
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 1259 **Hearing Date:** June 22, 2021
Author: Chiu
Version: February 19, 2021
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Criminal procedure: motion to vacate*

HISTORY

Source: ACLU of California

Prior Legislation: AB 2867 (Gonzalez Fletcher) Chapter 825, Statutes of 2018
AB 813 (Gonzalez), Ch. 739, Stats. 2016

Support: Alliance for Boys and Men of Color; Alliance San Diego; Asian Americans Advancing Justice – California; California Attorneys for Criminal Justice; California Coalition for Women Prisoners; California for Safety and Justice; California Immigrant Policy Center; California Public Defenders Association (CPDA); California Rural Legal Assistance Foundation, INC.; Communities United for Restorative Youth Justice (CURYJ); Community Legal Services in East; Palo Alto; Courage California; Drug Policy Alliance; Ella Baker Center for Human Rights; Essie Justice Group; Immigrant Defense Advocates; Initiate Justice; Long Beach Immigrant; Rights Coalition; Los Angeles Center for Law and Justice; National Association of Social Workers, California Chapter; Norcal Resist; Open Immigration Legal Services; Prosecutor Alliance California; Re:store Justice; Rubicon Programs; San Francisco District Attorney's Office; San Francisco Public Defender; Santa Clara County District Attorney's Office; Secure Justice; Showing Up for Racial Justice (SURJ) San Diego; Silicon Valley De-bug; Southeast Asia Resource Action Center; We the People - San Diego; Yolo County District Attorney

Opposition: None known

Assembly Floor Vote: 53 - 19

PURPOSE

The purpose of this bill is that a person who is no longer in criminal custody may file a motion to vacate a conviction or sentence if the conviction or sentence is legally invalid due 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 conviction or sentence.

Existing law requires a court before accepting a plea to advise a criminal defendant as follows: "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." (Pen. Code, § 1016.5, subd. (a).)

Existing law permits a defendant to make a motion to withdraw their plea if the court fails to admonish him or her about the possible immigration consequences of entering the plea. (Pen. Code, § 1016.5, subd. (a).)

Existing law permits a defendant to move to withdraw a plea at any time before judgment, or within six months after an order granting probation when the entry of judgment is suspended, or if the defendant appeared without counsel at the time of the plea. (Pen. Code, § 1018.)

Existing law allows every person unlawfully imprisoned or restrained of their liberty to prosecute a writ of habeas corpus to inquire into the cause of their restraint. (Pen. Code, § 1473, subd. (a).)

Existing law authorizes a person no longer unlawfully imprisoned or restrained to prosecute a motion to vacate the judgment based on newly discovered evidence, as specified, if the motion is brought within one year of the discovery. (Pen. Code, § 1473.6.)

Existing law authorizes a person no longer imprisoned or restrained to prosecute a motion to vacate a conviction or sentence for either of the following reasons:

- a) The conviction or sentence is legally invalid due 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; or
- b) 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. (Pen. Code, § 1473.7.)

This bill would allow a person to make a motion to vacate any conviction or sentence because it was invalid due 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 the conviction.

COMMENTS

1. Need for This Bill

According to the author:

Current law says that a conviction is legally invalid when a defendant is unaware of the adverse immigration consequences of a criminal conviction, either because counsel violated their obligation to inform the defendant of those consequences, or because other hurdles stood in the way of the defendant's ability to meaningfully understand the immigration impacts. However, for decades California provided no judicial remedy to address this problem for people who were out of criminal custody or did not otherwise satisfy the strict requirements of habeas corpus.

Many immigrants suffer convictions without having any idea that their criminal record would, at some point in the future, result in mandatory immigration imprisonment and deportation, permanently separating families. For many immigrants, the first time they learn of the immigration consequences of a conviction can be years after they have successfully completed their criminal sentence, when Immigration and Customs Enforcement initiates removal proceedings.

In 2016, AB 813 (Gonzalez) provided recourse for these injured parties by creating a process for a defendant to present evidence of a legal defect in their criminal case before the trial court. Proof of a legal defect can include that they failed to meaningfully understand or knowingly accept the immigration consequences of pleading to a specific crime that could later become grounds for detention or deportation.

If a court grants a motion to vacate based on this defect, the conviction is vacated and the person is eligible to enter a new plea, or, on the prosecutor's petition, have the charges dropped altogether.

This post-conviction relief process has proven to be a lifesaving tool for thousands of citizens and noncitizens with California convictions. However, the post-conviction relief procedure established under AB 813 is currently limited to people convicted by plea agreement. After their sentence has been served and they are no longer in criminal custody, individuals convicted by trial do not currently have any opportunity to raise evidence in court that the conviction violated California or federal laws.

Though the majority of criminal cases do not proceed to a full trial, this gap leaves thousands of Californians without access to relief. AB 1259 fixes this problem by extending the opportunity to challenge old, legally invalid convictions to those who exercised their constitutional right to defend themselves in front of a jury of their peers. This will ensure that all defendants have the opportunity to present evidence of invalidity to a court and keep more California families whole by preventing deportations based on faulty grounds.

Trial convictions make up only 2% of all convictions, but California must make clear that no person deserves to be deported as a result of an unconstitutional conviction—regardless of whether that unlawful conviction occurred by plea or by trial. This bill is about keeping California families whole by preventing detentions and deportations based on faulty grounds.

2. *Padilla v. Kentucky*

In *Padilla v. Kentucky* (2010) 559 U.S. 356, the United States Supreme court held that the Sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases. (Id. At 360.) Specifically, the United States Supreme Court held that defense counsel is constitutionally deficient if there is a failure to advise a noncitizen client entering a plea to a criminal offense of the risk of deportation. "Deportation as a consequence of a criminal conviction has become an integral part of the penalty for a criminal conviction for noncitizens, sometimes the most

important part.” (Id. at 364.) The court's holding is not limited to only affirmative mis-advice of the consequence because that would encourage defense counsel to remain silent on a matter of great importance to a noncitizen client, and that would be inconsistent with counsel's duty to provide advice to a client considering the advantages and disadvantages of a plea agreement. (Id. at 370-71.)

3. Writs of Habeas Corpus

Habeas corpus is the main vehicle for review of orders where an appeal is precluded or would be an inadequate remedy. Habeas corpus is also used to bring to the court's attention to matters outside the record which are crucial to the petitioner's claims for relief, and which have resulted in a constitutional violation, thereby rendering the petitioner's restraint unlawful. (In re Bower (1985) 38 Cal.3d 865, 872.) One common example of the use of habeas corpus is ineffective assistance of counsel claims. An individual could allege that their attorney was ineffective by failing to advise him or her of the adverse immigration consequences of accepting a plea, or by providing erroneous advice. (See e.g. People v. Soriano (1987) 194 Cal.App.3d 1470.) However, to be eligible for habeas corpus the individually must be considered "unlawful imprisoned or restrained." (Pen. Code, § 1473.) Actual incarceration in prison or jail is not required for a petition for writ of habeas corpus; persons on bail, probation, parole, or committed to a state hospital are considered to be in constructive custody for purposes of habeas corpus writ review. (In re Bandmann (1959) 51 Cal.2d 388, 396-97; In re Petersen (1958) 51 Cal.2d 177, 181.) However, federal immigration custody alone, does not qualify as "custody" for purposes of habeas corpus writ review. (People v. Villa (2009) 45 Cal.4th 1063.) Therefore, a non-citizen who did not learn of an immigration consequence until many years later, such as at a naturalization interview, would be precluded from using the writ of habeas corpus to challenge the conviction based on ineffective assistance of counsel.

4. Expansion of existing relief

AB 813 (Gonzalez) Chapter 739, Statutes of 2016 And AB 2867 (Gonzalez Fletcher Chapter 825, Statutes of 2018, created existing law which allows a person who entered a plea to seek to have that plea vacated because they did not understand the immigration consequences of that plea and sets forth the procedures for making such a motion..

This bill would expand the category of persons able to seek to vacate a conviction or sentence as legally invalid, whatever way that person was convicted or sentence, including a person who was found guilty after a trial.

5. Argument in Support

The Prosecutors Alliance of California supports this bill stating:

Penal Code § 1473.7 provides access to the courts for people who have completed their sentence to challenge the legal validity of old convictions, including when the person convicted failed to meaningfully understand or knowingly accept the immigration consequences of pleading to a specific crime that could later become grounds for detention or deportation. If a court grants a motion to vacate based on this defect, the person is eligible to enter a new plea, or, on the prosecutor's

petition, have the charges dropped altogether. This process has been a lifesaving tool for thousands of people with California convictions.

AB 1259 extends Penal Code § 1473.7 to immigrant community members who failed to meaningfully understand the immigration consequences of taking their criminal case to trial and suffered a conviction. While trial convictions only account for two percent of all convictions, AB 1259 ensures that all immigrants have the opportunity to present evidence of legal invalidity to a court and keep more California families whole by preventing deportations based on faulty legal grounds

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