

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
<b>MOTION TO VACATE CONVICTION OR SENTENCE</b> <b>(Pen. Code, §§ 1016.5, 1473.7)</b>	FOR COURT USE ONLY  DATE: TIME: DEPARTMENT:

**Instructions — Read Carefully**

- You must file a separate motion for each separate case number.
- 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).
- 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 the above case number. On (date) \_\_\_\_\_, I 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 for listing 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****GROUND FOR RELIEF: I am requesting relief based on the following:**

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

**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) on any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.*)

3.  **MOTION UNDER PENAL CODE SECTION 1473.7**

I am not currently imprisoned or restrained.

**GROUND FOR RELIEF: I am requesting relief based on the following:**

- a.  The conviction or sentence is legally invalid due to a prejudicial error (a mistake that causes harm) that damaged my ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.

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## 3. a. Supporting facts

Tell your story briefly. Describe the facts you allege to be prejudicial error. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifying what your attorney did or failed to do and how that affected your plea. *(If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) on any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

3. 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.

I discovered the new evidence of actual innocence on (date):

## Supporting facts

Tell your story briefly. Describe the facts you allege to constitute newly discovered evidence of actual innocence. *(If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) on any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

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4.  I am represented by counsel who will appear at the hearing. I request that the court hold the hearing on this motion without my personal presence for the following reasons:

5. I request that the court vacate the conviction or sentence in the above-captioned matter.

6. I request 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 is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

 \_\_\_\_\_  
(SIGNATURE OF MOVING PARTY OR ATTORNEY)