



## CHART: IMMIGRATION EFFECT OF POST-CONVICTION RELIEF<sup>1</sup>

By Katherine Brady, Immigrant Legal Resource Center

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Type of post-conviction relief	Immigration effect	Works on these offenses	Other effect or requirements
Vacation of judgment for legal error <sup>2</sup> from any state	Eliminates conviction for all immigration purposes	Works on any offense, by any state relief based on legal defect	Relief may have been granted partly but not wholly for imm purposes; as long as it also is based on a legal defect.
Rehabilitative relief <sup>3</sup> from any state  (E.g., Cal PC §1203.4, DEJ, Prop 36)	No effect, except removes conviction as an absolute bar to DACA, DAPA and an automatic enforcement priority – but even then the conviction is a negative factor in discretion. <sup>4</sup>	For DACA, DAPA, enforcement, works on any offense with any state relief	See next row regarding pre-7/15/11 drug pleas.
Rehabilitative relief for a qualifying pre-July 15, 2011 conviction for a first, minor drug offense <sup>5</sup> from any state	Eliminates a qualifying drug conviction for all immigration purposes, but <b>only</b> in immigration proceedings arising within <b>Ninth Circuit</b> states	Felony or misd possession of any substance or of paraphernalia -- but <b>not</b> using or being under the influence	Must not have violated probation or had prior pretrial diversion.  Conviction must pre-date 7/15/11, but relief may be applied for at any time.
Withdrawal of plea after charges dismissed under California DEJ <sup>6</sup>  Cal PC §1203.43, effective 1/1/16	Shd eliminate “conviction” for all immigration purposes.  Without 1203.43, Cal DEJ can remain a “conviction” for immigration purposes based on the guilty plea, even after the court dismisses charges based on person’s good performance during the DEJ period.	Any offense that was the subject of a completed California DEJ, Cal PC 1000, where court dismissed the charges.  Does not include Cal Prop 36 or DEJ from other states	Probation violation, prior pretrial diversion is not relevant or a bar.  Applies to any past or future successful DEJ (but DEJ is not a recommended plea <sup>7</sup> ). Provisions exist for if DEJ court records are no longer available.  Should work in imm proceedings everywhere.

## ENDNOTES

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<sup>1</sup> The Immigrant Legal Resource Center is a national, nonprofit resource center that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The mission of the ILRC is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. For the latest version of this practice advisory, please visit [www.ilrc.org](http://www.ilrc.org). For questions regarding the content of this advisory, please contact Katherine Brady at [kbrady@ilrc.org](mailto:kbrady@ilrc.org).

<sup>2</sup> See, e.g., *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003), *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378 (BIA 2000).

<sup>3</sup> Rehabilitative relief refers to expungements, set-asides, and other relief that removes a conviction not because of legal error in the criminal proceedings, but because, e.g., the defendant completed probation. See above cases and, e.g., *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), *Murillo-Espinoza v. INS*, 261 F.3d 771 (9th Cir. 2001).

<sup>4</sup> For information on DACA and DAPA see materials at [ilrc.org/daca](http://ilrc.org/daca) and [ilrc.org/crimes](http://ilrc.org/crimes), including a Chart on crimes bars to DACA and DAPA at <http://www.ilrc.org/resources/crimes-related-bars-to-dapa-daca>.

<sup>5</sup> See *Nunez-Reyes v. Holder*, 646 F.3d 684, 690 (9th Cir. 2011), overruling *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000) prospectively only, and see Advisory at [www.ilrc.org/resources/practice-advisory-lujan-nunez-july-14-2011](http://www.ilrc.org/resources/practice-advisory-lujan-nunez-july-14-2011).

<sup>6</sup> California Gov. Jerry Brown signed AB 1352 in October 2015, so that new Cal. P.C. § 1203.43 will be in effect as of January 1, 2016. Advocates will post sample § 1203.43 application forms, pending creation of a government form. See Advisory at [www.ilrc.org/resources/New\\_California\\_Drug\\_Law\\_1203.43](http://www.ilrc.org/resources/New_California_Drug_Law_1203.43).

<sup>7</sup> Immigrants charged with a first, minor drug offense should make every effort to plead to a non-drug offense rather than DEJ. The problem with DEJ – along with the fact that many defendants are not successful – is that even if the defendant will be successful, he or she might be charged with having a drug “conviction” during the minimum 18-month DEJ period. Immigration counsel will argue that this is not a conviction because there has not been a sentencing hearing or punishment or restraint. See, e.g., *Retuta v. Holder*, 591 F.3d 1181, 1188 (9th Cir. 2010) (DEJ is not a conviction when at the hearing following completion of the DEJ period, only an unconditionally suspended fine is imposed). They will argue that even if the court finds there is a conviction, removal proceedings should be terminated or continued until the DEJ program is over, under recent BIA precedent. See Advisory above.