§ N.2 Definition of Conviction

Table of Contents

How to Avoid or Eliminate a "Conviction" for Immigration Purposes

Most (although not all) immigration consequences relating to crimes require a conviction, as defined by federal immigration law, not state law. If your noncitizen client does not have a conviction for immigration purposes, their immigration case might be saved. This section discusses which dispositions in California criminal courts amount to a conviction for immigration purposes, and how to avoid or eliminate a conviction.

Warning: Immigration Consequences Even Without a Conviction. Some immigration penalties are triggered by evidence of conduct or findings, even absent a conviction. A noncitizen might be found inadmissible if immigration authorities have evidence that the person engaged in prostitution[1] or ever participated in drug trafficking or money laundering.[2] The person might be inadmissible or deportable if they are or were a drug addict or abuser.[3] Even a civil finding that a noncitizen violated a domestic violence stay-away order, in any way, makes the person deportable.[4] In those situations, avoiding a conviction is a good step, but will not necessarily protect the person. Also, a noncitizen is inadmissible who formally admits to immigration authorities that they committed a drug offense or crime involving moral turpitude – *unless* that conduct was charged in criminal court and the result was less than a conviction.[5]

[1] See 8 USC § 1182(a)(2)(D) and *§ N.10 Sex Crimes*.
[2] See 8 USC § 1182(a)(C), (I) and *§ N.8 Controlled Substances.*
[3] See 8 USC §§ 1182(a)(1)(A)(iv), 1227(a)(2)(B)(ii), and *§ N.8 Controlled Substances.*
[4] See 8 USC § 1227(a)(2)(E)(ii) and see *§ N.9 Domestic Violence.*
[5] See 8 USC § 1182(a)(2)(A)(i) and discussion of admitting conduct in *§ N.8 Controlled Substances.*

I. The Definition of Conviction and the Limited Effect of Rehabilitative Relief

Federal immigration law employs its own definition of when a conviction has occurred in state criminal court – regardless of what the state law says. For immigration purposes, a conviction occurs:

- Where there is "a formal judgment of guilt of the alien entered by a court" *or*
- "if adjudication of guilt has been withheld, where … a judge or jury has found the alien guilty, or the alien has entered a plea of guilty or *nolo contendere*, or has admitted sufficient facts to warrant a finding of guilt, and … the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. [6]

The Board of Immigration Appeals (BIA) held that a guilty plea or finding of guilt, plus *any* imposition by the judge of probation, fine, jail, or even requirement to attend classes, will create a conviction for immigration purposes.[7] This means that if a noncitizen pled guilty, it is very likely that they have a conviction – even if the state with jurisdiction says that they do not.

> **Example:** California Deferred Entry of Judgment (DEJ) was available under former Pen C § 1000 et seq. from January 1, 1997 to December 31, 2017. California law provided that a defendant who completed DEJ and whose charges were dismissed pursuant to former § 1000.3 would have no conviction for any purpose, and not even an arrest record. But because DEJ required a guilty plea, and courts generally imposed some fine or penalty, DEJ *has* been held to be a conviction for immigration purposes. (The only exception was if the criminal court judge imposed no penalty other than an unconditionally suspended fine. [8])
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> **Note:** As of 2016, clients whose DEJ charges are dismissed pursuant to former § 1000.3 can submit an additional short application, which will withdraw their plea for cause and eliminate it for immigration purposes. See discussion of Pen C § 1203.43 in Part IV. In 2018, California ended DEJ and substituted pre-trial diversion, which does not require a guilty plea. See Part III.

Once there is a conviction, how can we eliminate it? In general, a conviction is not eliminated for immigration purposes by mere "rehabilitative relief" – meaning, where a state permits withdrawal of a plea or dismissal of charges because the defendant completed probation or other requirements.[9] The result is that thousands of immigrants are advised in good faith, by defense counsel, prosecutors, and judges, that certain alternative state programs do not constitute a conviction for any purpose – when in fact the dispositions are convictions for the purpose of deportation.

> **Example:** In California, people who have pleas withdrawn or charges dismissed by "expungements" (Pen C § 1203.4, 1203.4a, etc.), Prop 36 (Pen C § 1210) or the former DEJ (former Penal C § 1000.3) still have a "conviction" for immigration purposes.

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[6] INA § 101(a)(48)(A), 8 USC § 1101(a)(48)(A).
[7] *Matter of Cabrera,* 24 I&N Dec. 459, 460−62 (BIA 2008), *Matter of Mohamed,* 27 I&N Dec. 92 (BIA 2017).
[8] *Retuta v. Holder,* 591 F.3d 1181 (9th Cir. 2010) held that there was no conviction when the only penalty for DEJ was an unconditionally suspended fine, and indicated that a requirement to attend classes is not a penalty. But see *Matter of Mohamed*, *supra*, which includes required attendance in classes in a list of "penalties."
[9] *Murillo-Espinoza v. INS*, 261 F.3d 771 (9th Cir. 2001).

What does eliminate a conviction for immigration purposes? Generally, the conviction must be vacated for cause, based on some legal error. See discussion in Part IX. However, there are two instances where rehabilitative relief *does* eliminate a conviction for immigration purposes. See next section.

II. When Does Rehabilitative Relief Eliminate a Conviction? DACA and *Lujan-Armendariz*

If there has been a plea or finding of guilt and the court has ordered any kind of penalty or restraint, including probation, generally immigration authorities will find that there is a conviction, even if state law provides the conviction was eliminated by some kind of rehabilitative relief. See discussion in Part I. There are at least two exceptions, however, where rehabilitative relief does help.

A. Rehabilitative relief eliminates a conviction as an absolute bar to eligibility for Deferred Action for Childhood Arrivals (DACA)

Rehabilitative relief will eliminate a conviction as an absolute bar to DACA, the relief for people brought to the U.S. as children. The expunged conviction still may be considered as a negative factor in the discretionary decision of whether to grant DACA.
Currently the DACA program is continued by court order, despite the Trump Administration's attempt to end it. DACA may or may not continue through 2019 and beyond. For more information, see materials at www.ilrc.org/daca.

B. Rehabilitative relief will eliminate a qualifying first minor drug conviction from on or before July 14, 2011, in the Ninth Circuit only

This section sets out the requirements for the *Lujan-Armendariz* benefit. If a prior drug conviction comes within *Lujan-Armendariz,* then it can be eliminated for all immigration purposes by rehabilitative relief such as Pen C § 1203.4, rather than having to be vacated for legal error.

The reason we have this relief is that, for some time, the Ninth Circuit held that any state rehabilitative relief would eliminate a first conviction for certain minor drug charges, because the state relief was an analogue to the Federal First Offender Act (FFOA), 18 USC § 3607. See *Lujan-Armendariz v. INS,* 222 F.3d 728 (9th Cir. 2000) and preceding cases. Unfortunately, on July 14, 2011, the Ninth Circuit declared it would no longer follow *Lujan-Armendariz*. Fortunately, it applied this decision prospectively only – to convictions that occurred after the date of publication. See *Nunez-Reyes v. Holder*, 646 F.3d 684, 690 (9th Cir. July 14, 2011) (en banc), prospectively overruling *Lujan-Armendariz.*

The result is that, in immigration proceedings arising within the Ninth Circuit only, the *Lujan-Armendariz* benefit applies to qualifying drug convictions that occurred on or before July 14, 2011. Rehabilitative relief, such as withdrawal of plea or dismissal of charges under Prop 36, the former DEJ, Pen C § 1203.4, etc., will eliminate a conviction as long as the following requirements are met.

- The conviction occurred on or before July 14, 2011, and the immigration proceedings arise within the jurisdiction of the Ninth Circuit.

- The conviction can have taken place in any jurisdiction – any state or country.[10] The conviction must have been treated under some form of rehabilitative relief in that jurisdiction. The particular type of rehabilitative relief does not matter.[11]

- It was the person's first drug conviction/s. The *Lujan-Armendariz* benefit should apply to multiple pleas in the same, first hearing as long as the person has no drug priors.[12]

- The conviction was for simple possession,[13] possession of paraphernalia or another offense less serious than possession and not covered under federal law,[14] or giving away a small amount of marijuana,[15] but *Lujan-Armendariz* does not apply to convictions for being under the influence.[16]

- The person was not found to have violated probation,[17] and did not participate in any earlier diversion program, including pretrial diversion. [18] Arguably these two disqualifiers do not apply to people who were under age 21 when they committed the offense, because they come within a different FFOA provision, 18 USC § 3607(c).

Example: Yali resides in California, but she pled guilty to a first drug offense, possession of cocaine, in January 2011 in New York. She completed probation conditions there without a problem and had no prior pre-plea diversion. She received an expungement under New York law in July 2018. She does not have a conviction for any immigration purposes, as long as the proceedings arise within Ninth Circuit states, including California. But if she were to move back to New York, she would have a conviction for immigration purposes.

WARNING: NINTH CIRCUIT ONLY: This benefit is only recognized in immigration proceedings held in Ninth Circuit states. If ICE detains an undocumented resident of California and transports her to detention and removal proceedings in Texas, or if a permanent resident takes a trip and is stopped when re-entering the U.S. at the Miami airport, the disposition will be treated as a conviction.

III. Not a Conviction: Pretrial Diversion, Pen C § 1000 (January 1, 2018)

For a conviction to exist under immigration law, the defendant must plead guilty or *nolo contendere* before a judge, or the judge must find the person guilty. INA § 101(a)(48)(A), 8 USC § 1101(a)(48)(A). As of January 1, 2018, California has a pretrial diversion program. See Pen C § 1000 et seq., amended effective Jan. 1, 2018 by AB 208 (Eggman). The program does not require a guilty plea. Rather, a

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[10] *Dillingham v. INS*, 267 F.3d 996 (9th Cir. 2001) (foreign rehabilitative relief eliminates foreign conviction).
[11] See, e.g., discussion of different types of rehabilitative relief in *Lujan-Armendariz* at n.18.
[12] The FFOA provides that the person must not have been convicted of a drug offense "prior to the commission of the" instant offense. 18 USC § 3607(a)(2). A person can use *Lujan-Armendariz* to eliminate multiple offenses pled to in the same hearing. See *Villavicencio-Rojas v. Lynch*, 811 F.3d 1216, 1219 (9th Cir. 2016).
[13] The FFOA requires the person to have been charged with an offense listed at 21 USC § 844. See 18 USC 3607(a) (first sentence). Section 844 includes simple possession, whether felony or misdemeanor.
[14] *Cardenas- Uriarte v. INS*, 227 F.3d 1132 (9th Cir. 2000).
[15] 21 USC § 841(b)(4) provides that a conviction for "distributing a small amount of marijuana for no remuneration shall be treated as provided in section 844 of this title and section 3607 of Title 18 [the FFOA]."
[16] *Nunez-Reyes, supra.*
[17] *Estrada v. Holder*, 560 F.3d 1039 (9th Cir. 2009).
[18] *De Jesus Melendez v. Gonzales*, 503 F.3d 1019, 1026-27 (9th Cir. 2007).

defendant charged with one or more minor drug offenses, who is not disqualified because of other criminal record issues, can plead not guilty, and the case will be diverted to a civil drug education program. The person must waive the right to speedy trial and to a trial by jury.

If the person successfully completes the program, the charges will be dropped. Because there was no guilty plea, this disposition is not a conviction for immigration or other purposes. If the person is not successful, they will be returned to criminal court to face the drug charges (but without the right to demand a trial by jury). For further information see *Practice Advisory: New California Pretrial Diversion* at https://www.ilrc.org/new-california-pretrial-diversion-minor-drug-charges

Pretrial diversion can be a great option for a motivated and fairly functional client. But if a client is likely to fail the diversion program, counsel should push for a plea to a non-drug offense rather than accept diversion. Or, if one will go forward with pretrial diversion, try to first amend the charges to avoid a possible dangerous plea. For example, if the client is a permanent resident who is not yet deportable, try to amend the charge to possession of a "controlled substance" rather than "methamphetamines." This may set the client up for a better plea, in the event that they flunk diversion. (This defense does not work for undocumented persons, however.) See discussion in the Practice Advisory.

Before January 1, 1997, Pen C § 1000 also set out a pretrial diversion program. Carefully check clients with dispositions from that time period, to see if they may have avoided pleading guilty and therefore do not have a conviction. Note that even after the law changed in 1997, for some years many criminal court judges did not actually take a guilty plea or admission. From January 1, 1997 to December 31, 2017, Pen C § 1000 was "deferred entry of judgment," which did require a guilty plea and generally was held a conviction. See Part IV, below.

Some California counties have drug court programs. Assume that if drug court requires a plea or other admission of guilt, the result is a conviction; if not, it is not. Even without a plea, a drug court disposition creates some immigration problems if the person must admit to being in danger of becoming an addict, which itself is a ground of inadmissibility or deportability. Defense counsel should try hard to get another option, such as pretrial diversion. However, if necessary, admitting to abuse generally is less dangerous than having a drug possession conviction.

IV. Former California DEJ and Pen C § 1203.43

Between January 1, 1997 and December 31, 2017, California Pen C § 1000 et seq. set out "deferred entry of judgment" (DEJ) as an alternative for defendants charged with minor drug offenses. The person would plead guilty and be diverted to a drug education program and monitoring for 18-36 months. If the person satisfactorily completed the requirements the charges would be dropped, and Pen C § 1000.3 promised that the person would not have a conviction or even an arrest record for any purpose. Due to the guilty plea, however, immigration authorities ruled that even a successfully completed DEJ was a dangerous drug conviction for immigration purposes.

Section 1203.43 can help noncitizens with DEJ "convictions," depending on the circumstances.

- ✓ If your client completed DEJ and charges were dismissed under former § 1000.3, they are entitled to relief under Pen C § 1203.43, which should eliminate the "conviction" for immigration purposes. Note, however, that the Board of Immigration Appeals is considering this issue; see below.
- ✓ If your client pled guilty under DEJ, dropped out of the program, and never returned to court for sentencing, but is a more functional person now, see if it is possible to reopen DEJ case so that the person can complete it and then obtain § 1203.43 relief.
- ✓ If your client pled guilty to DEJ, failed the program, and then was sentenced to probation, Prop 36, or jail, then your client does have a conviction.

Prop 36. Unfortunately, § 1203.43 does not help people who went through Prop 36 diversion, either after or instead of DEJ. However, 2019 amendments to another form of post-conviction relief, Pen C § 1473.7, should help people who completed Prop 36. Section 1473.7(a)(1) provides generally that a conviction should be vacated if legal error damaged the defendant's "ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences" of the plea. Section 1473.7(e)(2) provides specifically, "There is a presumption of legal invalidity … if the moving party pleaded guilty or nolo contendere pursuant to a statute that provided that, upon completion of specific requirements, the arrest and conviction shall be deemed never to have occurred, where the moving party complied with these requirements, and where the disposition under the statute has been, or potentially could be, used as a basis for adverse immigration consequences." Because Prop 36 comes within this description (see Pen C § 1210.1(e)(1)), successful completion at any time of Prop 36 diversion should create a presumption that vacation of judgment under Pen C § 1473.7 is warranted.

Why Pen C § 1203.43 works. If a judge vacates a conviction due to a legal defect, the conviction no longer exists for immigration purposes. As of January 1, 2016, Californians who successfully completed DEJ have a relatively quick and easy way to obtain such a ruling. Section § 1203.43(a)(1) provides that the DEJ statute makes an affirmative misrepresentation to some defendants, including all noncitizen defendants, because it promises that successful completion of its conditions will result in no conviction and no loss of legal benefits. Section 1203.43(a)(2) provides that "based on this misinformation and the potential harm, the defendant's prior plea is invalid." This provides a statement of legal error.

Section 1203.43(b) provides a post-conviction relief vehicle for some defendants. "For the above-specified reason, in any case in which [a defendant was granted DEJ] … and for whom the criminal charge or charges were dismissed pursuant to Section 1000.3, the court shall, upon request of the defendant, permit the defendant to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty, and the court shall dismiss the complaint or information against the defendant."

For further information about applying for Pen C § 1203.43, see materials at https://www.ilrc.org/new-california-drug-provision-helps-immigrants-plea-withdrawal-after-deferred-entry-judgment-dej.

Tips for filing the application. The application for § 1203.43 has no filing fee and does not require a hearing. If the client's charges were dismissed under former Pen C § 1000.3, they are entitled to relief under § 1203.43. The judge can issue an order on a short form, CR-180. However, many practitioners

prefer to submit their own written order[19] that includes a statement that the dismissal is based on the legal invalidity of the plea, pursuant to Pen C 1203.43(a). That language may be very helpful to persuade immigration judges to accept that the conviction really is vacated for cause. For sample orders, see the above link. If records of an older DEJ case were destroyed, see § 1203.43(b) for alternative means of proving that the client received relief under former § 1000.3 and therefore qualifies for § 1203.43 now.

Board of Immigration Appeals is reviewing § 1203.43. The Board has issued unpublished decisions that affirm that Pen C § 1203.43 eliminates a conviction for immigration purposes, but no published decision. In August 2018, the Board issued a call for amicus briefs to address the issue, which signals that the Board will publish a decision at some point. See the ILRC amicus brief online.[20] However, as of June 2019, the Board has not ruled. While advocates are confident that § 1203.43 must be held to eliminate a conviction under current legal standards, these are abnormal times. A client who can afford to wait to file an affirmative application may decide to try to wait until the Board issues an opinion.

V. Not a Conviction: Juvenile Delinquency Dispositions

Adjudication in juvenile delinquency proceedings does not constitute a conviction for almost any immigration purpose, regardless of the nature of the offense.[21] In addition, formally admitting conduct that one committed while a juvenile does not make a person inadmissible for admitting to a moral turpitude or controlled substance offense. This is because the person is admitting to having committed civil delinquency conduct,[22] not a "crime."

Juvenile court proceedings still can create problems for immigrants, however. A juvenile delinquency disposition will cause problems if it establishes that the youth has engaged in prostitution, is or has been a drug addict or abuser, or – by far the worst -- has been or helped a drug trafficker, or benefitted from an inadmissible parent or spouse's trafficking within the last five years. Undocumented juvenile defendants might be eligible to apply for lawful immigration status.

For a handout on representing juveniles in delinquency or dependency proceedings or family court proceedings, see *§ N.15 Juveniles* at www.ilrc.org/chart . See also free materials available at www.ilrc.org/immigrant-youth. For a comprehensive discussion of representing non-citizens in delinquency or dependency, see ILRC's manual, *Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth.*

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[19] See a sample narrative order at https://www.ilrc.org/sites/default/files/resources/1203_43_model_form_v2.pdf

[20] Many thanks to Prof. Jennifer Lee Koh, Western State College of Law, and Attorney Michael Mehr, for working with ILRC to write the brief on behalf of ILRC and 37 other legal services organizations, public defender offices, and law firms. See https://www.ilrc.org/ilrc-amicus-brief-arguing-validity-cal-penal-code-120343-vacaturs .

[21] *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). The exceptions are that certain delinquency dispositions may form a bar to applying for Family Unity (see *N. 17 Relief Toolkit at* www.ilrc.org/chart) or to petitioning for a relative under the Adam Walsh Act (see *§ N.13. Adam Walsh Act* at www.ilrc.org/chart).

[22] *Matter of M-U-*, 2 I&N Dec. 92 (BIA 1944). See INA § 212(a)(2)(A), 8 USC § 1182(a)(2)(A) for the inadmissibility ground.

VI. Not a Conviction: California Infractions?

The Board of Immigration Appeals has held that *some* dispositions relating to offenses that are less than a misdemeanor – sometimes called infractions or offenses – do not qualify as criminal convictions. This is because they are handled in non-conventional criminal proceedings that do not provide the usual constitutional protections of a criminal trial, and/or the disposition does not have effect as a prior conviction in subsequent prosecutions.[23]

Arguably, a California infraction is not a conviction under these criteria. See Yi, "Arguing that a California Infraction is Not a Conviction" at www.ilrc.org/crimes. *However, there are multiple reports of immigration authorities treating a California infraction as a conviction, and some unpublished Ninth Circuit decision have deferred to them.* Even an infraction can be an extremely dangerous conviction for immigration purposes. For example, the current infraction H&S C § 11358 is likely to be held an "aggravated felony" for immigration purposes.

Counsel should assume conservatively that an infraction might be held a conviction, prepare to litigate the matter (contact ILRC), and seek an additional defense where possible. The best practice may be to vacate an infraction with Pen C § 1473.7. This may be especially true if the person was found guilty of an infraction without representation by criminal defense counsel.

VII. Not a Conviction: Convictions on Direct Appeal on the Merits?

According to the Board of Immigration Appeals – and hopefully the Ninth Circuit – a conviction on direct appeal of right on the merits is not a "conviction" for immigration purposes.

The Board held that a conviction does not have a sufficient degree of finality for immigration consequences to attach, until the right to direct appellate review of the merits of the conviction has expired or been waived. *Matter of J. M. Acosta*, 27 I&N Dec. 420 (BIA 2018). The Board held that if the time for filing a direct appeal has passed, a presumption arises that the conviction is final for immigration purposes. "To rebut that presumption, a respondent must come forward with evidence that an appeal has been filed within the prescribed deadline, including any extensions or permissive filings granted by the appellate court. He or she must also present evidence that the appeal relates to the issue of guilt or innocence or concerns a substantive defect in the criminal proceedings." *Id.* at 432.

The Board asserted that federal courts should defer to this ruling, and it distinguished the holdings of some federal courts that had come to a contrary conclusion, including the Ninth Circuit in *Planes v. Holder*, 652 F.3d 991 (9th Cir. 2011), on the grounds that the decisions did not address a direct appeal of right on the merits of a conviction. At this writing, the Ninth Circuit has not yet responded to the BIA's ruling in *Acosta,* and it is possible that the court would disagree. Despite this uncertainty, it is worthwhile to file direct appeals or "slow pleas" in appropriate cases, because (a) according to the BIA, a pending direct appeal means that a conviction is not final for the purposes of removal or disqualification from relief, and (b) the conviction may be overturned on appeal. But when possible, defense counsel should have an additional back-up strategy in case the Ninth Circuit does not accept this ruling. Earlier the BIA had held that in some circumstances the fact that a case is on direct appeal of right supports the grant of

[23] *Matter of Cuellar*, 25 I&N Dec. 850 (BIA 2012), clarifying Matter of *Eslamizar*, 23 I&N Dec. 684 (BIA 2004).

continuance pending resolution of the appeal. *Matter of Montreal*, 26 I&N Dec. 555 (BIA 2015). If the conviction is actually reversed on appeal, it will no longer have immigration effect. *Planes, supra.*

VIII. Vacation of Judgment Based on Legal Error

When a court vacates a judgment of conviction for cause, the conviction no longer exists for immigration purposes.[24] The conviction must have been vacated based on a legal defect in the proceeding. A conviction is not eliminated for immigration purposes if the court vacated it for reasons "solely related to rehabilitation or immigration hardships, rather than on the basis of a procedural or substantive defect in the underlying criminal proceedings."[25] However, a legal defect that has some relationship to immigration does have effect, for example, ineffective assistance of counsel based on a failure to adequately advise the defendant regarding immigration consequences. The Board of Immigration Appeals states that it will not question the validity of a state order vacating a conviction for cause.

An especially useful form of post-conviction relief is Pen C § 1473.7. It went into effect as of January 1, 2017, and was amended as of January 1, 2019 to clarify some beneficial key points. Section 1473.7 permits an immigrant to apply to vacate a conviction "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." It does not require a finding of ineffective assistance of counsel, although it can be based on that.

For more information on Pen C § 1473.7 and several other types of California post-conviction relief, see materials at www.ilrc.org/immigrant-post-conviction-relief, and consult with expert practitioners in the local court or with the ILRC Attorney of the Day line (see information at www.ilrc.org/technical-assistance).

IX. Court-Martial; Not Guilty By Reason of Insanity

A judgment of guilt that has been entered by a general court-martial of the United States Armed Forces has been held a "conviction" for immigration purposes.[26]

There is a real risk that a not guilty by reason of insanity (NGI) disposition constitutes a conviction, at least under California procedure, since the defendant is required first to enter a guilty plea and in effect be convicted, before entering a NGI plea and receiving treatment rather than a sentence. Advocates may investigate ways to contest this.

[24] *Matter of Marroquin*, 23 I&N Dec. 705 (AG 2005); *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378 (BIA 2000). (BIA 2000). See also *Padilla v. Kentucky*, 559 U.S. 356 (2010).
[25] *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003).
[26] *Matter of Rivera-Valencia*, 24 I&N Dec. 484 (BIA 2008).