1. What is post conviction relief and why does it matter?
Post conviction relief is a way to challenge the legality or constitutionality of criminal convictions after the period for direct appellate relief has expired, or once all appellate remedies have been exhausted. It is a remedy available to all people who have been convicted of a crime in Minnesota. A petition for post conviction relief must be based on either: (1) a claim that the conviction or sentence was illegal or unconstitutional or (2) new scientific evidence not available at trial. They are filed in the district court in the county of conviction and seek to set aside the conviction, grant a new trial, or re-evaluate the sentence. The law only allows for filing of petitions for post conviction relief within two years of the conviction or of the disposition of any appeal. However, there are exceptions to this time limit meant to extend the opportunity for relief to extraordinary situations.

2. What’s the urgency to change this provision now?
Adding this exception to the post conviction relief statute would allow those who presently face deportation as a result of older constitutionally or legally invalid criminal convictions, and had no incentive to challenge those convictions until becoming aware of the immigration consequences, the opportunity to petition for post conviction relief. In the ever-shifting world of immigration law, people with old criminal convictions are facing deportation years, and sometimes decades, after they were convicted. Without access to post-conviction relief, Minnesotans who were given no information or inaccurate information on the possible immigration consequences of their conviction face imminent deportation. This is of particular concern to members of Minnesota’s Hmong community with criminal convictions, many of whom came to the United States as young children after being born in refugee camps, and now face deportation to Laos as the United States inches closer to entering into a repatriation agreement with the Lao government.

3. Why can’t we just do expungements?
The Immigration and Nationality Act defines conviction in broad terms as any formal judgment of guilt (whether a plea, admission of facts, or finding by a judge) along with a restraint of liberty. This definition has been interpreted by immigration courts to apply even to expunged convictions. In 2003, the Board of Immigration Appeals issued a precedential decision holding that “if a court vacates an alien’s conviction for reasons solely related to rehabilitation or immigration hardships, rather than on the basis of a procedural or substantive defect in the underlying criminal proceedings, the conviction is not eliminated for immigration purposes.” Seeing as expungements are based on rehabilitation, the underlying conviction still stands for immigration purposes.

4. Why should someone with a more serious crime be able to access this? Won’t this cause an influx/open the floodgates of post conviction relief?
Post conviction relief is a remedy available to all Minnesotans convicted of crimes. This narrow exception would merely allow those facing deportation as a result of convictions that were obtained following inaccurate, or absent, advice on immigration consequences the opportunity
to file petitions outside of the two-year time limit. Exceptions to this two-year time limit already exist for other extraordinary circumstances.