

COMMUNITY JOURNAL

YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & JEREMIAH JOHNSON

Avoiding immigration consequences from criminal convictions

which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his motion for the writ."

In the past, an immigrant could demonstrate that his criminal trial attorney was ineffective in not investigating the immigration consequences of pleading guilty to an offense. As such, the immigrant could withdraw his plea and vacate the original conviction based on a defect. Moreover, and perhaps more importantly, immigration courts have recognized that a successful writ of coram nobis would wipe out the immigration consequence of the conviction. However, as the California Supreme Court noted in *People v. Kim*, ineffective assistance is not an issue of fact; rather it is an issue of law which cannot be the basis of a writ of coram nobis. This holding leaves many immigrants without a vehicle to obtain post conviction relief.

Perhaps, more troubling for immigrants seeking post conviction relief is the Court's decision in *People v. Villa* affecting an immigrant's ability to obtain post conviction relief through a writ of habeas corpus. A writ of habeas corpus is a legal action through which a person can seek relief from unlawful detention. Originally, the California Court of Appeal considered *Villa's* writ of habeas corpus since he was in "custody" based upon a 1989 conviction even though he completed probation. However, the California Supreme Court denied the writ finding that *Villa* was neither in constructive or actual state custody and therefore it could not issue a writ. Specifically, the California Supreme Court held that

there is no habeas corpus relief to address the immigration consequences of a conviction when the defendant is no longer in custody. In short, neither habeas corpus or coram nobis is likely to correct errors in pleadings after the period of probation or parole has ended.

As such, it is important to seek a highly skilled and knowledgeable immigration attorney as early as possible if you are an immigrant facing a criminal conviction. Although criminal convictions can have severe immigration consequences, an individual facing a criminal conviction may avoid some of the harsh consequences by having his/her criminal attorney consult with an experienced immigration attorney. It is important for the immigration attorney to analyze the criminal case because the defense strategy for a legal permanent resident will be different for each case. The analysis changes depending upon past convictions and what type of immigration relief is potentially available. Although in some cases post conviction relief may still be available, immigrants can no longer rely on post conviction relief to ensure they remain in the United States with their friends and families.

Atty. Reeves has represented clients in numerous landmark immigration cases that have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City.
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The analysis and suggestions offered in this column do not create a lawyer-client relationship and are not a substitute for the personalized representation that is essential to every case.

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