



YOU CAN'T DO THAT!

I KNOW MY RIGHTS!

Protesting in 2020

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It was her advocacy for medicinal cannabis that initially drew her to the legal field and at Tully & Weiss she has been able to help individuals operate in compliance with California state law. This work in the commercial cannabis industry further enables her to bring an added level of expertise and advocacy to her cannabis related criminal defense cases.

Her criminal defense work extends far beyond cannabis related cases, however, and she was recently named a Northern California Rising Star Super Lawyer for her criminal defense advocacy.

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Ms. Mora currently serves on numerous local and statewide boards within the legal community as well as regularly publishes and speaks on a wide range of employment law matters.

Ms. Mora has achieved an AV rating, Martindale-Hubbell's highest rating for legal ability and ethical standards. She has been recognized by Super Lawyers each year since 2011 and was also included in the 2016 Super Lawyers Top 50 Women Attorneys in Northern California list. She has also been honored with a Diversity Award from the Contra Costa County Bar Association, a Torch Award from the California Employment Lawyers Association, and the Secretary's Exceptional Achievement Award from the United States Department of Labor.



2020 – THE YEAR OF PROTEST

Future historians, will discuss what developed into, at times, daily protests throughout the coronavirus pandemic, even before COVID-19 fully gripped the world, 2020 was shaping up to be a year of activism, the following are just a few of the protests which gripped the nation:

- Anti-Lockdown Protests, conservative activities gathered, mostly in April to May, objecting to social distancing measures (though with notable differences in how treated by civil servants)
- #IRunWithMaud, on May 8th runners demonstrated in honor of Ahmaud Arbery who was murdered while running
- Black Lives Matter, the murder of George Floyd in Minneapolis on May 25th spurred a nationwide ongoing protest
- Black Trans Lives Matter, culminated in a massive march on June 14th in Brooklyn, New York, in response to the epidemic of Black trans women being killed in the U.S. such as Dominique Rem'mie Fells and Riah Milton
- Juneteenth protests, an annual holiday marking the day in 1865 when news that slavery had been abolished finally reached enslaved people in Galveston, Texas
- Portland, Oregon, ongoing protests as to free speech and BLM

BLACK LIVES MATTER MAY BE THE LARGEST PROTEST
MOVEMENT IN U.S. HISTORY
WHAT DOES THAT LOOK LIKE?

- Four recent polls suggest that 15 million to 26 million people in the United States have participated in demonstrations over the death of George Floyd and others over a several week period
 - Across the U.S., as of July 3rd, there have been more than 4,700 demonstrations or an average of 140 per day, since the first protest began in Minneapolis on May 26th
 - Participation has ranged from dozens to tens of thousands across 2,500 locations
- Said numbers would mark the BLM movement as the largest movement in the country's history
- In contrast, the Women's March in 2017 had a turnout of 3 to 5 million on a single day

BLACK LIVES MATTER MAY BE THE LARGEST PROTEST MOVEMENT IN U.S. HISTORY

MISCONCEPTIONS CLARIFIED

- Between May 24th and August 22nd, more than 10,600 demonstration events across the country occurred
- Over 10,100 (95%) of these demonstrators, involve peaceful protesters; fewer than 570 (5%), involved demonstrators engaged in violence
- Vast majority of demonstration events associated with BLM movement are non-violent, more than 93% of all demonstrations connected to the movement have been absent violence or destructive activity; peaceful protests are reported in over 2,400 distinct locations, with violent demonstrations limited to less than 220 locations
- Even so, 42% of persons recently polled believed demonstrators in the BLM movement are trying to incite violence or destroy property- these perceptions (or misperceptions) impact demonstrators and those who monitor protesters including police

U.S. CONSTITUTION, FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

CALIFORNIA CONSTITUTION, ARTICLE I

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy. California Constitution, Article I, Section 1

Every Person may freely speak, write and publish his or her sentiments on all subjects being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press. California Constitution, Article I, Section 2

RIGHT TO SPEAK FREELY & WHERE PROTECTIONS END

- The right to “free speech” does not extend to libel, slander, obscenity, true threats or speech that incites imminent violence or law-breaking
- “Fear of serious injury cannot alone justify suppression of free speech and assembly... To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced... that danger apprehended is imminent... the evil to be prevented is a serious one.” *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring)
- Free speech is for everyone, including speech we may not like, that which society rejects and despises
- Owners of private property may set rules limiting free speech, if those rules are violated, the owner can ask one to leave and seek charges for trespass if they refuse
- In the workplace, this applies only to government employee with few exceptions, there is no general right of “free speech” in a private employer workplace, thus the First Amendment does not limit the right of private employers to regulate employees’ communications nor provide any constitutional right for workers to express thoughts or opinions at work

FREE SPEECH IS MORE THAN PROTEST

- The First Amendment covers all forms of communication including music, theater, film and dance
- The Constitution also protects actions that symbolically express a viewpoint. Examples of these symbolic forms of speech include wearing masks and costumes or holding a candlelight vigil
- However, symbolic acts and civil disobedience that involve illegal conduct may be outside the realm of constitutional protections and may lead to an arrest or conviction
 - Example: Holding a drum circle on a freeway on-ramp blocking traffic may be to express a political opinion, the act of blocking traffic may lead to criminal punishment



CONDUCT AT A PROTEST

I'M RECORDING – FILMING THE POLICE

- In public spaces – perfectly legal
 - In your car, perfectly legal
 - On your property, perfectly legal
- Not obstructing or getting in the way
 - This can include not getting too close.
 - Officer safety will be upheld in court.
- On private property the owner can prevent it

DO NOT
HIDE
THAT
YOU'RE
FILMING!

- Using a concealed camcorder or recorder where a person has a reasonable expectation of privacy is a crime.
 - Cal. Penal Code § 647(j)(3)
- Performing law enforcement duty in public has NO expectation of privacy
 - But you do not want to open yourself up to a wiretapping/eavesdropping argument
- Be obvious and say that you are filming for legal safety

PAPERS PLEASE

- California is NOT a papers please state
 - This means that it is NOT always illegal for you to refuse to give an officer your identification card or identity.
 - DO NOT LIE!
- Not all officers know this, so you may get arrested, but the law says you don't have to, so it would be an unlawful arrest
- "the Fourth Amendment itself cannot require a suspect to answer questions. This case concerns a different issue, however. Here, the source of the legal obligation arises from Nevada state law, not the Fourth Amendment."
- Hiibel v. Sixth Judicial District of Humboldt County, 542 U.S. 177 (2004)

LIMITATIONS

- DO NOT LIE
 - Misidentifying yourself to an officer is a crime
 - Penal Code 148.9
 - Misdo, 0-180 days, moral turpitude
- In the following situations you do have to provide an identification card:
 - Driving and get pulled over
 - If arrested or booked

FLIP SIDE OF FREE SPEECH: 5TH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

WHAT DOES IT MEAN?

- EVERYBODY has the right to remain silent
 - Not just for people who have done something wrong
 - Even witnesses
- Must be affirmatively invoked
 - Unambiguous, otherwise further clarification can be sought
 - Must be more than NOT speaking
- Can be invoked in or out of custody
 - *Miranda* and the suppression remedy therein only applies to custodial interrogations.

RIGHT TO REMAIN SILENT

- “[v]olunteered statements of any kind are not barred by the Fifth Amendment.”
 - *Miranda*, 384 U.S. at 478, 86 S.Ct. at 1630, 16 L.Ed.2d at 726;
 - *Innis*, 446 U.S. at 300, 100 S.Ct. at 1689, 64 L.Ed.2d at 307.”
 - *State v. Geasley* (Ohio Ct. App. 1993) 85 Ohio App. 3d 360, 369
- "Volunteered" can be quite expansive and can include statements AFTER invocation.

LIMITATIONS

- Right to remain silent
 - Officers have to stop interrogating you
 - BUT may come back later
- Right to an attorney
 - Officers have to stop questioning you
 - CANNOT come back
- Booking questions excluded

BOOKING QUESTIONS?

- A plurality of the U.S. Supreme Court has recognized as an exemption from *Miranda*'s coverage an accused's answers to "routine booking question[s] . . . to secure the `biographical data necessary to complete booking or pretrial services.'"
 - *Pennsylvania v. Muniz*, [496 U.S. 582, 601](#) (110 SC 2638, 110 LE2d 528) (1990)
- “ In *Pennsylvania v. Muniz* ... the court adopted a "routine booking question" exception to the strict prescripts of *Miranda*. Thus, an arrestee, even after asserting his right to remain silent, may still be asked questions to secure "biographical data necessary to complete booking or pretrial services." (citation omitted) While finding that such questioning constitutes interrogation, the court held it permissible when "reasonably related to the police's administrative concerns."
 - *State v. Geasley* (Ohio Ct. App. 1993) 85 Ohio App. 3d 360, 365

IMPORTANT
POINTERS
FOR LAW
ENFORCEMENT
INTERACTIONS

- Stay calm and be polite.
- Do not interfere with or obstruct the police.
- Affirmatively assert your rights.
- Do not lie or give false documents.
- Do not consent to any searches.
- Do not resist the officers.
- Recall the details and write them down as soon as you can.



WHAT DID I DO WRONG?

CIVIL DISOBEDIENCE & POTENTIAL CHARGES

- Civil disobedience is the active refusal to comply with certain laws as a form of protest
- Even if the expressive activity is viewed by the actor as lawful, there is a chance the police will regard it otherwise, the following California statutes could be invoked against a demonstrator, including:
 - Resisting arrest or delaying a peace officer, Penal Code Section 148;
 - Disrupting a public meeting, Penal Code Section 403;
 - Riot and unlawful assembly, Penal Code Sections 404 – 408;
 - Failure to disperse, Penal Code Section 409;
 - Disturbing the peace, Penal Code Section 415;
 - Trespassing, Penal Code Section 602; and,
 - Refusing to obey a peace officer who is enforcing the Vehicle Code, Vehicle Code Section 2800(a);
 - Attempting to free a person who has just been arrested, Penal Code Section 405a.

ARRESTED AT A PROTEST, WHAT IS THE OFFENSE

Depending on what the person is arrested for, under California law, there are three different types of offenses:

- **Infractions** – For most infractions, one can show a government issued ID, the police will issue a ticket referred to as a “promise to appear”, then the individual is released unless they refuse to execute the ticket.
- **Misdemeanors** - This often results in one being taken to the station, fingerprinted and photographed, though released if have proper ID and sign a promise to appear, though one will be retained if police believe individual will continue to break the law if released; and,
- **Felonies** – Police may keep individual in jail though there is a right to bail, if not bailed out in 48-hours, a judge will review the police reports to determine if they show a criminal act, individual must be seen in court within two business days to be informed if being charged with a crime.

ARRESTED AT A PROTEST

CAN THAT IMPACT EMPLOYMENT?

- Pursuant to California Labor Code 432.7, an employer is not allowed to use one's arrest pending trial as the *sole* determining factor in making a negative employment decision against them, otherwise, there would be no presumption of "innocent until proven guilty"
- Employees can expect their employer to ask about the circumstances of their arrest pending trial to determine whether the arrest could have an impact on the employer's business
- Exception - if the arrest could reasonably have an impact on the employer's business, then the employer may take action against the employee while the arrest is pending, example: police officer arrested while off-duty for engaging in violence during a protest
- If arrest is resolved without conviction, the arrest cannot be used against the employee in the workplace
- If wrongfully terminated, employee can sue for actual damages under the applicable labor code

POLITICAL ACTIVITY & CALIFORNIA WORKPLACE LAWS

- Labor Code sections 96(k) and 98.6(a) prohibit employers from discriminating, retaliating, or taking any adverse employment action (up to and including termination of employment) because the employee or applicant engaged in lawful conduct during nonworking hours away from the employer's premises.
- Labor Code sections 1101 and 1102 concern political activity by employees. An employee cannot be fired for simply engaging in political protest pursuant to California Labor Code Section 1102. However, an employee can be disciplined or fired if they missed work without permission while engaging in a protest (unless they can show the employer never disciplines employees for missing work for any other reason). Further, an employee can be disciplined or fired if the political activity significantly disrupts the employer's business.

POLITICAL ACTIVITY, SOCIAL MEDIA & THE WORKPLACE

POTENTIAL WORKPLACE RIGHTS & DUTIES

As social media use continues to grow amongst employees, sharing pictures of their outside of work protest activity, potential overlapping issues may arise:

Privacy - Employees have a right to privacy under U.S. Constitution's 4th Amendment and the California Constitution. Whether that right has been *violated* depends on whether there is a protected privacy interest and what the employer is trying to find out

- To bring an invasion of privacy claim in California, one must show:
 - A legally protected privacy interest;
 - A reasonable expectation of privacy; and
 - A serious invasion of the privacy interest.
- The employer has an opportunity to show that the intrusion was motivated by a business reason
- Areas of privacy for the workplace complicated by political activity and postings on social media, include:
 - Criminal Record – California Labor Code Section 432.7, Ban the Box
 - Credit Report – Fair Credit Reporting Act and California Consumer Reporting Agencies Act
 - Disabilities/Medical Information – FEHA, ADA and HIPPA
 - Religious Beliefs – FEHA and Title VII

POLITICAL ACTIVITY, SOCIAL MEDIA & THE WORKPLACE

POTENTIAL WORKPLACE RIGHTS & DUTIES

- Discrimination means being treated differently or unfairly. Discrimination in employment is illegal when the treatment is based on a personal characteristic or status, such as sex or race, which is protected under anti-discrimination laws. Since the law prohibits discrimination based only on certain protected categories, not every form of discriminatory or unfair treatment is illegal. . Discrimination can be expressed through “harassment,” when a boss, supervisor, or co-worker says or does something that creates an intimidating, hostile or threatening work environment.
- Harassment is illegal if it is based on a personal. There are various federal and state laws prohibiting employment discrimination, including but by *far*, not limited to characteristic or status protected under anti-discrimination laws. To be illegal, the harassment must be so “severe or pervasive” that it interferes with the employee’s ability to perform the job.
- Several federal and state laws protect people against many types of discrimination in employment:
 - Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits discrimination based on race, color, sex (including sexual harassment), national origin (including characteristics related to one’s national origin, such as language), religion, and pregnancy;
 - The Americans with Disabilities Act (“ADA”) prohibits discrimination on the basis of disability;
 - The Age Discrimination in Employment Act (“ADEA”) prohibits discrimination based on age (40+);
 - Immigration Reform and Control Act of 1986 (“IRCA”) prohibits discrimination based on national origin and citizenship. 42 U.S.C. § 1981 (“Civil Rights Act of 1866”) prohibits discrimination based on race and national origin in the ability to “make and enforce contracts,” which has been interpreted to apply to many aspects of employment; and,
 - California’s main anti-discrimination law in employment is the Fair Employment and Housing Act (“FEHA”), which prohibits discrimination based on race, color, sex (including sexual harassment), national origin, ancestry, disability, sexual orientation, gender identity (including transgender status), medical condition (cancer), pregnancy, marital status, and military status. Additional protections against discrimination are found in the California Labor Code, including protections for crime victims who testify at trials, employees who take time off for jury duty, and victims of domestic violence, sexual assault and stalking.



WHAT CAN BE DONE WITH PRIORS?

ARREST THROUGH CONVICTION: THE PROCESS

- Arrest/Law Enforcement contact
- Report created and possibly reviewed
- District attorney review
- Filing of charges
- Process of the case
- Resolution of the case

ARREST WITHOUT CHARGES

- There are many instances where an arrest occurs, but no charges are ever FILED.

BUT WHY?

- Arrested for lawful behavior – no crime
 - Arrested to stop the protest but nothing chargeable
 - In a jurisdiction where resisting alone won't be charged
- No charges sought
 - The officer decides in their discretion not to send it over to the da's office
- Legal shortcoming/justification
 - Da reviews the case and either an element clearly isn't met or there is an obvious justification
 - If any chance to find it, often charged anyway

WHAT IF THEY DON'T FILE?

- Penal Code § 851.8(a)
- Penal Code § 851.8(b)
- Penal Code § 851.91

FACTUAL FINDING OF INNOCENCE – NO FILING

- Penal Code section 851.8
 - Subdivision (a): If nothing filed, petition filled out and sent to law enforcement agency that performed the arrest and the prosecuting attorney of that jurisdiction.
 - At this point the agency can just agree.
 - Often they don't respond though, so that takes us to

FACTUAL FINDING OF INNOCENCE – NO FILING

- Penal Code section 851.8
 - Subdivision (b): If no response within 60 days of service AND the statute of limitations has run, assumed to be denied.
 - Then the petitioner can petition the superior court that would have had territorial jurisdiction over the matter, served on the law enforcement agency and the prosecutor at least 10 days prior to the hearing.
 - Hearing includes evidence from both sides: declarations, affidavits, police reports, or anything else material, relevant, and reliable
 - Standard: No reasonable cause to believe the arrestee committed the offense for which the arrest was made.
 - Upon that finding the burden shifts. If no reasonable cause shown, then must be seal and destroy the records, and after 3 years seal and destroy the order to do so.



PETITION TO SEAL AND DESTROY ADULT ARREST RECORDS

(Per Penal Code section 851.8)

Print or type required information *Note: DOJ does NOT accept petitions or documents from the public*

FULL NAME OF PETITIONER		LAST	FIRST	MIDDLE
ALIASES	DATE OF BIRTH	DRIVER LICENSE NUMBER	SOCIAL SECURITY (OPTIONAL)	
STREET NUMBER	STREET NAME		APARTMENT OR UNIT NUMBER	
CITY	COUNTY	STATE	ZIP CODE	
DATE(S) OF ARREST	NAME OF ARRESTING AGENCY	AGENCY CASE NUMBER	CHARGE(S)	DISPOSITION

 SIGNATURE OF PETITIONER

 DATE

SECTION TO BE COMPLETED BY LAW ENFORCEMENT AGENCY/COURT WITH JURISDICTION FOR OFFENSE(S)

I have verified the above information to be accurate.

 PRINT NAME (GRANTOR)

 PHONE NUMBER / EMAIL ADDRESS

 SIGNATURE OF AGENCY (GRANTOR)

 DATE

NAME OF LAW ENFORCEMENT AGENCY OR COURT	LAW ENFORCEMENT AGENCY CASE NUMBER OR COURT CASE NUMBER
CI NUMBER OF PETITIONER	FBI NUMBER OF PETITIONER

SECTION TO BE COMPLETED BY LAW ENFORCEMENT AGENCY (851.8(a) PC)

PETITION GRANTED (Send to DOJ) PETITION DENIED (Do NOT send to DOJ)

 PRINT OR TYPE NAME OF AGENCY AND GRANTOR

 PHONE NUMBER / EMAIL ADDRESS

 SIGNATURE OF AGENCY (GRANTOR)

 DATE

SECTION TO BE COMPLETED BY COURT OF JURISDICTION (851.8(b), (c), or (d) PC)

PETITION GRANTED (Send to DOJ) PETITION DENIED (Do NOT send to DOJ)

 PRINT NAME OF AGENCY OR COURT OFFICIAL

 PHONE NUMBER / EMAIL ADDRESS

 SIGNATURE OF AGENCY OR COURT OFFICIAL

 DATE

WAIVER: TIME RESTRICTION ON FILING WAIVED (851.8 (l) PC)

 PRINT NAME OF AGENCY OR COURT OFFICIAL

 SIGNATURE OF AGENCY OR COURT OFFICIAL

 DATE

Submit Approved Petition to: Department of Justice Record Sealing Unit PO Box 903417 Sacramento, CA 94203-4170	Also Distribute to: District Attorney Petitioner	AREA FOR AGENCY/COURT SEAL OR ADDITIONAL REMARKS
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(SEE REVERSE SIDE FOR MORE INFORMATION ON PENAL CODE § 851.8)

PENAL CODE 851.91 RELIEF – NO CONVICTION RELIEF

- This can apply to both pre or post filing cases
- (1) For purposes of this section, an arrest did not result in a conviction if any of the following are true:
 - Statute of limitations has run and no charges are filed
 - A pleading was filed but:
 - No conviction occurred, the charge has been dismissed, and cannot be refiled
 - No conviction occurred and the arrestee has been acquitted
 - A conviction occurred but it was vacated or reversed on appeal, all appellate remedies exhausted, and cannot be refiled

SEALING ARREST RECORDS

Penal Code section 851.91.

(a) A person who has suffered an arrest that did not result in a conviction may petition the court to have his or her arrest and related records sealed, as described in Section 851.92.

...

(2) A person is NOT eligible for relief under this section in any of the following circumstances:

- Could still be charged
- If it is a charge of murder or any other offense with no statute of limitations UNLESS acquitted or found factually innocent
- The petitioner intentionally evaded law enforcement efforts to prosecute the arrest.
 - This takes more than bench warrants or failures to appear before the case closed.
- Evasion of prosecution by identify fraud and subsequently charged for such

SEALING ARREST RECORDS, CONT.

There is a bunch of minutia about what is required and timelines on how to be served, but basically:

- File it in the court that would have criminal jurisdiction
- 15 days before the hearing, provide the form to the prosecutor and law enforcement agency
- Include all the necessary information
- This process is supposed to be posted about at detention facilities and the forms provided upon request

SEALING ARREST RECORDS, CONT.

Penal Code section 851.91 petitions to seal may be granted as a matter of right or in the interests of justice.

- It is a matter of right unless pattern of arrests, convictions, or both of specific charges.
 - Pattern means two or more convictions, or five or more arrests, for separate offenses occurring on separate occasions within three years from at least one of the other convictions or arrests.
- Specific charges:
 - Domestic violence
 - Child abuse
 - Elder abuse

HOW TO SHOW IT'S IN THE INTEREST OF JUSTICE

Evidence:

- Hardship to the petitioner caused by the arrest that is the subject of the petition.
- Declarations or evidence regarding the petitioner's good character.
- Declarations or evidence regarding the arrest.
- The petitioner's record of convictions.

At a hearing where you can present declarations, affidavits, police investigative reports, copies of state summary criminal history information and local summary criminal history information, or any other evidence submitted by the parties that is material, relevant, and reliable.

Petitioner's burden at first to show that they are entitled as a matter of right OR that it would serve justice. If the court agrees, the prosecutor gets the burden.

WHAT IF YOU WIN?

The record of arrest has been sealed as to petitioner, the arrest is deemed not to have occurred, the petitioner may answer any question relating to the sealed arrest accordingly, and the petitioner is released from all penalties and disabilities resulting from the arrest, except as provided in Penal Code section 851.92 and as follows:

- The sealed arrest may be pleaded and proved in any subsequent prosecution of the petitioner for any other offense, and shall have the same effect as if it had not been sealed.
- The sealing of an arrest pursuant to this section **does not relieve** the petitioner of the obligation to disclose the arrest, if otherwise required by law, in response to any direct question contained in a questionnaire or application for **public office**, for employment as a **peace officer**, for **licensure by any state or local agency**, or for contracting with the **California State Lottery Commission**.
- The sealing of an arrest pursuant to this section **does not affect** petitioner's authorization to own, possess, or have in his or her custody or control any **firearm**, or his or her susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.
- The sealing of an arrest pursuant to this section **does not affect** any prohibition from holding **public office** that would otherwise apply under law as a result of the arrest.

Clerk stamps date here when form is filed.

1 Your Information

a. Petitioner (the person who is filing this petition):

Name: _____

Last First MI

Date of birth: _____ (mm/dd/yyyy)

Street address: _____

Street

City State Zip

Mailing address (if you have a lawyer for this case, give your lawyer's information):

Street

City State Zip

Phone: _____

E-mail (if available): _____

State Bar number: _____

Fill in the name and street address of the court that you are filing the petition in:

Superior Court of California, County of

Fill this out if a criminal complaint was filed or charged against the petitioner, and there is a case number and case name for that criminal case. Do not fill this out if an arrest happened but no criminal complaint was filed or charged in court:

Trial Court Case Number:

Trial Court Case Name:

People of the State of California

v. _____

2 Notice of Court Hearing

A court hearing is scheduled on this petition as follows:

Hearing Date

→ Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

If an interpreter is needed, please specify the language: _____

3 Information About Your Case

a. Date of the arrest you are requesting to be sealed: _____ (mm/dd/yyyy)

b. Where did the arrest happen? Include the city and county: _____

c. What law enforcement agency made the arrest? If it was a police department, include the city (for example, ABC City Police Department). If it was a county sheriff, list the county (for example, XYZ County Sheriff):

d. What is the arrest report number or police report number, if available?

Trial Court Case Name: _____

Trial Court Case Number: _____

c. Include any other information about the arrest that is available from the prosecutor (district attorney/city attorney) or the court, including the case number that the prosecutor used to review the arrest or used to file a case against you. If you would like to explain the information provided, please do so below, or complete and attach the *Attached Declaration* (form MC-031) or submit other relevant documents.

f. Add any information on offenses or charges based on the arrest. If you would like to explain the information provided, please do so below, or complete and attach the *Attached Declaration* (form MC-031) or submit other relevant documents.

g. If the prosecutor filed a case against you, please include what the charges were (for example, Pen. Code, § 242, for battery).

h. Choose one:

I am entitled to have this arrest (the arrest described in item 2 of this petition) sealed as a matter of right because the arrest did not result in a conviction, and I satisfy the requirements of Penal Code section 851.91.

OR

I am requesting to have the arrest sealed in the interests of justice (Pen. Code, § 851.91(c)(2)(B)). (Describe below how this is in the interests of justice. In deciding whether to grant this request, the court may consider any important factors, including: hardship and difficulties caused by the arrest; statements or evidence regarding your good character; statements or evidence regarding the arrest; your record of convictions; or any other important factors. You may provide statements or evidence from you, from others, or both.)

Please attach any additional signed and dated statements with the petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____

Signature of petitioner or attorney

WHAT IF THEY DO FILE?

- Relief beyond Penal Code § 851.91
- Penal Code § 851.8(c) - (e)
- Penal Code § 851.85
- Penal Code § 851.86
- Penal Code § 851.90

FACTUAL FINDING OF INNOCENCE - FILING

- Penal Code § 851.8
 - Subdivision (c): Defense attorney files a petition on the prosecuting attorney and then a hearing like in (b) occurs.
 - Subdivision (d): At the time of dismissal the court may, with concurrence of the prosecutor, grant the relief along with the dismissal.
 - Subdivision (e): The trial judge can grant the relief after a trial resulting in acquittal.

FACTUAL FINDING OF INNOCENCE - FILING

- Penal Code § 851.85 is like 851.8(e)
- Whenever a person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of the charge, the judge may order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case. If such an order is made, the court shall give to the defendant a copy of such order and inform the defendant that he may thereafter state that he was not arrested for such charge and that he was found innocent of such charge by the court.

FACTUAL FINDING OF INNOCENCE - FILING

Penal Code § 851.86

Whenever a person is convicted of a charge, and the conviction is set aside based upon a determination that the person was factually innocent of the charge, the judge shall order that the records in the case be sealed, including any record of arrest or detention, upon written or oral motion of any party in the case or the court, and with notice to all parties to the case.

Petition for Dismissal

§ 1203.4

Expungements

This applies to cases where:

- Got probation
 - 1203.4a if no probation
- Fulfilled conditions of probation for the entire period or discharged early
- Not serving a sentence
- Not on probation
- Not charged with any offense

It is the withdrawal of the plea and entry of a plea of not guilty.

WHAT DOES IT DO?

- Dismisses the accusations or information
- Released from all penalties and disabilities
 - EXCEPT
 - VC 13555 – revocation or suspension of license by DMV
 - Firearm ban still in place
 - Holding public office still in place

This is because it was still a felony conviction.

ADD

A

17(b)

17(b) relief is right on the petition form.

Makes it a misdemeanor for all purposes.

Allowed anytime punishment was under Penal Code 1170(h), or was punished by fine or county jail time.

- NOT allowed if state prison time imposed
 - even if not executed

Does not remove the duty to register as a sex offender.

CR-180 PETITION FOR DISMISSAL

CR-180

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		FOR COURT USE ONLY	
NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:	ZIP CODE:	
TELEPHONE NO.:	FAX NO.:		
E-MAIL ADDRESS:			
ATTORNEY FOR (name):			
PEOPLE OF THE STATE OF CALIFORNIA			
v.			
DEFENDANT:	DATE OF BIRTH:	CASE NUMBER:	
<p align="center">PETITION FOR DISMISSAL (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)</p>		FOR COURT USE ONLY	
		DATE:	
		TIME:	
		DEPARTMENT:	

1. On (date): _____, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses or was granted deferred entry of judgment for the following offenses:

Code	Section	Type of offense (felony, misdemeanor, or infraction):	Eligible for reduction to misdemeanor under Penal Code, § 17(b) (yes or no)	Eligible for reduction to infraction under Penal Code, § 17(d)(2) (yes or no)

If additional space is needed for listing offenses, use Attachment to Judicial Council Form (form MC-025).

2. Felony or misdemeanor with probation granted (Pen. Code, § 1203.4)

Probation was granted on the terms and conditions stated in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, on probation for any offense, or under charge of commission of any crime, and the petitioner (check all that apply)

- a. has fulfilled the conditions of probation for the entire period thereof.
- b. has been discharged from probation prior to the termination of the period thereof.
- c. should be granted relief in the interests of justice. (Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below, or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

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PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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3. Misdemeanor or infraction with sentence other than probation (Pen. Code, § 1203.4a)

Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. Petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime, and the petitioner (check one):

- a. has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; or
- b. should be granted relief in the interests of justice. (Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

4. Misdemeanor conviction under Penal Code section 647(b) (Pen. Code, § 1203.49)

Petitioner has completed a term of probation for a conviction under Penal Code section 647(b) and should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking.

(Please note: You may provide evidence that the conviction was the result of your status as a victim of human trafficking. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

5. Felony county jail sentence under Penal Code section 1170(h)(5) (Pen. Code, § 1203.41)

Petitioner is not under supervision under Penal Code section 1170(h)(5)(B); is not serving a sentence for, on probation for, or charged with the commission of any offense; and should be granted relief in the interests of justice, and (check one)

- a. more than one year has elapsed since petitioner completed the felony county jail sentence with a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); or
- b. more than two years have elapsed since petitioner completed the felony county jail sentence without a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).

(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

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PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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6. Felony prison sentence that would have been eligible for a felony county jail sentence after 2011 under Penal Code section 1170(h)(5) (Pen. Code, § 1203.42)

Petitioner is not under supervision and is not serving a sentence for, on probation for, or charged with the commission of any offense; more than two years have elapsed since petitioner completed the felony prison sentence; and petitioner should be granted relief in the interests of justice.

(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.)

7. Deferred entry of judgment (Pen. Code, § 1203.43)

Petitioner performed satisfactorily during the period in which deferred entry of judgment was granted. The criminal charge(s) were dismissed under former Penal Code section 1000.3 on (date): _____. Furthermore (check one),

- a. court records are available showing the case resolution; or
- b. petitioner declares under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment. Petitioner (check one)
 - (1) has
 - (2) has not
 attached a copy of his or her state summary criminal history information.

8. Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).

9. Petitioner requests that he or she be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under the Penal Code section(s) noted above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ (SIGNATURE OF PETITIONER OR ATTORNEY)

(ADDRESS OF PETITIONER) (CITY) (STATE) (ZIP CODE)



QUESTIONS?
THANK YOU FOR JOINING US - PROTEST SAFELY!

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