

DEFEND LA

TRANSFORMING PUBLIC DEFENSE
IN THE ERA OF MASS DEPORTATION

APPENDICES

Appendix A
ILRC, *California Criminal and Immigration Laws Passed*
(Nov. 22, 2017)

CALIFORNIA CRIMINAL AND IMMIGRATION LAWS PASSED¹

November 22, 2017

Bills Signed into Law in the 2014-2017 Legislative Sessions

Misdemeanor Sentencing, Penal Code § 18.5(a) (SB 1310, Lara). Signed into law in 2014, provides that as of January 1, 2015, all misdemeanor crimes shall have a maximum possible sentence of no more than 364 days. Because of technicalities in immigration law, this helps thousands of immigrants overcome the threat of deportation, ineligibility to naturalize, and inability to obtain legal status. Sponsored by Coalition for Humane Immigrant Rights Los Angeles (CHIRLA), California Attorneys for Criminal Justice (CACJ), Californians for Safety & Justice (CSJ), Latino Coalition for Healthy Communities, and MALDEF.

Retroactive Misdemeanor Sentencing, Penal Code § 18.5(b) (SB 1242, Lara). Signed into law in 2016, provides that for convictions from before January 1, 2015, all misdemeanor crimes shall have a maximum possible sentence of no more than 364 days, and permits a person who previously was sentenced to 365 days on a misdemeanor to ask the judge to reduce the sentence by one day. Sponsored by CHIRLA, CACJ, Immigrant Legal Resource Center (ILRC), Los Angeles District Attorney's Office, and MALDEF.

Preventing Unintended Immigration Consequences for Certain Drug Offenses, Penal Code § 1203.43 (AB 1352, Eggman). Signed into law in 2015, ends unintended federal and immigration consequences for certain drug offenses such as simple possession, for immigrants and others who have successfully completed a drug program called Deferred Entry of Judgment. Sponsored by ACLU, Drug Policy Alliance (DPA), CHIRLA, Human Rights Watch, ILRC, MALDEF, and National Council of La Raza (NCLR).

Deferred Entry of Judgment: Pretrial Diversion, (AB 208 Eggman). Signed into law in 2017, eliminates federal consequences, including immigration, for certain minor drug offenses by establishing a pretrial diversion program that does not require a guilty plea. Sponsored by ACLU, CHIRLA, DPA, ILRC, and MALDEF.

Ensuring Due Process for Immigrant Defendants, Penal Code § 1016.2 & 1016.3 (AB 1343, Thurmond). Signed into law in 2015, safeguards due process for immigrants in the criminal legal system by ensuring that immigrants are provided access to fair, honest, and competent legal advice to protect against the disproportionate impacts that a criminal offense can have on an immigration case. Requires prosecutors to consider the immigration consequences of a criminal plea and disposition. Sponsored by the ILRC.

One California (Budget 2017). State funds allocated to organizations representing immigrants in deportation proceedings, prioritizing immigrants that are detained, and providing ongoing and updated immigration resources for criminal defenders across the state so they can more effectively represent noncitizen defendants in criminal court.

¹ This summary was written by the Immigrant Legal Resource Center. For ongoing updates on this practice advisory, please visit www.ilrc.org. For questions regarding the content of this advisory, please contact Angie Junck at ajunck@ilrc.org.

Appendix A

Crim/Imm Legislation Passed

Juvenile Confidentiality, Cal. Welf. & Inst. Code § 831 (AB 899, Levine). Signed into law in 2015, protects youth in the youth justice system from the fear of deportation and other federal penalties by protecting their records from unauthorized disclosure to federal officials, including immigration officials. Sponsored by the ILRC and Public Counsel.

Prohibit Sharing Gang Database Information, (AB 2298, Weber). Signed into law in 2016, requires notice to an individual before being placed on a gang database, makes the database accessible to the public, and provide a mechanism for individuals to challenge erroneous designation. Sponsored by CHIRLA, National Immigration Law Center (NILC), Policy Link, Urban Peace Institute, and Youth Justice Coalition.

Fair and Accurate Gang Databases, (AB 90 Weber). Signed into law in 2017, makes the Department of Justice responsible for administering and overseeing any shared gang database, requires the department to promulgate regulations governing the use, operation, and oversight of any shared gang database (including a prohibition on disclosing information in a shared gang database for purposes of enforcing federal immigration law), and imposes a moratorium on the use of the CalGang database commencing January 1, 2018, until the Attorney General certifies that specified information has been purged from the CalGang database, among other changes. Sponsored by Youth Justice Coalition, CHIRLA, NILC, Policy Link, and Urban Peace Institute.

Post-Conviction Relief, Penal Code § 1473.7 (AB 813, Gonzalez). Signed into law in 2016, provides a means for people who are no longer in criminal custody to erase legally invalid convictions. This will give thousands of immigrants the opportunity to challenge convictions where they were unaware of the immigration consequences, opening up new options to remain in the country, where before there were none. Sponsored by ACLU, CACJ, California Public Defender Association (CPDA), and ILRC.

Immigrant Rights in Local Jails, TRUTH Act (AB 2792, Bonta). Signed into law in 2016, establishes *Miranda*-type advisals prior to ICE interviews in jails and a transparent process when it comes to local law enforcement's participation in Immigration and Customs Enforcement (ICE) deportation programs. Sponsored by Asian Americans Advancing Justice-California, ACLU, California Immigrant Policy Center (CIPC), ILRC, MALDEF, and National Day Laborer Organizing Network (NDLON).

California Values Act, (SB 54 De Leon). Signed into law in 2017, ensures the state of California is not complicit in the business of deportation by limiting cooperation between local and state law enforcement and federal immigration authorities. Among its many provisions, SB 54 will make immigration holds, 287(g) contracts, inquiring about immigration status and using ICE agents as interpreters, unlawful in every circumstance. It also places limits on the use of notification requests and transfers to ICE in certain circumstances, extends due process protections to ICE interviews in state prisons, and directs the Attorney General to create model policies for protecting certain spaces such as shelters, schools, health facilities, and others from immigration enforcement.

Dignity not Detention Act, (SB 29 Lara) & (AB 103). Signed into law in 2017, SB 29 coupled with AB 103 will check immigration jail growth by prohibiting new immigration detention contracts and placing expansion restrictions on certain existing contracts. AB 103 also provides the first state-funded mandate to review all facilities. The Attorney General will conduct reviews of all immigration jails and all reports will be made public with the first due on March 1, 2019. SB 29 was sponsored by ILRC and CIVIC.

Appendix B

The Bronx Defenders' Immigration Plea Consult Intake Form

Appendix B



860 Courtlandt Avenue
Bronx, NY 10451
t: 718.838.7878
f: 718.665.0100

IMM. ATTY: _____ **REFERRED BY:** CDP / FDP / Other: _____

CLIENT: _____ **Referred by:** _____ **Date:** ____/____/____

M F **NYSID:** _____ **DOB:** ____/____/____ **A #** _____

Location: In Out **Detainer?** Y N **Facility:** _____ **Bail Amt. \$** _____

LANGUAGE(S): _____

CLIENT / FAMILY CONTACT INFORMATION:

IMMIGRATION HISTORY:

COUNTRY OF ORIGIN: _____

DATE OF FIRST ENTRY: _____

MANNER OF FIRST ENTRY: _____

OTHER ENTRIES / EXITS: _____

CURRENT STATUS (include date): _____

PENDING APPS / PROCEEDINGS / PRIOR CONTACTS:
(include attorney info, NCD, judge, etc.)

- LPR as of ____/____/____
I-130 (pet. _____) / I-140 /amnesty / ref. or asy.
- CPR (expires: ____/____/____)
- Visa Overstay
- EWI (date of entry: ____/____/____)
- Asylee / Refugee
- PFO (date: ____/____/____)
- Reentry after removal (illegal reentrant)
- TPS / DACA / Granted Withholding
- In-status visa holder (expires: ____/____/____)
- Other: _____

FAMILY INFORMATION:

Marital Status: Single Married Baby m/d Partner/common law Separated Divorced

Partner status: LPR / USC / natz / undoc. **Partner name/contact:** _____

Partner country of birth: _____ **CW?** Y / N

Kids:

Name	Age/DOB	Status	Location	Hardship?

Mother: a / d LPR / USC / natz (date _____) / undoc. **Location:** _____

Father: a / d LPR / USC / natz (date _____) / undoc. **Location:** _____

Siblings ____ status/location: _____

Grandparents:

Extended family in U.S:

EQUITIES / OTHER NOTES (employed? taxes? disability? student?)

Appendix B

CRIMINAL / FAMILY CASE INFO:

Incident Date(s): _____ NCD _____ Part _____
 C/W: _____ NCD _____ Part _____
 _____ NCD _____ Part _____

Charges / Allegations:	Offer / Likely Disposition:

Priors:

237 deportable
 1 CIMT/w/in5
 2 CIMTs
 CODV/OOP
 CAC
 FO
 CSO
 AggFel

 212 inadmissible
 1 A mis CIMT
 w/ > 6 mo. sentence
 1 fel CIMT?
 multiple CIMTs?
 CSO including 1 MJ?
 prost./commercialized vice
 reason to believe trafficker

FOR FDP CASES ONLY:
 Criminal case? Y N Criminal Attorney: _____ NCD: _____
 Immigration raised in family court? Y N OOP? Y N Location of kids: _____

ADVICE / FOLLOW UP:

<input type="checkbox"/> Citizenship ___ Acquired at birth ___ Derived ___ CCA (DOB2/27/83+) ___ mom natzed ___ legitimated dad natzed ___ pre-CCA <input type="checkbox"/> Naturalize now? ___ 3 yrs married USC/ 5 yrs LPR ___ Speak/Write English/civics ___ English waived ___ 55 yrs old & 20 yrs LPR? ___ 60 yrs old & 15 yrs LPR? ___ Disability Waiver for civics available ___ Ineligible: ___ open case/CD/probation ___ 212/237 w/in 5 yrs ___ deportable beyond 5 yrs ___ other GMC prob tax/child suprt) ___ AF bar (post 11/29/90 AF) ___ 2 or more priors w total sent. 5yrs. ___ confinement in jail 180+days ___ 2 gambling offenses <input type="checkbox"/> Bond eligible ___ Pre-10/98 release ___ Ineligible: ___ ARR alien ___ PFO ___ 236c (excludes CODV/a2E & 1w/in5) <input type="checkbox"/> DACA ___ Arrive in US before 16 th bday ___ Cont presence in US since 1/1/2010 ___ Present in US on 11/20/2014 ___ Not have lawful immigration status ___ HS dip/GED/in school ___ Not eligible: ___ One felony conviction or AF ___ One Significant Misdemeanor (DV, Sex Abuse, FO, Drug Sale, Burg, DUI, or any other misd for which sentenced to >90 days) ___ 3 or more Non-Significant misdemeanors, not arising out of single scheme (misd or violation with any sentence of incarceration <90 days)	<input type="checkbox"/> DAPA ___ Son or daughter (of any age, married/unmarried) who is USC or LPR ___ arrived in US before 1/1/2010 ___ lived continuously in US since 1/1/2010 ___ present in US on 11/20/14 ___ no lawful status ___ not enforcement priority ___ Not eligible: ___ One felony conviction or AF ___ One Significant Misdemeanor (DV, Sex Abuse, FO, Drug Sale, Burg, DUI, or any other misd for which actually served more than 90 d) ___ 3 or more Non-Significant misdemeanors, not single scheme <input type="checkbox"/> Future AOS ___ Lawful admission ___ 245i or derive 245i ___ IR or approved I-130 ___ Fraud bar ___ elig 212i: hardship- spouse, parent ___ UP ___ elig waiver:hardship-spouse/parent/child ___ Asylee/refugee AOS ___ 1+ yr ___ 209c needed (no trafficking) <input type="checkbox"/> LPR Readjust <input type="checkbox"/> 212h eligible ___ w/ AOS ___ Stand-alone ___ Not eligible: ___ CSO (except 1 MJ < 30g) ___ AggFel if LPR (ok in 3d Cir) ___ violent/dangerous conv (presump bar) ___ no qualifying family ___ no hardship ___ if LPR: no 7 yrs pre-NTA <input type="checkbox"/> LPR Cancellation ___ 5 yrs LPR ___ 7 yrs pre-clock stop from admission ___ Not eligible: ___ AggFel ___ Prior grant ___ Clock stopped by NTA w/in 7 yrs ___ Clock stopped by 212 ground	<input type="checkbox"/> 212e ___ 7 yrs LPR (no clockstop) ___ Pled before 4/24/96 ___ 212 ground or "equiv" <input type="checkbox"/> TPS/late TPS ___ Not eligible: ___ any felony ___ 2 or more misdemeanors ___ 1 CIMT (POE applies) ___ CSOs ___ agg sentence of 5+ yrs. <input type="checkbox"/> Persecution-based relief ___ Fear _____ Nexus/group <input type="checkbox"/> Asylum ___ timely? ___ w/in 1 yr ___ changed/extraordinary circes ___ not subject to crim bar (AF/PSC) <input type="checkbox"/> Withholding/CAT ___ W: nexus required; no AF/PSC ___ CAT: torture by gov/group out of control <input type="checkbox"/> 10 yr Cancellation ___ Qualifying relative (US/LPR child/prent/spous) ___ GMC (212 or 237/unless 1 B misd) ___ Extreme/exceptional hardship <input type="checkbox"/> SIJS ___ Guardian or other juv. jx ___ Abuse/abandon/neglected ___ Under 21 & unmarried ___ Admissible (1 MJ 30g ok) <input type="checkbox"/> VAWA ___ 3 yr VAWA cancellation ___ USC/LPR parent/spouse abusive - self/child ___ 3 yrs presence ___ GMC/no 212/237 ___ waiver elig: related to DV ___ hardship to self/child ___ VAWA self-petition/LPR/USC spouse ___ GMC/no 212/237 ___ waiver elig: related to DV ___ Battered Spouse CR waiver	<input type="checkbox"/> U Visa ___ AF: needs waiver <input type="checkbox"/> T Visa ___ Trafficking victim ___ In US due to trafficking ___ Extreme hardship to self ___ Admissible ___ Waiver if related to trafficking <input type="checkbox"/> Pros Discretion/Def Action <input type="checkbox"/> Motion to Reopen ___ In absentia ___ Ground: ___ lack of notice ___ extraordinary circes ___ IAC? (+avail relief/prejudice) ___ Other? ___ Change of circes <input type="checkbox"/> RELEASE: DOCS law? ___ Criminal history: ___ no prior convictions ___ prior misdemeanor 10+ yrs ___ prostitution/511 only priors ___ Current cases: ___ not charged w a F ___ pending mis (not 265.01/gun, sex abuse, 1192, contempt) ___ pending assault, PNR 170.70 ___ no warrants ___ no prior order ___ no concern re gang/terrorist <input type="checkbox"/> RELEASE: ICE Guidance? ___ Criminal history: ___ no prior F ___ not 3 or more M (unless traffic ___ not 1 of: violent or assault, sex abuse, 1192, poss of deadly weapon/gun, drug traffic ___ Current cases: ___ charge not bad (as above) ___ not a threat to public safety ___ no prior order
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Appendix C

Memorandum from Brendon D. Woods, Chief Public Defender, Alameda County Public Defender, to PD Attorneys, Post Bar Clerks, Interns, Regarding Immigration (Dec. 4, 2013)

Alameda County Public Defender

Lakeside Plaza Office
1401 Lakeside Drive, Suite 400
Oakland, CA 94612-4305
(510) 272-6600



Brendon D. Woods
Public Defender
Robert C. Shipway
Chief Assistant Public Defender

MEMORANDUM

December 4, 2013

TO: PD Attorneys, Post Bar Clerks, Interns
FROM: Brendon D. Woods
SUBJECT: Immigration

This is an important message for all Public Defender Lawyers, Post-Bars, Interns, and any other personnel who interview our clients. Please copy for your records and send a signed original copy back to Debra Green.

The "Immigration Problems" section of our Intake Form **MUST BE FILLED OUT IN EVERY CASE**. Here's how to do it:

- 1) ASK EVERY CLIENT: ***Where were you born?*** (Your first question should not be "are you a citizen?" or "what is your immigration status?" or "do you have any immigration concerns?"). It's important to ask "where were you born?" because this will give you the best sense of whether or not your client is a citizen or not. As you know, a long time Legal Permanent Resident (who may have come to the United States as a baby and lived here ever since) may (erroneously) believe that she/he is a citizen.
- 2) If your client answers that he was born in the United States, then fill in the Intake Form with: "def. says he's born in U.S. and is a U.S. citizen" or words to that effect. (ie. D born US, is USC)
- 3) If your client answers that he was born in another country, your next question is: What is your immigration status? If he knows what his status is, write down where he was born and whatever it is he tells you about his immigration status (citizen, legal permanent resident, overstayed a VISA, undocumented, etc.)
- 4) If he doesn't know what his immigration status is, write down where he says he was born and that he doesn't know what his immigration status is.

You will want to preface these questions by explaining to your client that we have an immigration specialist to help with potential immigration problems and therefore it is in the client's interest to be honest when answering the following questions. In other words, build some trust with your client up front so that he knows we're here to help and that anything she/he

Appendix C

tells us is strictly confidential.

These steps must be taken when you interview a client. NEVER LEAVE THE “IMMIGRATION PROBLEMS” SECTION OF THE INTAKE FORM BLANK. This information is critical. We can’t meaningfully assist our non-citizen clients unless we take every step to determine whether or not they are non-citizens. Moreover, immigration lawyers file habeas petitions to collaterally attack convictions all the time and we do not want our lawyers to have to testify at an evidentiary hearing and answer questions about whether or not they failed to inquire about an ex-client’s immigration status.

Signature

Date

Appendix D

ILRC, *Immigrant Defendant Questionnaire*

IMMIGRANT DEFENDANT QUESTIONNAIRE

Your name	Defendant's case number (from your office, court, etc.)	Defendant's A# (if possible)

Def's Country of Birth	Def's Date of Birth	ICE Detainer/Hold/Notification <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know

1. ENTRY:

Date first entered U.S.	Visa Type (or 'none')	Departures from U.S. (approximate OK; append list)
		Date/s: Length of departure/s:

2. IMMIGRATION STATUS:

Lawful permanent resident ("green card") <input type="checkbox"/> Yes <input type="checkbox"/> No Date Obtained? _____ On what basis (e.g. family visa, refugee): <input type="checkbox"/> Check one. To obtain LPR status, D: --Went to an interview in the home country <input type="checkbox"/> --Processed ("adjusted status") here in U.S. <input type="checkbox"/>	Other Current Immigration status <input type="checkbox"/> Undocumented <input type="checkbox"/> Doesn't know <input type="checkbox"/> Has work permit but unsure of status <input type="checkbox"/> Refugee <input type="checkbox"/> Asylee <input type="checkbox"/> Temporary Protected Status <input type="checkbox"/> Deferred Action Childhood Arrivals (DACA) Other:
Screen for possible US citizenship: <input type="checkbox"/> Grandparent or parents were US citizen at time of D's birth; OR <input type="checkbox"/> Parent/s were USCs while D was under age 18; (Mark even if parents or grandparents now are deceased. Stepparents do not qualify here) <input type="checkbox"/> Neither of the above	USC or LPR Parent, Spouse, Child List each relative and whether the person is an LPR or a USC. Include age of each child.

3. PRIOR REMOVAL/DEPORTATION/VOLUNTARY DEPARTURE:

Was D ever deported or got "voluntary" departure?	Describe what happened, to extent possible (e.g., Saw immigration judge? Just signed form before leaving U.S.? Caught at the border?)	Where? When? For each deport/voluntary departure
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know		

Immigrant Defendant Questionnaire, p. 2

Your name:

Client case number:

Information on Prior Conviction/s from any jurisdiction:

Include additional page if needed				
Code section, F/M	Offense Date	Conviction Date	Sentence	Post-Con relief (PC 17 etc)

Information on Current Charges

Include additional page if needed			
Code sec.	F/M, strike, etc.	Date committed	Other info

Current Plea Offer/s if any

Include additional page if needed			
Code sec	F/M, strike, etc	Sentence	Other info: DA flexibility, priorities; Your comments

Immigrant Defendant Questionnaire, p. 3

Your name:

Client case number:

Eligible to Apply for Lawful Status or Relief from Deportation

If the answer to any question is “yes,” the client might be eligible for the relief indicated. References are to the *Relief Toolkit for Defenders*, available free online at www.ilrc.org/chart.

“USC” stands for U.S. Citizen and “LPR” stands for lawful permanent resident (green card-holder)

Questions for LPR Clients (green card-holders) Only:

1. Has your LPR client lived in the U.S. for at least seven years? Yes No

To apply for this waiver in deportation proceedings, client must be an LPR who (a) is not convicted of an aggravated felony; (b) has been a LPR for at least five years; and (c) has lived in the U.S. for at least seven years since being admitted in any status (e.g. as a tourist, LPR, etc.). See §17.5 *LPR Cancellation*.

2. Can your LPR client apply for U.S. Citizenship? Yes No

An LPR can apply for U.S. citizenship after five years LPR status, or three years of marriage to a USC while an LPR; must establish good moral character and should not be deportable. More beneficial rules apply to some current and former military personnel. See §17.4 *Naturalization*

Questions for All Immigrant Clients, Including Undocumented Persons and LPRS

3. Has your client been abused by a USC or LPR relative? Yes No

Your client, or certain family member/s, have been abused (including emotional abuse) by a USC or LPR spouse, parent, or adult child. What relative and what immigration status? _ _
See §17.8 *VAWA*. (If abuser does not fit this profile, consider U Visa, below.)

4. Is your client a juvenile and a victim of abuse, neglect, or abandonment? Yes No

Client can't be returned to at least one parent, due to abuse, neglect or abandonment. See §17.9 *Special Immigrant Juvenile*.

5. Is your client a victim of abuse who also was convicted of domestic violence? Yes No

Client was convicted of a deportable DV or stalking offense, but in fact client is the primary victim in the relationship. A waiver of the DV deportation ground, or the DV bar to non-LPR cancellation, might be available. See §17.11 *Domestic Violence Waiver*.

6. Did your client enter the U.S. before his or her 16th birthday? Yes No

Client entered U.S. before turning 16 and before 6/15/2007. See §17.12 *DACA*.

7. Has your client lived in the U.S. for at least ten years? Yes No

To be eligible for this defense in removal proceedings, client must have lived in U.S. at least ten years and have a USC or LPR parent, spouse or child (see §17.14 *Non-LPR Cancellation of Removal*) or lived here at least ten years and all deportable convictions occurred before April 1, 1997 (see § 17.15 *Suspension of Deportation, available in Ninth Circuit states*).

Immigrant Defendant Questionnaire – p. 4

Your name:

Client case number:

8. Has your client been a victim of a crime? Yes No

Client must have been a victim of a crime such as DV, assault, false imprisonment, extortion, stalking, or sexual abuse, and be or have been willing to cooperate in investigation or prosecution of the crime. See §17.16 The “U” Visa.

9. Has your client been a victim of human trafficking? Yes No

Client must have been victim of (a) sex trafficking of persons (if under age 18, could have been consensual), or (b) labor trafficking, including being made to work by force, fraud, etc. See §17.17 “T” Visa.

10. Is your client afraid to return to his or her home country for any reason? Yes No

Mark “yes” if (a) Client fears persecution or even torture if returned to the home country, see §§ 17.19 Asylum and Withholding and 17.20. Convention Against Torture; or (b) Client already is an asylee or refugee, see §17.21 Refugees and Asylees; or (c) Client is from a country that the U.S. designated for TPS status, based on natural disaster, civil war, or the like, see §17.22 Temporary Protected Status (TPS).

11. Is your client from the former Soviet Bloc, El Salvador, Guatemala, or Haiti? Yes No

Your client might be eligible for a program if he/she from these areas and applied for asylum or similar relief in the 1990’s -- or is a dependent of such a person. See §17.23 NACARA for Central Americans, and see §17.24 HRIFA for Haitians and Dependents.

12. Does your client, or parent or spouse, have an imm case from 1980’s “amnesty”? Yes No

The application still might be pending and viable. See §17.25.

Appendix E
The Law Offices of the San Bernardino County Public
Defender's Immigration Questionnaire and Protocol

Defendant Immigration Questionnaire - This information is confidential and protected by attorney-client privilege

Case Number	Courtroom	Time waiver <input type="radio"/> Yes <input type="radio"/> No ___ # of Days
--------------------	------------------	--

Defendant's Name	A# (if possible)	Next hearing date
Def's Country of Birth	Def's Date of Birth	

1. ENTRY:

Date first entered U.S.	Visa Type at Entry	Significant Departures (approximate OK; add below) Dates: Length of departures:
		Frequent Trips? <input type="checkbox"/>

2. IMMIGRATION STATUS:

Lawful permanent resident? <input type="radio"/> Yes <input type="radio"/> No Date Obtained? On what basis (e.g. family visa, refugee):	Other Current Immigration status? (check one) <input type="radio"/> Undocumented <input type="radio"/> Doesn't know <input type="radio"/> Has work permit (is there a pending application for status or relief?) <input type="radio"/> Refugee <input type="radio"/> Asylee <input type="radio"/> Temporary Protected Status <input type="radio"/> Deferred Action for Childhood Arrivals (DACA) Other:
Screen for possible US citizenship if: <input type="checkbox"/> Grandparent or parents were US citizen at time of Def's birth; OR <input type="checkbox"/> Parent(s) became naturalized US citizens while Def was under age 18; Def became LPR while under age 18	

*****PHOTO COPY ALL IMMIGRATION DOCUMENTS!*****

3. PRIOR REMOVAL/DEPORTATION/VOLUNTARY DEPARTURE:

Was Defendant ever deported? <input type="radio"/> Yes <input type="radio"/> No	Describe what happened, to extent possible (e.g., saw an imm. judge, just signed form before leaving U.S., etc.)	Where? When?
---	---	---------------------

4. DEFENSE GOALS

Defendant's Goals Re: Immigration Consequences <input type="checkbox"/> Avoid conviction that triggers deportation <input type="checkbox"/> Preserve eligibility to apply for immigration status or relief from removal <input type="checkbox"/> Get out of jail ASAP <input type="checkbox"/> Immigration consequences/deportation not a priority <input type="checkbox"/> Other Information:
--



Promoting Justice

Protecting Constitutional Rights

Through Effective Representation



Appendix E

From: Morris, Phyllis
Sent: Wednesday, August 19, 2015 2:47 PM
To: PD All Attorneys <PDAttorneys@pd.sbcounty.gov>
Subject: Immigration Consequences advisements

Good afternoon,

In representing non-citizen clients, please remember that we have an obligation under Padilla to advise clients of the immigration consequences flowing from a conviction before the court. Such advisements must be complete, and accurate and should be reflected on the attorney annotation sheet. If an immigration issue should pop up later, we will look to the attorney annotation sheet to determine what was or wasn't stated.

To assist you in fulfilling your Padilla obligations, please utilize the following protocol.

1. At the first opportunity, ask **each** client a couple specific questions to assess if they are a citizen, and note their answers in the annotations.
2. Contact Mr. DeGriselles if there is any doubt that the client is a citizen, even if the client desires a trial. We are required by *Padilla* and state case law to advise the non-citizen client of the immigration consequences of any decision the client makes. Cases such as *Missouri v. Frye* and *Lafler v. Cooper* require proper advisement of clients at the plea bargaining stage, which means we must advise noncitizen clients about the immigration consequences of their decisions to go to trial or to plead, early on.
3. Once contacted, Mr. DeGriselles will assist you in determining the complexity of the issues and how best to resolve them. We still encourage you to use a worksheet wherever possible, but one may not always be necessary. If the issues presented are simple, for example, an email or telephone contact with Mr. DeGriselles may be all that is needed. In that case, simply annotate the file regarding that discussion, and drop any email exchanges into the file. If the issues are more complicated, Mr. DeGriselles may need further information, including a worksheet.
4. If a worksheet is required, please submit it to Mr. DeGriselles, then place the worksheet and any responses you receive into the client's digital file as part of the case annotations. That way, another attorney can pick up the file and handle the case, including immigration consequences advice.
5. Clients are, as always, free to decide how to proceed with their case, but the law requires their decisions be informed by sound legal advice from us. By following this protocol, we can later demonstrate not just that we endeavored to learn citizenship status of any given client, but that we also gave our noncitizen clients immigration advice, what that immigration advice was, and the facts upon which that advice was based. That's not just best for the client: it's also best for all of us.

Full and zealous representation of all our clients, including our non-citizen clients, is paramount. Holistic representation of our clients is our goal. Assisting each deputy maintain competence is just as important to us. We have full faith in the competence of the lawyers in our office. However, immigration law is a highly specialized field, and answers are often counter-intuitive. That is why we have assistance available here in the office.

Thanks.

Phyllis K. Morris
San Bernardino County Public Defender
909-382-3940

CONFIDENTIALITY NOTICE: This communication contains legally privileged and confidential information sent solely for the use of the intended recipient. If you are not the intended recipient of this communication you are not authorized to use it in any manner, except to immediately destroy it and notify the sender.

Appendix F

County of Los Angeles Public Defender Search (July 2017)



County of Los Angeles Public Defender Search

Open for Applications starting:
July 31, 2017

First consideration given to applications received before:
September 8, 2017



ABOUT THE COUNTY OF LOS ANGELES

The County of Los Angeles, listed by *Forbes* as one of America's Best Employers for 2015, 2016 and 2017, is the largest employer in Southern California with more than 109,000 employees in over 35 departments. The County provides vital, wide-ranging services to a diverse population of 10 million residents. The County offers a remarkable opportunity for an individual with a successful track record in promoting justice and equity through the management of a public or private legal agency or a law firm engaged in criminal litigation.

THE OPPORTUNITY

Reporting to the elected Board of Supervisors, the Public Defender directs the work of over 1,152 employees, including 708 attorneys, with a budget of \$215 million and provides free legal defense for those who cannot afford counsel. The Public Defender is a recognized leader and collaborative partner within the County – working with social services agencies, community-based partners, law enforcement, and others – to represent adults and youth in criminal cases, as well as assist their individual clients in obtaining the best and most humane outcomes.

From its beginnings over 100 years ago as the first office of its kind in the nation, the Los Angeles County Office of the Public Defender has initiated strategic collaborations with stakeholders in the adult and juvenile justice systems at national, State, and local levels. Its innovative approaches have resulted in more effective legal representation of its clients and culminated in award-winning recognition. The Office of the Public Defender has 40 locations throughout Los Angeles County.

Promoting a team-based approach to representing clients who may otherwise be limited in receiving justice, the Public Defender's Office also provides assistance in felony and misdemeanor proceedings to youth in Juvenile Court proceedings, and to adults and youth in Mental Health Court proceedings.

Our ideal candidate has demonstrated success creating and sustaining partnerships with a diverse group of stakeholders that reflect the County's values of protecting and serving the residents of Los Angeles County, whatever their circumstances may be. The individual selected is an innovative and visionary leader. The candidate we seek has extensive knowledge of current trends and developments in holistic representation for adults and youth, such as restorative justice, with a specific emphasis on juvenile justice.

The Public Defender's Office also devotes its resources to facilitate broad justice system improvements for all of its clients, including best and promising practice programs and initiatives designed to produce positive lifestyle outcomes for children, adults, their families and the communities in which they reside.

THE POSITION

The Board of Supervisors for Los Angeles County is seeking a dynamic professional with appropriate legal experience in California. The ideal candidate will have demonstrated success – a preferred minimum of 10 years – managing a large-scale metropolitan legal office, and will possess expertise in the management of business affairs, including budget and other administrative duties, and supervisory responsibility of attorneys handling criminal cases.

The appointee must have been a practicing attorney in California for at least the year immediately preceding the date of the appointment. U.S. citizenship is required for appointment to this position.



The new Public Defender should:

- Have successful experience leading a holistic, client-based representation model, including addressing the specific needs of youth, victims of sex-trafficking, clients with behavioral health needs, veterans, and others who lack a strong voice within their community.
- Be driven by dedication to achieve individualized justice for diverse populations, with an established record of validated commitment to social justice.
- Possess demonstrated ability to create strong working relationships with judicial officers and the District Attorney, Sheriff, Probation and others to develop creative solutions that protect public safety, save taxpayer money, and best serve client interests.
- Have a record of fostering employee training and development, as well as creating an environment of employee engagement and high morale.
- Be knowledgeable and proficient in vigorously pursuing information allowed by Brady v. Maryland when working with prosecutors and law enforcement to obtain exculpatory evidence on behalf of clients.
- Possess confirmed proficiency in managing the uniquely challenging budget of a large public agency, and a track record as an innovative thinker extending limited resources to meet the changing needs of the County and its constituents would also be valuable.
- Exhibit comprehensive knowledge of management control systems, financial planning and information technology, which includes working with consultants to implement major technology projects.
- Have advanced education in public administration, social work, business administration, or criminal law.
- Have experience serving in the capacity of Public Defender, Special Counsel to the Public Defender, Chief Deputy Public Defender, Assistant Public Defender, or other relevant experience.
- Have existing relationships with legislative bodies.
- Meet regularly and work with a variety of elected officials, government representatives, community representatives, judges, law enforcement officers and other stakeholders.
- Demonstrate creativity and innovation in the solution of complex problems.
- Possess demonstrated leadership ability, including working effectively with diverse community groups and with various segments of the criminal justice system.
- Keep informed of developments in State and federal legislation impacting the Public Defender and/or Los Angeles County.
- Serve as an advisor to staff attorneys and work with the staff in the preparation and trial of assigned cases.
- Be available to assist staff attorneys by acting as co-counsel as opportunity and/or need presents.
- Attend trainings and events provided by bar associations.
- Encourage and promote zealous representation of clients.



COMPENSATION & BENEFITS

Annual Salary: \$286,899 to \$434,245

The appointee will receive an annual salary commensurate with qualifications, as well as an excellent choice of employee benefit programs.

The package includes:

- **Retirement Plan** – New appointees will participate in a contributory defined benefit plan.
- **Cafeteria Benefit Plan** – The County funds its cafeteria plan using a tax-free contribution of an additional 19% of the employee's monthly salary.
- **Flexible Spending Accounts** – In addition to tax-free medical and dependent care spending accounts, the County contributes \$75 per month to an employee's dependent care spending account.
- **Savings Plan (401k)** – Optional tax-deferred income plan that may include a County matching contribution up to 4% of employee's salary.
- **Deferred Compensation Plan (457)** – Optional tax-deferred income plan that may include a County matching contribution up to 4% of employee's salary.
- **Holidays** – 12 paid days per year.
- **Transportation Allowance**
- **Split Dollar Life Insurance**

HOW TO APPLY

- The position will be open from **July 31, 2017** until filled.
- First consideration will be given to applications received before **September 8, 2017**.

Please submit your cover letter, resume and any confidential inquiries to the County's search consultants, Korn Ferry, by email to: LACountyPublicDefender@kornferry.com

KORN FERRY CONTACTS

John Amer, Esq.
Senior Client Partner

Liz Zessman, Esq.
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Appendix G
Los Angeles County Public Defender's Office,
Protocol re: Potential ICE Courthouse Arrests (Mar. 1, 2018)

Advisal Regarding Possible Immigration Interviews and/or
Arrests Inside LA County Courthouses



Nicole Davis Tinkham
Interim Public Defender

**LAW OFFICES OF THE
LOS ANGELES COUNTY PUBLIC DEFENDER**
19-513 CRIMINALS COURTS BUILDING
210 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012
(213) 974-2811
TDD # (800) 801-5551

March 01, 2018

PROTOCOL RE: POTENTIAL ICE COURTHOUSE ARRESTS
**INSTRUCTIONS FOR ALL PUBLIC DEFENDERS: HOW TO PROTECT NON-
CITIZEN CLIENTS WHO MAY BE ARRESTED BY ICE**

The January 10, 2018, ICE Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses, announces that immigration enforcement could soon begin or increase in public spaces inside state and municipal courthouses across the country. In response, to best protect our non-citizen clients' Due Process rights, all attorneys need to take the following steps in the listed order.

What to do before an ICE courthouse arrest:

- 1) Before a potential courthouse ICE arrest, advise all non-citizen clients of their rights by using the document titled "Advisal Regarding Possible Immigration Interviews and/or Arrests Inside LA County Courthouses" that is attached and will be accessible on the PD Portal.
- 2) At all times, keep this advisal document on your person, pre-filled with your contact information.
- 3) Ask non-citizens for their Alien Registration Number ("A-Number") if they have one and add it to your client file. The A- Number should be eight or nine digits long.

What to do during an ICE courthouse arrest:

- 1) Most importantly, remain calm and professional. Attorneys should not escalate the situation.
- 2) If it is possible and you have enough time, call the Appellate Branch at (213) 974-3002 to tell them what is happening. You should save this number in your cell phone. Even if you cannot call as the arrest is happening, please call after the arrest is over to inform Appellate that it happened.
- 3) Do not physically interfere with an arrest and risk escalating the situation.
- 4) Inform the ICE officers that you represent the person they are arresting.

"To Enrich Lives Through Effective and Caring Service"

Page 2

- 5) Ask the ICE officers to see the arrest warrant.¹
 - a. If ICE does not have a warrant:
 - i. Ask if your client is free to go. If the ICE officer says yes, inform the client.
 - ii. If the client is not free to go, ask the officers to provide the basis of their arrest – officers need to have probable cause of removability and fear of flight risk. Do not interfere with your client's arrest, even if you believe it is unlawful.
 - iii. Ask if they would not arrest the client now and arrange a time for the client to surrender themselves to the ICE office. This would give the client the opportunity to make arrangements.
- 6) Ask the ICE officers for the following information:
 - a. The ICE officer's identification, including badge number;
 - b. Purpose and basis for arrest; and
 - c. Where they are taking your client.
- 7) Remind your client of her rights as he or she is being arrested, most importantly the right to remain silent and that he or she does not have to sign anything without consulting an attorney.
- 8) Inform the judge in the pending state criminal case what you just witnessed and ask him or her not to issue a bench warrant. Cite Penal Code section 1305.1 if asked for authority for the request.

What to do after a courthouse ICE arrest:

- 1) Document what happened, including where the arrest took place, number of ICE agents, how they were dressed and identified themselves; how they responded when you asked questions; and whether any court staff were involved in the arrest or aware of ICE presence. This may all be significant in the client's removal proceedings and for future litigation. Keep this information in your case file.
- 2) Search the ICE Online Detainee Locator (www.ice.gov/locator) to locate your client.

NOTE: Under 8 U.S.C. § 1324(a)(1), shielding an undocumented person from ICE detection is unlawful. Therefore, it is critical to understand that the Executive Management is issuing this

¹ An "ICE warrant," form I-200 or I-205, is not a judicial warrant. Instead, an "ICE warrant" is an administrative warrant issued by certain immigration officers that names an allegedly deportable non-citizen and directs various federal immigration enforcement agents to arrest that individual. (8 U.S.C. § 1226(a); 8 C.F.R. § 287.5(e).) Unlike the warrant requirements of the Fourth Amendment, ICE warrants are issued by the immigration enforcement agency itself, without any review by a neutral magistrate. (8 C.F.R. § 287.5(e).) Because it is not a judicial warrant, an ICE warrant doesn't provide local law enforcement (including courts or jails) authority to prolong detention of someone until ICE can pick him up. The ICE warrant does, however, provide ICE officers authority to arrest an individual in a public place for civil immigration violations.

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policy with the singular purpose of ensuring that our non-citizen clients receive due process within the court rules, and not with the intent of hiding non-citizen clients from ICE detection.

NOTE: While we have not heard of defense attorneys being sanctioned, arrested or charged with criminal offenses when representing noncitizen clients, be careful that your actions do not expose you to potential federal prosecution. Just as in all aspects of your representation, it is critical that you do not lie to any officer, physically obstruct ICE agents in their duties, advise your client to leave the court house, or tell your client not to appear in court (unless their presence is waived). These actions could run afoul of federal criminal laws, such as 8 U.S.C. § 1324 (harboring aliens), 18 U.S.C. § 111 (impeding federal officers), 18 U.S.C. §§ 2, 3, and 4 (aiding and abetting, accessory after the fact, misprision).

Advisal Regarding Possible Immigration Interviews and/or Arrests
Inside LA County Courthouses

You should be aware that Immigration and Customs Enforcement (“ICE”) agents may be present inside Los Angeles County Courthouses in order to interview and/or arrest certain people who they believe do not have lawful immigration status. ICE agents may want to interview you about your criminal or immigration history. If ICE agents ever question you, in or outside a courthouse, you have the right to refuse to speak with them and the right to demand that your attorney is present during any interview. The Los Angeles County Public Defender has prepared this form to make sure that you understand your rights. It is important that you understand the following:

- (1) ICE may not explain why they want to interview you and may tell you that you have to speak to them, but interviews with ICE are **voluntary** interviews. You do not have to speak to ICE or submit to any ICE questioning.
- (2) You do not have to sign any documents that ICE or other officers may give you. Anything you sign at the request of ICE can and will be used against you in immigration court or criminal court.
- (3) You have the right to decline the interview. If you agree to be interviewed, anything that you say to ICE can be used against you to deport you or to prosecute you, including simple information like where you were born.
- (4) You may request to have an attorney present during any ICE interview. Your public defender is an attorney who can represent you during such questioning.
- (5) You may ask to have an attorney present during any conversation with ICE. If ICE does not respect this request, you still have the right to remain silent.
- (6) You may and should contact your lawyer to report any interview requests, interviews, abuse or problems you experience.
- (7) ICE may not tell you that they are ICE officers. They may wear uniforms, plain clothes, and/or even clothing that says “Police” on it.

Lawyer’s Name: _____

Lawyer’s Phone: _____

What should I do if ICE comes to talk to me?

If an ICE agent or an unknown person comes to talk to you, you should:

1. Ask the person to identify themselves, if you aren’t sure who they are.
2. Tell the ICE agent that you wish to remain silent and cannot speak to him/her without your lawyer present.
3. Give the ICE agent a copy of this paper. This tells him/her to contact your attorney and that you will not answer questions without your attorney present.
4. You are not required to answer any of their questions even if you are in county jail.
5. Inform your lawyer as soon as possible about this interaction.

Appendix G

To ICE Officer:

The undersigned _____, is represented by the Law Offices of the Los Angeles County Public Defender.

The undersigned individual does **not** agree to being questioned by any ICE official without the individual's attorney being present. The contact information for counsel is listed below.

DECLARATION

I, _____, invoke my right to remain silent. If you wish to speak with me, you must first contact my lawyer, whose contact information is below, and I want my lawyer present for any questioning:

Lawyer's name

Lawyer's phone number

Lawyer's email

Appendix H
Letter to the Los Angeles City Attorney (Nov. 15, 2017)

November 15, 2017

Mary Clare Molitor
Chief Assistant City Attorney
Criminal and Special Litigation Branch
Los Angeles City Attorney
Los Angeles, California

Recommendations for the Implementation of Penal Code § 1016.3(b) in Los Angeles

Dear Ms. Molitor,

Thank you for your willingness to discuss how the City Attorney can best implement Penal Code section 1016.3(b).

California law provides: “The prosecution, in the interests of justice . . . *shall* consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution.”¹ Cal. Pen. Code § 1016.3(b) (emphasis added). In a state where “one out of every four persons . . . is foreign-born” and “one out of every two children lives in a household headed by at least one foreign-born person,” the legislature was strongly motivated by the finding that “immigration consequences of criminal convictions have a particularly strong impact.” Cal. Pen. Code § 1016.2(g).

A conviction for even a minor offense may lead to detention and deportation, inhibit a lawful permanent resident’s application for citizenship or prevent someone from securing permanent legal status. Appropriate resolutions of offenses are highly fact-specific but prosecutors must consider the consequences to all defendants from any proposed disposition. Prosecutors should also consider the immigration consequences of prosecutorial policies—as *any* conviction exponentially increases the risks of immigration enforcement.

In consultation with local and state experts, we propose the following recommendations for the implementation of Section 1016.3(b) in Los Angeles. These recommendations aim to increase immigration-safe pleas; expand the use of diversion programs and enhance their effectiveness at limiting immigration consequences; and limit unnecessary exposure to immigration enforcement.

¹ In *Padilla v. Kentucky*, the Court placed the onus on the prosecution, in addition to the defense, to meaningfully consider immigration consequences during plea-bargaining negotiations. 559 U.S. 356 (2010). To reach just outcomes, the Court endorsed plea-bargaining “creatively” so as to “craft a conviction and sentence that reduce the likelihood of deportation.” *Id.* at 373. Far from a concession by the prosecution, the Court found that the interests of the State and those of a noncitizen criminal defendant converge during immigration-sensitive plea-bargaining. *Id.* Section 1016.2 explicitly adopts the Supreme Court’s reasoning in *Padilla*. Cal. Penal Code § 1016.2(b). (“By bringing deportation consequences into this process, the defense and prosecution may well be able to reach agreements that better satisfy the interests of both parties.”).

I. INCREASE ACCESS TO IMMIGRATION SAFE PLEAS

1. **Actively work with defense counsel in individual cases to avoid immigration consequences of criminal charges, prosecutions or convictions.** Prosecutors should be alert to potential immigration consequences of charges and/or statements, and proactively work with criminal defense counsel to avoid disproportionate immigration consequences of criminal charges, prosecutions or convictions. Prosecutors should meet with defense counsel off the record to allow defense counsel to explain, and maintain confidential, the potential immigration consequences and mitigating information.²

Representations by the defense attorney to the City Attorney regarding specific biographical information including attestations of immigration status, coupled with relevant legal authority, should satisfy the prosecutor that an individual's immigration status is or would be affected as a result of the charge, prosecution or conviction. The defense attorney should not be required to provide corroborating documents attesting to the defendant's immigration status that are not already available to law enforcement.

2. **Implement training programs to increase awareness of Section 1016.3 obligations.** Immigration law is complex and evolving. The consequences that might flow from a conviction are not always intuitive or clear. We encourage your office to seek technical advice on such topics from specialists and would be glad to facilitate such trainings, including with the Immigrant Legal Resource Center, in addition to close and proactive consultation with criminal defense attorneys on individual cases.

3. **Recommend dispositions that limit negative, and disproportionate, immigration consequences.** The immigration consequences that flow from a noncitizen's criminal conviction will vary due to the intricate nature of immigration law. For example, many low-level non-violent offenses—such as failing to pay a public transportation fee or simple drug possession—can trigger deportation. The negotiation of the charge of a noncitizen defendant may be the most important decision of the person's life.

For instance, a single DUI prosecution initiates immigration enforcement proceedings for many undocumented immigrants.³ A wet reckless conviction (Cal. Veh. Code § 23103.5) carries fewer immigration consequences than a DUI conviction (Cal. Pen. Code § 23152 *et seq.*) as DUI convictions are considered negative discretionary factors and can lead to inadmissibility or deportability.⁴ Similarly, pleas under Penal Code Section 32 (accessory after the fact) as compared to drug possession misdemeanors present drastically different potential effects for the individual's prospects in the immigration system. California Penal Code Sections 243(e)(1), 246,

² Heidi Altman, *Prosecuting Post-Padilla: State Interests and the Pursuit of Justice for Noncitizen Defendants*, 101 *Geo. L.J.* 1, 24, 27, n. 121 (2012).

³ See, e.g., Maria Sacchetti & Ed O'Keefe, *ICE Data Shows Half of Immigrants Arrested in Raids Had Traffic Convictions or No Record*, WASH. POST, Apr. 28, 2017; Michael Miller, *Undocumented Immigrant Rights Activist Loses Her Battle to Avoid Being Deported*, WASH. POST, Jan. 25, 2017; Alan Gomez, *These Undocumented Immigrants Thought They Could Stay. Trump Says Deport Them*, USA TODAY, Mar. 22, 2017.

⁴ Kathy Brady, *Immigrant Legal Resource Center: Immigration Consequences of Driving Under the Influence: California DUI and Reckless Driving Statutes*, at https://www.ilrc.org/sites/default/files/resources/dui_advisory_2final.pdf.

and 273.5A are all used to prosecute intimate partner violence, but Cal. Pen. Code Section 273.5 can carry particularly severe immigration consequences—including inadmissibility, deportability, and ineligibility for forms of immigration relief. Appendix A is a chart of some of the potential immigration consequences of the most commonly-charged offenses of the City Attorney’s office.⁵

The immigration status, and desired or potential immigration relief or immigration risks, of an individual defendant can dramatically alter the Section 1016.3 considerations. The terms of the sentence, language used in disposition documents and length of sentence imposed are also critical factors with potential immigration consequences. The custody time imposed on a defendant’s conviction can, in some instances, determine the immigration impact of the conviction. In limited circumstances, immigration consequences can result from “conduct” – for instance, evidence or reason to believe an individual engaged in prostitution, misused documents or made false claims regarding citizenship status, or used or sold drugs – whether or not there is an ultimate conviction. This creates additional immigration risks from, i.e., admissions or information included in the record of conviction.

In determining an appropriate plea offer or sentence, or the record of conviction, we recommend that prosecutors engage with defense counsel and take into account diverse factors, including history and character of the defendant; the impact of the disposition upon them, not limited to their present and potential future immigration status; and humanitarian considerations, such as any hardship that the defendant and the defendant’s family would face as a result of detention and/or deportation. There are many creative ways that prosecutors can work with defendants to get immigration-neutral dispositions that still carry the sentence exposure a prosecutor may want. Prosecutors should also be conscious of the risk of conduct or the existence of a “reason to believe,” even absent a conviction, to carry immigration consequences.

II. EXPAND ACCESS TO DIVERSION PROGRAMS, AND ENHANCE THEIR EFFECTIVENESS AT LIMITING IMMIGRATION CONSEQUENCES

4. **Increase use of diversion programs, and in particular *pre-plea* diversion programs.** Prosecutors have wide latitude in determining whether or not, or how, to use discretion in pursuing cases after they have filed charges. We recommend prosecutors to regularly use this discretion by offering pre-plea and informal diversion—where there is no guilty plea entered onto the record and thus generally no immigration consequences. The use of diversion programs should be designed to avoid imposing immigration consequences on their non-citizen participants. In particular, diversion programs often require a defendant to enter a guilty plea prior to participation, with the end goal of having their plea dismissed; however, the fact that a guilty plea was entered is often what triggers a noncitizen to be put in removal proceedings and may result in deportation.⁶ On October 14, 2017, Governor Jerry Brown signed into law AB 208,

⁵ Analyses of different potential offenses, and their immigration consequences are available here: Immigrant Legal Resource Center, Quick Reference Chart for Determining Key Consequences of California Offenses, at https://www.ilrc.org/sites/default/files/resources/california_chart_jan_2016-v2.pdf; Continuing Education of the Bar (CEB) California (Norton Tooby & Katherine Brady), *Criminal Defense of Immigrants* 2017.

⁶ The Immigration and Nationality Act will treat as evidence of criminal conduct whenever a non-citizen has “admitted sufficient facts to warrant a finding of guilt.” See 8 U.S.C. §1101(a)(48)(A). See generally Sara Elizabeth

the Deferred Entry of Judgment: Pretrial Diversion Act. Prosecutors should expand use of pre-plea diversion programs for a broader array of offenses than covered by AB 208, which is limited to possession offenses, and includes certain exceptions—as such pre-trial diversion programs limit undesired immigration consequences.

Seattle’s Law Enforcement Assisted Diversion (LEAD) allows for pre-booking diversion in response to low-level drug and prostitution offenses. Developed with community groups, law enforcement agencies and public officials, the program demonstrated better results – including recidivism rates, costs, and access to services – than the typical criminal justice model.⁷ In addition to avoiding unnecessary, costly and debilitating prosecutions, the program proactively diverts offenders to community-based support services, including housing, healthcare, job training, treatment and mental health support.

Your office has established important diversion programs to avoid unnecessary criminal consequences, and in some cases also immigration consequences, of interactions with law enforcement. These include the possibility of office hearings or other pre-charge diversion programs such as the Administrative Citation Enforcement (ACE) program and the Neighborhood Justice Program (NJP); or even pre-booking in the case of the Los Angeles Diversion Outreach and Opportunities for Recovery (DOOR).

These programs appear most robust for first-time offenders and in connection with particular offenses. We appreciate and welcome the opportunity to learn more about how these programs operate in practice, and how they might be strengthened to serve a broader population of suspected offenders and ensure that they do not inadvertently carry immigration or other unwanted consequences. For instance, we further recommend expanding access to pre-plea diversion programs (like ACE) for offenses relating to homelessness, poverty, or unauthorized immigration status—offenses such as driving without a license or driving with a suspended license—and not only municipal code violations. Simultaneously, we ask that your office consider and support reforms to the ACE program to provide greater due process protections for low-income defendants.⁸ Correspondingly, we recommend referring drug possession, petty theft and domestic violence related offenses to programs like NJP. Diversion programs that connect individuals to service providers and community organizations—fully outside of the justice

Dill, *Unbalanced Scales of Justice: How ICE Is Preventing Noncitizens from Having Equal Access to Diversion Programs and Therapeutic Courts*, 50 Fam. Ct. Rev. 629, 632 (2012).

⁷ Law Enforcement Assisted Diversion (LEAD), “Evaluation”, at <http://leadkingcounty.org/lead-evaluation/>.

⁸ While the ACE program is a positive step as it seeks to keep offenses out of the court system, there are several ways to improve the process, including but not limited to: protecting against excessive penalties that individuals cannot pay (ensuring assessment of an individual’s ability to pay both during and after the hearing process and allowing individuals to pay a lower fee or participate in community service, particularly as many of the offenses eligible for ACE diversion are associated with poverty; and prohibiting additional charges for hearings); and reforming the administrative hearing process to better protect due process rights (extending the timeline to pay or request a hearing, ensuring that there is language accessibility throughout the process, permitting individuals to confront witnesses, and facilitating judicial review); and considering how to protect the privacy of the individuals who participate in the ACE program to avoid immigration and other harms. See Los Angeles City Council Budget and Finance Motion of Council Members Curren Price and Jose Huizar, Dec. 14, 2016, at http://clkrep.lacity.org/onlinedocs/2014/14-0818-S4_mot_12-14-2016.pdf; Letter to Los Angeles City Council from Los Angeles Street Vending Campaign, Dec. 8, 2016, at http://clkrep.lacity.org/onlinedocs/2013/13-1493_misc_r_12-08-16.pdf.

system—should be considered and endorsed in a sustained and effective way, especially for offenses associated with substance addiction and mental illness.

Further, office hearings should be permissible *before* arraignment. Defense attorneys should be permitted to request office hearings and to present some evidence off the record, related to the adverse immigration consequences the defendant may face should the charges go through. Since many defendants often do not obtain a defense attorney until arraignment, we also recommend that prosecutors remain open to the possibility of holding office hearings post-arraignment.

5. Avoid filing charges at all, or filing charges with immigration consequences, where possible for lower-level, first-time or public health-related offenses.

As we have discussed previously, non-violent drug, property and “quality of life” offenses (which are often considered or related to crimes of poverty) account for a significant number of prosecutions by your office.⁹ These cases often result in unnecessary devastation for individuals and families, and may also result in disproportionate and irreparable immigration consequences of even lawful permanent residents. An arrest or criminal charge—whether or not there is a resulting conviction—will often create negative immigration consequences for a noncitizen’s life or expose noncitizens to deportation. This is because of the automatic booking and fingerprint-sharing between local law enforcement and immigration authorities that results from an arrest.

There is an increasing recognition—from the public, advocates and law enforcement—that “[t]oo many resources go toward arresting, prosecuting and imprisoning low-level offenders, and those suffering from mental illness and drugs or alcohol addictions.”¹⁰ The public safety benefits of such criminal prosecutions tend to be severely outweighed by the costs.¹¹ This is even more true for noncitizens. These types of offenses can more appropriately be handled through non-law enforcement tools or through a civil process.

⁹ *CJSC Statistics: Arrest Dispositions*, California Dep’t of Justice (2017), <https://oag.ca.gov/crime/cjsc/stats/arrest-dispositions>. See, e.g., U. of California Berkeley, Policy Advocacy Clinic, *California’s New Vagrancy Laws*, 34 (2015), http://considerthehomeless.org/pdf/CA_New_Vagrancy_Laws.pdf (counting 21 LA laws that essentially criminalize homelessness, such as laws against resting in public and panhandling); L.A. City Council, *Official LA City Municipal Code*, Chapter IV: Public Welfare, [http://library.amlegal.com/nxt/gateway.dll/California/lamc/municipalcode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal.losangeles_ca_mc](http://library.amlegal.com/nxt/gateway.dll/California/lamc/municipalcode?f=templates$fn=default.htm$3.0$vid=amlegal.losangeles_ca_mc) (including such misdemeanor offenses as cutting in line at the gas pump). See Emily Reyes, *L.A. city attorney doubles number of neighborhood prosecutors*, L.A. Times (June 2, 2014), <http://www.latimes.com/local/lanow/la-me-ln-neighborhood-prosecutors-20140602-story.html>. Emily Reyes, *L.A. Prosecutor’s Work Goes Beyond the Courtroom*, L.A. Times, June 21, 2014, <http://www.latimes.com/local/cityhall/la-me-neighborhood-prosecutor-20140622-story.html>.

¹⁰ See, e.g., Letter from David LaBahn, et. al., to Donald J. Trump and Hillary R. Clinton, July 13, 2016, <http://lawenforcementleaders.org/wp-content/uploads/2016/07/Law-Enforcement-Letter.pdf>.

¹¹ Representatives of law enforcement officials, including the President of the Association of Prosecuting Attorneys and the President of the National District Attorneys Association, urged the then-leading Presidential candidates to allocate resources away from non-violent crimes, stating: “Too many resources go toward arresting, prosecuting and imprisoning low-level offenders, and those suffering from mental illness and drugs or alcohol addictions.” Letter from David LaBahn, et. al., to Donald J. Trump and Hillary R. Clinton, July 13, 2016, <http://lawenforcementleaders.org/wp-content/uploads/2016/07/Law-Enforcement-Letter.pdf>.

In New York City, the city council, mayor's office, advocates and the police department stood behind the passage of a package of eight bills geared towards creating a more just criminal justice system and decreasing the backlog in the criminal courts. The series of bills, known as the Criminal Justice Reform Act, work to divert the most common low-level and quality-of-life offenses, like public urination, turnstile jumping and open container offenses, away from the criminal justice system by issuing civil summonses to offenders rather than arresting them, thus more proportionally fitting the penalty to the offense.¹²

This is not only a matter for legislative action. Prosecutors, in the interests of justice, could use their discretion to not file charges or criminally prosecute for quality-of-life and low-level offenses, such as driving without a license or with a suspended license; public urination, trespassing, or other offenses associated with homelessness¹³, or possession of small quantities of drugs. These offenses could also be referred to a civil process, which would serve as a more appropriate and proportionate response to the offense than criminal prosecution, and allow law enforcement to allocate their resources to investigate serious crimes while reducing the backlog of cases in criminal court.¹⁴

Appendix B includes a non-exhaustive list of recommended offenses which could result in no charges, or benefit from pre-plea (or pre-charge or pre-booking) diversion, at least absent extenuating circumstances.

III. LIMIT UNNECESSARY EXPOSURE TO IMMIGRATION ENFORCEMENT

6. **Limit pre-trial detention.** In California, 2/3 of the prison population is pre-trial or pre-sentencing.¹⁵ While the majority of detained pre-trial inmates in Los Angeles County face felony charges, on an average day there are more than 650 misdemeanor pre-trial arrestees in County custody, including more than 275 with arrests for drug, property and vehicle code offenses.¹⁶ Even short durations of pre-trial detention can have destabilizing effects on an individual's life,

¹² Mayor de Blasio Signs the Criminal Justice Reform Act, (June 13, 2016) <http://www1.nyc.gov/office-of-the-mayor/news/530-16/mayor-de-blasio-signs-criminal-justice-reform-act>; see also New York City Department of Investigation, Office of the Inspector General for the NYPD, *An Analysis of Quality of Life Summonses, Quality of Life Misdemeanor Arrests, and Felony Crime in New York City, 2010-2015*, (June 22, 2016) <https://www1.nyc.gov/assets/oignypd/downloads/pdf/Quality-of-Life-Report-2010-2015.pdf> (finding that there was no clear and direct link between an increase in summons and misdemeanor arrest of quality of life offenses and a related drop in felony crimes).

¹³ National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities*, 2016.

¹⁴ As this office has already noted, a civil process for minor offenses may serve only to delay the problem and exacerbate the inequalities in the justice system by doling out fines that the chronically poor and disadvantaged will not have the capacity to pay. See, e.g., Alexandra Natapoff, *Misdemeanor Decriminalization*, 68 Vand. L. Rev. 1055 (2015).

¹⁵ Magnus Lofstrom & Brandon Martin, Public Policy Institute of California, *Just the Facts: California's County Jails*, at http://www.ppic.org/publication/californias-county-jails/?utm_source=ppic&utm_medium=email&utm_campaign=epub.

¹⁶ Los Angeles County Sheriff's Department, *Custody Division Year End Review (2016)*, at http://www.la-sheriff.org/s2/static_content/info/documents/PMB_YER2016.pdf, 28-29.

and tend to distort the criminal justice process.¹⁷ The City Attorney should establish policies to avoid any unnecessary detention. One method of limiting unnecessary detention is through encouraging the use of own recognizance (OR) release.¹⁸ A single day in jail exponentially increasing the risk of associated immigration enforcement.

7. Revise filing guidelines and LAPD guidance to limit unnecessary arrests, consistent with state law. Another method of preventing unnecessary pre-trial custody is avoiding arrest and booking altogether. For noncitizens, booking results in fingerprinting and information-sharing with immigration authorities. This can lead to subsequent targeting of an individual by immigration authorities at home or in the community, or an interrogation or arrest from a courthouse or jail, and ultimate deportation.¹⁹

We understand that the City Attorney revised filing guidelines to recognize that law enforcement shall, absent extenuating circumstances, treat certain listed “wobblettes” as infractions rather than misdemeanors, for purposes of determining whether to cite and release or arrest, and whether and how to prosecute.²⁰ The City Attorney should further revise the list to expand the offenses treated as infractions to cover *all* wobblettes.

Further, the City Attorney’s office could amend its direct citation policy, and its guidance to law enforcement, to more closely align with state law, which requires that individuals arrested for misdemeanors be cited and released in most instances.²¹

Lastly, individuals with infractions for minor or quality of life crimes too often end up in custody for failure to appear in court. The City Attorney could also periodically review old infraction cases and dismiss those pending for an extended period of time which have resulted in bench warrants.

¹⁷ See generally Criminal Justice Policy Program, Harvard Law School, *Moving Beyond Money: A Primer on Bail Reform*, 6-8 (2016), <http://cjpp.law.harvard.edu/assets/FINAL-Primer-on-Bail-Reform.pdf>.

¹⁸ Cal. Penal Code §§ 1270, 1318. In the longer term, the City Attorney could take a leadership role in supporting the end of money bail, in recognition that liberty should not depend on a person’s wealth. See, e.g., Bob Egelko, *State to Intervene in a Case Against Bail System After SF Declines*, SF Gate, November 29, 2016, <http://www.sfgate.com/bayarea/article/State-to-defend-suit-against-bail-system-after-10640767.php> (S.F. City Attorney Dennis Herrera refused to defend the money bail system).

¹⁹ Fair Punishment Project, *The Promise of Sanctuary Cities and the Need for Criminal Justice Reforms in an Era of Mass Deportation*, 17 (May 4, 2017), <http://fairpunishment.org/wp-content/uploads/2017/04/FPP-Sanctuary-Cities-Report-Final.pdf> (“Because cash bail keeps poor people in jails, it makes many non-citizens sitting ducks for ICE.”). See generally ICE Out of LA, *The Human Rights Consequences of LASD-ICE Collaboration: A Toxic Entanglement* (January 2017), <http://iceoutofla.org/wp-content/uploads/2017/01/ICEoutofLA-UCLA-HR-Clinic-1-12-2017.pdf>.

²⁰ LAPD Dept. Manual, 1/512, Alternatives To Physical Arrest, Booking, Or Continued Detention, 4 § 216.66-67.

²¹ California Penal Code § 853.6. Note that the Fontana Police Department not only authorizes but *requires* citation and release for almost *all* misdemeanor offenses, with a limited number of exceptions, and enables citation release for a number of felonies as well. Fontana Police Department, Policy Manual, § 420, 311 (December 16, 2014).

8. Act to limit immigration enforcement in courthouses; and do not directly facilitate immigration enforcement actions by discussing cases with representatives of the Department of Homeland Security.

The City Attorney should not engage with DHS in individual cases absent a request from the individual or her attorney, or a legal requirement.²² This position is compelled by the Mayor's Executive Directive 20, various policy pronouncements from your office, and the recently signed California Values Act, all of which have taken important steps to prohibit or limit unnecessary engagement with DHS authorities which facilitate immigration enforcement.²³

The Mayor's Executive Directive 20 provides that no "City monies or resources [may] be used to assist or cooperate with, any federal agent or agency in any action where the purpose is federal civil immigration enforcement." It further requires special protections to prevent the disclosure of sensitive information "that can be used to establish or trace an individual's citizenship or immigration status, either on its own or when combined with other information."

SB 54, the California Values Act recently signed into law, prohibits law enforcement officers, including prosecutors, from sharing non-public personal information of noncitizens with federal immigration agencies for the purposes of immigration enforcement, with limited exceptions. Cal. Gov. Code §§ 7284.6(a)(1)(C), (D). The City Attorney can also adopt a higher standard than SB 54. Under SB 54, disclosures of information to ICE pursuant to SB 54 "are never required." Cal. Gov. Code § 7284.6(a)(1)(C) (emphasis added).

Further, the City Attorney has recognized the importance in ensuring access to the courts for all, regardless of immigration status and irrespective of whether an individual is a plaintiff, defendant, victim or witness.²⁴ DHS authorities have asserted repeatedly that they will use the courtrooms as sites for identifying and pursuing targets of immigration enforcement.²⁵ Thus, to preserve access to justice in Los Angeles, prosecutors should proactively work to prevent or limit immigration enforcement in the courtroom to the greatest extent possible under the law. This should include, at a minimum, training prosecutors to identify ICE agents in the courthouse and, if identified, to inform the judge and the defense attorneys of their potential or actual presence and the possibility or likelihood that this may disrupt the administration of justice.²⁶ This should trigger action from the judge and should notify the targeted individuals of potential immigration enforcement. The prosecutors should also be trained to seek from the potential ICE agent their

²² This should not prohibit certification of U or T visas for victims of crime or trafficking, or support to individuals seeking access to services.

²³ City of Los Angeles, Office of the Mayor, Eric Garcetti, Exec. Directive No. 20, *Standing with Immigrants: A City of Safety, Refuge, and Opportunity for All*, (March 21, 2017); City of Los Angeles, Office of the City Attorney, Michael N. Feuer, *Report Re: Sanctuary City Litigation and Policies Relating to the City's Undocumented Immigrant Population*, (May 18, 2017).

²⁴ See, e.g., City News Service, *Prosecutors Want ICE Agents to Stop Making Arrests at Courthouses*, Los Angeles Daily News, Apr. 4, 2017.

²⁵ See, e.g., Angela Hart, *Quit Stalking Immigrants at California Courthouses, Chief Justice Tells ICE*, SACRAMENTO BEE, Mar. 16, 2017; Devlin Barrett, *DHS: Immigration Agents May Arrest Crime Victims, Witnesses at Courthouses*, WASH. POST, Apr. 4, 2017.

²⁶ ICE agents will sometimes wear uniforms that say "ICE." But more frequently they wear nondescript black uniforms with the term "POLICE" on the uniform or will be plainclothes. Local police generally wear unique uniforms clearly identifying their agency.

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identification and intended purpose; and to refuse to provide any information—including the names of individual defendants or witnesses—to the ICE agents.

The above suggestions are not intended to limit your office's ability to prosecute, but rather seek to establish a framework for the utilization of discretion to further the interests of justice for the community and individual defendants. We welcome the opportunity to discuss these ideas further.

Very truly yours,

Jennie Pasquarella
Maria Romani
Andres Kwon
American Civil Liberties Union of
Southern California

Carlos Amador
California Immigrant Policy Center

Patricia Guerra
Kirk Samuels
Community Coalition

Cathy Dreyfuss
Meeth Soni
Immigrant Defenders Law Center

Rose Cahn
Immigrant Legal Resource Center

Emi MacLean
National Day Laborer Organizing Network

Shiu-Ming Cheer
National Immigrant Law Center

Keli Reynolds
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Tony Pullara
Law Offices of Anthony J. Pullara

Phal Sok
Kim McGill
Youth Justice Coalition

APPENDICES

A.

LA CITY ATTORNEY MOST COMMONLY CHARGED OFFENSES AND RELATED IMMIGRATION CONSEQUENCES²⁷

To be deportable means that ICE can strip the non-citizen of his or her current legal status in the United States and deport the non-citizen. Convictions, the information reflected in the record of conviction, and/or certain conduct without a conviction can make a non-citizen deportable.

To be inadmissible means that if the non-citizen seeks to enter via a U.S. Port of Entry, he or she will be denied entrance into the U.S. If the non-citizen is inadmissible and still in the country, he or she will be ineligible for certain kinds of relief or immigration statuses like 1) Non-LPR cancellation of removal, 2) Refugee/Asylum adjustment of status, and 3) Family Immigration.

A crime involving moral turpitude that makes someone inadmissible can also make someone deportable depending on the person’s prior convictions and/or when the crime involving moral turpitude was committed in relation to when they were admitted into the U.S. Thus, one can be deportable and inadmissible.

SEC. CODE	CHARGE	IMMIGRATION CONSEQUENCES
Drug and Alcohol Related Offenses		
HS 11377(a) HS 11350 HS 11364a	Possession of a controlled substance Possession of drug paraphernalia	<ul style="list-style-type: none"> ▪ Inadmissible controlled substance offense under 212(a)(2) ▪ Deportable controlled substance offense under 237(a)(2) ▪ Stops accrual of continuous residence for cancellation of removal
HS 11359b L 45.19.6.2.A	Possession of a controlled substance for sale Unlawful operation of a medical marijuana business	<ul style="list-style-type: none"> ▪ Inadmissible controlled substance offense under 212(a)(2) ▪ Deportable controlled substance offense under 237(a)(2) ▪ Deportable for aggravated felony (drug trafficking) ▪ Renders ineligible for nearly all forms of relief
VC 23152f VC 23152e VC 23152a	Driving under the influence offenses	<ul style="list-style-type: none"> ▪ Numerous offenses could be used to establish habitual drunkard ▪ Considered significant misdemeanor barring DACA ▪ Government has argued that this could trigger inadmissibility (212(a)(2)) or deportability (237(a)(2)) as a controlled substance offense, or stop accrual of continuous residence for LPR cancellation of removal if drug or inconclusive record of conviction

²⁷ This table includes those most commonly charged offenses of the City Attorney’s office with clear immigration consequences.

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Prostitution-Related Offenses		
PC 647(b)(1)	Prostitution—intent to receive compensation	<ul style="list-style-type: none"> ▪ Inadmissible under 212(a)(2) if prior record of one or more CIMT ▪ Deportable under 237(a)(2) if second CIMT ▪ Can bar non-LPR cancellation of removal due to lack of good moral character ▪ Can be used to establish inadmissibility under prostitution ground
PC 647b	Solicitation for prostitution (pre-2017)	
PC 653.22a	Loitering with intent of prostitution	
PC 647(b)(2)	Prostitution—intent to provide compensation	<ul style="list-style-type: none"> ▪ Inadmissible under 212(a)(2) if prior record of one or more CIMT ▪ Deportable under 237(a)(2) if second CIMT
Domestic Violence and Other Violence Related Offenses		
PC 273.5A	Corporal injury to a spouse (after 1/1/14)	<ul style="list-style-type: none"> ▪ Government has argued that could render inadmissible under 212(a)(2) if record of conviction identifies any victim other than former cohabitant ▪ Deportable crime of domestic violence under 237(a)(2); aggravated felony if sentence of one year or more ▪ Renders ineligible for non-LPR cancellation of removal ▪ Renders ineligible for nearly all forms of relief if sentence is one year or more ▪ Considered significant misdemeanor barring DACA
PC 273.6(a)	Violation of protective/restraining order	<ul style="list-style-type: none"> ▪ Deportable under 212(a)(2) for violation of domestic violence protective order ▪ Bar to non-LPR cancellation of removal
PC 166(C)(1)	Contempt of court - protective order (1/1/09)	
PC 245(a)(1)	Assault with a deadly weapon - weapon or instrument other than firearm	<ul style="list-style-type: none"> ▪ Inadmissible if prior record of one or more CIMT and/or if sentence is greater than 180 days ▪ Deportable if second CIMT; deportable aggravated felony if sentence of one year or more ▪ Renders ineligible for nearly all forms of relief if sentence is one year or more ▪ If sentence is greater than 180 days or second CIMT, stops accrual of continuous residence for cancellation of removal ▪ Considered significant misdemeanor barring DACA
PC 422(A)	Threatening great bodily harm	
PC 242 PC 243(b)	Battery against peace or other officer	<ul style="list-style-type: none"> ▪ Government has argued that PC 243(b) can be considered a crime of violence and/or crime involving moral turpitude
Theft-Related Offenses		

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PC 350 ²⁸	Possession of Counterfeit goods	<ul style="list-style-type: none"> ▪ Inadmissible if prior record of one or more CIMT and/or if sentence is greater than 180 days ▪ Deportable if second CIMT
PC 484a PC 490.2(a) PC 484a	Petty Theft	<ul style="list-style-type: none"> ▪ Inadmissible under 212(a)(2) if prior record of one or more CIMT ▪ Deportable under 237(a)(2) if second CIMT ▪ Bars non-LPR cancellation of removal, and stops accrual of continuous residence for cancellation of removal, if prior record of CIMT
VC 10851A	Driving vehicle without owner's consent	<ul style="list-style-type: none"> ▪ Deportable for aggravated felony if sentence is one year or more ▪ Renders ineligible for nearly all forms of relief if sentence is one year or more
PC 530.5(c)(1)	Possession of personal identifying info	<ul style="list-style-type: none"> ▪ Could be inadmissible CIMT if record of conviction shows loss, harm or theft ▪ Deportable for aggravated felony if record of conviction reflects loss to the victim of \$10k or more ▪ Renders ineligible for nearly all forms of relief if record of conviction reflects loss to the victim of \$0k or more ▪ Could be used to establish false claim to U.S. citizenship if record reflects use of citizenship documents to obtain a benefit
Other Offenses		
VC 20002a	Hit and run	<ul style="list-style-type: none"> ▪ Could be inadmissible CIMT if record of conviction shows failure to stop ▪ Could be inadmissible CIMT if record of prior CIMT and record of conviction shows failure to stop
VC 21200.5	Riding a bicycle under the influence	<ul style="list-style-type: none"> ▪ Could be conduct-based ground if substance not specified
PC 647(a)	Lewd conduct	<ul style="list-style-type: none"> ▪ Considered a crime involving moral turpitude

²⁸ This is not listed as one of the most commonly charged offenses of the City Attorney but is included here as it is seen frequently and has notable immigration consequences.

B. OFFENSES WHICH SHOULD TRIGGER DIVERSION OR DISMISSAL IN THE INTERESTS OF JUSTICE	
Sect. Code	Offense
Vehicular Violations	
<p>Charges for violating Vehicle Code Section 12500 and Penal Code Section 14601.1a have been a large part of the misdemeanor docket in Los Angeles. Both offenses are “wobblettes” and they have been disproportionately levied on noncitizens and people of limited means—who face obstacles in securing drivers’ licenses, paying traffic- and parking-related fines, and appearing in court. Effective June 27, 2017, AB 103 repealed the authority of the state to maintain driver’s license suspensions for failure to pay a fine—a portion of PC 14601.1a offenses. <i>See</i> Stats. 2017, Ch. 17, Secs. 51-54. Nevertheless, Penal Code Section 14601.1(a) can still be charged based on failure to appear, and this offense has amounted to a significant portion of all Penal Code Section 14601.1a charges. Because of their wide impact and the unintended immigration consequences of related bookings, charges and convictions, both Vehicle Code Section 12500 and Penal Code Section 14601.1a offenses should be discretionarily dismissed, eligible for pre-charge diversionary programs or charged only as infractions where appropriate.</p>	
VC 12500a	Driving vehicle without a license
VC 14601.1a	Driving with a suspended license – not alcohol-related; typically for failure to pay traffic or parking fines
VC 14601.2a VC 14601.5a	Driving with a suspended license – alcohol-related
Quality of Life Offenses	
<p>Quality of life offenses such as public urination, loitering, vandalism, and unlicensed street vending, are offenses that often stem from poverty and homelessness. They should be diverted from the criminal justice system wherever possible.</p>	
PC 647 LAMC 41.18, 56.11 LAMC 85.02	Disorderly conduct - Public sleeping; blocking sidewalk <ul style="list-style-type: none"> ▪ Blocking sidewalk with person or belongings ▪ Living in a vehicle
PC 415 et seq.	Disturbing the peace
PC 148(a)	Resisting or disrupting an office
PC 647(h)	Loitering
PC 374.4	Littering on public or private property
PC 647(f)	Public intoxication
PC 370/372	Public nuisance
PC 314.1	Indecent exposure, public urination
PC 374.3	Illegal dumping on roads (often used as response to urination or defecation on roadside by homeless)
PC 594A	Vandalism
PC 640.5	Graffiti (on government vehicle)
PC 640.6(a)(1)	Graffiti (on private property)
PC 272(b)(1)	Contributing to the delinquency of a minor (used for truancy)

LAMC 63.44B(3), 80.73(b)(2)A(1)	Unlicensed vending in a park; dispensing food from a cart
LAMC 71.02(a), 71.03(d)	Bandit cab violations; illegal vehicle for hire
PC 602.7	Unauthorized sales on public transit facility, property or vehicle
Minor Property Offenses	
<p>Minor property offenses tend to stem from poverty – and convictions for such offenses also tend to reinforce a cycle of poverty as they make stable employment and housing more challenging. Voters overwhelmingly endorsed Proposition 47, which mandated that certain low-level nonviolent felony drug and property offenses could be reclassified as misdemeanors, absent the extenuating circumstances of certain designated prior convictions. In doing so, voters expressed a commitment to “maximize alternatives for non-serious, nonviolent crime, and to invest the savings generated ... into prevention and support programs in K-12 schools, victim services, and mental health and drug treatment.” The downgraded offenses include the minor property offenses where the loss is less than \$950—shoplifting or theft (PC 459, 484, 484/666); forgery, fraud or bad checks (PC 470-476, PC 476a); and receipt of stolen property (PC 496). Many of these offenses can be considered crimes involving moral turpitude, increasing the immigration consequences. They should be eligible for dismissal in the interests of justice or pre-plea diversion unless circumstances compel prosecution.</p>	
PC 555, 602, L 41.24a, PC 602o, 602.5a, 369-ia	Trespassing-related offenses (or unauthorized entry/remaining in noncommercial residence or illegal entry on railroad land)
PC 350	Possession of counterfeit goods
PC 537 PC 484a PC 490.1 PC 490.2(a), PC 487 PC 459.5	“Dine and dash” – obtaining food without paying Petty Theft (larceny) Petty Theft (less than \$50) Petty/Grand Theft (less than \$950) Shoplifting (valued less than \$950)
PC 470, 471, 472, 473, 474, 475, 476 PC 476a	Forgery Passing bad checks (valued less than \$950)
PC 485 PC 496	Receipt / use of stolen property Receiving stolen property (valued less than \$950)
VC 10851A	Driving vehicle without owner’s consent
Drug-Related Offenses	
<p>Drug and alcohol related offenses should be eligible for diversionary programs as the offenses stem from health issues that require treatment. Addiction should be treated similarly to other chronic conditions.²⁹ Governor Brown’s recent signing of AB 208, the Deferred Entry of Judgment: Pretrial Diversion Act, expands use of pre-plea diversion programs for drug possession offenses, though the City Attorney could expand upon the eligibility criteria established in this new law. Voters also overwhelmingly endorsed Proposition 47, which mandated that certain low-level nonviolent felony drug and property offenses could be reclassified as misdemeanors, absent extenuating circumstances (of certain prior convictions). These include drug possession offenses (HS 11350, 11357(a), and HS 11377). Voters further endorsed the legalization of marijuana for recreational use. Propositions 47 and 64 – and a clear public commitment to treatment and rehabilitation of addiction, and opposition to criminalization – make the prosecution of drug possession and related offenses</p>	

²⁹ U.S. Department of Health and Human Services, Office of the Surgeon General, *Facing Addiction in America: The Surgeon General’s Report on Alcohol, Drugs, and Health*, (November 2016)
<https://addiction.surgeongeneral.gov/surgeon-generals-report.pdf>

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<p>particularly concerning. A close look at – and revision of – the City Attorney’s prosecution of drug offenses is particularly necessary given the draconian immigration penalties associated with drug offenses.</p>	
HS 11350 HS 11377(a)	Possession of a Controlled Substance
HS 11364a	Possession of drug paraphernalia
L 45.19.6.2.A HS 11357.5 HS 11360	<p>Marijuana-related offenses</p> <ul style="list-style-type: none"> ▪ Unlawful operation of medical marijuana business ▪ Sale or use of synthetic cannabinoid compound ▪ Importation or sale of marijuana
HS 104495, HS 118945	Smoking (in a playground; on public transit / in a car with a minor)
<p>Alcohol-Related Offenses</p>	
<p>Alcohol related offenses should be eligible for diversionary programs as the offenses stem from health issues that require treatment. Alcoholism is a chronic neurological disorder that must be treated similarly to other chronic conditions.³⁰ Governor Brown recognized that DUIs may be eligible for diversion in certain instances, in signing SB 725 in August 2017, permitting veterans with DUIs to access diversion programs.</p>	
VC 23103.5	Wet reckless
VC 23152a	Driving under the influence
VC 23152a (with prior)	Driving under the influence with prior
VC 23152f/e	Driving under the influence of a drug
VC 21200.5	Riding a bicycle under the influence
VC 23152a/77	DUI refusal
<p>Prostitution-Related Offenses</p>	
<p>People who are arrested for prostitution are often victims of a cycle of survival and violence. Convictions for prostitution offenses may serve to further the traumatization and limited opportunities that can lead someone to engage in sex work. The City should endeavor to provide alternatives to the sex trade, including treatment, counseling, medical and mental health care, and other support services. A diversion program like the Prostitution Diversion Program in Los Angeles may offer victims with an option that does not further criminalize and provides services. However, this is not available for all offenses or offenders. This policy should be reviewed in light of Section 1016.3b given the severe immigration consequences of prostitution-related convictions.</p>	
PC 653.22a	Loitering with intent of prostitution
PC 647(b)(1)	Prostitution—intent to receive compensation
PC 647(b), 647(b)(2)	Intent to provide compensation; solicitation for prostitution
<p>Intimate Partner Violence</p>	
<p>Convictions for intimate partner violence, and restraining order violations, carry harsh immigration penalties. Depending on the severity of the offense and extenuating circumstances, individuals suspected of or charged with intimate partner violence should be considered for diversion programs where not legally prohibited.</p>	

³⁰ U.S. Department of Health and Human Services, Office of the Surgeon General, *Facing Addiction in America: The Surgeon General’s Report on Alcohol, Drugs, and Health*, (November 2016)
<https://addiction.surgeongeneral.gov/surgeon-generals-report.pdf>.

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