

# **California Criminal Record Expungement and Immigration Consequences: A Research Guide for Immigration Practitioners**

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## **FINDINGS**

### **CALIFORNIA CRIMINAL RECORD EXPUNGEMENT AND IMMIGRATION CONSEQUENCES: A COMPREHENSIVE RESEARCH GUIDE FOR IMMIGRATION PRACTITIONERS**

This research brief addresses a critical intersection in immigration law practice: understanding how California's comprehensive criminal record relief statutes interact-or fail to interact-with federal immigration law. While California has expanded expungement and record sealing mechanisms substantially through recent legislation, particularly the Clean Slate Act (SB 731) effective July 1, 2023, these state-law remedies provide virtually no relief for federal immigration consequences of criminal convictions. This report examines the mechanics of California expungement procedures while emphasizing the distinct and often superior strategies available under California Penal Code sections 1473.7 and 1016.5, which can actually eliminate convictions for immigration purposes by addressing defects in the underlying criminal proceedings.

#### **Understanding California Expungement: Statutory Framework and Practical Reality**

##### **What Expungement Actually Accomplishes Under California Law**

California does not have true expungement in the sense of erasing a criminal record from existence[1][5][27]. The process is technically called a "dismissal" under Penal Code section 1203.4 or related statutes. When a court grants what is colloquially called an expungement, the judge allows a defendant to withdraw a guilty or no-contest plea, enter a plea of not guilty, and then dismisses the charges, releasing the person from penalties and disabilities resulting from the conviction[2][4][10]. This provides meaningful relief within the California state criminal justice system but operates within significant limitations that practitioners must clearly communicate to immigrant clients.

When an expungement petition is granted under Penal Code 1203.4, the conviction is not sealed or truly erased[1][7]. The record will continue to show the conviction and the dismissal "per PC 1203.4" in California Department of Justice databases and Federal Bureau of Investigation criminal history records[1][7]. Any person or entity that knows where to look will still find the court case file, which remains accessible to the public despite the dismissal[1][7]. This is fundamentally different from what many defendants expect when they hear the term "expungement," and the distinction becomes critically important when immigration consequences enter the analysis.

The effects of an expungement within California's state system are circumscribed but meaningful for non-immigration purposes[1][7]. An expungement allows a person to answer honestly on many job applications that they have not been convicted of the offense, though not on applications for government jobs, government-issued licenses, or jobs requiring security clearances, where the conviction must still be disclosed[1][7]. An expungement prevents the conviction from being used to impeach a defendant's credibility if they testify as a witness, except in cases involving subsequent offenses[1][7]. For felony convictions, an expungement is the first step toward obtaining a gubernatorial pardon[1][4].

However, what expungement will not accomplish is extensive and particularly relevant to immigrant defendants. An expungement does not restore firearm rights if they were removed due to the conviction, except in narrow circumstances where a reduction to a misdemeanor occurs for a non-violent offense[1][7][13]. An expungement does not terminate sex offender registration requirements under Penal Code 290; individuals must complete additional procedures and apply for a Certificate of Rehabilitation when

eligible[1][7][21]. An expungement does not prevent the conviction from being used as a prior strike under California's Three Strikes Law or from being considered in future criminal cases[1][7]. Most critically for this immigration law practice, an expungement does not prevent the conviction from being used by immigration authorities for removal and exclusion purposes[1][7][9].

### **Eligibility Requirements for Petition-Based Expungement Under PC 1203.4 and 1203.4a**

The eligibility framework for expungement reflects a two-tiered approach depending on whether probation was granted at sentencing. For defendants who received probation at sentencing, the primary requirement is completion of all probation terms without violation[1][4]. The individual must no longer be on probation and must not be serving a sentence (including informal probation) for any other offense anywhere in the United States[1][4]. Probation need not have been completed through its full term; early termination under Penal Code 1203.3 is permissible, and in fact, courts have discretion to terminate probation early if the interests of justice are served[1][4][16].

For defendants who were not granted probation at sentencing, or whose case involves an infraction reduction, Penal Code 1203.4a provides an alternative pathway[1][7]. Applicants must wait at least one year after conviction before applying for expungement under 1203.4a[1][7]. This one-year waiting period is measured from the date of conviction, not from completion of any sentence or custody term.

Certain convictions are explicitly excluded from expungement relief. Penal Code 1203.4(b) excludes misdemeanor offenses involving vehicles under specific Vehicle Code sections, certain sexual offenses, and infractions[1][10]. Additionally, individuals sentenced to state prison cannot obtain expungement under the traditional PC 1203.4 framework, though recent legislative changes under Senate Bill 731 and Penal Code 1203.41 have expanded eligibility for certain felonies involving state prison sentences, as discussed below[2][4][44].

### **Recent Legislative Expansion: Senate Bill 731 and the Clean Slate Act**

The California legislature made substantial changes to expungement and record relief law through Senate Bill 731, effective July 1, 2023, creating what is popularly called the Clean Slate Act[2][14][51]. This legislation fundamentally altered who is eligible for expungement relief by expanding court discretion to grant expungement on certain felony convictions involving imprisonment in state prison or county jail, provided specific conditions are met[2][14][44].

Under amended Penal Code 1203.41, a court may now exercise discretion to grant relief on certain felony convictions even if the defendant was sentenced to prison, provided the felony is not specifically excluded by law and at least two years have passed since the defendant completed their prison term[2][44]. This represents a dramatic departure from prior law, which automatically excluded from expungement anyone who received a state prison sentence. However, certain sex offenses requiring registration under Penal Code 290 and crimes against children were specifically excluded from this expansion[2][44].

Additionally, SB 731 created automatic record relief mechanisms that operate without requiring a defendant to file a petition. Penal Code section 1203.425 and 1203.425(c) require the California Department of Justice to review records on a monthly basis and automatically identify convictions eligible for relief[14][17][51]. Under these provisions, once a person has completed their sentence and has not had any contact with the criminal justice system for a specified period (generally four years for those with incarceration or probation revocation; immediately for those with successful probation completion), their conviction is automatically sealed and will not appear in background checks provided to employers and licensing agencies[14][51]. The implementation of this automatic relief was delayed and became operative on October 1, 2024[14][17][51].

Critically, automatic record relief under these statutes is not a dismissal, expungement, or sealing in the traditional sense; rather, it adds a notation to the record indicating that relief has been granted[17]. The conviction remains on state criminal history records maintained by law enforcement and the Department of Justice; it is simply not disseminated to employers and other agencies for employment, licensing, or certification purposes under Penal Code 11105[17].

### **Procedural Requirements and Timeline for Petition-Based Expungement**

The procedural pathway for obtaining expungement through a court petition involves discrete steps that vary somewhat by county but follow a consistent framework. A defendant must complete a Petition for Dismissal form (typically CR-180 or a county-specific equivalent) and submit it to the Superior Court in the county where the conviction occurred[3][6][56]. The specific forms required vary by county; for example, San Diego Superior Court requires form CRM-204, while other counties may use locally-developed forms with equivalent information[10][56]. The petition must be completed in its entirety and filed with proof of service on the District Attorney's office and, if applicable, the probation office[3][6][56].

Court filing fees for expungement petitions vary by county and by offense type. Most California counties charge approximately \$60 to \$150 per misdemeanor petition, with felony petitions typically ranging from \$120 to \$150[1][20]. However, California law provides that applicants who cannot afford these fees may request a fee waiver by submitting a Defendant's Financial Statement (CR-105 or equivalent) demonstrating financial hardship[1][3][20]. The court will rule on the fee waiver request; importantly, the inability to pay cannot be a prerequisite to eligibility, and the fee waiver request cannot be grounds for denial of the underlying expungement petition[20].

Once the petition is filed, the District Attorney must receive notice and has an opportunity to respond[1][29]. The prosecutor can file an objection within a specified period (typically fifteen days), and courts will consider the prosecutor's opposition[1][29]. The petitioner bears the burden of demonstrating compliance with eligibility requirements, though courts have discretion to grant or deny petitions based on the interests of justice[1][3][29].

The timeline from filing to final decision typically requires ninety to one hundred twenty days, though variations exist[57][60]. Some courts with lighter caseloads process expungements in six to eight weeks[57][60]. Delays commonly result from court backlogs (particularly in larger counties like Los Angeles and Orange County), the need to retrieve archived case files, requests for probation reports or other supplemental documentation, and the requirement of a hearing for certain offense types[57][60]. Once the court signs an order, the clerk typically issues a certified copy within one to two weeks, and the order is sent to the California Department of Justice for processing, which can take weeks to months depending on DOJ backlog[57][60].

### **The Critical Immigration Law Problem: Expungement Does Not Eliminate Immigration Consequences**

#### **Federal Definition of "Conviction" Under Immigration Law**

The central problem for immigrants seeking expungement relief is the fundamental mismatch between California's definition of a dismissed conviction and the federal immigration law definition of a "conviction." Federal immigration law uses a specific definition codified in the Immigration and Nationality Act at 8 U.S.C. § 1101(a)(48)(A). Under this federal definition, a person has been convicted of a crime for immigration purposes if: (1) they entered a plea of guilty, a plea of nolo contendere (no contest), or were found guilty after

a trial; AND (2) the judge ordered some form of punishment, penalty, or restraint on liberty[11][33]. This "punishment or restraint" includes anything from imprisonment to probation, a fine, community service, or any other penalty or disability imposed by the court[11][33].

The critical distinction is that the federal definition focuses on what occurred at the time of sentencing, not what happens afterward through post-conviction relief. Because an expungement under California law occurs after a defendant has already received a sentence-and thus already satisfied the federal definition of "conviction"-the subsequent state-law dismissal does not retroactively erase the fact that the federal definition of conviction was met[11][33]. The United States Court of Appeals for the Ninth Circuit, whose precedent controls in Northern California, has consistently held that California expungements do not eliminate immigration consequences of convictions[11][33].

In *Marinelarena v. Garland*, 6 F.4th 975, 979 (9th Cir. 2021), the Ninth Circuit concluded that a state conviction expunged under California law due to fulfillment of probation conditions remains a "conviction" for federal immigration law purposes[11]. Similarly, in *Ramirez-Castro v. INS*, 287 F.3d 1172, 1174 (9th Cir. 2002), the Ninth Circuit held that expungement of a misdemeanor California conviction for carrying a concealed weapon did not eliminate the immigration consequences of the conviction[11]. The Board of Immigration Appeals has explicitly stated in precedent decisions that it defers to the federal definition and "preclud[es] the recognition of subsequent state rehabilitative expungements of convictions"[11].

This means that even though a conviction may be "expunged" under California law-allowing a defendant to state on most job applications that they were never convicted-the conviction still counts as a conviction for federal immigration purposes. An immigrant with an expunged conviction must still disclose that conviction on all immigration applications and in removal proceedings[8][31][33]. Failure to disclose an expunged conviction on an immigration application can result in a separate ground for denial based on misrepresentation, which creates a permanent bar to most immigration benefits[33].

### **Expungement Does Not Prevent Removal Based on Criminal Convictions**

The practical consequences of this distinction are severe. An immigrant with a conviction for a crime involving moral turpitude (CIMT), a crime of violence, an aggravated felony, or any other deportability ground will still be removable even if the conviction is expunged under California law[8][31][33]. Immigration authorities will continue to use the expunged conviction as a basis for charging removability[8][31][33]. For example, if an immigrant has a conviction for drug trafficking that has been expunged under California law, that expunged conviction still constitutes an aggravated felony for immigration purposes, and immigration authorities can initiate removal proceedings[8][31][33].

Similarly, an immigrant seeking permanent residence (a green card) or citizenship cannot rely on expungement to overcome an inadmissibility ground based on a prior conviction. Even though the California conviction may be dismissed, the federal government will treat it as a conviction for purposes of determining admissibility[33]. An immigrant with a conviction for fraud, a crime of violence, or other bars to immigration benefits will be unable to obtain those benefits based on an expungement alone[33].

An immigrant who has already received a Notice to Appear initiating removal proceedings and who subsequently obtains an expungement will not have removal proceedings dismissed or stayed[8][31][33]. The expungement does not eliminate the ground of removability charged by immigration authorities[33]. Immigration judges in the San Francisco Immigration Court and other courts nationwide treat expunged convictions as convictions for purposes of removal proceedings[11][33].

### **The Limited Exception: Federal First Offender Act for Simple Drug Possession**

There is one narrow exception to this general rule. The federal First Offender Act (FFOA), codified at 18 U.S.C. § 3607, provides that aliens whose offense would have qualified for first-offender treatment under federal law but who were convicted and had their conviction expunged under state law may not be removed on account of that offense[11][48]. The Ninth Circuit has recognized this exception in cases involving simple possession of a controlled substance as defined in federal law under 21 U.S.C. § 844[11][48].

To qualify for FFOA treatment, the noncitizen must: (1) have been found guilty of an offense described in section 404 of the Controlled Substances Act (21 U.S.C. § 844); (2) have had no prior conviction for a federal or state controlled substances offense; and (3) have the conviction expunged pursuant to the state or foreign expungement statute[11][48]. Critically, the conviction must already be expunged; the possibility of future expungement is not sufficient[11][48].

Additionally, the Ninth Circuit has held that the FFOA does not apply to use or being under the influence offenses, only to possession[11][48]. Furthermore, in some circumstances involving possession of drug paraphernalia or other variants of simple possession offenses, courts have recognized expungement under FFOA only when to do otherwise would lead to absurd results or frustrate congressional intent[11][48].

For immigrants in Northern California with simple drug possession convictions from before July 14, 2011, an expungement may be recognized for immigration purposes under this exception[8][31]. However, this represents a limited category of relief affecting a small subset of cases and should never be assumed to apply without careful legal analysis.

## **Superior Alternatives: Penal Code 1473.7 and 1016.5 Vacaturs**

### **The Power of Vacatur: Eliminating Convictions for Immigration Purposes**

While California expungement provides limited state-law benefits with virtually no immigration benefit, California has created two powerful post-conviction relief statutes that can eliminate convictions for immigration purposes by attacking the legal validity of the conviction itself. These statutes-Penal Code 1473.7 and Penal Code 1016.5-allow defendants to file motions to vacate convictions based on defects in the underlying criminal proceedings. When successful, a vacatur under these statutes conclusively establishes that the conviction is invalid and therefore not a "conviction" under federal immigration law[32][35][40].

The critical principle is that when a conviction is vacated because of a substantive or procedural defect in the criminal proceedings-such as ineffective assistance of counsel or failure to advise of immigration consequences-the government cannot rely on that conviction as a basis for removal or other immigration consequences[32][35][40]. This is fundamentally different from expungement, which leaves the conviction technically valid but dismissed under state law. A vacatur for defect erases the conviction itself, which is why it is recognized by federal immigration authorities[32][35][40].

### **Penal Code 1473.7: Vacatur for Immigration-Related Prejudicial Error**

Penal Code 1473.7, enacted in 2016 and amended in 2021, provides that a person no longer imprisoned or restrained may prosecute a motion to vacate a conviction or sentence for one of two reasons[35][40]. The first basis is that 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[35][40]. The second basis is newly discovered evidence of actual innocence[35][40].

The immigration-related ground under PC 1473.7(a)(1) encompasses at least three distinct causes of action

that may be raised independently or together[35][40]. First, a defendant may move to vacate based on defense counsel's failure to advise the defendant of the immigration consequences of a plea, violating the defendant's constitutional right to effective assistance of counsel under the Supreme Court's landmark decision in *Padilla v. Kentucky*, 559 U.S. 356 (2010)[35][40]. Second, a defendant may move to vacate based on the defendant's failure to meaningfully understand the immigration consequences of the plea, demonstrating that the plea was not knowing, voluntary, and intelligent[35][40]. Third, a defendant may move to vacate based on the court's failure to provide advisement about immigration consequences, though this ground is also addressed through PC 1016.5[35][40].

To obtain relief under PC 1473.7(a)(1), the defendant must demonstrate by a preponderance of the evidence that: (1) the conviction or sentence is legally invalid due to prejudicial error; (2) the prejudicial error damaged the defendant's ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the plea; and (3) either the conviction is currently causing or has the potential to cause removal or denial of an immigration benefit[35][40]. The petitioner must file the motion without undue delay from the earlier of: (1) the date the Department of Homeland Security provides notice of removability; or (2) the date a removal order becomes final[40].

The evidentiary burden in establishing a PC 1473.7 motion requires careful attention to the record. The defendant typically bears the burden of proving ineffective assistance of counsel under the two-prong test from *Strickland v. Washington*, 466 U.S. 668 (1984): (1) counsel's performance was deficient, falling below an objective standard of reasonableness; and (2) the deficiency prejudiced the defense in such manner as to deprive the defendant of a fair proceeding[35][40]. The prejudice prong in immigration cases is uniquely favorable to defendants because a showing of lack of meaningful understanding regarding immigration consequences is typically sufficient to satisfy the prejudice requirement[35][40].

A court order granting a Penal Code 1473.7 motion necessarily establishes that the conviction was vacated for substantive or procedural error[35][40]. This automatically meets the immigration-court requirement for vacatur because the government cannot prove "with clear, unequivocal and convincing evidence" that the state court vacated the conviction solely for rehabilitative reasons or to avoid immigration consequences[35][40]. Under *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), and Ninth Circuit precedent, a conviction vacated pursuant to PC 1473.7(a)(1) is conclusively not a "conviction" under the Immigration and Nationality Act, regardless of the respondent's personal circumstances[32][35][40].

### **Penal Code 1016.5: Vacatur for Court's Failure to Advise of Immigration Consequences**

Penal Code 1016.5, enacted in 1977, addresses the court's affirmative obligation to advise defendants of immigration consequences before accepting a plea[38][40][41]. Prior to accepting a guilty plea or no-contest plea in a criminal case, Penal Code 1016.5(a) requires the court to administer the following advisement on the record: "If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." [38][40][41]

If the court failed to provide this advisement, Penal Code 1016.5(b) gives the defendant the right to move to vacate the judgment and withdraw the plea of guilty or no-contest provided: (1) the court failed to advise about the specified immigration consequences; (2) there is a possibility that the conviction may have one of the specified immigration consequences; and (3) the defendant was prejudiced by the non-advisement[38][40][41]. The prejudice requirement under PC 1016.5 differs slightly from the *Strickland* analysis; the defendant must show that they would have made a different choice-presumably rejecting the plea-had they been advised of the immigration consequences[38][40][41].

Importantly, if the court has no record that the defendant was advised of deportation consequences pursuant to PC 1016.5, it is presumed that the defendant was not advised, shifting the burden to the prosecution to prove that the advisement was given[38][40][41]. This procedural presumption is extraordinarily favorable to defendants, particularly in cases where the trial attorney failed to contemporaneously document the advisement or where the court's minute orders do not reflect compliance with the statute[38][40][41].

The statute requires that the court advise the defendant expressly of each of the three distinct possible immigration consequences: deportation, exclusion from admission, and denial of naturalization[38][40][41]. Courts cannot substitute alternative language such as advising that consequences "will" occur rather than "may" occur; the statute specifically requires the word "may," and substitution of "will" creates a different legal standard and may constitute ineffective assistance of counsel if done at counsel's direction[38][40][41]. Recent case law has emphasized that even when a defendant signs a form stating the plea "will" result in deportation, this does not satisfy the "may" standard and does not prevent relief under PC 1016.5[38][40][41].

### **Building a Record for 1473.7 and 1016.5 Motions**

For practitioners representing immigrants seeking to vacate convictions, the critical strategic element is building an adequate evidentiary record. The Board of Immigration Appeals has emphasized that immigration and criminal practitioners must submit detailed declarations, affidavits, and other evidence to establish the basis for vacatur[32]. Affidavits from the defendant describing their understanding or lack of understanding of immigration consequences are admissible under penalty of perjury and carry evidentiary weight[32].

In *Matter of Azrag*, 28 I&N Dec. 784 (BIA 2024), the BIA emphasized that the state court record must contain specific findings of fact or legal conclusions demonstrating the defect in the original proceedings[32]. Simply alleging ineffective assistance is insufficient; the petitioner must provide evidence such as trial counsel's notes, prior correspondence between counsel and the client, notes from meetings, or other contemporary documentation[32]. The absence of such documentation requires the defendant to provide a detailed, credible declaration explaining why the documentation does not exist[32].

For PC 1016.5 motions, practitioners should request certified copies of the minute orders from the guilty plea proceeding, the probation report, sentencing documents, and any transcripts available[40]. If the court's minute orders do not reflect the PC 1016.5 advisement, this creates a presumption that it was not given[40]. For PC 1473.7 motions based on ineffective assistance of counsel, practitioners should obtain the complete case file, including discovery, defense correspondence, and any internal case notes if available through public defender records or retained counsel's files[40].

## **San Francisco Immigration Court and Northern California Procedural Considerations**

### **San Francisco Immigration Court Context**

The San Francisco Immigration Court, located at 100 Montgomery Street, Suite 800, San Francisco, CA 94104, handles removal proceedings for immigrants from Northern California, including the Bay Area, as well as cases from Hawaii and Guam. The court maintains additional hearing locations in Concord, California (1855 Gateway Boulevard, Suite 850, Concord, CA 94520) and previously in San Jose, with current procedural requirements available through the Executive Office for Immigration Review (EOIR) website[40][41].

Immigration judges in the San Francisco Immigration Court apply controlling Ninth Circuit precedent regarding the non-recognition of state expungements for immigration purposes[11][33]. The judges regularly encounter cases where immigrants or their representatives mistakenly believe that an expungement will

protect them from removal; educating clients about this distinction is critical to competent representation. The court will not dismiss or stay removal proceedings based on a state-law expungement, and the government will rely on the expunged conviction as the basis for removability charges[33].

However, the San Francisco Immigration Court does recognize vacatur under PC 1473.7 and PC 1016.5 when properly documented and when the record demonstrates that the conviction was vacated for substantive or procedural defect rather than rehabilitative reasons[32][35]. Immigration judges in this court are experienced with California post-conviction relief procedures and understand the significance of legally valid vacatur as opposed to rehabilitative dismissals[32][35].

### **Northern California Criminal Courts and Expungement Procedures**

Expungement procedures vary by county in Northern California. The San Diego Superior Court has comprehensive self-help resources and local forms (CRM-204 for petitions, with separate packets for misdemeanor and felony cases)[10][56]. The Orange County Superior Court provides detailed local rules and forms (packets L-1278, L-1279, and related forms)[4][59]. The Riverside Superior Court accepts both in-person and electronic filing of expungement petitions through its eSubmit Portal, with no filing fee required[6][58].

San Francisco Superior Court does not maintain as extensive public self-help resources as some larger Southern California counties, but the California Courts Self-Help Center provides statewide forms and guidance[27][43][46]. The statewide forms CR-180 (Petition for Dismissal) and CR-181 (Order for Dismissal) are available through the California Courts website and can be used in San Francisco and other Northern California counties[43][46].

Filing fees in Northern California counties generally align with statewide patterns: approximately \$60 to \$150 for misdemeanor petitions, \$120 to \$150 for felony petitions[20]. Fee waivers are available for individuals demonstrating financial hardship[20].

### **Northern California District Attorney Policies**

Different Northern California district attorney offices maintain varying policies regarding prosecution opposition to expungement petitions. Some prosecutors routinely object to expungement based on public safety concerns or insufficient rehabilitation, while others rarely object to straightforward cases involving completion of probation without violation[55]. Practitioners should contact the specific district attorney's office where the conviction occurred to determine local practice.

The San Francisco District Attorney's office, the Oakland District Attorney's office (Alameda County), the Santa Clara County District Attorney's office, and other Northern California prosecuting authorities each maintain different approaches to expungement petitions. Some counties have "Clean Slate" programs operated by public defender offices that facilitate expungement for eligible individuals; practitioners should inquire whether such programs exist in the relevant county[4][14].

## **Immigration-Specific Considerations and Strategic Analysis**

### **When Expungement May Provide Collateral Benefits**

Although expungement does not eliminate immigration consequences, it may provide collateral benefits in certain limited contexts. An expungement may facilitate employment or housing in contexts where employers or landlords conduct background checks through private vendors who may not have access to sealed or dismissed records[3][5]. An expungement may improve prospects for obtaining professional licenses in some

fields, though immigration agencies and licensing boards with access to law enforcement databases will still see the conviction[1][4][19].

For DACA (Deferred Action for Childhood Arrivals) recipients, expungement may have limited beneficial effect in specific circumstances. USCIS has strict limitations on DACA eligibility and renewal based on certain criminal convictions, but in specific circumstances, an expungement may allow USCIS to reconsider renewing or granting DACA even where the applicant has an otherwise disqualifying conviction[8][31]. For example, if a DACA recipient had DACA status and subsequently incurred a misdemeanor DUI conviction that caused them to lose DACA status, an expungement under California law may be counted as having that conviction removed for DACA purposes, allowing the applicant to reapply for DACA[8][31]. However, this should be verified through an immigration attorney's analysis of current USCIS policy, as DACA eligibility requirements remain subject to change.

### **Strategic Prioritization: PC 1473.7 Vacatur Over Expungement**

For immigrant clients with criminal convictions affecting their immigration status, the strategic priority should be evaluation for a PC 1473.7 vacatur before-or instead of-pursuing expungement[33][34][35][40]. A successful PC 1473.7 vacatur eliminates the conviction for federal immigration law purposes, providing the superior legal outcome[33][34][35][40]. Expungement, by contrast, leaves the conviction technically valid under federal law, limiting its protective effect[33][34][35].

The decision to pursue a PC 1473.7 vacatur requires careful case-by-case analysis. The defendant must demonstrate that: (1) the criminal conviction or sentence is legally invalid due to prejudicial error affecting the defendant's ability to meaningfully understand the immigration consequences of the plea; (2) defense counsel either failed to advise of immigration consequences (ineffective assistance of counsel) or the court failed to advise; and (3) the conviction currently causes or has the potential to cause removal or denial of an immigration benefit[35][40]. Not every case will satisfy these elements, particularly if the defendant had sophisticated understanding of immigration consequences or if counsel's advice regarding immigration consequences, while not optimal, was not objectively unreasonable[35][40].

However, where a defendant was not advised of immigration consequences by defense counsel or the court-or where counsel's advice was demonstrably incorrect or incomplete-a PC 1473.7 vacatur should be strongly pursued even in cases where immigration status is not presently at risk, because a future immigration matter could trigger removal proceedings[35][40]. The filing deadline is measured from when the Department of Homeland Security provides notice of removability or when a removal order becomes final; strategically, it is preferable to file proactively rather than waiting for immigration enforcement[40].

### **Cost-Benefit Analysis for Immigrant Clients**

For immigrant clients of modest means, the cost implications of pursuing expungement versus PC 1473.7 vacatur differ significantly. Expungement involves paying court filing fees (\$60-\$150) and potentially attorney fees for preparation and filing, typically \$500-\$2,000 depending on case complexity and attorney rates[20][57]. A PC 1473.7 vacatur requires more extensive work-investigating the criminal record, gathering evidence of counsel's failure to advise or court's failure to advise, potentially obtaining affidavits or declarations, and litigating the motion-potentially costing \$1,500-\$5,000 or more depending on complexity[35][40].

However, the return on investment is substantially different. An expungement provides state-law benefits with minimal immigration protection. A successful PC 1473.7 vacatur eliminates the conviction for immigration purposes, eliminating the risk of deportation or denial of immigration benefits based on that

conviction[35][40]. For an immigrant facing potential removal based on a conviction, the superior outcome of a PC 1473.7 vacatur justifies the higher cost[35][40].

Additionally, practitioners should consider whether automatic record relief under PC 1203.425 may provide some of the practical benefits of expungement without the litigation cost. If the conviction is eligible for automatic relief under PC 1203.425 (implemented October 1, 2024), the California Department of Justice will automatically seal the conviction, preventing disclosure to employers and licensing agencies, though the conviction remains valid for immigration purposes[14][17][51]. For clients concerned primarily with employment barriers, automatic relief may provide sufficient practical relief without the cost of expungement petition[14][17][51].

### **Disclosure Obligations in Immigration Proceedings**

Practitioners must emphasize to immigrant clients that even an expunged or sealed conviction must be disclosed on all immigration applications and in removal proceedings[8][31][33]. The failure to disclose an expunged conviction on an I-485 (Application for Adjustment of Status), I-130 (Petition for Alien Relative), N-400 (Application for Naturalization), or other immigration form constitutes misrepresentation, which is an independent ground for deportability and which creates a permanent bar to most immigration benefits[8][31][33].

Specifically, under INA § 101(a)(43)(F), a crime of fraud or a crime of dishonesty involving misrepresentation is an aggravated felony[8][31][33]. Misrepresentation on an immigration application based on failure to disclose a conviction—even an expunged one—can establish this ground[8][31][33]. Furthermore, misrepresentation is a ground of deportability even for lawful permanent residents, and it can result in permanent ineligibility for adjustment of status, naturalization, and certain forms of relief[8][31][33].

Clients must understand that the legally correct approach is to disclose the expunged conviction on the immigration application, accompanying the disclosure with an explanation of the expungement and its limited scope under federal law[8][31][33]. This forthright approach eliminates the risk of misrepresentation and allows the immigration attorney to frame the expungement in its proper legal context[8][31][33].

## **Recent Statutory Developments and Implementation Timeline**

### **SB 731 Implementation and Automatic Relief Expansion**

As noted above, Senate Bill 731's automatic relief provisions became operative on October 1, 2024, after delays due to budget constraints[14][17][51]. As of February 3, 2026, the California Department of Justice is conducting monthly reviews of statewide records to identify individuals eligible for automatic conviction relief[14][17][51]. For clients with eligible convictions, the DOJ will automatically add a notation to the record reflecting that relief has been granted, and the conviction will no longer be disseminated to employers and other non-law enforcement entities[14][17][51].

However, automatic record relief under PC 1203.425 must be clearly distinguished from actual expungement or sealing. The conviction remains on the record; it is simply not distributed to employers[17]. For immigration purposes, the conviction is still valid and must be disclosed[17][31][33]. Practitioners should not represent to clients that automatic relief under PC 1203.425 provides immigration benefits, as it does not[17][31][33].

### **PC 1203.42 and Felonies with County Jail Sentences Under Realignment**

Penal Code 1203.42, amended by AB 134 in 2023, provides that defendants sentenced prior to the 2011

Realignment Legislation for crimes that would otherwise have qualified for county jail sentencing under the current law can petition the court for dismissal relief after completion of their sentence[26][44]. This statute applies to individuals sentenced before realignment took effect, creating a narrow category of defendants eligible for relief[26][44]. The motion must be filed at least two years after completion of the sentence, and the defendant must not be under supervised release or serving a sentence for another offense[26][44].

The relief available under PC 1203.42 includes withdrawal of a guilty plea and dismissal of charges, similar to traditional expungement, but it is limited to the specific category of defendants sentenced before realignment[26][44]. As with expungement, relief under PC 1203.42 does not prevent a conviction from being used for immigration purposes[26][44].

### **PC 1203.43 and Diversion Program Dismissals**

Penal Code 1203.43 addresses convictions that should have been dismissed pursuant to diversion programs but were not[26][44]. This statute allows defendants to petition the court to correct the record and obtain dismissal after successful completion of a diversion program[26][44]. Like other expungement-type relief, PC 1203.43 relief does not eliminate immigration consequences[26][44].

## **Criminal Record Vacatur for Cause: The Strategic Priority**

### **When Defense Counsel Failed to Advise of Immigration Consequences**

The most common basis for PC 1473.7 vacatur involves defense counsel's failure to advise of immigration consequences of a plea, particularly in cases where the consequences were foreseeable and significant[35][40]. Practitioners should scrutinize trial counsel's files for evidence of immigration-related communication: did counsel investigate the client's immigration status? Did counsel discuss possible immigration consequences? Did counsel document the discussion? Did counsel advise the client to consult an immigration attorney?

The absence of any such documentation, combined with a declaration from the defendant stating they were not advised of immigration consequences and would not have pled guilty had they been so advised, typically establishes a sufficient basis for pursuing a PC 1473.7 motion[35][40]. The defendant's credible testimony regarding lack of understanding, combined with circumstantial evidence that counsel did not investigate immigration consequences (such as trial counsel's notes not mentioning immigration, discovery materials not being reviewed for immigration angles, or plea agreements not addressing immigration), creates a strong evidentiary foundation[35][40].

For practitioners in Northern California, the Immigrant Legal Resource Center has published extensive materials on PC 1473.7 practice, including a sample memorandum of law with a detailed table of BIA precedent and Ninth Circuit cases[35][40]. These materials are valuable resources for structuring arguments and presenting evidence in PC 1473.7 motions[35][40].

### **When the Court Failed to Advise Under PC 1016.5**

PC 1016.5 vacatur is sometimes easier to establish than PC 1473.7 motions based on ineffective assistance of counsel because the burden is on the prosecution to prove the advisement was given[38][40][41]. If the minute orders from the guilty plea hearing do not reflect that the PC 1016.5 advisement was administered, the presumption is that it was not given[38][40][41].

However, practitioners must be careful about the specific language of the advisement. Recent case law has rejected arguments that alternative language—such as "will" instead of "may" have consequences—satisfies the

statutory requirement[38][40][41]. The statute requires the specific words "may have the consequences," and courts have held that saying the consequences "will" occur changes the legal meaning[38][40][41]. Additionally, the advisement must address all three possible consequences: deportation, exclusion from admission, and denial of naturalization[38][40][41].

For older cases, many trial courts did not administer the PC 1016.5 advisement routinely; obtaining relief based on the court's failure to advise is therefore common in cases from the 1990s and early 2000s[38][40][41]. Even more recent cases may lack proper documentation of the advisement, creating vulnerability to PC 1016.5 motions[38][40][41].

## **Practical Implementation: Step-by-Step Guidance for Immigrant Clients**

### **Initial Intake and Criminal Record Assessment**

When an immigrant client presents with a criminal conviction affecting their immigration status, the attorney's first step should be comprehensive assessment of the conviction. This involves obtaining the certified disposition, minute orders from all proceedings, the abstract of judgment, and the probation report[57][58]. The attorney should determine: (1) the precise nature of the conviction under California law; (2) the elements of the crime as defined in California law; (3) whether the conviction constitutes a deportability or inadmissibility ground under federal law; and (4) whether the conviction affects any pending or potential immigration applications[33][34][35].

The attorney should then evaluate the procedural and substantive validity of the conviction under California law. Was the defendant represented by counsel? Did counsel appear competent and engaged? Are there any trial transcripts or records indicating whether immigration consequences were discussed? Was the PC 1016.5 advisement administered and documented? These questions shape the analysis of whether a PC 1473.7 or PC 1016.5 motion is viable[35][40].

### **Decision-Making Framework: Vacatur vs. Expungement vs. Automatic Relief**

Once the conviction is assessed, the attorney should present the client with a clear framework for deciding among PC 1473.7 vacatur, traditional expungement, and automatic record relief under PC 1203.425 (where available). For clients whose primary concern is immigration status, a PC 1473.7 vacatur should be the priority if evidence of counsel's failure to advise or court's failure to advise can be established[35][40]. For clients with stable immigration status who are concerned primarily with employment or housing barriers, automatic relief under PC 1203.425 may provide sufficient practical benefit without litigation cost[14][17][51]. Traditional expungement may be valuable for collateral purposes even though it does not help immigration status[1][4][5].

The attorney should clearly explain to the client that even an expunged conviction must be disclosed on immigration applications and will be treated as a valid conviction by immigration authorities[8][31][33]. The client must understand that expungement does not provide immigration protection and that filing an immigration application without disclosing an expunged conviction could result in misrepresentation charges[8][31][33].

### **Filing a PC 1473.7 Motion: Key Elements and Evidence**

If a PC 1473.7 vacatur is strategically appropriate, the attorney should begin by gathering all available evidence regarding the original criminal proceeding and counsel's advising (or failure to advise) regarding immigration consequences. This includes: (1) the complete case file from criminal defense counsel, if

available; (2) trial and plea hearing transcripts if available; (3) the probation report; (4) the disposition and minute orders; (5) any correspondence between defense counsel and the client; (6) any internal case notes or memoranda prepared by defense counsel[35][40].

The attorney should then prepare a detailed declaration from the client, signed under penalty of perjury, explaining: (1) the client's immigration status at the time of the plea; (2) the specific immigration consequences the client now understands the conviction has; (3) that the client was not informed by counsel of these consequences (or was misinformed); (4) what the client would have done had they known the consequences (typically, refusing the plea); (5) any evidence of the client's lack of understanding at the time of the plea[35][40].

The motion should be accompanied by an affidavit or declaration from a qualified immigration attorney explaining the specific immigration consequences of the conviction and how those consequences differ from what the defendant understood or was told[35][40]. The immigration attorney's declaration can establish that the consequences were foreseeable and that a competent defense counsel would have investigated and communicated them[35][40].

Supporting evidence should include trial counsel's case file, contemporaneous notes, any prior correspondence with the client, discovery materials related to the offense, and plea agreements[35][40]. If contemporaneous documentation is unavailable, the attorney should explain why in a declaration and rely on the client's credible testimony[35][40].

### **Timeline and Procedural Considerations in Northern California Courts**

Once a PC 1473.7 motion is filed, the criminal court should rule within a reasonable timeframe, typically 30-90 days, though some courts take longer[35][40]. In San Francisco Superior Court and other Northern California courts, judges are experienced with immigration-related post-conviction motions and understand the significance of defects in the original proceedings[32][35].

If the motion is granted, the order vacating the conviction should be forwarded to the California Department of Justice, which will update state records[35][40]. The defendant should obtain certified copies of the order for use in immigration proceedings. If removal proceedings are pending, the defendant should file the vacated conviction order in the immigration case and present it to the immigration judge, requesting that the charge of removability based on the now-invalid conviction be dismissed[32][35].

If the motion is denied, the defendant retains the right to appeal to the California Court of Appeal within the appeal period[35][40]. Additionally, if the defendant is in immigration removal proceedings, the immigration judge may allow the defendant to file a motion to stay or continue removal proceedings pending appeal of the PC 1473.7 denial, though this is discretionary[35][40].

### **Comprehensive Strategic Summary and Recommendations for Northern California Immigration Practice**

The intersection of California criminal record relief law and federal immigration law creates significant complexity and risk for immigrant clients. While California has substantially expanded expungement eligibility through Senate Bill 731 and related statutes, these state-law remedies provide virtually no protection against federal immigration consequences. Immigration authorities consistently treat expunged convictions as valid convictions for purposes of removability, inadmissibility, and other immigration consequences.

For immigration practitioners in Northern California, the critical message to immigrant clients must be unambiguous: an expungement will not protect immigration status and must not be relied upon as immigration relief. Clients must understand that an expunged conviction must still be disclosed on all immigration applications and will be treated as a valid conviction by USCIS, ICE, and the San Francisco Immigration Court.

Instead, practitioners should prioritize evaluation of Penal Code 1473.7 and 1016.5 vacatur as superior alternatives when evidence of defects in the original criminal proceedings can be established. A successful vacatur under these statutes-based on ineffective assistance of counsel, failure to advise of immigration consequences, or other legal defects-eliminates the conviction for federal immigration law purposes and thereby eliminates the basis for removal or denial of immigration benefits[32][35][40].

The strategic sequence should be: (1) comprehensive assessment of all criminal convictions and their immigration consequences; (2) evaluation of PC 1473.7 and PC 1016.5 vacatur eligibility; (3) if vacatur is viable, prioritize vacatur over expungement; (4) if vacatur is not viable or is being pursued concurrently, consider traditional expungement or automatic relief under PC 1203.425 for collateral benefits; and (5) ensure client understands the requirement to disclose all convictions (even expunged ones) on immigration applications[35][40].

For Northern California practitioners, the Ninth Circuit's consistent rejection of state-law expungement as immigration relief is controlling precedent[11][33]. The San Francisco Immigration Court applies this precedent routinely, and immigration judges in the Concord and other Northern California hearing locations will not dismiss removal proceedings or overlook immigration consequences based on a state-law expungement[33]. Building a record for successful PC 1473.7 vacatur, by contrast, creates a legally valid basis for eliminating the conviction and defeating removal proceedings[32][35][40].

The investment in proper criminal-immigration analysis at the outset of representation-and the strategic prioritization of superior remedies over readily-available but legally ineffective options-protects immigrant clients from the catastrophic consequences of relying on expungement as immigration protection.