



## Note on Non-Citizen Defendants and SB 1437

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SB 1437 can open up important new opportunities for immigrant defendants to enter new, non-deportable dispositions. In this time of unprecedented immigration enforcement, it is crucial for defenders, eligible petitioners, and immigrant advocates to work closely together to determine if it is possible to achieve an immigration-neutral outcome as a result of a successful SB 1437 petition. The below offers a brief, high level summary of important considerations when filing a SB 1437 petition for a noncitizen.

- **Identify an immigration neutral offense to which to re-plead.** It is a tremendous victory for the defendant to win release from prison, but we do not want to cause the person to suffer an unnecessary deportation based on our work. For this reason, whenever we advise a noncitizen on a criminal case, defense counsel has a Sixth Amendment duty to identify, advise, and try to avoid adverse immigration consequences. This is necessary for all noncitizen defendants, including lawful permanent residents, undocumented people, refugees, and others.

This analysis is a two-step process. First, each case requires an individual criminal/immigration analysis, often called a “crim/imm” analysis. Unfortunately, there is no “one size fits all” when it comes to immigration and crimes. A plea that is safe for one noncitizen defendant, based on their prior convictions, immigration history, and goals, can be fatal to another. To get this analysis, usually one would need to complete a short immigration “Questionnaire,” collect information on any prior convictions, and then provide that information to an expert.

Tip: For a free sample Questionnaire, see [https://www.ilrc.org/sites/default/files/resources/crimimm\\_questionnaire-20180801.pdf](https://www.ilrc.org/sites/default/files/resources/crimimm_questionnaire-20180801.pdf).

Tip: If you work for a public defender office or panel attorney program that has a contract with the Immigrant Legal Resource Center’s Attorney of the Day (AOD) service, you can reach out to the AOD at [aod@ilrc.org](mailto:aod@ilrc.org) to help identify case-specific immigration neutral dispositions.

The expert then will work to identify realistic defense goals – meaning a potential plea to that is similar to what the prosecution requests in terms of the seriousness of the offense and sentence, but that for technical reasons will not cause immigration harm.

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- **Negotiate an immigration neutral disposition.** Once alternative dispositions are identified, try to negotiate them. Fortunately, in many cases it is possible to get an immigration-neutral plea, even if the person must plead to a serious offense. Immigration law employs federal definitions of crimes, and federal and state offenses often don't line up in a rational manner. Some minor California offenses have severe immigration consequences, while some serious California felonies and even strikes may have no consequences, depending on the individual.

For example, some recommended pleas that can take *more than a year's sentence* without triggering the worst immigration penalties (known as "aggravated felonies") include: first or second degree burglary (Pen C § 459); grand theft (Pen C § 487, although this is a "crime involving moral turpitude"); and arguably felony false imprisonment and battery with injury (Pen C §§ 236/237, 243(d)). Felony § 136.1(b)(1) (non-violent attempt to persuade someone not to call the police, a strike) has no immigration consequences *unless* a sentence of a year or more is imposed. To see an analysis of the immigration consequences of common California offenses, see the ILRC's *California Quick Reference Chart* at [www.ilrc.org/chart](http://www.ilrc.org/chart).

Again, each case is different, and a disposition that will work for one defendant may not work for another. But armed with an analysis, you may be able to save your client from a lifetime of prison and also prevent their deportation.

- **During the pendency of your proceedings, try not to get transferred back to CDCR.** CDCR often works closely with Immigration and Customs Enforcement (ICE) to identify people to pass on to ICE custody once criminal custody has ended. Some county jails, however, are governed by local ordinances that prohibit sharing information of recently released individuals. For that reason, it will often be very helpful to remain in county custody rather than CDCR custody, during the pendency of a SB 1437 proceeding.