction or sentence be vacated as a matter of law or in the interests of justice. § 1473.7(a)(2).

- a. ***Immigration-Related Grounds: Statutory Definition.*** A criminal defendant can file a motion to vacate a criminal conviction or sentence on any ground of prejudicial error that damages the defendant's ability to meaningfully understand the immigration consequences of the conviction or sentence, defend against them, or knowingly accept them. § 1473.7(a)(1). This encompasses a number of claims of legal invalidity of a conviction or sentence.
- b. ***Grounds to Vacate Conviction.*** Grounds for vacating a conviction may be any prejudicial error in the plea or trial that fits the "immigration-related" definition above. This is because allowing an invalid conviction impairs the defense against the immigration consequences of the conviction.

i) Ineffective Assistance of Counsel

The U.S. Supreme Court held in 2010 that defense counsel has an affirmative duty to give correct advice concerning the actual immigration consequences of plea as a constitutionally required component of the right to effective assistance of counsel.¹³ In 2015, the California Legislature reaffirmed these principles, stating: "It is the intent of the Legislature to codify *Padilla* and related California case law and to encourage the growth of such case law in furtherance of justice and the findings and declarations of this section." Cal. Penal Code § 1016.2(h). It also provided that defense counsel must investigate and advise the defendant regarding the actual immigration consequences of the available dispositions and try to defend the defendant against them. Cal. Penal Code § 1016.3(a). It also stated: "The prosecution, in the interests of justice, and in furtherance of the findings and declarations of § 1016.2, shall consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution." Cal. Penal Code § 1016.3(b). This legislation may have retroactive effect.¹⁴ While most claims may seek to invalidate a conviction based on a plea of guilty or no contest, it appears to be an open question whether a defendant may vacate a conviction even after trial, on the ground of ineffective assistance during plea bargaining.^{15 16 17} A claim of immigration-related ineffectiveness may be presented where, through counsel's error during plea bargaining, in failing to advise the defendant of the adverse immigration consequences of a conviction at trial, the defendant fails to defend against these adverse immigration consequences by failing to seek an alternative disposition to avoid them.

There are many immigration-related forms of ineffective assistance of counsel (IAC). The more common varieties include:

¹³ *Padilla*, 559 U.S. 356.

¹⁴ *Plotkin v. Sajahtera, Inc.*, 106 Cal. App. 4th 953, 131 Cal. Rptr. 2d 303 (2003)(if the Legislature declares a statute states "existing law," this expresses its intent that the statute will have retroactive effect).

¹⁵ *Plotkin*, 106 Cal. App. 4th 953(fair trial failed to cure prejudice from ineffective counsel in plea bargaining).

¹⁶ *In re Alvernaz*, 2 Cal. 4th 924, 830 P.2d 747 (1992).

¹⁷ *In re Alvernaz*, 2 Cal. 4th 924(ineffective assistance in deciding to go to trial based on erroneously low prediction of sentence on conviction).

1. *Failure to Investigate Immigration Status.* Counsel renders ineffective assistance by failing to investigate a client's immigration status, even if counsel is unaware that the client is not a United States citizen.^{18 19}
2. *Failure to Advise of Actual or Potential Immigration Consequences.* Defense counsel may render ineffective assistance by failing to offer any immigration advice at all.^{20 21 22} While this portion of the U.S. Supreme Court's holding in *Padilla* is not retroactive to pleas entered prior to March 31, 2010 when *Padilla* was decided,²³ California law has recognized an IAC claim for failure to advise since *People v. Soriano* was decided in 1987.²⁴
3. *Counsel's Affirmative Misadvice of Immigration Consequences.* Defense counsel may also render ineffective assistance by offering mistaken advice to the defendant.^{25 26} ²⁷ Note that this claim, unlike a claim of failure to advise, is retroactive to convictions occurring before *Padilla* was decided.²⁸
4. *Failure to Defend Against Immigration Consequences.* Solely providing correct immigration advice, however, is not enough to discharge counsel's duties to noncitizen defendants. Counsel must also attempt to *avoid* the adverse immigration consequences. This may be by taking the case to trial.²⁹ Alternatively, counsel may decline the damaging plea bargain, and attempt to negotiate a more favorable plea to an equivalent offense or sentence that does not trigger the immigration disaster.^{30 31}
5. *Ineffective Plea Negotiations.* Counsel may also be ineffective by failing to attempt to avert adverse immigration consequences by trying to negotiate an immigration-neutral disposition.^{32 33}
6. *Failure to Use Immigration Consequences to Mitigate Offense.* Counsel renders ineffective assistance by failing to use adverse immigration consequences as a

¹⁸ *Vega v. Ryan*, 757 F.3d 960, 969 (9th Cir. 2014)(defense counsel has duty to investigate even if client does not divulge relevant information).

¹⁹ See N. TOOBY, CALIFORNIA POST-CONVICTION RELIEF FOR IMMIGRANTS §§ 7.24-7.25 (2d ed. 2009).

²⁰ *People v. Soriano*, 194 Cal. App. 3d 1470, 240 Cal. Rptr. 328 (Ct. App. 1987).

²¹ N. TOOBY, CALIFORNIA POST-CONVICTION RELIEF FOR IMMIGRANTS §§ 7.24-7.25.

²² N. TOOBY & K. BRADY, CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS § 20.40.

²³ *Chaidez v. United States*, 568 U.S. 342, 133 S. Ct. 1103, 1110-12, 185 L. Ed. 2d 149 (2013).

²⁴ *People v. Bautista*, 115 Cal. App. 4th 229, 8 Cal. Rptr. 3d 862 (2004), *as modified* (Feb. 17, 2004), *as modified* (Feb. 17, 2004).

²⁵ *In re Resendiz*, 25 Cal. 4th 230, 19 P.3d 1171 (2001), *abrogated by Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010).

²⁶ *Padilla*, 559 U.S. 356.

²⁷ See CALIFORNIA POST- CONVICTION RELIEF FOR IMMIGRANTS § 7.18; CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS § 20.43.

²⁸ *United States v. Rodriguez-Vega*, 797 F.3d 781, 787 (9th Cir. 2015).

²⁹ *Hill v. Lockhart*, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985).

³⁰ *Bautista*, 115 Cal. App. 4th 229(failure to attempt to plead up to greater, non-deportable offense).

³¹ See CALIFORNIA POST-CONVICTION RELIEF FOR IMMIGRANTS § 7.20; CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS § 20.44.

³² *Bautista*, 115 Cal. App. 4th 229(failure to attempt to plead up to greater, non-deportable offense).

³³ See CALIFORNIA POST- CONVICTION RELIEF FOR IMMIGRANTS § 7.20; CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS § 20.44.

mitigating factor when attempting to obtain a disposition involving a less serious offense or shorter sentence.³⁴

ii) Judicial Errors

1. *Failure to Advise of Potential Immigration Consequences.* Penal Code § 1016.5 provides a different statutory motion to vacate a conviction where the court fails to advise the defendant, at the time of this plea, of the three possible adverse immigration consequences listed in the statute: deportation, exclusion from admission to the United States, and denial of naturalization pursuant to the law of the United States.³⁵ The 1016.5 motion, however, is subject to a due diligence requirement that may bar some of these claims of legal invalidity that would be allowed under the more generous due diligence requirement § 1473.7(b)(2), which starts only when legal challenges to the removal order have been exhausted or waived.
2. *Affirmative Misadvice on Actual Immigration Consequences of Plea.* Just as counsel's error in giving advice on the actual immigration consequences of a plea constitutes a ground of legal invalidity of the plea, so the court can commit reversible error by making the same mistake.^{36 37 38} This may occur, for example, where the court advises the defendant to enter a plea, without first informing himself of the actual immigration consequences of the plea, and instead deal with them later in immigration proceedings. It may also occur where the court misadvises the defendant that the plea will in fact trigger deportation, where the court has no idea whether this is in fact correct, a common judicial error often recorded for posterity in the plea waiver forms employed by the court.

iii) Ineffective Translation of Immigration Consequences

Denial of the right to an interpreter, or errors in translation, may interfere with the defendant's ability to receive accurate immigration advice from counsel, or the ability to receive the statutory judicial warning of potential adverse immigration consequences required under Cal. Penal Code § 1016.5.³⁹

iv) Invalid Waiver of Right to Counsel

When the defendant is self-represented, no claim of IAC is possible. The defendant may, however, make a claim that the defendant's waiver of the right to counsel is legally invalid for insufficient or mistaken advice concerning the potential adverse immigration consequences of the case as one of the dangers and disadvantages to waiving counsel – a ground for setting aside the waiver of the right to counsel.⁴⁰

³⁴ See CALIFORNIA POST-CONVICTION RELIEF FOR IMMIGRANTS § 7.23; CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS § 20.45.

³⁵ See CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS §§ 20.47-51.

³⁶ *In re Resendiz*, 25 Cal. 4th 230.

³⁷ *Castro-Taveras*, 841 F.3d 34.

³⁸ CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS § 20.43.

³⁹ See CALIFORNIA POST-CONVICTION RELIEF FOR IMMIGRANTS §§ 7.47-7.50.

⁴⁰ See CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS § 20.46.

v) Newly Discovered Evidence

Under this statute a motion to vacate a conviction or sentence can be filed on grounds of newly discovered evidence of actual innocence that requires the conviction or sentence be vacated as a matter of law or in the interests of justice.⁴¹

1. Definition

Prior law on a claim of newly discovered evidence, made in habeas corpus cases, indicates relief should be granted on this ground at least where it points unerringly to the petitioner's innocence or reduced culpability and is conclusive.⁴² In *Hardy*, the court stated that an example of such evidence is a confession by a third party.⁴³

vi) Prejudice

The immigration-related portion of this statute applies only to “prejudicial error damaging the moving party’s ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.” § 1473.7(a)(1). Because the Legislature is assumed to be aware of and incorporate existing law, the courts would apply the same prejudice standard here as in other related contexts.⁴⁴ The courts already employ the same prejudice standard for motions to vacate convictions under Cal. Penal Code § 1016.5, on grounds of judicial failure to give mandatory advice at plea to defendants concerning immigration consequences,⁴⁵ and claims of ineffective assistance of counsel (IAC) for failing to deliver correct advice on immigration consequences at plea.⁴⁶

In *People v. Superior Court (Zamudio)*, the California Supreme Court held that to obtain reversal of a conviction on account of an error under Cal. Penal Code § 1016.5, the defendant must show prejudice from the court’s error.⁴⁷ The requisite prejudice necessary for a violation of Cal. Penal Code § 1016.5 appears very similar or identical to that used to evaluate claims of IAC.⁴⁸

1. Reasonable Likelihood of Different Outcome

Several forms of prejudice have been recognized. First, the most traditional form of prejudice from IAC is a reasonable probability, less than a preponderance, but sufficient to undermine confidence that the defendant would have obtained a different outcome absent counsel’s error. This is the classic *Strickland* definition of prejudice.⁴⁹ Second, in *Hill v. Lockhart*, the Supreme Court discussed an example of prejudice where there was a reasonable probability that the defendant would have rejected the plea bargain and taken the case to trial.⁵⁰ Third, the Supreme Court held that prejudice from ineffective counsel during plea bargaining had been shown where the defendant established a reasonable probability that he would have been able to

⁴¹ *In re Lawley*, 42 Cal. 4th 1231, 179 P.3d 891 (2008).

⁴² *Id.* at 867–868 (the evidence on guilt or innocence must undermine the entire prosecution case and point unerringly to innocence or reduced culpability).

⁴³ *In re Lawley*, 42 Cal. 4th 1231, 867-868.

⁴⁴ *People v. Superior Court (Zamudio)*, 23 Cal. 4th 183, 199, 999 P.2d 686 (2000), *as modified* (July 12, 2000).

⁴⁵ *Superior Court (Zamudio)*, 23 Cal. 4th 183.

⁴⁶ *In re Resendiz*, 25 Cal. 4th at 253–254.

⁴⁷ *Superior Court (Zamudio)*, 23 Cal. 4th 183.

⁴⁸ See CALIFORNIA POST- CONVICTION RELIEF FOR IMMIGRANTS §§ 6.49, 7.27; CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS §§ 20.50.

⁴⁹ *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

⁵⁰ *Hill*, 474 U.S. 52.

negotiate a more favorable plea agreement absent counsel's error.⁵¹ *Padilla* defined prejudice from IAC during plea negotiations as when "a decision to reject the plea bargain would have been rational under the circumstances."⁵²

2. *Denial of Opportunity for Decision Maker to Exercise Discretion*

Many cases have held that prejudice is shown where the defendant has lost an opportunity to persuade a decision maker, such as the court, prosecution, or jury, to exercise discretion in his favor. For example, the Court of Appeal held that IAC had been shown at sentence where counsel failed to make a motion for a non-deportable sentence, which he had a right to make.⁵³ ⁵⁴ The defendant need not show that the decision maker would in fact have exercised discretion in his or her favor. It is sufficient for this form of prejudice to show that the motion, or request for a favorable exercise of discretion, would have been made and that the defendant had a right to make it.

c. ***Grounds to Vacate Sentence***

Grounds for vacating a sentence resulting from a guilty plea or a trial may be any prejudicial error in the plea or trial that damages the defendant's ability to meaningfully understand, defend against, and knowingly accept the immigration consequences of the sentence. § 1473.7(a)(1). This covers any prejudicial ground of legal invalidity, even if the conviction does not result from a plea, so long as the error damages his ability to knowingly accept or defend against the actual or potential immigration consequences of a plea.

The following is a list, though not an exhaustive one, of common grounds for vacating a sentence that fit this definition:

i) ***Ineffective Assistance at Sentencing***

Perhaps the most fertile ground on which to vacate a sentence as legally invalid is the denial of the right to counsel and the effective assistance of counsel. There is an unqualified right to the assistance of counsel at the sentencing hearing, as sentencing is a critical stage of the proceedings.⁵⁵ This right is especially important to noncitizens concerned with avoiding a sentence that would result in an immigration disaster.

1. *Failure to Investigate Immigration Consequences of Sentence*

Defense counsel has the obligation to investigate the immigration consequences of sentence.⁵⁶ ⁵⁷ ⁵⁸

⁵¹ *Missouri v. Frye*, 566 U.S. 134, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012).

⁵² *Padilla*, 559 U.S. at 372, citing *Roe v. Flores-Ortega*, 528 U.S. 470, 480, 486, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000).

⁵³ *Barocio*, 216 Cal. App. 3d 99.

⁵⁴ *United States v. Kwan*, 407 F.3d 1005 (9th Cir. 2005) (prejudice shown where defense counsel failed to make a motion to withdraw a plea or a motion for a non-deportable sentence after a plea had already been entered).

⁵⁵ *Mempa v. Rhay*, 389 U.S. 128, 88 S. Ct. 254, 19 L. Ed. 2d 336 (1967).

⁵⁶ *Soriano*, 240 Cal. Rptr. at 336 ("[W]hatever advice his counsel did give him was not founded on adequate investigation of federal immigration law.").

⁵⁷ N. TOOBY, CALIFORNIA POST-CONVICTION RELIEF FOR IMMIGRANTS §§ 7.24-7.25.

⁵⁸ N. TOOBY & K. BRADY, CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS § 20.40.

2. *Counsel's Mistaken Argument Concerning Immigration Consequences*

Reliability of the information considered by the court is the key issue in determining fundamental fairness in this context. A court's reliance, in its sentencing and probation decisions, on factually erroneous sentencing reports or other incorrect or unreliable information can constitute a denial of due process.⁵⁹ A mistaken argument that leads the court to impose a sentence resulting in an immigration disaster for the client should be considered deficient representation and should be grounds to vacate the sentence under this statute, assuming it meets the two requirements of § 1473.7(a)(1).

Counsel's failure to obtain information that may affect sentence has also been held to be a breach of professional obligations to the client.^{60 61}

3. *Failure to Defend Against Immigration Consequences*

Effective counsel must seek a sentence that minimizes adverse immigration consequences.⁶²

ii) **Judicial Errors**

1. *Basing Sentence on Misinformation*

The Due Process Clause prohibits sentencing based on any false and misleading information. Sentencing a defendant on the basis of assumptions concerning his or her criminal record which are materially untrue, "whether caused by carelessness or design, is inconsistent with due process of law, and such a conviction cannot stand."⁶³ Courts have remanded for re-sentencing when the court relied upon erroneous or unreliable facts or inferences at sentencing.⁶⁴

Not only must the court guard against using false evidence, the prosecution has an affirmative responsibility to assure that the court is relying on accurate facts when sentencing a defendant.⁶⁵

2. *Prosecutorial Misconduct in Argument*

The prosecution has both an ethical and constitutional duty to ensure that its arguments do not lead to a sentence based on prejudice or passion. Due process can be violated by inflammatory remarks by the prosecutor, especially before a sentencing jury.^{66 67} The prosecution must also not make disparaging remarks regarding racial, ethnic or religious groups.⁶⁸

⁵⁹ *People v. Arbuckle*, 22 Cal. 3d 749, 754–755, 587 P.2d 220 (1978).

⁶⁰ *United States v. Aviles-Solarzano*, 623 F.3d 470, 474 (7th Cir. 2010).

⁶¹ *James v. Schriro*, 659 F.3d 855 (9th Cir. 2011), *withdrawn and superseded on denial of reh'g en banc sub nom. James v. Ryan*, 679 F.3d 780 (9th Cir. 2012), *cert. granted, judgment vacated*, 568 U.S. 1224, 133 S. Ct. 1579, 185 L. Ed. 2d 572 (2013)(prejudicial failure to investigate social history, mental state, and drug abuse required reversal of the sentence).

⁶² See CALIFORNIA POST-CONVICTION RELIEF FOR IMMIGRANTS. §§ 8.45; CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS § 20.58.

⁶³ *Townsend v. Burke*, 334 U.S. 736, 740–41, 68 S. Ct. 1252, 92 L. Ed. 1690 (1948).

⁶⁴ *United States v. Tucker*, 404 U.S. 443, 447–49, 92 S. Ct. 589, 30 L. Ed. 2d 592 (1972).

⁶⁵ *Berger v. United States*, 295 U.S. 78, 88, 55 S. Ct. 629, 79 L. Ed. 1314 (1935).

⁶⁶ See ABA Standards Relating to Sentencing Alternatives and Procedures, § 5.3(b) (1968).

⁶⁷ *Brooks v. Kemp*, 762 F.2d 1383 (11th Cir. 1985), *cert. granted, judgment vacated*, 478 U.S. 1016, 106 S. Ct. 3325, 92 L. Ed. 2d 732 (1986).

⁶⁸ *Bains v. Cambra*, 204 F.3d 964, 974 (9th Cir. 2000).

3. *Basing Sentence on Improper Considerations*

The sentencing court must not consider inflammatory information such as the offender's national origin or other prejudicial and irrelevant references to race, ethnicity or religion.⁶⁹ Due process is also violated where the court bases the sentencing decision in part on the defendant's status as a noncitizen.⁷⁰ If the judge considers inappropriate factors in imposing sentence, counsel must normally object or the error is waived.⁷¹ If the trial court relies on sentencing documents which contain material factual misstatements, the proper remedy is a remand for a new probation and sentencing hearing.⁷²

A defendant retains his right against self-incrimination at the sentencing hearing and the court is not allowed to draw any adverse inferences from an invocation of silence, except, perhaps in evaluating departures based on acceptance of responsibility.⁷³

Conduct for which the defendant was acquitted, however, can be used as a sentencing factor consistent with due process so long as the conduct is proven by a preponderance of the evidence.⁷⁴

4. *Denial of the Right to Counsel*

Where the defendant is not represented by counsel, he or she can have no claim of IAC. While a criminal defendant may choose to represent himself or herself in a criminal proceeding, the waiver of the right to counsel must be knowing and voluntary.⁷⁵ In addition to being aware of the charges against him, a criminal defendant must be aware of the possible penalties, before his decision to waive counsel will be knowing and intelligent.⁷⁶

The California Supreme Court has explained that the requirements for a valid waiver of the right to counsel are: (1) a determination that the defendant is competent to waive the right, i.e., that he has the mental capacity to understand the nature of the proceedings; and (2) a finding that the waiver is knowing and voluntary. While specific warnings are not needed to demonstrate a knowing waiver, the record as a whole must demonstrate that the defendant understood the dangers and disadvantages of self- representation at every stage of the proceedings, including at sentencing.

After *Padilla*, defense counsel must affirmatively give accurate immigration advice at plea concerning the adverse immigration consequences of the conviction. This is a major advantage of exercising the right to counsel. Obviously, after *Padilla*, one of the dangers and disadvantages of forgoing the right to counsel is losing this valuable advice on the immigration pitfalls of various dispositions of the case, including various sentences. If the court fails to advise the defendant of this disadvantage, that arguably invalidates the waiver of counsel as not knowingly or intelligently entered. If prejudice can be shown from this error, the conviction or sentence should be set aside.

⁶⁹ *United States v. Borrero-Isaza*, 887 F.2d 1349 (9th Cir. 1989).

⁷⁰ *United States v. Onwuemene*, 933 F.2d 650 (8th Cir. 1991).

⁷¹ *People v. Scott*, 9 Cal. 4th 331, 353 n.16, 885 P.2d 1040 (1994), *as modified on denial of reh'g* (Mar. 14, 1995).

⁷² *People v. Eckley*, 123 Cal. App. 4th 1072, 20 Cal. Rptr. 3d 555 (2004).

⁷³ *Mitchell v. United States*, 526 U.S. 314, 119 S. Ct. 1307, 143 L. Ed. 2d 424 (1999).

⁷⁴ *United States v. Watts*, 519 U.S. 148, 117 S. Ct. 633, 136 L. Ed. 2d 554 (1997).

⁷⁵ *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).

⁷⁶ *United States v. Rylander*, 714 F.2d 996, 1005 (9th Cir. 1983).

iii) Translation Errors

Many sentences are potentially invalid on grounds of violation of the right to an interpreter for limited English-proficient defendants in criminal proceedings, both directly because of violation of this right, and indirectly because of the violation of the many other fundamental constitutional rights that depend upon the defendant understanding what is happening in court. These requirements apply for all criminal proceedings in which a party's or witness' limited capabilities in English inhibit understanding and participation in the proceedings.

Because all constitutional rights flow through the interpreter, a constitutionally defective interpreter should constitute "structural error" sufficient to require vacation of a sentences without any need to show prejudice.⁷⁷ Even the guilty have a constitutional right to an interpreter. Therefore, reversal should be required whenever a significant failure to understand what is going on is caused by inadequate interpretation.

These claims can be raised under the specific California constitutional right to an interpreter.⁷⁸ They can also be raised as violations of the due process clauses of the United States Constitution.⁷⁹

It is worthwhile to take a very careful look at the sentencing transcript to determine whether it contains evidence that the defendant did not fully understand what was going on.

iv) Prejudice

1. Reasonable Likelihood of Different Outcome

To demonstrate ineffective assistance of counsel (IAC), a petitioner must show both deficient performance and prejudice.⁸⁰ In the sentencing context, prejudice is shown where the unreasonably deficient performance of counsel at the sentencing hearing results in any amount of increased jail time. There is no need to demonstrate that counsel's poor performance led to a significant increase in the amount of time the defendant was ordered to serve; it is sufficient for prejudice to show it led to any increase at all in the length or severity of sentence imposed.⁸¹

Another form of prejudice from ineffective assistance at sentence is a sentence that causes worse immigration consequences than the sentence counsel should have tried to obtain. There are many different ways in which a certain sentence can worsen the immigration consequences of a conviction, that could have been avoided if counsel had been aware of them and tried to avoid them.^{82 83 84}

2. Denial of Opportunity for Decision Maker to Exercise Discretion

To render effective assistance at sentence, counsel must seek a non-deportable sentence if possible. The failure to do so constitutes prejudice, where the defendant has a right that the effort be made, so long as the effort has a reasonable chance of succeeding. For example, the Court of

⁷⁷ *United States v. Cronin*, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984).

⁷⁸ *People v. Rodriguez*, 42 Cal. 3d 1005, 728 P.2d 202 (1986).

⁷⁹ *Amadou v. I.N.S.*, 226 F.3d 724 (6th Cir. 2000).

⁸⁰ *Strickland*, 466 U.S. 668.

⁸¹ *Glover v. United States*, 530 U.S. 1261, 120 S. Ct. 2716, 147 L. Ed. 2d 982 (2000)(sentence one day longer sufficient to constitute prejudice from IAC at sentence).

⁸² See CALIFORNIA POST-CONVICTION RELIEF FOR IMMIGRANTS § 8.50.

⁸³ *Soriano*, 194 Cal. App. 3d 1470.

⁸⁴ *Barocio*, 216 Cal. App. 3d 99.

Appeal held that IAC had been shown at sentence where counsel failed to make a motion for a non-deportable sentence, which he had a right to make.^{85 86 87}

6) Due Diligence

The statute allows a criminal defendant to file a motion to vacate a conviction or sentence without any specific time limit or custody requirement. A special provision of this statute governs the time at which the due diligence obligation begins for immigration- related claims under § 1473.7(a)(1).

a. Notice that Conviction is Basis for Removal, or Final Removal Order

Cal. Penal Code § 1473.7 provides that a defendant must file the motion to vacate with due diligence after receiving notice that the Department of Homeland Security is relying on the conviction or sentence as a basis for removal, or after a removal order based on the conviction has become final. § 1473.7(b). The general rule in California criminal law is that a conviction becomes final after direct appeal has been exhausted or waived. The rule under immigration law is the same: If an immigration judge's order of removal is appealed, it is not considered "final." The regulatory definition of a final order provides that, except when certified to the Board of Immigration Appeals, the decision of the Immigration Judge becomes final "upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first." 8 C.F.R. § 1003.39. In effect, this means that the duty to exercise due diligence to file the motion *begins* after the end of any legal challenges to the removal order that were brought in the immigration or federal courts, e.g., after the affirmance of the removal order by the highest court in which its validity was challenged or could still be challenged.

In § 1473.7(b), the statute specifically provides:

(b) A motion pursuant to paragraph (1) of subdivision (a) shall be filed with reasonable diligence after the later of the following:

(1) The date the moving party receives a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal.

(2) The date a removal order against the moving party, based on the existence of the conviction or sentence, becomes final.

This is consistent with the federal rule on the due diligence issue, which counts challenges to the validity of the removal order in the immigration and federal courts as a legitimate reason to defer seeking post-conviction relief in the court of conviction.⁸⁸ Another reason for this rule is that success in averting removal in the immigration courts would make the filing of a request for post-conviction relief unnecessary. This would therefore minimize the judicial workload by avoiding unnecessary post-conviction litigation in the criminal courts.

⁸⁵ *Barocio*, 216 Cal. App. 3d 99.

⁸⁶ *Kwan*, 407 F.3d 1005 (prejudice shown where defense counsel failed to make a motion to withdraw a plea or a motion for a non-deportable sentence after a plea had already been entered).

⁸⁷ *Janvier v. United States*, 793 F.2d 449 (2d Cir. 1986) (reversible IAC to fail to make a motion for a non-deportable sentence. Not necessary to show the motion would have been granted).

⁸⁸ *Kwan*, 407 F.3d 1005.

A different rule governs due diligence issues for motions to vacate under this statute regarding claims of newly discovered evidence. § 1473.7(c). A somewhat different due diligence rule governs the filing of motions to vacate convictions for violation of Cal. Penal Code § 1016.5.⁸⁹

b. Definition of Due Diligence

The Legislature is assumed to be aware of and incorporate existing law, except when it expressly provides otherwise.⁹⁰ The courts would therefore apply the same due diligence standard here as in other related contexts, except they must follow the statutory provision beginning the due diligence duty at a different point for immigration claims, i.e., when the removal order has become final after the end of any procedures challenging its validity. § 1473.7(b).

The California Supreme Court already employs the same due diligence standard for different post-conviction procedural vehicles. These include petitions for habeas corpus and coram nobis relief, and statutory motions to vacate under § 1016.5.^{91 92 93 94} Relevant cases appear to construe due diligence the same way for each post-conviction vehicle that requires it. There is no reason why they would use a different standard here, except they must begin the examination of due diligence where the statute provides: at the end of any immigration litigation concerning the validity of the removal order based on the conviction. § 1473.7(b). Under this standard, a number of arguments can be made in an appropriate case: The delay was not unreasonable, since there was a legitimate reason for the delay⁹⁵; The delay was not excessive, since it was necessary to raise funds to employ post-conviction counsel, investigate the case, draft the pleadings, obtain the supporting evidence and documentation, and the like. Lack of access to a law library for incarcerated defendants can also justify delay.

c. Newly Discovered Evidence

For motions filed under Cal. Penal Code § 1473.7(a)(2), on grounds of newly discovered evidence of innocence, § 1473.7(c) provides:

C) A motion pursuant to paragraph (2) of subdivision (a) shall be filed without undue delay from the date the moving party discovered or could have discovered with the exercise of due diligence, the evidence that provides a basis for relief under this section.

7) Other Timing Issues

Other than the separate due diligence standards for immigration-related claims and claims of newly discovered evidence under this statute, § 1473.7(b)-(c), the statute has no other requirements relating to the timing of the filing of the motion. For example, unlike habeas corpus, there is no custody requirement of any kind. There is no statute of limitations before which the motion must be filed. It is unclear whether the doctrine of laches applies at all in this context,

⁸⁹ *People v. Rathert*, 24 Cal. 4th 200, 203–207, 6 P.3d 700 (2000).

⁹⁰ *Superior Court (Zamudio)*, 23 Cal. 4th at 199.

⁹¹ *Superior Court (Zamudio)*, 23 Cal. 4th 183 (§ 1016.5 motions).

⁹² *Kim*, 45 Cal. 4th 1078 (coram nobis petitions).

⁹³ California Criminal Law Procedure and Practice § 42.43 (Cal CEB) (habeas corpus timeliness requirement).

⁹⁴ N. Tooby, CALIFORNIA POST- CONVICTION RELIEF FOR IMMIGRANTS § 6.33 (2009).

⁹⁵ *Kwan*, 407 F.3d 1005 (seeking relief in immigration proceedings was a legitimate reason to wait before seeking post-conviction relief in criminal proceedings).

because the Legislature's entire purpose in enacting this legislation was to expand the time within which the motion could be filed.⁹⁶

8) Successive Motions

There is a general rule that a defendant may not present successive post-conviction attacks against a conviction one after another, or in a piecemeal fashion.⁹⁷ However, this doctrine disapproving piecemeal post-conviction litigation cannot logically apply against use of a new post-conviction procedure, such as this one, that the Legislature has just created. This is because there was no opportunity to use it at any earlier time and the Legislature specifically created it to enable immigrants and others to pursue legitimate claims of legal invalidity that were previously time-barred.⁹⁸

9) Evaluation of Chances of Success

It is important to recognize that this new statute does not guarantee success in obtaining post-conviction relief. In addition to a vehicle for which the defendant qualifies, that is capable of granting the type of post-conviction relief the defendant needs, he or she also must be able to establish one or more grounds of legal invalidity of the conviction or sentence. In order to succeed at this, it is often necessary to show that there was a "safe haven" disposition, or an immigration-neutral plea, that would not trigger the adverse immigration consequences the defendant wishes to avoid. This is generally very important to establish prejudice from the ground of legal invalidity, and the court will wish now to satisfy itself that granting the post-conviction relief sought by the defense will in fact avoid the immigration consequences. Courts do not wish to grant relief unless it makes a difference. Finally, post-conviction success becomes much more likely when the client's equities are such that the court and prosecution can be motivated to cooperate in the effort.⁹⁹

10) Procedure

a. Statutory Procedure

The procedures under this statute apply equally to all immigration-related claims as well as all claims of newly discovered evidence. § 1473.7(d)-(f). The statute provides that all motions under this statute must receive a hearing by the court in which the conviction occurred. § 1473.7(d). The defendant can appear by counsel, rather than appearing personally, when good cause is shown. The defendant bears the burden of proof by a preponderance of the evidence. The court shall provide the specific basis for its ruling granting or denying the motion. If the motion is granted, the court shall allow the defendant to withdraw his or her plea. If the motion is denied, the defendant may appeal from the denial under Cal. Penal Code § 1237(b) as an order issued after judgment affecting the defendant's substantial rights. § 1473.7(e).

⁹⁶ *Superior Court (Zamudio)*, 23 Cal. 4th 183.

⁹⁷ *Kim*, 45 Cal. 4th at 1100-1101.

⁹⁸ Legislative Counsel's Digest and text of Cal. Penal Code § 1473.7, Appendix C, below.

⁹⁹ See CALIFORNIA POST-CONVICTION RELIEF FOR IMMIGRANTS, Chapter 3, Evaluating Post-Conviction Chances; CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS §§ 20.19-20.23.

c. General Procedural Rules for Motions to Vacate

There is no reason why the procedures applicable to other statutory motions to vacate convictions would not also apply here. The *Zamudio* Court also discussed a number of issues that apply not only to motions brought under § 1016.5, but also to motions to vacate guilty pleas in general.¹⁰⁰

The Supreme Court affirmed the trial court's authority to decide a motion to vacate under *Superior Court (Zamudio)*, 23 Cal. 4th at 19 and resolve evidentiary conflicts without hearing live testimony.¹⁰¹ This rule also applies "more generally [to] plea withdrawal motions."¹⁰² The prosecution cannot exclude from evidence the declaration of a witness who is not a party (such as immigration counsel) in support of a motion to withdraw a plea under § 1016.5. The Court also implied that a court should not exclude the declaration of the defendant from evidence unless the defendant refuses to answer material questions on cross-examination.¹⁰³ If the court does not hear live testimony, or the defendant does not refuse to answer material questions on cross-examination, there is no basis on which to exclude his or her declaration from evidence.¹⁰⁴

¹⁰⁰ *Superior Court (Zamudio)*, 23 Cal. 4th at 190–201.

¹⁰¹ *Superior Court (Zamudio)*, 23 Cal. 4th at 19, citing *Rosenthal v. Great W. Fin. Sec. Corp.*, 14 Cal. 4th 394, 414, 926 P.2d 1061 (1996).

¹⁰² *Superior Court (Zamudio)*, 23 Cal. 4th at 19.

¹⁰³ *People v. Williams*, 30 Cal. App. 3d 502, 510, 106 Cal. Rptr. 324 (Ct. App. 1973).

¹⁰⁴ *Superior Court (Zamudio)*, 23 Cal. 4th at 21.

APPENDIX A

Assembly Bill No. 813
CHAPTER 739

An act to add Section 1473.7 to the Penal Code, relating to criminal procedure. [Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 813, Gonzalez. Criminal procedure: postconviction relief.

Under existing law, although persons not presently restrained of liberty may seek certain types of relief from the disabilities of a conviction, the writ of habeas corpus is generally not available to them. Existing law creates an explicit right for a person no longer unlawfully imprisoned or restrained to prosecute a motion to vacate a judgment based on newly obtained evidence of fraud or misconduct by a government official, as specified.

This bill would create an explicit right for a person no longer imprisoned or restrained to prosecute a motion to vacate a conviction or sentence based on a prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere, or based on newly discovered evidence of actual innocence, as specified. The bill would require a court to grant the motion if the moving party establishes a ground for relief, by a preponderance of the evidence. The bill would require a court granting or denying the motion to specify the basis for its conclusion.

Digest Key

Vote: MAJORITY Appropriation: NO Fiscal Committee: NO Local Program: NO

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 1473.7 is added to the Penal Code, to read:

1473.7.

(a) A person no longer imprisoned or restrained may prosecute a motion to vacate a conviction or sentence for either of the following reasons:

- (1) The conviction or sentence is legally invalid due to a prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.

(2) Newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice.

(b) A motion pursuant to paragraph (1) of subdivision (a) shall be filed with reasonable diligence after the later of the following:

(1) The date the moving party receives a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal.

(2) The date a removal order against the moving party, based on the existence of the conviction or sentence, becomes final.

(c) A motion pursuant to paragraph (2) of subdivision (a) shall be filed without undue delay from the date the moving party discovered, or could have discovered with the exercise of due diligence, the evidence that provides a basis for relief under this section.

(d) All motions shall be entitled to a hearing. At the request of the moving party, the court may hold the hearing without the personal presence of the moving party if counsel for the moving party is present and the court finds good cause as to why the moving party cannot be present.

(e) When ruling on the motion:

(1) The court shall grant the motion to vacate the conviction or sentence if the moving party establishes, by a preponderance of the evidence, the existence of any of the grounds for relief specified in subdivision (a).

(2) In granting or denying the motion, the court shall specify the basis for its conclusion.

(3) If the court grants the motion to vacate a conviction or sentence obtained through a plea of guilty or nolo contendere, the court shall allow the moving party to withdraw the plea.

(f) An order granting or denying the motion is appealable under subdivision (b) of Section 1237 as an order after judgment affecting the substantial rights of a party.

APPENDIX B

Checklist of Immigration-Related Claims

- i) Grounds to Vacate Conviction After Plea or Trial
 - (a) Ineffective Assistance of Counsel
 - 1. Failure to Investigate Immigration Status
 - 2. Failure to Advise of Actual or Potential Immigration Consequences
 - 3. Counsel's Affirmative Misadvice of Immigration Consequences
 - 4. Failure to Defend Against Immigration Consequences
 - 5. Ineffective Plea Negotiations
 - 6. Failure to Use Immigration Consequences to Mitigate Offense
 - (b) Judicial Errors
 - 1. Failure to Advise of Potential Immigration Consequences
 - 2. Affirmative Misadvice on Actual Immigration Consequences of Plea
 - 3. Ineffective Translation of Immigration Consequences
 - (c) Invalid Waiver of Rights
 - (d) Ineffective Translation of Immigration Consequences
 - (e) Prejudice
 - 1. Reasonable Likelihood of Different Outcome
 - 2. Denial of Right to Opportunity for Decision Maker to Exercise Discretion
- ii) Grounds to Vacate Sentence
 - (a) Ineffective Assistance at Sentencing
 - 1. Failure to Investigate Immigration Consequences of Sentence
 - 2. Counsel's Mistake Argument Concerning Immigration Consequences
 - 3. Failure to Defend Against Immigration Consequences
 - (b) Judicial Errors
 - 1. Basing Sentence on Misinformation
 - 2. Prosecutorial Misconduct in Argument
 - 3. Basing Sentence on Improper Considerations
 - 4. Denial of the Right to Counsel
 - (c) Translation Errors Relating to Immigration Issues
 - (d) Prejudice
 - 1. Reasonable Likelihood of Different Outcome
 - 2. Denial of Right to Opportunity for Decision Maker to Exercise Discretion

APPENDIX C

Game Plan Template

1. Goal
 - a. The goal in post-conviction relief is usually to vacate the current conviction and either get a dismissal or replace it with a conviction that results in less severe immigration consequences, or no immigration consequences at all. We refer to this replacement conviction as a “safe haven.” See 4, below.
2. Vehicle
 - a. Cal. Penal Code § 1473.7, the subject of this article, is a new post-conviction procedural vehicle that can be used to get the matter before the court. Other vehicles include Cal. Penal Code § 1385, Cal. Penal Code § 1016.5, Penal Code 1016.5, and habeas corpus, among others.
3. Grounds
 - a. For a motion to be effective in reducing or eliminating the immigration consequences of a *conviction*, it must be based, at least in part, on a ground of legal invalidity. Perhaps the most common ground of legal invalidity is IAC, but other grounds of legal invalidity, such as judicial errors and translation errors, may also be found.
4. Safe Haven
 - a. A safe haven is a replacement conviction that results in less severe immigration consequences than the current conviction or no immigration consequences at all. The safe haven can be an offense of equal or even greater severity from a criminal perspective.
5. Equities
 - a. Equities are positive characteristics about the client that can help persuade a judge or prosecutor to allow us to replace the current conviction with a safe haven. Common equities include the harm that would be done to US citizen relatives or dependents if the client were to be deported or unable to work legally in the US, the client’s standing and ties to the community, length of law-abiding living in the US before and after the offense of conviction, education, and employment.

APPENDIX D

Resources

1. CALIFORNIA CRIMINAL DEFENSE OF IMMIGRANTS, by Norton Tooby and Katherine Brady (CEB 2017).
2. Rose Cahn, Immigrant Legal Resource Center, Practice Advisory, [How to Use New California Law Penal Code § 1473.7 to Vacate Legally Invalid Convictions \(October 2016\)](#).
3. CRIMINAL DEFENSE OF IMMIGRANTS, by Norton Tooby and J.J. Rollin.
4. CALIFORNIA POST-CONVICTION RELIEF FOR IMMIGRANTS, by Norton Tooby.
5. SAFE HAVENS: HOW TO IDENTIFY AND CONSTRUCT NON-DEPORTABLE CONVICTIONS, by Norton Tooby and J.J. Rollin.