

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	<i>FOR COURT USE ONLY</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	CASE NUMBER: _____
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	<i>FOR COURT USE ONLY</i> DATE: _____ TIME: _____ DEPARTMENT: _____

MOTION TO VACATE CONVICTION OR SENTENCE

Pen. Code, § 1016.5
 Pen. Code, § 1473.7(a)(1)
 Pen. Code, § 1473.7(a)(2)

Instructions—Read carefully if you are filing this motion for yourself

- | The term "Moving Party" as used in this form refers to the person asking for relief.
- | This motion must be clearly handwritten in ink or typed. Make sure all answers are true and correct. If you make a statement that you know is false, you could be convicted of perjury (lying under oath).
- | You must file a separate motion for each separate case number.
- | Fill in the requested information. If you need more space, add an extra page and note that your answer is "continued on added page," or use *Attachment to Judicial Council Form* (form MC-025) as your additional page.
- | Serve the motion on the prosecuting agency.
- | **File the motion in the superior court in the county where the conviction or sentence was imposed.** Only the original motion needs to be filed unless local rules require additional copies.
- | Notify the clerk of the court in writing if you change your address after filing your motion.

1. This motion concerns a conviction or sentence in case number _____ . On (date): _____, the Moving Party was convicted of a violation of the following offenses (*list all offenses included in the conviction*):

CODE	SECTION	TYPE OF OFFENSE (<i>felony, misdemeanor, or infraction</i>)

If you need more space to list offenses, use *Attachment to Judicial Council Form* (form MC-025) or any other additional page.

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2. **MOTION UNDER PENAL CODE SECTION 1016.5**

a. **GROUND FOR RELIEF: The Moving Party requests relief based on the following:**

- (1) Before acceptance of a plea of guilty or nolo contendere to the offense, the court failed to advise the Moving Party that the conviction might have immigration consequences, as required under Penal Code section 1016.5(a).
- (2) The conviction that was based on the plea of guilty or nolo contendere may result in immigration consequences for the Moving Party, including possible deportation, exclusion from admission to the United States, or denial of naturalization.
- (3) The Moving Party likely would not have pleaded guilty or nolo contendere if the court had advised the Moving Party of the immigration consequences of the plea. (*People v. Arriaga* (2014) 58 Cal.4th 950.)

b. **Supporting Facts**

Tell your story briefly. Describe the facts you allege regarding (1) the court's failure to advise you of the immigration consequences, (2) the possible immigration consequences, and (3) the likelihood that you would not have pleaded guilty or nolo contendere if you had been advised of the immigration consequences by the court. (*If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting the claim.*)

3. **MOTION UNDER PENAL CODE SECTION 1473.7(a)(1), Legal Invalidity With Actual or Potential Immigration Consequences**

The Moving Party is not currently in criminal custody in the case referred to in item 1 (criminal custody includes in jail or prison or on bail, probation, mandatory supervision, postrelease community supervision (PRCS), or parole).

a. **GROUND FOR RELIEF: Moving Party requests relief based on the following:**

The conviction or sentence is legally invalid due to a prejudicial error (a mistake that causes harm) that damaged the Moving Party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence. (Note: A determination of legal invalidity may, *but is not required to*, include a finding of ineffective assistance of counsel.) If you are claiming that your conviction or sentence is invalid due to ineffective assistance of counsel, before the hearing is held on this motion, you (or the prosecutor) must give timely notice to the attorney who you are claiming was ineffective in representing you.

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3. b. **Supporting Facts**

Tell your story briefly. What facts show prejudicial error? Include information that shows that the conviction or sentence you are challenging is currently causing or has the possibility of causing your removal from the United States, or the denial of your application for an immigration benefit, lawful status, or naturalization.

CAUTION: You must *state facts, not conclusions*. For example, if claiming ineffective assistance of counsel, you must state facts detailing what the attorney did or failed to do and how that affected your conviction or sentence.

Note: The court presumes your conviction or sentence is not legally valid if

- (1) you pleaded guilty or nolo contendere based on a law that provided that the arrest and conviction would be deemed never to have occurred if specific requirements were completed;
- (2) you completed those specific requirements; and
- (3) despite completing those requirements, your guilty or nolo contendere plea has been, or possibly could be, used as a basis for adverse immigration consequences.

(If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting the claim.)

c. **Reasonable diligence (check all that apply):**

(1) (a) On (date): _____, the Moving Party received a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal or the denial of an application for an immigration benefit, lawful status, or naturalization.

(b) The Moving Party has not received a notice to appear in immigration court or other notice from immigration authorities as described above.

(2) (a) On (date): _____, the Moving Party received notice that a final removal order was issued against the Moving Party, based on the conviction or sentence that the Moving Party seeks to vacate.

(b) The Moving Party has not received a final notice of removal as described above.

(If you are requesting appointment of counsel, you may skip the following item, 3c(3).)

(3) This motion may be denied because of a delay in filing it. If you received *both* notices mentioned above, explain why you did not bring and could not bring this motion earlier. If you received both notices before this law went into effect on January 1, 2017, when did you become aware of the law? Did something happen to give you a reason to look for conviction relief?

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4. **Q MOTION UNDER PENAL CODE SECTION 1473.7(a)(2), Newly Discovered Evidence of Actual Innocence**

The Moving Party is not currently in criminal custody in the case referred to in item 1 (criminal custody includes in jail or prison or on bail, probation, mandatory supervision, postrelease community supervision (PRCS), or parole).

a. **GROUND FOR RELIEF: Moving Party requests relief based on the following:**

- (1) Newly discovered evidence of actual innocence exists that requires vacating the conviction or sentence as a matter of law or in the interests of justice.
- (2) The Moving Party discovered the new evidence of actual innocence on *(date)*:

b. **Supporting Facts**

Tell your story briefly. Describe the newly discovered evidence and how it proves your actual innocence. Explain why you could not discover this evidence at the time of your trial. Explain why you did not bring and could not bring this motion earlier. *(If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting the claim.)*

5. **Q REQUEST FOR COUNSEL (*People v. Fryhaat* (2019) 35 Cal.App.5th 969, 981)**

- a. The Moving Party requests appointment of counsel upon a finding by the court that there is a prima facie case for relief.
- b. The Moving Party is indigent and has completed and attached *Defendant's Financial Statement* (form CR-105) showing that the Moving Party cannot afford to hire a lawyer. Form CR-105 is available online at www.courts.ca.gov/forms.

6. **Q** The Moving Party requests that the court hold the hearing on this motion without the Moving Party's personal presence because the Moving Party is *(check one)*

- a. **Q** in federal custody awaiting deportation.
- b. **Q** otherwise in custody at *(facility)*:
- c. **Q** outside of the United States and lacks permission to enter.
- d. **Q** other *(specify)*:

7. The Moving Party requests that the court vacate the conviction or sentence in the above-captioned matter.

8. If the Moving Party entered a plea of guilty or nolo contendere, the Moving Party requests that the court allow the withdrawal of the plea of guilty or nolo contendere in the above-captioned matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

(NAME OF MOVING PARTY OR ATTORNEY FOR MOVING PARTY)_____
(SIGNATURE OF MOVING PARTY OR ATTORNEY)