**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

**OFFICE OF THE IMMIGRATION JUDGE, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(CITY), \_\_\_\_\_\_(STATE)**

**BOARD OF IMMIGRATION APPEALS, FALLS CHURCH, VA**

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| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **)**  **)**  **In re. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Name) )**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(A#) )**  **)**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Memorandum of Law in Support of**  **Respondent’s Motion to Terminate Removal Proceedings, and/or Respondent’s Eligibility for Relief from Removal** |

**MEMORANDUM OF LAW**

Respondent’s prior conviction is no longer a “conviction” as defined under section 101(a)(48)(A) of the Immigration and Nationality Act (“INA”). As such, this court or Board must terminate Respondent’s removal proceedings or schedule a relief hearing.

**ARGUMENT**

## Relevant Statutory Background and BIA Precedents on the Definition of “Conviction”

### Pre-IIRIRA BIA and AG Decisions Deferring to State Determinations Regarding Disposition of Criminal Charges

With no statutory definition of “conviction” for immigration purposes for most of the twentieth century, the BIA almost always deferred to a state’s determination for whether a disposition constitutes a conviction. *See, e.g.*, *Matter of L-R-*, 8 I&N Dec. 269, 270 (BIA 1959); *Matter of G-*, 9 I&N Dec. 159, 164 (BIA 1960; AG 1961); *Matter of Ibarra-Obando*, 12 I&N Dec. 576 (BIA 1966; AG 1967); *see generally Pinho v. Gonzales*, 432 F.3d 193, 208 (3d Cir. 2005) (“The BIA held as early as 1943 that an expunged conviction was not a ‘conviction’ for immigration purposes, and adhered to that position with only occasional exceptions until *Roldan*.”); *but see Matter of A-F-*, 8 I&N Dec. 429 (BIA 1959). Importantly, this meant that vacated or expunged convictions could not sustain charges of deportability. *See, e.g.*, *Matter of Sirhan*, 13 I&N Dec. 592, 600 (BIA 1970) (vacated convictions); *Matter of G-*, 9 I&N Dec. 159, 164 (BIA 1960, AG 1961) (expunged convictions).

In 1988, the BIA published *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988), which was the last significant agency precedent addressing the definition of conviction prior to the adoption of a statutory definition in the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) in 1996. In *Ozkok*, the Board reaffirmed that a disposition is a conviction generally only where “the court has adjudicated [the noncitizen] guilty or has entered a formal judgment of guilt.” *Id.* at 551. The only exception, first identified in *Ozkok*, was for certain withheld adjudications. The BIA held that, in cases where adjudication of guilt has been withheld, the disposition would amount to a conviction where:

(1) a judge or jury has found the [noncitizen] guilty or he has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilty;

(2) the judge has ordered some form of punishment, penalty, or restraint on the person’s liberty to be imposed . . . and

(3) a judgment or adjudication of guilt may be entered if the person violates the terms of his probation or fails to comply with the requirements of the court’s order, without availability of further proceedings regarding the person’s guilt or innocence of the original charge.

*Id.* at 551–52.

### IIRIRA and Subsequent BIA Precedent

Eight years after *Ozkok*, Congress codified the definition of “conviction” for the first time in IIRIRA. *See* INA § 101(a)(48)(A). In this definition, Congress adopted *Ozkok*’s two categories of convictions almost verbatim: (1) a “formal judgment of guilt,” and (2) a deferred or withheld adjudication but applying only the first two requirements of *Ozkok*’s tripartite test:

(A)

(i)

a judge or jury has found the [noncitizen] guilty or the [noncitizen] has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii)

the judge has ordered some form of punishment, penalty, or restraint on the [noncitizen]’s liberty to be imposed.

INA § 101(a)(48)(A); attached as Appendix A.

In codifying a definition in the INA, Congress did not alter the first prong of the *Ozkok* definition of conviction, a “formal judgment of guilt entered by a court.” Congress only altered the second prong of the *Ozkok* definition, withheld adjudications. For withheld adjudications, Congress adopted the first two requirements of *Ozkok*’s tripartite test but omitted the third. Nowhere does the INA definition expressly include or even refer to vacated or expunged convictions, nor does the accompanying legislative history discuss them. *See* H.R. Conf. Rep. No.104-828, at 223–24 (1996).

The BIA nevertheless held in *Matter of* *Roldan* that convictions eliminated for so-called “rehabilitative” reasons remain convictions for immigration purposes in light of the codified “conviction” definition. 22 I&N Dec. 512, 521–23 (BIA 1999) (en banc). The majority held that the Congressional Committee Conference Report provided “a clear indication that Congress intends that the determination of whether [a noncitizen] is convicted for immigration purposes be fixed at the time of the original determination of guilt[.]” *Id*. at 521. However, as the concurring and dissenting opinion pointed out, the majority’s conclusion rested on deeply flawed reasoning because the legislative history “does not expressly evince any will on the part of Congress to include all vacated or expunged criminal convictions within the definition of a conviction.” *Id*. at 531–32 (Bd. Member Villageliu, et al., dissenting in part and concurring in part); *id* at 529–30 (characterizing as *dicta* the part of the majority opinion that found “the scope of section 101(a)(48)(A) of the Act is also designed to cover all convictions that have been either vacated or expunged.”). *See also Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378, 1379–80 (BIA 2000) (holding that a conviction vacated under Article 440 of New York’s Criminal Procedure Law is not a conviction because such vacatur is not a state rehabilitative action, distinguishing *Roldan*).

Then, in *Matter of* *Pickering*, the Board held that a conviction that is vacated “based on a defect in the underlying criminal proceedings” is no longer a “conviction” under the statutory definition, while a conviction vacated “for reasons unrelated to the merits of the underlying criminal proceedings” remains a conviction for immigration purposes. 23 I&N Dec. 621, 624 (BIA 2003), *rev’d on other her grounds*, *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006). The Board and the Attorney General subsequently reiterated this distinction. *See* *Matter of Adamiak*, 23 I&N Dec. 878, 879 (BIA 2006) (applying *Pickering*’s distinction between vacatur based on “post-conviction events, such as rehabilitation” and vacatur based on defect in underlying proceedings); *Matter of Marroquin-Garcia*, 23 I&N Dec. 705, 708–13 (AG 2005).

## The Plain Text of the INA Conviction Definition Unambiguously Does Not Include Vacated or Expunged Convictions.

The text of the conviction definition, § 101(a)(48)(A), defines two categories of convictions: (1) formal judgments of guilt and (2)certain withheld adjudications. INA § 101(a)(48)(A). The definition does not include any language referring to prior convictions that have been eliminated through post-conviction relief, such as vacatur or expungement, much less include any language expressly providing that convictions that no longer exist may continue to be deemed convictions for immigration purposes. *See* *supra* Section I. Rather, a formal judgment of guilt or other prior disposition that has since been vacated or expunged signifies the *absence* of any conviction (the prior disposition having been eliminated). This is the only reading consistent with how Black’s Law Dictionary—the preeminent authority for the meaning of legal terminology—understood these terms of art at the time that Congress enacted the “conviction” definition. *Cf. Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1569 (2017) (consulting “reliable dictionaries,” such as Black’s, to identify statutory meaning). In its edition in circulation in 1996, Black’s identified the meaning of the term “judgment” as:

The final decision of the court resolving the dispute and determining the rights and obligations of the parties. The law’s last word in a judicial controversy, it being the final determination by a court of the rights of the parties upon matters submitted to it in an action or proceeding.

Black’s Law Dictionary 841-42 (6th ed. 1990). It is unambiguous that a formal judgment that has been vacated is not the final decision of the court, nor is it the last word in a judicial controversy, nor is it the final determination of the court—by definition, a vacated judgment has been superseded by a subsequent judgment. Black’s identified that “vacate” means, “To render an act void; as, to vacate an entry of record, or a judgment,” *id.* at 1548, and that “expunge” means, “To destroy; blot out; obliterate; erase; efface designedly; strike out wholly. The act of physically destroying information—including criminal records—in files, computers, or other depositories.” *Id.* at 582.[[1]](#footnote-1) Prior judgments rendered void are no longer judgments—they are void. Nor are judgments ordered to be destroyed or obliterated—they have been destroyed or obliterated.

The statute’s meaning is plain: prior convictions eliminated through vacatur or expungement are not included within the INA’s conviction definition. *Cf. Caminetti v. United States*, 242 U.S. 470, 485 (1917) (“It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms.”). Had Congress intended otherwise, it would have used different words in creating the statutory definition. Instead, Congress chose terms that are both commonly and historically understood to exclude dispositions of vacatur and expungement. *See supra* Section I. “If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.” *Chevron*, 467 U.S. at 842–43. That is the case here. It is unambiguous that Congress intended to codify continued deference to state decisions to vacate and expunge prior convictions. This reading of the statute is further supported by its legislative history and applicable statutory construction principles. *See infra,* Sections III–IV. The Board must give effect to Congress’ intent. Against this backdrop, the Board’s inclusion of vacated and expunged judgments in *Roldan* and *Pickering* is an unauthorized expansion of the definition that is contrary to and inconsistent with unambiguous congressional intent.

## Legislative History Confirms That the INA Conviction Definition Does Not Extend to Vacated or Expunged Convictions.

The legislative history of INA § 101(a)(48)(A) clarifies that Congress, in codifying the conviction definition, did not articulate any intent to include vacated and expunged convictions. The Congressional Committee Conference Report accompanying the enactment of § 101(a)(48)(A) shows that Congress was adopting the *Ozkok* definition but wished to alter it *only* with respect to withheld adjudications by omitting the third prong of *Ozkok*’s tripartite test for withheld adjudications, and nothing else. The Conference Report in relevant part states the following:

Ozkok, while making it more difficult for [noncitizen] criminals to escape such consequences, *does not go far enough to address situations where a judgment of guilt or imposition of sentence is suspended, conditioned upon the [noncitizen]’s future good behavior*. For example, the third prong of Ozkok requires that a judgment or adjudication of guilt may be entered if the [noncitizen] violates a term or condition of probation, without the need for any further proceedings regarding guilt or innocence on the original charge. In some States, adjudication may be “deferred” upon a finding or confession of guilt, and a final judgment of guilt may not be imposed if the [noncitizen] violates probation until there is an additional proceeding regarding the [noncitizen’s] guilt or innocence. In such cases, the third prong of the Ozkok definition prevents the original finding or confession of guilt to be considered a “conviction” for deportation purposes. This new provision, by removing the third prong of Ozkok, clarifies Congressional intent that even in cases where adjudication is “deferred,” the original finding or confession of guilt is sufficient to establish a “conviction,” for purposes of the immigration laws.

H.R. Conf. Rep. No. 104-828, at 224 (1996) (emphasis added).[[2]](#footnote-2)

As the dissent and concurrence in *Roldan* found, this discussion reflects that Congress “specifically considered the myriad of provisions for ameliorating the effects of a conviction and acted only to remove the last prong” of the test in *Ozkok* for withheld adjudications. 22 I&N Dec. at 531 (Bd. Member Villageliu, et al., dissenting in part and concurring in part). To this end, the Conference Report confirms that when Congress codified the “conviction” definition, it all but entirely incorporated *Ozkok* and the prior common law history on the term “conviction,” and it abrogated these cases only with respect to certain deferred or withheld adjudication cases.

Simply put, there is no indication in the Conference Report of any intent to include within the conviction definition dispositions that have been vacated, expunged, or otherwise eliminated through state post-conviction relief. *See* H.R. Conf. Rep. No. 104-828, at 223–24.

## Applicable Statutory Interpretation Principles Further Confirm That the INA Conviction Definition Does Not Include Vacated or Expunged Prior Convictions.

Application of traditional tools of statutory construction further confirms and requires finding that the conviction definition does not include prior convictions that have been vacated or expunged. The Supreme Court directs that traditional canons of construction be applied to identify Congressional intent in passing a law. *See, e.g.*, *Chevron*, 467 U.S. at 843 n.9 (“If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect.”). The INA is no exception, as is reflected by the Court’s long history of applying interpretive canons to determine Congressional intent in the immigration context. *See, e.g.*, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 446–48 (1987) (“[e]mploying tools of statutory construction” to ascertain intent of Congress in INA provisions and citing *Chevron*, 467 U.S. at 843 n.9); *INS v. St. Cyr*, 533 U.S. 289, 319 n.45 (2001) (applying presumption against retroactivity to conviction-related provision of INA, former section 212(c)).[[3]](#footnote-3)

*Roldan* and *Pickering* do not apply or discuss these interpretive tools that the Supreme Court instructs must be applied to identify correct statutory meaning. Proper application of interpretive canons—including the prior construction canon, federalism canon, rule of lenity, and presumption against deportation—unambiguously establish that Congress did not intend for the conviction definition to extend to convictions vacated or expunged by the States, regardless of the reasons underlying a state’s post-conviction action.

### Prior Construction Canon: In codifying the terms of art “conviction” and “formal judgment of guilt,” Congress incorporated the decades of prior decisional law interpreting those terms to exclude convictions that have been vacated or expunged.

The prior construction canon provides that, when Congress has adopted language from authoritative decisional law, courts presume that Congress also intended to import the judicial and administrative interpretations of that language, unless there is clear indication to the contrary. *See, e.g.*, *Williams v. Taylor*, 529 U.S. 420, 434 (2000) (explaining that “[w]hen the words of the Court are used in a later statute governing the same subject matter,” courts should “give the words the same meaning in the absence of specific direction to the contrary”). *See also, e.g.*, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 144–46 (2000) (discussing Congress’s incorporation of prior agency action by Food and Drug Administration into subsequently codified statute); *Zuni Pub. Sch. Dist. No. 89 v. Dep’t of Educ.*, 550 U.S. 81, 90–91 (2007) (noting Congress adopted language originally drafted by the Secretary of Education without amendment and crediting this as evidence Congress did not intend to disturb the agency’s interpretation of the relevant statutory language). With respect to the INA “conviction” definition, where Congress codified the very terms of art found in prior decisional law, the canon makes apparent that Congress intended to incorporate this longstanding deference to state vacatur and expungement decisions in proceedings under the Act.

As discussed above, for decades BIA precedent deferred to state law regarding whether a disposition constitutes a conviction and generally held that vacated or expunged convictions were not convictions for immigration purposes. *See supra* Section I.A. (discussing pre-IIRIRA agency case law). In codifying the definition of “conviction” in the INA, Congress adopted almost verbatim the terms of art and language in the *Matter of Ozkok* definition with a carefully circumscribed exception for certain withheld adjudications that are not material to expunged or vacated prior convictions. *See supra* Section I.A. Congress adopted the agency’s “formal judgment of guilt” conviction category without alteration. INA § 101(a)(48)(A). As the legislative history confirms, the codification of the “conviction” definition was meant only to address certain withheld adjudications, not formal judgments of guilt, and not judgments that have been expunged or vacated. *See supra* Section III. (reviewing relevant legislative history). It is apparent that Congress intended to preserve the pre-existing meaning of “conviction,” which generally deferred to states’ own categorization of their criminal dispositions, including for vacated and expunged convictions.

The prior construction canon requires that statutes be interpreted to be consistent with prior jurisprudence when—as here—Congress adopts the words of prior court or agency precedent in a statute that governs the same subject matter, and “in the absence of specific direction to the contrary.” *Williams*, 529 U.S. at 434. The majority opinion in *Roldan* and the decision in *Pickering* fail to consider and account for prior agency and judicial construction of the conviction term, and wrongly misidentify congressional intent. In addition to the statute’s plain text and legislative history, the prior construction canon makes even clearer that Congress intended to continue to make immigration consequences dependent on state disposition of criminal charges and to defer to the States on questions of convictions. *Roldan* and *Pickering* therefore must be overruled.

### Federalism Canon: By legislating immigration consequences to depend on state convictions, Congress intended for federal immigration law to defer to state determinations regarding convictions.

The federalism canon requires that statutes be interpreted with the assumption that Congress did not mean to disturb the traditional constitutional balance between federal and state powers. *See Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (“[W]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.”). State criminal convictions fall squarely within the States’ traditional police powers to regulate their own criminal laws. *See, e.g.*, *Heath v. Alabama*, 474 U.S. 82, 89 (1985). In the INA, there is no statement—let alone an “unmistakably clear” statement—of intent from Congress to intrude on the States’ police powers to determine whether a conviction continues to exist or has been eliminated. *See* *Gregory v. Ashcroft*, 501 U.S. 452, 460–61 (1991) (discussing “plain statement” rule). To the contrary, Congress has chosen to make immigration consequences dependent on how state courts adjudicate a criminal case. Correctly understood, the statutory term does not include convictions that a state has decided to expunge or vacate.

#### Vacatur and expungement of a state conviction fall within a state’s constitutional police powers to regulate their own criminal laws.

The federalism canon is rooted in the Constitution, which provides that powers that are not specifically delegated to the federal government are reserved for the States. U.S. Const. amend. X, § 8. The Constitution’s reservation of a generalized police power to the States “is deeply ingrained in our constitutional history.” *United States v. Morrison*, 529 U.S. 598, 618 n.8 (2000). Consistent with these federalism principles, the States are sovereign with respect to defining and enforcing their own criminal laws, including laws defining convictions and sentencing. *See id.* at 618 (describing regulation of crime as a prime example of state police power denied to the federal government and reposed in the States); *United States v. Lopez*, 514 U.S. 549, 561 n.3 (1995) (“Under our federal system, the States possess primary authority for defining and enforcing the criminal law.” (internal quotation marks omitted)); *Heath*, 474 U.S. at 89 (explaining that “each State’s power to prosecute is derived from its own ‘inherent sovereignty, not the Federal Government’”).

#### In the INA, Congress has not stated an intention to interfere with the States’ constitutional police powers over their criminal laws.

“[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance.” *United States v. Bass*, 404 U.S. 336, 349 (1971). With respect to the INA conviction definition, Congress did not state any intent to disturb the States’ authority with respect to defining and enforcing their criminal laws. To the contrary, by requiring a criminal court’s “conviction,” Congress continued to make the immigration consequences of a criminal case dependent on the state’s adjudication of the criminal case. *See* INA § 101(a)(48) (requiring adjudication by a state court judge or jury for a state disposition to qualify as a “conviction”). Accordingly, the Board must recognize that § 101(a)(48)(A) defers to the States’ traditional police powers over convictions.

The text of § 101(a)(48)(A) does not state any intent to include convictions that have been vacated or expunged. *See* *supra* Section II. The section’s legislative history also does not state or indicate any intent to include vacated or expunged convictions within the conviction definition. *See supra* Section III. This silence falls far short of the “clear” statement of intent that is required to intrude on the traditional balance between federal and state powers in the realm of state criminal laws.

By construing the immigration laws to include in the “conviction” definition dispositions that have been expunged and vacated, *Roldan* and *Pickering* have disturbed fundamental state sovereignty over dispositions of charged criminal conduct, without required statutory authority.

### Criminal Rule of Lenity: Any ambiguity in the INA “conviction” definition must be resolved in favor of the defendant, to exclude vacated and expunged convictions.

As discussed above, the statutory text and relevant legislative history unambiguously confirm that the “conviction” definition does not include convictions that have been eliminated through post-conviction action such as vacatur or expungement. *See supra* Sections II, III, IV. In the event of ambiguity on this point, such ambiguities must be resolved in favor of noncitizens under the criminal rule of lenity, to exclude vacated or expunged convictions. *Cf. Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8 (2004) (noting that the rule of lenity applies to a criminal statute that has both criminal and noncriminal application—including in the deportation context—and requires the Court “to interpret any ambiguity in the statute in petitioner’s favor”). The rule of lenity provides that “where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant.” *Bass*, 404 U.S. at 347–48 (“[W]hen choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.” (internal quotation marks omitted)).

The rule of lenity applies to interpretation of the INA conviction definition because the INA attaches criminal penalties to prior criminal convictions, *see, e.g.*, 8 U.S.C. §§ 1324c(e)(2), 1326(b), 1327, and the definition of “conviction” applies to the entire Act, *see* INA § 101, 8 U.S.C. § 1101(a). *See, e.g.*, *United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 518 n.10 (1992) (applying rule of lenity to a tax statute with both criminal and civil application, noting the statute must have only one meaning); *Esquivel-Quintana v. Lynch*, 810 F.3d 1019, 1028 (6th Cir. 2016) (Sutton, J., dissenting in part and concurring in part) (“Time, time, and time again, the Court has confirmed that the one-interpretation rule means that the criminal-law construction of the statute (with the rule of lenity) prevails over the civil-law construction of it[.]”), *rev’d on other grounds* *sub nom. Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017).

Any ambiguities in the “conviction” definition should be resolved with the narrowest reading, which does not include those prior convictions that have been eliminated. *Cf. Crandon v. United States*, 494 U.S. 152, 158 (1990) (describing rule of lenity as a “time-honored” rule of statutory interpretation).

### Presumption Against Deportation: Any ambiguities in the statutory “conviction” definition must be resolved through the narrowest reading, to exclude vacated and expunged convictions.

As with the criminal rule of lenity, ambiguities in the Act are resolved in favor of noncitizens under the presumption against deportation (sometimes referred to as the immigration rule of lenity). The Supreme Court requires this principle be applied to resolve any remaining ambiguity in the text of the INA. *See, e.g.*, *Cardoza-Fonseca*, 480 U.S. at 449 (describing this presumption as “the longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the [noncitizen]”).

The Supreme Court and federal courts apply this presumption (or immigration rule of lenity) when analyzing removability and bars to relief from removal based on convictions. *See, e.g*., *St. Cyr*, 533 U.S. at 320 (applying “the longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the [noncitizen]” to interpretation of a criminal conviction bar to relief eligibility under former INA section 212(c)); *Mendez v. Barr*, 960 F.3d 80, 87 (2d Cir. 2020) (applying the immigration rule of lenity in an analysis of what constitutes a “crime involving moral turpitude” under the INA); *Dalton v. Ashcroft*, 257 F.3d 200, 208 (2d Cir. 2001) (“‘[D]eportation is a drastic measure and at times the equivalent of banishment or exile . . . . [W]e will not assume that Congress meant to trench on [a noncitizen’s] freedom beyond that which is required by the narrowest of several possible meanings of the words used.’” (quoting *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948))); *Lennon v. INS*, 527 F.2d 187, 193 (2d Cir. 1975) (“It is settled doctrine that deportation statutes must be construed in favor of the [noncitizen].”).

**CONCLUSION**

A prior conviction that has been vacated or expunged no longer fits within the INA’s definition of conviction and therefore may not be regarded as a conviction for purposes of immigration law. To the extent that *Roldan* and *Pickering* violate this principle, they must be overruled, and vacaturs and expungements must be recognized by federal immigration law.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Respectfully submitted,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Sign name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Print name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(A#)

**CERTIFICATE OF SERVICE**

On \_\_\_\_\_\_\_\_\_\_\_\_\_(Date) I sent the foregoing memorandum of law to U.S. Immigration and Customs Enforcement, Office of the Chief Counsel, at the following address:

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1. Black’s defined “formal” to mean, “Relating to matters of form,” *id.* at 652, and “guilt” to mean, “In criminal law, that quality which imparts criminality to a motive or act, and renders the person amenable to punishment by the law.” *Id.* at 708. [↑](#footnote-ref-1)
2. The full Conference Report is attached as Appendix B. [↑](#footnote-ref-2)
3. The Supreme Court has applied traditional tools of statutory construction at *Chevron* step 1, before considering deference to an agency’s interpretation of a statute, to conclude that Congress’ intent is unambiguous and that a suggested interpretation is foreclosed. *See, e.g.*, *Chevron*, 467 U.S. at 843 n.9 (discussing use of “traditional tools of statutory construction” in Step 1); *St. Cyr*, 533 U.S. at 319 n.45 (applying presumption against retroactivity to find no ambiguity). [↑](#footnote-ref-3)