

APPENDIX A

TABLE OF CASES:

BIA DECISIONS HOLDING INA § 101(a)(48)(A) “CONVICTION” DEFINITION DOES NOT INCLUDE PLEAS VACATED DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL OR PLEAS VACATED BECAUSE THEY WERE NOT KNOWING, VOLUNTARY, AND INTELLIGENT

Case Name	-Date of Decision -State Issuing Vacatur	Holding
<p><i>In Re: Victor Enrique Moran A.K.A. Victor Rivera</i> 2019 WL 5086717 (BIA) Board Member Molly Kendall Clark</p>	<p>September 17, 2019 California vacatur</p>	<p>“The respondent has also submitted the order of that court dated April 3, 2019, granting his motion to vacate his plea or sentence due to prejudicial error damaging his ability to meaningfully understand and knowingly accept the actual immigration consequences, and the order of that court dated May 29, 2019, dismissing his criminal proceedings. In view of the fact that the conviction underlying the respondent’s sole ground of removability has been vacated on the basis of a procedural or substantive defect in the underlying proceedings, the respondent is no longer removable and the motion to terminate will therefore be granted. <i>See Matter of Pickering</i>, 23 I&N Dec. 621 (BIA 2003).”</p>
<p><i>In re: Samra Oric</i> 2018 WL 3045848 (BIA) Board Member Edward R. Grant</p>	<p>April 20, 2018 Kentucky vacatur</p>	<p>“The respondent’s motion is supported by evidence that the Jefferson Circuit Court, Commonwealth of Kentucky, has withdrawn the respondent’s guilty plea underlying her conviction pursuant to K.R.S. § 514.030, based on due process violations regarding ineffective assistance of counsel. Given the evidence presented, we find that the respondent’s vacated conviction may not be considered a conviction for immigration purposes. <i>Matter of Adamiak</i>, 23 I&N Dec. 878 (BIA 1006); <i>Matter of Pickering</i>, 23 I&N Dec. 621 (BIA 2003).”</p>
<p><i>In re: Roberto Perez Chavez</i> 2018 WL 4692855 (BIA) Board Member Edward R. Grant</p>	<p>August 23, 2018 Washington vacatur</p>	<p>“Attached to the Government’s motion is a copy of the May 23, 2017, court order from the King County Superior Court, Washington, vacating the respondent’s conviction due to ineffective assistance of counsel resulting in a constitution violation pursuant to <i>Padilla v. Kentucky</i>, 559 U.S. 356 (2010). The respondent’s conviction is no longer valid for immigration purposes. <i>Matter of Pickering</i>, 23 I & N Dec. 621 (BIA 2003).”</p>
<p><i>In re: Obioma J. Ezeocha</i></p>	<p>April 5, 2018 Maryland vacatur</p>	<p>“With the instant motion, the respondent has proffered evidence that the 2008 Maryland state</p>

<p>2018 WL 3007221 (BIA) Board Member Molly Kendall Clark</p>		<p>conviction that formed the sole basis for his removability has been. . . . Based on the proffered evidence, we hereby grant the respondent's motion to reopen. <i>See Matter of Pickering</i>, 23 I&N Dec. 621, 624 (BIA 2003).”</p>
<p><i>In Re: Jose Luis Pazarin-Castrejon</i> 2017 WL 4946948 (BIA) Board Member John Guendelsberger</p>	<p>September 6, 2017 California vacatur</p>	<p>“The respondent has filed a motion to reopen and terminate, based on a state court vacating the conviction on constitutional grounds. <i>See Matter of Pickering</i>, 23 I&N Dec. 621 (BIA 2003); <i>Matter of Chavez</i>, 24 I&N Dec. 272 (BIA 2007). The court order indicates, inter alia, that the respondent’s defense counsel did not advise him that his guilty plea may have adverse immigration consequences. <i>See Padilla v. Kentucky</i>, 559 U.S. 356 (2010).... The motion is granted and the proceedings are terminated without prejudice.”</p>
<p><i>In Re: Jeannine Evelin Stevens A.K.A. Jeannine Justin</i> 2017 WL 1045513 (BIA) Board Member John Guendelsberger</p>	<p>January 19, 2017 Washington vacatur</p>	<p>“[T]he Superior Court’s order explains that the respondent did not knowingly and voluntarily enter her guilty plea because counsel failed to advise her of the immigration consequences of her guilty plea (Motion to Reopen at 6).”</p> <p>“Inasmuch as the conviction underlying the respondent's basis for removability has been vacated due to a defect in the underlying proceedings, we will grant the respondent’s motion to reopen and terminate proceedings. <i>See Matter of Pickering</i>, 23 I&N Dec. 621 (BIA 2003).”</p>
<p><i>In re: Richard Austin Palmer</i> 2016 WL 394022 (BIA) Board Member John Guendelsberger</p>	<p>June 9, 2016 New York vacatur</p>	<p>“The criminal court’s October 18, 2013, decision vacating the conviction was not entered “solely” to enable the respondent to avoid the immigration consequences of his conviction. The criminal court’s decision was also entered to correct a procedural defect in the criminal proceedings whereby the respondent was provided improper legal advice regarding the immigration consequences of his guilty plea prior to entering the plea. Accordingly the respondent's appeal will be sustained, and the motion to terminate will be granted.”</p>
<p><i>In re: Jafet E. Garcia-Diaz</i> 2016 WL 11158781 (BIA) Board Member John Guendelsberger</p>	<p>January 25, 2016 Florida vacatur</p>	<p>“The respondent’s motion is supported by evidence that the 11th Circuit Judicial Court in and for Miami-Dade County, Florida, vacated the respondent's nolo contendere plea underlying his conviction pursuant to Florida Statute 827.03(2), based on due process violations regarding ineffective assistance of counsel. Given the evidence presented, we find that the respondent’s vacated conviction may not be considered a conviction for immigration purposes. <i>Padilla v. Kentucky</i>, 559 U.S. 356 (2010); <i>Matter of</i></p>

		<i>Adamiak</i> , 23 I&N Dec. 878 (BIA 2006); <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003).”
<i>In Re: Rogelio Luna-Meza A.K.A. Sergio Aldaba</i> 2016 WL 946694 (BIA) Board Member David B. Holmes	February 18, 2016 Oklahoma vacatur	“The respondent has filed a timely motion to reopen based on an Oklahoma criminal court vacating the conviction. <i>See generally Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003); <i>Matter of Chavez</i> , 24 I&N Dec. 272 (BIA 2007). The court order reflects that respondent's defense counsel did not advise him that his guilty plea may have adverse immigration consequences. <i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010).” “The motion will be granted.”
<i>In re: Aziz Lokhandwala</i> 2014 WL 7508455 (BIA) Board Member Edward R. Grant	November 18, 2014 Georgia vacatur	“The respondent has moved for the termination of these removal proceedings as the Georgia state courts have vacated the aforementioned conviction due to ineffective assistance of counsel. <i>Padilla v. Kentucky</i> , 130 S. Ct. 1473 (2010); <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003). Considering the totality of the circumstances, the motion is granted.”
<i>In Re: Victor Manuel Martinez</i> 2014 WL 4259406 (BIA) Board Member Roger Pauley	July 30, 2014 Texas vacatur	“The court’s decision vacating the respondent’s conviction concluded that his 2007 plea was not knowing and voluntary because it was made without adequate notice of all its potential immigration consequences (Exh. 5, at 5). That decision is entitled to full faith and credit here because it does not purport to vacate the conviction on rehabilitative or immigration hardship grounds; rather, it focuses on a substantive legal defect in the underlying plea process. <i>See Matter of Adamiak</i> , 23 I&N Dec. 878 (BIA 2006).”
<i>In re: Jacinto Moises Carbonell-Desliz</i> 2014 WL 347664(BIA) Board Member Neil P. Miller	January 13, 2014 Maryland vacatur	“Here, the respondent has presented evidence indicating that his prior conviction was vacated because the trial and plea procedures did not comply with Maryland Rule 4-215 (see Motion, Exhs. A4, B1). <i>See Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003)...; <i>see also Padilla v. Kentucky</i> , 130 S.Ct. 1473 (2010).”
<i>In Re: Mamoudou Camara</i> 2013 WL 3899704 (BIA) Board Member John Guendelsberger	June 17, 2013 Georgia vacatur	“In the March 2013 order, the criminal court determined that the respondent's guilty plea was not knowingly and voluntarily entered, as he was misinformed about the consequences of entering his guilty plea and was prejudiced, in violation of <i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010).... This qualifies as a merits reason under <i>Matter of</i>

		<i>Pickering, supra.</i> We therefore find it appropriate to grant the motion to terminate.”
<i>In Re: Nowel Q. Dela Cruz A.K.A. Nowel Quito-Dela Cruz</i> 2013 WL 1933916 (BIA) Board Member David B. Holmes	February 8, 2013	“The 2007 conviction...which formed the basis of the respondent’s removability, has been vacated due to ineffective assistance of counsel.”
<i>In Re: William Enrique Alvarado Melendez</i> 2013 WL 2608492 (BIA) Board Member Garry D. Malphrus	May 10, 2013	“We will sustain the parties’ appeals because we agree that the respondent’s conviction, which was vacated pursuant to the Supreme Court’s decision in <i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010) no longer constitutes a conviction within the meaning of section 101(a)(48)(A) of the Act.”
<i>In Re: Alindo Filipe Lima A.K.A. Arlindo F. Lima</i> 2013 WL 6921691 (BIA) Board Member Neil P. Miller	December 19, 2013 Massachusetts vacatur	“The court order reflects that respondent's defense counsel did not advise the respondent that his guilty plea may have adverse immigration consequences. <i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010).” “The respondent’s removal proceedings are reopened.”
<i>In Re: Eduardo Garcia</i> 2012 WL 911834 (BIA) Board Member Roger A. Pauley	February 29, 2012 Oklahoma vacatur	“On appeal, the respondent has provided a document showing that the Oklahoma criminal court vacated the aforementioned conviction by its order of August 11, 2011. On July 14, 2011, the criminal court determined that the respondent's guilty plea was not knowingly and voluntarily entered and that post-conviction relief was not sought pursuant to any rehabilitative statute. This qualifies as a merits reason under <i>Matter of Pickering</i> .”
<i>In Re: Genara Castillo Batista A.K.A. Genara Castillo</i> 2012 WL 1495530 (BIA) Board Member Roger Pauley	April 6, 2012 Massachusetts vacatur	“The respondent’s motion is supported by a certified copy of the Massachusetts judgment vacating her guilty plea based on a showing that prejudice resulted from counsel’s misadvice regarding immigration consequences. <i>See Padilla v. Kentucky, supra.</i> ” “Because the sole conviction underlying the charge of removability has been vacated, and there are no other charges currently pending against the respondent, the removal proceedings are hereby reopened and terminated without prejudice.”
<i>In re: Adonis Ramon Reyes</i> 2012 WL 6641688 (BIA) Board Member Elise L. Manuel	October 26, 2012	“[T]he respondent submitted evidence demonstrating that the conviction which served as the basis for his removal was vacated under <i>Padilla v. Kentucky</i> , ___ U.S. ___, 130 S. Ct. 1473 (2010). Because the new evidence demonstrates that the respondent's conviction was vacated on the basis of a procedural

		or substantive defect in the underlying criminal proceedings, we find that the conviction has been eliminated for immigration purposes. <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003); <i>Matter of Rodriguez-Ruiz</i> , 22 I&N Dec. 1378 (BIA 2000).”
<i>In Re: Chun Lam Chan</i> 2011 WL 230757 (BIA) Board Member Jean King	January 6, 2011 Massachusetts vacatur	“In light of the state court orders vacating the respondent's convictions for failure to advise the respondent of the immigration consequences of his plea, we find that termination of the respondent’s removal proceedings is appropriate. <i>Matter of Pickering</i> , 23 I&N Dec. 621, 624 (BIA 2003)[;] <i>See also Padilla v. Kentucky</i> , __ U.S. __, 130 S. Ct. 1473 (2010).”
<i>In Re: Miguel Roman Brito</i> 2011 WL 6965209 (BIA) Board Member David B. Holmes	December 13, 2011 South Carolina vacatur	“[T]he motion for a new trial was based on after discovered evidence and his former counsel’s failure to advise the respondent of the immigration consequences of his guilty plea [<i>sic</i>].... Consequently, the sole conviction underlying the Immigration Judge’s order of removal in this case has been vacated due to a defect in the criminal proceedings. <i>See Rumierz v. Gonzales</i> , 456 F.3d 31 (1st Cir. 2006); <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003).”
<i>In Re: Oswald Joseph Belizaire</i> 2011 WL 1373413 (BIA) Board Member David B. Holmes	March 28, 2011 Maryland vacatur	“[T]he conviction was vacated because the respondent's entry of a plea on an agreed statement of facts was not knowingly and intelligently made. <i>See Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003) (a conviction that has been vacated by the criminal court based upon a procedural or substantive defect in the underlying proceedings is no longer a conviction for immigration purposes). <i>See also Padilla v. Kentucky</i> , __ U.S. __, 130 S.Ct. 1473 (March 31, 2010); <i>Matter of Adamiak</i> , 23 I&N Dec. 878 (BIA 2006); <i>Matter of Rodriguez-Ruiz</i> , 22 I&N Dec. 1378, 1379-80 (BIA 2000).... Accordingly, the motion is granted and the proceedings are terminated.”
<i>In Re: Francisco Jose Alvarez Troncoso a.k.a. Francisco Alvarez Troncoso a.k.a. Tony Motana a.k.a. Francisco Troncoso</i> 2011 WL 230762 (BIA) Board Member Roger A. Pauley	January 6, 2011 Massachusetts vacatur	“In the matter before us, however, it is clear that the criminal court judge’s ruling, granting the respondent’s Motion to Withdraw Guilty Plea and Order a New Trial, was based on a procedural and substantive defect in the plea entered by the respondent at his criminal trial. Specifically, the respondent maintains that he was provided ineffective assistance of counsel, and that his plea was not knowingly, voluntarily, or intelligently made, in violation of state and federal due process.”

<p><i>In Re: Lufty Abraham Abassy Oqueli</i> 2011 WL 7071038 (BIA) Board Member Roger A. Pauley</p>	<p>December 30, 2011 Georgia vacatur</p>	<p>“He provided a copy of the Order of the Superior Court of Gwinnett County, dated June 9, 2009, which states that the judgment, plea, and sentence are vacated as void ab initio, on the ground that the respondent's Sixth Amendment right to counsel was violated and on the ground that the respondent's plea was not entered in knowing and voluntary fashion under state and federal constitutional standards of due process of law.”</p> <p>“Under the circumstances, it appears that the modification was based on procedural or substantive defects in the underlying proceedings. <i>See Matter of Pickering</i>, 23 I&N Dec. 621, 625 (BIA 2003).”</p>
<p><i>In re: Paulo do Rosario</i> 2010 WL 4035430 (BIA) Board Member David B. Holmes</p>	<p>September 17, 2010</p>	<p>“The convictions were vacated as constitutionally invalid due to a failure to warn the respondent of the immigration consequences of his guilty pleas. <i>Matter of Pickering</i>, 23 I&N Dec. 621 (BIA 2003).”</p>
<p><i>In Re: Raymond Alexander Royes-Riggs A.K.A. Raymond A. Royesriggs</i> 2010 WL 691270 (BIA) Board Member David B. Holmes</p>	<p>February 12, 2010</p>	<p>“With his motion, the respondent has offered evidence that on January 20, 2010, the criminal court vacated the conviction underlying the charge of removability based on the finding that the respondent's guilty plea was not knowingly, intentionally and voluntarily made. Upon review, it appears that the respondent's conviction was vacated for defects in the underlying criminal proceedings and not due to any post-conviction event. <i>See Cruz v. Attorney General of U.S.</i>, 452 F.3d 240, 242 (3rd Cir. 2006); <i>Matter of Pickering</i>, 23 I&N Dec. 621 (BIA 2003). <i>See also Matter of Chavez</i>, 24 I&N Dec. 272 (BIA 2007). As the vacated conviction was the sole conviction underlying the charges of removability, we will grant the respondent's motion to reopen and terminate the proceedings.”</p>
<p><i>In Re: Romer R. Peguero A.K.A. Rommel Richardson Peguero</i> 2010 WL 3157437 (BIA) Board Member David B. Holmes</p>	<p>July 28, 2010</p>	<p>“[T]he respondent’s conviction was vacated on the basis of the United States Supreme Court's recent decision in <i>Padilla v. Kentucky</i>, ___ U.S. ___, 130 S. Ct. 1473 (2010), and specifically that the respondent was denied effective assistance of counsel because he was not advised of the immigration consequences of his plea.”</p> <p>“[T]hese removal proceedings are terminated.”</p>
<p><i>In Re: Juan Jose Castilla A.K.A. Juan J. Cantra A.K.A. Ricardo</i></p>	<p>June 21, 2010 New Jersey vacatur</p>	<p>“The motion is supported by evidence that, on June 1, 2010, the Superior Court of New Jersey, Law Division, Criminal Part, vacated the criminal</p>

<p><i>R. Cardenas A.K.A. Juan Castillo</i> 2010 WL 2846297 (BIA) Board Member Frederick D. Hess</p>		<p>conviction underlying the respondent's removal order on the ground that his criminal defense counsel provided constitutionally defective advice regarding the potential immigration consequences of his guilty plea (MTR, Tab H)."</p> <p>"Accordingly, the motion will be granted."</p>
<p><i>In re: Valter Manuel Moura</i> 2010 WL 673478 (BIA) Board Member Linda S. Wendtland</p>	<p>January 28, 2010 Massachusetts vacatur</p>	<p>"In the matter before us, however, it is clear that the criminal court judge's ruling, granting the respondent's Motion to Withdraw Guilty Plea and Order a New Trial, was based on his finding that the record did not document that the plea entered by the respondent at his criminal trial was knowingly, voluntarily, and intelligently made, in conformance with the statutory requirements as set out in MASS. GEN. LAWS ch. 278, § 29D, which requires that, before accepting a guilty or nolo contendere plea, a judge must provide a defendant with an advisement as to what immigration consequences his or her plea may have. <i>See Commonwealth v. Rodriguez</i>, 876 N.E.2d 487, 490 (Mass. App. Ct. 2007). Therefore, the court's action was premised upon what it perceived to be a procedural defect in the underlying proceedings."</p>
<p><i>In Re: Patrick Thompson</i> 2010 WL 4500879 (BIA) Board Member Edward R. Grant</p>	<p>October 15, 2010 Georgia vacatur</p>	<p>"The respondent has offered evidence that on March 25, 2009, the Recorder's Court of Gwinnett County, Georgia, granted the respondent's motion to withdraw his guilty plea and vacated the respondent's conviction for possession of marijuana entered on August 21, 2006. The Recorder's Court indicated that the parties agreed that the respondent's plea was not entered freely, voluntarily, or intelligently in violation of his right to Due Process."</p> <p>"It is clear that the court's action in this case was premised upon what it perceived to be a constitutional infirmity in the underlying proceedings."</p>
<p><i>In re: Javier Sevilla-Lopez</i> 2009 WL 1800022(BIA)Board Member David B. Holmes</p>	<p>May 29, 2009 Illinois vacatur</p>	<p>"[T]he respondent's decision to plead guilty was based upon his attorney's assurances that he would face no consequences relating to his immigration status... Upon review, it appears that the respondent's conviction was vacated for defects in the underlying criminal proceedings and not due to any post-conviction event. <i>See Ali v. Ashcroft</i>, 395 F.3d 722, 728-29 (7th Cir. 2005); <i>Matter of Pickering</i>, 23 I&N Dec. 621 (BIA 2003). <i>See also Matter of Chavez</i>, 24 I&N Dec. 272 (BIA 2007)."</p>

<p><i>In re: Dempsey J. Lucien a.k.a. Lucien Dempsey</i> 2009 WL 4899054 (BIA) Board Member Jim Hilz</p>	<p>November 27, 2009 Massachusetts vacatur</p>	<p>“The criminal court judge’s ruling granting the respondent’s Motion to Withdraw Guilty Plea and Order a New Trial, was based on his finding that the plea entered by the respondent at his criminal trial was not “knowingly, voluntarily, and intelligently made,” where it was the product of ineffective assistance of counsel. Therefore, the court’s action was premised upon what it perceived to be a constitutional infirmity in the underlying proceedings, rather than some form of post-conviction relief. <i>See Rumierz v. Gonzales</i>, 456 F.3d 31, 34-35 (1st Cir. 2006).”</p>
<p><i>In re: Angelo Varela</i> 2008 WL 243723 (BIA) Board Member Roger A. Pauley</p>	<p>January 9, 2008 Massachusetts vacatur</p>	<p>“In the matter before us, however, it is clear the criminal court judge’s ruling granting the respondent’s Motion to Withdraw Guilty Plea and Vacate His Conviction, was based on his finding the respondent’s former criminal counsel’s failure... constituted ineffective assistance of counsel.”</p> <p>“Therefore, the court’s action was premised upon what it perceived to be a constitutional infirmity in the underlying proceedings.”</p>
<p><i>In Re: Roberto Brito A.K.A. Roberto Brito-Batista</i> 2008 WL 5025245 (BIA) Board Member John Guendelsberger</p>	<p>November 5, 2008 New York vacatur</p>	<p>“The respondent provides evidence that in an August 21, 2008, decision the criminal court vacated his August 25, 1997, conviction based on the ineffective assistance of counsel which he received. Under <i>Matter of Pickering</i>..., if a court with jurisdiction vacates a conviction based on a defect in the underlying criminal proceedings, the alien no longer has a “conviction” within the meaning of section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A)[;] vacating the respondent’s conviction is given effect for immigration purposes.”</p>
<p><i>In re: Sajan Singla</i> 2007 WL 1724843 Board Member (BIA) Jeffrey L. Romig</p>	<p>May 23, 2007 Illinois vacatur</p>	<p>“In rendering his vacatur order, the criminal court Judge found support for the respondent’s claim of ineffective assistance of counsel and determined that the respondent’s plea was tendered involuntarily and was violative of constitutional due process.”</p>
<p><i>In re: Emmanuel Kewu Ameh</i> 2007 WL 1125704 (BIA) Board Member Roger A. Pauley</p>	<p>February 23, 2007 Maryland vacatur</p>	<p>“[T]he respondent’s criminal conviction was vacated following a petition for Writ of Error Coram Nobis, because the respondent was not advised of the collateral immigration consequences of his guilty plea under the Maryland Rules of Court section 4-242(e).” “[S]ince the respondent’s removability was solely predicated upon the vacated conviction...the proceedings are terminated.””</p>

<p><i>In Re: Antonio Solis</i> <i>A.K.A. E Antonio</i> <i>A.K.A. Antonio J. Solis</i> <i>A.K.A. Antonio Salas</i> 2007 WL 2588612 (BIA) Board Member Roger A. Pauley</p>	<p>August 13, 2007 Illinois vacatur</p>	<p>“[T]here was no Spanish interpreter to interpret the required plea admonitions for the respondent and...the trial court judge did not sufficiently inquire as to whether the respondent understood fully the ramifications of a guilty plea, such that the parties agreed that the plea was not voluntary.... Accordingly, we agree with the respondent that this conviction was vacated for substantive or procedural defect, rather than rehabilitative post-conviction relief; and is therefore no longer valid for immigration purposes. <i>See Ali v. Ashcroft</i>, 395 F.3d 722, 728-29 (7th Cir. 2005), <i>discussing Matter of Pickering</i>, 23 I&N Dec. 621, 624-25 (BIA 2003). <i>See also Sandoval v. INS</i>, 240 F.3d 577, 578-79 (7th Cir. 2001).”</p>
<p><i>In Re: Peralta-Valadez,</i> <i>Yuridia</i> 2006 WL 2391275 (BIA)</p>	<p>June 22, 2006 Wisconsin vacatur</p>	<p>“[T]he Court found that the respondent had been deprived of her Sixth Amendment rights as she was afforded ineffective assistance of counsel.”</p> <p>“The conviction which formed the sole basis for the charges of removability has been vacated “on the basis of a procedural or substantive defect in the underlying criminal proceedings.”</p> <p>“As such, his conviction can no longer support the charges of removability. Accordingly, the appeal is sustained and the proceedings in this case are terminated.”</p>
<p><i>In Re: Elser Roel</i> <i>Escobar-Guerra</i> 2006 WL 3485830 (BIA)</p>	<p>October 12, 2006 Pennsylvania vacatur</p>	<p>“In granting the motion, the court accepted the respondent’s contention that he had been misinformed by prior counsel as to what effect the entering a plea of nolo contendere would have on his immigration status, and that as a result, it was not entered voluntarily or knowingly.”</p> <p>“[T]he court's action was premised upon what it perceived to be a constitutional infirmity in the underlying proceedings.”</p>
<p><i>In re: Reynaldo Ibarra</i> <i>Casarez</i> 2006 WL 3922304 (BIA)</p>	<p>December 26, 2006 Iowa vacatur</p>	<p>“The respondent has presented evidence that his conviction was vacated based on allegations that his plea violated the Iowa Rules of Criminal Procedure, he did not waive his right to make a motion and arrest of judgment, and his plea was inadequate due to no factual basis, ineffective assistance of counsel, and failure to understand the elements of the crime.”</p> <p>“Accordingly, the respondent's conviction is no longer valid for immigration purposes. <i>See Matter of Adamiak</i>, 23 I&N Dec. 878 (BIA 2006).”</p>

<p><i>In Re: Durid Bahjat Hana</i> 2006 WL 901310 (BIA)</p>	<p>February 22, 2006</p>	<p>“A conviction vacated due to ineffective assistance of counsel qualifies as a vacation on the merits.”</p>
<p><i>In re: Juan Carlos Cazares Mendez</i> 2006 WL 1455242 (BIA) Board Member Frederick D. Hess</p>	<p>March 31, 2006 Georgia vacatur</p>	<p>“We conclude that this state action vitiates the respondent's conviction for immigration purposes, necessitating termination of the removal proceedings... The respondent’s conviction was vacated because of constitutional and procedural errors during the criminal proceedings.”</p>
<p><i>In Re: Daniel Irineo Colunga-Dominguez a.k.a. Daniel I. Colunga</i> 2006 WL 3485821 (BIA)</p>	<p>October 11, 2006 California vacatur</p>	<p>“The trial court order dated May 12, 2005, states that ‘Defense counsel motioned that this matter to vacate the conviction and guilty plea because defendant states that he was not properly advised regarding the immigration consequences. The People do not oppose the motion.’ With that, the court granted the respondent’s motion. On May 19, 2005, the court entered an order vacating the respondent’s misdemeanor conviction.” “Because the respondent’s conviction is no longer valid for immigration purposes and it was the sole basis for the removal order, we find it appropriate to reopen and terminate these removal proceedings.”</p>
<p><i>In Re: Roque Antonio Mora-Alvarado</i> 2006 WL 901497 (BIA)</p>	<p>March 9, 2006 Maryland vacatur</p>	<p>“In the instant case, the language of the vacating order suggests that a procedural or substantive defect occurred (Exh. R2 at 70 (writ of error <i>coram nobis</i> granted based on a finding that the respondent was not voir dired as to the voluntariness of his guilty plea, as required by Maryland Rule 4-242(c))). Matter of Pickering, supra, only applies where the court's order clearly shows that the conviction was vacated for reasons purely related to immigration hardships or nonlegal defects.”</p>
<p><i>In Re: Juan Carlos Cazares Mendez</i> 2006 WL 1455242 (BIA)</p>	<p>March 31, 2006 Georgia vacatur</p>	<p>“The record reflects that on August 22, 2003, the Georgia State court vacated the respondent's conviction in violation of V.G.C.S.A. Possession of Cocaine on the grounds that the respondent's Sixth Amendment right to counsel was violated and that the guilty plea was not entered in a knowing and voluntary fashion of both state and federal constitutional standards of due process of law. We conclude that this state action vitiates the respondent's conviction for immigration purposes, necessitating termination of the removal proceedings. <i>See Matter of Rodriguez-Ruiz</i>, 22 I&N Dec. 1378 (BIA 2000); <i>see also Matter of Adamiak</i>, 23 I&N Dec. 878 (BIA 2006) (finding that a conviction vacated for failure of the trial court to advise the</p>

		alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes).”
<i>In Re: Jose Felipe Martinez-Hernandez</i> 2006 WL 2391244 (BIA)	July 10, 2006 Texas vacatur	“The Texas court determined that the respondent's plea was not entered into freely and voluntarily because he was not advised that he could be deported as a result of his plea. We have consistently held that there is a significant difference between having a conviction vacated because of an underlying defect in the conviction and having a conviction vacated because of post-conviction events such as rehabilitation or immigration consequences. <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003); <i>Matter of Rodriguez-Ruiz</i> , 22 I&N Dec. 1378 (BIA 2000); <i>Matter of Roldan</i> , 22 I&N Dec. 512 (BIA 1999).” “Therefore, the vacatur of the respondent's conviction in this case effectively eliminated the conviction for immigration purposes. <i>See Matter of Rodriguez-Ruiz, supra.</i> ”
<i>In re: Sun Hee Bang</i> 2006 WL 2008212 (BIA)	May 18, 2006 New Hampshire vacatur	“In its order, the criminal court specified that its reason for vacating the conviction was a substantive, constitutional defect because it was unable to find that the respondent entered into her plea agreement on a knowing, intelligent, and voluntary basis. <i>See Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003).” “Accordingly, we will grant the motion and will terminate the removal proceedings, since the conviction has been vacated due to a substantive defect.”
<i>In Re: Anacleto Roberto Trevino-Villarreal</i> 2005 WL 698447 (BIA)	March 2, 2005 Texas vacatur	“The respondent notes in his appellate brief that his conviction has been vacated because his guilty plea was not “knowing and voluntary,” and suggests that it is no longer a “conviction” under section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a) (48)(A) (Respondent's Brief at 5-16). Under Board precedent, the respondent's statement of the law is correct. <i>See Matter of Pickering</i> , 23 I&N 621 (BIA 2003).”
<i>In Re: Hai Ngoc Ha</i> 2005 WL 698395 (BIA)	March 10, 2005 Florida vacatur	“The order vacating the conviction in this case provides that it was vacated pursuant to section 3.850(5) of the Florida Rules of Criminal Procedure because the respondent's ‘plea was involuntary due to his misconception of the deportation consequences of his plea.’” “[W]e find that the respondent's conviction was vacated because the underlying conviction was deemed to be substantively defective. <i>See Matter of Pickering, supra.</i> We, therefore, conclude that the

		respondent no longer has a 'conviction' under section 101(a)(48)(A) of the Act.”
<i>In Re: Ricardo Antonio Cueva-Amaya A.K.A. Ricardo Antonio Cueva</i> 2004 WL 2374280 (BIA)	September 10, 2004 Maryland vacatur	<p>“The Maryland Circuit Court Judge's decision dated August 3, 2004, to vacate the conviction states that the court failed to advise the defendant of his rights to a jury trial, presumption of innocence[sic], proof beyond a reasonable doubt, his right to testify or remain silent, ‘and all other trial and appellate rights.’”</p> <p>“The DHS contends that the motion to reopen should be denied because the vacatur of the respondent's conviction was done solely to avoid immigration consequences rather than on the basis of any procedural or substantive defect in the underlying criminal proceedings.”</p> <p>“In the instant case the court order does identify a basis for questioning the integrity of the underlying criminal proceedings. The Board will not look behind that decision. <i>Matter of Rodriguez, supra</i>. We grant the motion based upon the criminal court's order vacating the respondent's conviction due to fundamental defects underlying the conviction.”</p>
<i>In Re: Angel Abad Solano-Chicas</i> 2004 WL 2374312 (BIA)	September 3, 2004 Minnesota vacatur	<p>“The reasons for the vacation of the respondent's conviction can be ascertained from the wording of the order and the motion requesting post-conviction relief. In this case, the motion requesting withdrawal of the guilty plea references the state law pursuant to which the respondent seeks his remedy (Exh. 3).”</p> <p>“We concur in the Immigration Judge's decision concluding that the respondent's 2003 conviction for criminal sexual conduct has not been vacated for immigration purposes.”</p> <p>“It is the criminal court's reasoning in vacating the conviction that is controlling.”</p>
<i>In re: Joao Luis Tavares</i> 2004 WL 2418620 (BIA)	October 5, 2004 Rhode Island vacatur	<p>“In this case, the respondent has submitted a July 6, 2004, order from the Rhode Island court of conviction vacating his conviction...because the respondent's guilty plea was not “voluntary or knowingly made.” The respondent suggests that a conviction vacated for substantive or procedural reasons is no longer a “conviction” under section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48) (A). Under Board precedent, the respondent's statement of the law is correct. <i>See Matter of Pickering</i>, 23 I&N 621 (BIA 2003).”</p>

APPENDIX B

TABLE OF CASES:		
BIA DECISIONS HOLDING INA § 101(a)(48)(A) “CONVICTION” DEFINITION DOES NOT INCLUDE PRIOR CONVICTIONS VACATED PURSUANT TO § 1473.7		
Case Name	Date of Decision	Holding
<i>In re. C-H-C-</i> , AXXXXXX630 (BIA 2020) Board Member Deborah Goodwin	March 30, 2020	“Though collaterally related to immigration enforcement, vacatur under section 1473.7(a)(1) renders a conviction ineffective for immigration purposes because ineffective assistance of counsel or ‘prejudicial error’ in plea proceedings are ‘procedural or substantive defects’ under California law.” “[T]he vacatur of the respondent’s 1995 conviction under 1473.7 must be given effect for immigration purposes because a conviction can be vacated under that section only because of a ‘procedural or substantive defect’ in underlying criminal proceedings.”
<i>In re. Arutyun Demirchyan</i> , 2019 WL 7168795 (BIA 2019) Board Member Edward R. Grant	October 31, 2019	“[I]t appears to the Board that vacatur under Cal. Pen. Code § 1473.7 is available only in cases of legal invalidity or actual innocence.”
<i>In re. J-B-</i> , AXXXXXX252, (Immigration Court, Eloy, AZ, 2019) Immigration Judge Irene Feldman	November 11, 2019	“[A] textual reading of CPC § 1473.7 indicates that a vacatur is available only in cases of legal invalidity or actual innocence.”
<i>In re. Ernesto Rios Rodriguez</i> , 2019 WL 7859271 (BIA 2019) Board Member Earle B. Wilson	December 2, 2019	“[I]t appears to the Board that a <i>vacatur</i> under CAL. PENAL CODE § 1473.7(a)(1) is available only in cases of legal invalidity or actual innocence.” (citing <i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010); <i>Matter of Marquez Conde</i> , 27 I&N Dec. 251 (BIA 2018); <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003)).
<i>In re. Jose Jesus Arredondo Gomez</i> , 2018 WL 3007175 (BIA 2018)	October 19, 2018	“The respondent’s motion is supported by evidence that the Superior Court of California, County of Los Angeles, withdrew the respondent’s 2013 guilty pleas underlying his convictions in response to the respondent’s motion to vacate under California Penal

Board Member John Guendelsberger		Code § 1473.7 based on due process violations. Given the evidence presented, we find that the respondent's vacated convictions may not be considered convictions for immigration purposes. <i>Matter of Adamiak</i> , 23 I&N Dec. 878 (BIA 2006); <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003).”
<i>In re. Albert Limon Castro</i> , 2018 WL 8333468 (BIA 2018) Board Member Adkins-Blanch	December 28, 2018	<p>“With his motion, the respondent presents evidence that on June 8, 2018, a California court vacated his criminal conviction pursuant to CAL. PENAL CODE § 1473.7. <i>See Mot.</i>, Tab A.”</p> <p>“While the state court's order does not indicate the specific reason for the state court's action, it appears to the Board that vacatur under CAL. PENAL CODE § 1473.7 is available only in cases of legal invalidity or actual innocence. <i>See Padilla v. Kentucky</i>, 559 U.S. 356 (2010); <i>Matter of Marquez Conde</i>, 27 I&N Dec. 251 (BIA 2018); <i>Matter of Pickering</i>, 23 I&N Dec. 621 (BIA 2003).”</p>
<i>In re. Oscar George Thetford</i> , 2017 WL 4418352 (BIA 2017) Board Member John Guendelsberger	July 17, 2017	<p>“The respondent has filed a motion with evidence reflecting that a state criminal court vacated the respondent’s conviction as legally invalid under Cal. Penal. Code § 1473.7. <i>See generally Matter of Pickering</i>, 23 I&N Dec. 621 (BIA 2003); <i>Matter of Chavez</i>, 24 I&N Dec. 272 (BIA 2007).”</p> <p>“Under the circumstances, we will grant the respondent's motion to reopen. Moreover, we will terminate the proceedings without prejudice, given that the conviction forming the basis of the respondent's removability has been invalidated and vacated.”</p>