

ILRC Case Chart - BIA Cases Citing to 1473.7 and Motions to Vacate

Case Name	Date of Decision	Holding
BIA Cases Involving 1473.7 (2019-2022)		
<p><i>In re Jesus Le Sanchez Gutierrez</i> (BIA Aug. 29, 2022)</p> <p>A200-414-085</p>	<p>Aug. 29, 2022</p>	<p>Vacatur under Cal. Pen. Code 1473.7(a)(1) meets <i>Pickering</i> and <i>Nath</i>. “The record is unclear with respect to what the prejudicial error was in this case and neither the Immigration Judge’s decision nor the DHS’s opposition to the respondent’s motion to terminate identify any evidence in the record suggesting the respondent’s convictions were vacated solely for rehabilitative or immigration purposes. Therefore, on this record, we are not persuaded that the DHS has sustained its burden of proof. <i>See Nath v. Gonzales</i>, 467 F.3d 1185, 1189” “The United States Court of Appeals for the Ninth Circuit, in whose jurisdiction this matter arises, has stated that “the burden is on the government” to prove that a conviction serving as the basis of a charge of removability was vacated “solely for rehabilitative reasons or reasons related to his immigration status.” <i>See Reyes-Torres v. Holder</i>, 645 F.3d 1073, 1077 (9th Cir. 2011) (citing <i>Cardoso–Tlaseca v. Gonzales</i>, 460 F.3d 1102, 1107 n.3 (9th Cir. 2006)); <i>see also Torres v. Barr</i>, 790 F. App’x 139, 140 (9th Cir. 2020) (citing <i>Reyes-Torres</i> and explaining that “[a] vacated conviction no longer qualifies as a conviction for immigration purposes unless vacatur was ‘solely for rehabilitative reasons or reasons related to [the noncitizen’s] immigration status.’”); <i>Ochoa v. Lynch</i>, 639 F. App’x 425, 426 (9th Cir. 2016) (“The government has the burden to establish that a conviction remains valid for immigration purposes.”).”</p>
<p><i>In re Jose Yudiel Mejia-Rosas</i> (not currently on Westlaw) (BIA Jan. 12, 2022)</p> <p>A094-372-332</p>	<p>Jan. 12, 2022</p>	<p>Vacatur under Cal. Penal Code 1473.7(a)(1) “because the respondent’s criminal attorney did not advise him of the immigration consequences of pleading guilty and the respondent may not have otherwise entered into such a plea... <i>See Padilla v. Kentucky</i>, 559 U.S. 356, 369 (2010)... <i>Matter of Pickering</i>, 23 I&N Dec. 621, 624 (BIA 2003).</p>

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<p><i>In re. Juan Manuel Corrales</i> (not currently on Westlaw) (BIA Oct. 21, 2020)</p> <p>A041-447-589</p>	<p>Oct. 21, 2020</p>	<p>NOTE: Making the connection that <i>because</i> defendant was <u>unaware</u> of the immigration consequences, <i>therefore</i> the conviction is legally and procedurally invalid due to a prejudicial error.</p> <p>Reopening and terminating proceedings sua sponte in light of a vacatur under Cal. Penal Code 1473.7 of sole conviction underlying charge of removability because <u>respondent</u> was <u>unaware</u> of immigration consequences of guilty plea, and thus the court found the conviction was legally and procedurally invalid due to a prejudicial error.</p>
<p><i>In re C-J-</i>, (not currently on Westlaw) (BIA Oct. 5, 2020)</p> <p>AXXX-XXX-108</p>	<p>Oct. 5, 2020</p>	<p>“<u>A conviction may be vacated pursuant to section 1473.7 only if it is ‘legally invalid’ as a consequence of a procedural defect, or if ‘evidence of actual innocence’ has been discovered.</u> Cal. Penal Code § 1473.7(a)(1)-(2) (West 2019). Because the respondent’s State drug offenses have ‘been vacated based on procedural and substantive defects in the underlying criminal proceeding,’ they are ‘no longer valid for immigration purposes...’”</p>
<p><i>In re Wenross St. George Perry</i> (BIA Aug. 19, 2020)</p> <p>A208-244-345</p>	<p>August 19, 2020</p>	<p>Reopens and terminates proceedings sua sponte following vacatur of conviction underlying charges of deportability because respondent was not informed of immigration consequences of his plea</p>
<p><i>In re Carlos Jaimes</i> (BIA July 24, 2020)</p> <p>A207-897-108</p>	<p>July 24, 2020</p>	<p>Vacatur under Cal. Penal Code 1473.7 are available only in cases of legal invalidity or actual innocence; states that failure to advise or understand immigration consequences is a substantive and/or procedural defect that vitiates a conviction, not a vacatur to avoid immigration consequences.</p>
<p><i>In re Antonio Antunez Delgado</i> (BIA April 17, 2020)</p> <p>A096-342-377</p>	<p>April 29, 2020</p>	<p>Rejects DHS argument that conviction remained valid for immigration purposes because state court order vacating conviction was drafted by respondent’s attorney. Cal. Penal Code § 1473.7 is available only in cases of legal invalidity or actual innocence.</p> <p>“Failure to advise or understand immigration consequences is a substantive and/or procedural defect that vitiates a conviction,</p>

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		<p>not a vacatur to avoid immigration consequences.”</p> <p>History: “The legislative history of Cal. Penal Code § 1473.7, reflects that the purpose of this section was to fill a gap in California criminal procedure to allow defendants no longer in custody to challenge the legal validity of their criminal convictions...”</p> <p>NOTE: says the history shows that 1473.7 relies on the Supreme Court’s decision in <i>Padilla v. Kentucky</i>.</p>
<p><i>In re C-H-C-</i> (BIA March 30, 2020)</p> <p>AXXX-XXX-630</p>	<p>March 30, 2020</p>	<p>Holding that vacatur under Cal. Penal Code 1473.7 must be given effect for immigration purposes because it requires a procedural or substantive defect in underlying criminal proceedings.</p>
<p><i>In re Leni Margarita Saco Cotito a.k.a. Leni Margarita Cosey</i>, 2020 WL 1169206 (BIA 2020)</p> <p>AXXX-XX9-284</p>	<p>Jan. 6, 2020</p>	<p>The respondent was “no longer considered convicted of, and not removable based on, an aggravated felony” for his H&S § 11360(a) conviction because it had been vacated pursuant to PC § 1473.7, and this statute “applies in cases of legal invalidity or actual innocence.”</p> <p>In contrast, the respondent’s W&I § 10980(c)(2) conviction that had been vacated under PC § 1203.43 was still a “conviction” for Federal immigration purposes because it was deemed a “rehabilitative statute” by the Ninth Circuit. <i>Lopez v. Sessions</i>, 901 F.3d 1071, 1075 (9th Cir. 2018).</p> <p>Court reopened and remanded for consideration of the relief he was newly eligible now that his 11360(a) conviction had been vacated.</p>
<p><i>In re Elpidio Mendoza Sotelo</i>, 2019 WL 8197756 (BIA 2019)</p> <p>AXXX-XX8-491</p>	<p>December 23, 2019</p>	<p>The respondent’s conviction for possession of a narcotic controlled substance under H&S 11350A was vacated under PC 1473.7 in 2018. “A vacatur under California Penal Code § 1473.7 is available only in cases of legal invalidity or actual innocence. <i>See, e.g., People v. Perez</i>, 19 Cal. App. 5th 818, 826 (Ct. App. 2018).” Thus “this conviction no longer remains valid for immigration purposes. <i>See Padilla v. Kentucky...</i>; <i>Matter of Marquez Conde</i>, 27 I&N Dec. 251 (BIA 2018) (<i>reaffirming</i> the Board’s holding in <i>Matter of Pickering</i>, 23 I&N Dec. 621 (BIA</p>

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		2003)).” Because the other CS conviction had only been vacated under 1203.43, though, he was still inadmissible and ineligible for AOS.
<i>In re. Ernesto Rios Rodriguez</i> , 2019 WL 7859271 (BIA 2019) Board Member Earle B. Wilson AXXX-XX4-738	December 2, 2019	“Nonetheless, while the California criminal court record here does not indicate the specific reason for the California court's action, it appears to the Board that a vacatur under CAL. PENAL CODE § 1473.7(a)(1) is available only in cases of legal invalidity or actual innocence. ² See <i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010); <i>Matter of Marquez Conde</i> , 27 I&N Dec. 251 (BIA 2018); see also <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003) (holding that if a court vacates an alien's conviction because of a procedural or substantive defect, rather than for reasons solely related to rehabilitation or immigration hardships, the conviction is eliminated for immigration purposes), <i>rev'd on other grounds, Pickering v. Gonzales</i> , 465 F.3d 263 (6th Cir. 2006).”
<i>In re. Arutyun Demirchyan</i> , 2019 WL 7168795 (BIA 2019) Board Member Edward R. Grant AXXX-XX4-622	October 31, 2019	“While the motion materials do not indicate the specific reason for the state court's action, it appears to the Board that vacatur under Cal. Pen. Code § 1473.7 is available only in cases of legal invalidity or actual innocence.” (quoting verbatim the text of the amended 1473.7) “Accordingly, it appears that the court vacated the respondent's convictions due to a legal infirmity. See <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003).”
<i>In re Daniel Jose Torres</i> (BIA May 31, 2019) A029-229-962	May 31, 2019	The motion to vacate the robbery conviction pursuant to PC § 1473.7 was “due to procedural and legal invalidity.” “It appears to us that vacatur under CAL. PENAL CODE § 14737 is available only in cases of legal invalidity or actual innocence. <i>Id.</i> Consequently, the respondent may no longer be removable as charged. See <i>Matter of Pickering</i> , 23 I&N Dec 621 (BIA 2003).”
<i>In re Erick Javier Villatoro Padilla</i> (BIA May 15, 2019) A043-562-927	May 15, 2019	The PC § 245(a)(2) conviction with 5 year sentence was vacated pursuant to PC § 1473.7. “However, the docket sheet further indicates

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		<p>that his conviction and sentence were dismissed in the furtherance of justice.”</p> <p>The record did not reveal why the conviction was dismissed. Under Ninth Circuit precedent the government bears the burden of proving whether the conviction was dismissed or vacated for immigration hardship purposes or for substantive reasons, <i>Nath v Gonzales</i>, 467 F.3d 1185, 1189 (9th Cir. 2006); <i>Cardoso-Tlaseca v. Gonzales</i>, 460 F.3d 1102, 1107 (9th Cir 2006), and since DHS did not present evidence of the underlying order, they did not meet their burden.</p> <p>Thus, the BIA held respondent was no longer removable as charged.</p>
<p><i>In re Jose Valencia-Mata</i> (BIA April 19, 2019)</p> <p>A095-717-786</p>	<p>April 19, 2019</p>	<p>Finding that because the conviction had been vacated under PC § 1473.7, it no longer rendered the respondent ineligible for cancellation of removal, and remanded the case for further consideration of his cancellation case.</p>
<p><i>Remanding for Consideration of 1473.7 effect</i></p>		
<p><i>In re Ahmed Hamdy Elamary</i>, (BIA May 6, 2020)</p> <p>A060-339-401</p>	<p>May 6, 2020</p>	<p>Remanding for further consideration of whether vacated conviction remained valid for immigration purposes in light of intervening order from criminal court clarifying that proceedings were reopened on due process grounds.</p>
<p>BIA Cases Involving 1473.7 (pre-2019)</p>		
<p><i>In re. Albert Limon Castro</i>, 2018 WL 8333468 (BIA 2018) Board Member Adkins-Blanch</p> <p>AXXX-XX0-288</p>	<p>December 28, 2018</p>	<p><i>NOTE: This is the same language used in post-2019 decisions.</i></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>
<p><i>In re. Jose Jesus Arredondo Gomez</i>, 2018 WL 3007175 (BIA 2018) Board Member John Guendelsberger</p>	<p>October 19, 2018</p>	<p>“The respondent's motion to vacate under California Penal Code § 1473.7 based on <u>due process violations</u>. Given the evidence presented, we find that the respondent's</p>

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AXXX-XX8-774		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 Jose Pablo Hernandez Valdez a.k.a. Jose Hernandez</i> , 2018 WL 4611530 (BIA 2018) AXXX-XX2-353	July 18, 2018	Respondent’s H&S 11377(a) conviction was vacated and his plea withdrawn pursuant to PC § 1203.43 and 1473.7. The BIA referred to this as a “nullified conviction” and granted the motion to reopen and remanded to the IJ for further consideration of the respondent’s AOS application.
<i>In re. Oscar George Thetford</i> , 2017 WL 4418352 (BIA 2017) Board Member John Guendelsberger AXXX-XX9-837	July 17, 2017	NOTE: This and other decisions use the “legal invalidity” language and not the constitutional defect or IAC language. “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. See generally <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003); <i>Matter of Chavez</i> , 24 I&N Dec. 272 (BIA 2007).”

CA Motion to Vacate but No Reference to 1473.7		
<i>In Re: Victor Enrique Moran A.K.A. Victor Rivera</i> , 2019 WL 5086717 (BIA) Board Member Molly Kendall Clark AXXX-XX4-685	Sept. 17, 2019	“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. See <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003).”
<i>In re Jairo D. Saballos Gutierrez</i> (BIA Oct. 2, 2019) A055-619-844	October 2, 2019	Reopens and terminates proceedings in light of vacatur of Cal PC § 273.5 conviction underlying ground of removability, which was

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		vacated based on defense attorney’s failure to advise respondent of immigration consequences.
<i>In Re: Jose Luis Pazarin-Castrejon</i> , 2017 WL 4946948 (BIA) Board Member John Guendelsberger AXXX-XX8-839	September 6, 2017	“The respondent has filed a motion to reopen and terminate, based on a state court vacating the conviction on <i>constitutional grounds</i> . See <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003); <i>Matter of Chavez</i> , 24 I&N Dec. 272 (BIA 2007).”
<i>In Re: Daniel Irineo Colunga-Dominguez a.k.a. Daniel I. Colunga</i> , 2006 WL 3485821 (BIA) AXXX-XX5-008	October 11, 2006	“In his motion, the respondent sought to set aside his June 12 1998, conviction on two grounds: first, because his attorney did not properly investigate the alleged crime; and, second, because he was not informed of the immigration consequences of his criminal conviction...” “If a court with jurisdiction vacates a conviction based on a defect in the underlying criminal proceedings, the respondent no longer has a “conviction” within the meaning of section 101(a)(48)(A).” 2.

1203.43 Vacatur Honored for Immigration Purposes		
<i>In re J-A-B-E-</i> (BIA June 26, 2020) AXXX-XXX-748	June 26, 2020	Whether deferred entries of judgment vacated under Cal. Penal Code 1203.43 remain valid for immigration purposes must be determined on case-by-case basis.
<i>In re Abraham Uribe</i> (BIA Feb 19, 2019) A200-505-536	February 19, 2019	BIA granted motion to reopen based on respondent’s PC § 1203.43 vacatur of a controlled substance-related offense. The BIA found that uncontested evidence presented showed that the underlying conviction which served as the sole basis for the respondent being subject to removal had been vacated. Cited to <i>Matter of Cota-Vargas</i> , 23 I&N Dec. 849 (BIA 2005) and <i>Matter of Pickering</i> , 23 I&N Dec. 621 (BIA 2003) (convictions eliminated for immigration purposes when based on procedural or substantive defect).

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<p><i>In re Juan Carlos Suazo-Suazo</i> (BIA Feb. 9, 2017)</p> <p>A077-074-203</p>	<p>February 9, 2017</p>	<p>“We conclude that 28 U.S.C. § 1738 obliges immigration adjudicators to extend full faith and credit to a California court order vacating a guilty plea and dismissing a drug charge under section 1203.43 of the California Penal Code. <i>See Matter of Rodriguez-Ruiz</i>, 22 I&N Dec. 1378, 1379-80 (BIA 2000).”</p> <p>“In section 1203.43, the California Legislature has determined that California law systematically ‘misinform[s]’ alien defendants about possible ‘adverse immigration consequences’ of their guilty pleas to first-time minor drug offenses, which forms the basis for the vacatur. The BIA held that this shows “the convictions were dismissed on substantive grounds and thus no longer appear to be a convictions for immigration purposes.”</p> <p>2.</p>
<p><i>In re H-S-A-</i> (BIA Sept. 7, 2016)</p> <p>AXXX-XXX-788</p>	<p>Sept. 7, 2016</p>	<p>Convictions vacated under Calif. Penal Code 1203.43 are no longer valid for immigration purposes because defendants are conclusively presumed to have pled guilty on the basis of misinformation about the plea’s consequences.</p>