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THE FOURTH CIRCUIT BREAKS WITH PICKERING: WHY YANEZ PIEDRA V. BLANCHE MATTERS FOR VACATED CONVICTIONS

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For more than two decades, the Board of Immigration Appeals has treated some vacated criminal convictions as continuing to exist for immigration purposes. Under *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), the critical question was why the criminal court vacated the conviction. A vacatur based on a substantive or procedural defect eliminated the conviction for immigration purposes, while a vacatur granted for rehabilitative reasons or to avoid immigration consequences generally did not.

In *Yanez Piedra v. Blanche*, No. 25-1258 (4th Cir. Aug. 24, 2026), the Fourth Circuit declined to apply that framework to the inadmissibility provision in INA § 212(a)(2)(A)(i). Invoking *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) to exercise independent judgement, the court held that a person whose conviction has been vacated and whose charge has been dismissed is no longer an "alien convicted of" that offense. The decision is significant not only for noncitizens seeking to eliminate the immigration-related consequences of criminal convictions, but also as an early illustration of how the end of *Chevron* deference under *Loper Bright* may unsettle longstanding BIA doctrine.

Lizbeyde Yanez Piedra, a native and citizen of Mexico, came to the United States as a child and subsequently became a lawful permanent resident. She was convicted of two counts of common-law forgery in North Carolina, and, in a separate case, possession of marijuana. After returning to the U.S. from a trip to Mexico, Yanez Piedra was placed in removal proceedings as an applicant for admission. She conceded inadmissibility as an "alien convicted of" a controlled-substance offense and a crime involving moral turpitude, and sought an INA 212(h). The immigration judge (IJ) denied the waiver application on several

grounds, including that she had not established that the marijuana offense involved 30 grams or less, had not demonstrated the requisite hardship, and did not merit relief as a matter of discretion. The IJ nevertheless granted voluntary departure.

While her administrative appeal was pending, a North Carolina court vacated the marijuana conviction, and the state dismissed the charge. Yanez Piedra asked the BIA to remand her case in light of that development. Instead, the BIA applied *Pickering*. Because it concluded that the vacatur was not based on a substantive or procedural defect in the underlying criminal proceeding, the BIA continued to treat the marijuana conviction as operative for immigration purposes and found Yanez Piedra ineligible for the 212(h) waiver.

Yanez Piedra appealed to the Fourth Circuit, which began with an analysis of INA § 212(a)(2)(A)(i), a provision that makes inadmissible "any alien convicted of" a crime involving moral turpitude or a controlled-substance offense. In the court's view, that language pertains to the noncitizen's present legal status, not simply to whether a conviction existed at some point in the past.

Once the state court vacated Yanez Piedra's marijuana conviction and the state dismissed the charge, she no longer stood "convicted of" that offense. The court also emphasized the ordinary legal consequence of vacatur: a vacated judgment no longer has prospective legal effect.

The government relied on INA § 101(a)(48)(A), which defines "conviction" to include a formal judgment of guilt and, in certain withheld-adjudication cases, a plea or finding of guilt coupled with punishment or restraint. However, that definition only identifies the circumstances that establish a conviction; it does not provide that a judgment remains a conviction after a court has vacated it, nor does it direct immigration adjudicators to examine the reason or motivation for a state-court vacatur. The court therefore found no textual basis for *Pickering*'s distinction between defect-based vacaturs and vacaturs granted for rehabilitative or immigration-related reasons. The relevant question in the Fourth Circuit's view was whether the person remained "convicted of" the offense, not why the state court had eliminated the conviction.

The opinion is unusually direct about the significance of the Supreme Court's repudiation of *Chevron*. The Fourth Circuit characterized the case as one in which a fresh judicial interpretation produces a "sharp break with past practice." Before *Loper Bright*, courts often asked whether an agency's statutory

interpretation was reasonable. After *Loper Bright*, the question is which interpretation is best. An agency's expertise and considered judgment may still be persuasive, but an agency cannot prevail merely because the statute is ambiguous and its interpretation is reasonable. Applying that independent standard, the Fourth Circuit concluded that *Pickering* reflected a policy judgment rather than the best reading of the statutory language Congress enacted. Nothing in § 212(a)(2)(A)(i), the court reasoned, instructs adjudicators to distinguish among vacaturs based on the reason they were granted.

The government also relied on *Phan v. Holder*, 667 F.3d 448 (4th Cir. 2012), in which the Fourth Circuit had applied *Pickering* in the naturalization context. *Phan* concerned INA § 316(a), which requires an applicant for naturalization to establish good moral character, together with INA § 101(f)(8), which bars a finding of good moral character for a person convicted of an aggravated felony, and the general definition of "conviction" in INA § 101(a)(48)(A). USCIS had concluded that Phan's cocaine-distribution conviction remained an aggravated felony even though it had been set aside for rehabilitative purposes under the District of Columbia Youth Rehabilitation Act. *Yanez Piedra* presented a different statutory question. It directly concerned INA § 212(a)(2)(A)(i), which makes inadmissible "any alien convicted of" specified offenses. The panel emphasized the significance of that present-tense formulation. Unlike the provisions at issue in *Phan*, § 212(a)(2)(A)(i) required the court to determine whether the individual presently stood "convicted of" the relevant offense.

Loper Bright also cautioned that overruling *Chevron* does not, by itself, unsettle prior decisions upholding particular agency actions. Those decisions remain subject to ordinary principles of statutory stare decisis, and reliance on *Chevron* alone is not a "special justification" for overruling them. The Fourth Circuit, though, concluded that it did not need to decide how that principle would apply to a prior decision that actually resolved the same statutory question. *Phan* did not do so. The parties in *Phan* had assumed that *Pickering* supplied the governing framework, and the court had not considered—much less decided—whether the distinct phrase "any alien convicted of" in INA § 212(a)(2)(A)(i) permitted the BIA's reason-for-vacatur distinction. Because an issue that merely "lurks" in the record is not resolved by precedent, *Phan* created no statutory holding to which stare decisis could attach on the question presented in *Yanez Piedra*.

The court also rejected the government's argument that Yanez Piedra had

failed to exhaust her challenge to *Pickering* under INA § 242(d)(1). The BIA was bound by *Pickering*, and the Attorney General had endorsed the same framework. Although the BIA could theoretically refer a case to the Attorney General, such referral was discretionary. It was not an administrative remedy available to the petitioner as of right .INA 242(d)(1), the court reasoned, does not require a noncitizen to pursue a discretionary referral mechanism before obtaining judicial review. Requiring such a step would effectively turn exhaustion into a demand that a petitioner pursue a discretionary and potentially futile procedural maneuver.

Within the Fourth Circuit, *Yanez Piedra* gives practitioners a significant argument that a fully vacated conviction cannot support inadmissibility under INA § 212(a)(2)(A)(i), regardless of why the state court granted the vacatur. That can be particularly consequential where state post-conviction relief is available but the record does not establish a constitutional or procedural defect of the type contemplated by *Pickering*. A noncitizen may be able to obtain a state-court vacatur and dismissal without being able to satisfy *Pickering*'s reason-for-vacatur test. *Yanez Piedra* suggests that, at least under § 212(a)(2)(A)(i) in the Fourth Circuit, that distinction is beside the point.

The decision also offers a broader litigation strategy in the post-*Loper Bright* era: identify the precise statutory language at issue, determine whether existing circuit precedent actually construed that language, and insist on independent judicial interpretation rather than reflexive reliance on pre-*Loper Bright* agency doctrine. At the same time, the holding should not be read more broadly than the opinion permits. The court interpreted the inadmissibility language in INA § 212(a)(2)(A)(i); it did not purport to resolve every INA provision that turns on a conviction. Other provisions may use different language or implicate circuit precedent that cannot be distinguished as *Phan* was here.

The government may also argue outside the Fourth Circuit that existing precedent adopting *Pickering* remains binding unless and until reconsidered by the relevant court sitting en banc or by the Supreme Court. And a state-court order must actually vacate the conviction. A pardon, expungement, deferred disposition, etc. may not suffice.

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