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UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
WASHINGTON, D.C.

In the Matters of

Michael Vernon Thomas,  
Joseph Lloyd Thompson,

Respondents.

*A- Redacted*

In Removal Proceedings

**REQUEST TO APPEAR AS AMICUS CURIAE AND  
BRIEF FOR AMICUS CURIAE  
IMMIGRATION REFORM LAW INSTITUTE**

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## **REQUEST TO APPEAR AS AMICUS CURIAE**

The Immigration Reform Law Institute respectfully requests leave to file this amicus curiae brief at the invitation of the Attorney General. *See* Invitation To Submit Briefs, 27 I. & N. Dec. 556 (A.G. 2019).

## **INTEREST OF AMICUS CURIAE**

The Immigration Reform Law Institute (“IRLI”) is a nonprofit 501(c)(3) public interest law firm incorporated in the District of Columbia. IRLI is dedicated to litigating immigration-related cases on behalf of United States citizens, as well as organizations and communities seeking to control illegal immigration and reduce lawful immigration to sustainable levels. IRLI has litigated or filed amicus curiae briefs in many immigration-related cases before federal courts and administrative bodies, including: *Trump v. Hawaii*, 138 S. Ct. 2392 (2018); *United States v. Texas*, 136 S. Ct. 2271 (2016); *Arizona Dream Act Coal. v. Brewer*, 818 F.3d 101 (9th Cir. 2016); *Washington All. of Tech. Workers v. U.S. Dep’t of Homeland Sec.*, 74 F. Supp. 3d 247 (D.D.C. 2014); *Save Jobs USA v. U.S. Dep’t of Homeland Sec.*, No. 16-5287 (D.C. Cir., filed Sept. 28, 2016); *Matter of Silva-Trevino*, 26 I. & N. Dec. 826 (B.I.A. 2016); and *Matter of C-T-L-*, 25 I. & N. Dec. 341 (B.I.A. 2010).

## **ISSUES AND FACTS PRESENTED**

In these cases, the Attorney General has invited “interested amici to submit briefs that address whether, and under what circumstances, judicial alteration of a criminal conviction or sentence—whether labeled ‘vacatur,’ ‘modification,’ ‘clarification,’ or some other term—should

be taken into consideration in determining the immigration consequences of the conviction.” 27 I. & N. Dec. 556 (A.G. 2019).

In the Immigration and Nationality Act (“INA”), Congress instructs the Attorney General to remove certain convicted criminal aliens from the United States. 8 U.S.C. § 1227(a). For example, an alien convicted of “a crime of violence . . . for which the term of imprisonment [is] at least one year” is deportable. 8 U.S.C. § 1101(a)(43)(F). Sometimes, however, a judge orders a judicial alteration to change the record of a criminal alien’s conviction or sentence. Judges might do this expressly to halt a deportable alien’s federal removal proceedings, but the INA does not include a provision permitting this. *See United States v. Maung*, 320 F.3d 1305, 1309 (11th Cir. 2003) (“Just as courts cannot directly alter the result of the decision that Congress has made about the immigration consequences of an aggravated felony, they also cannot indirectly change that result by departing downward at sentencing in order to take a case out of the definition of aggravated felony. Yet, that is precisely what the district court in this case did.”). Congress has not authorized the Attorney General to take such judicial alterations into consideration when determining the immigration consequences for a deportable alien.

The instant cases illustrate the problem of judicial alteration. In *Matter of Thomas*, the BIA declined to take into consideration a judicial alteration described as a “clarifying” order. *Thomas*, \_\_\_ B.I.A. at 2 (Aug. 2018). But in *Matter of Thompson*, the BIA took into consideration a judicial alteration described as a “*nunc pro tunc*” order. *Thompson*, \_\_\_ B.I.A. at 2 (Mar. 2019). Yet the aliens in both cases committed crimes rendering them deportable from the United States.

Mr. Thomas committed Battery-Family Violence against his stepson and was sentenced “to be confined for a term of 12 months . . . provided, that the confinement specified shall be probated.” *Michael Vernon Thomas*, Removal Proceedings at 2-3 (June 2017). Mr. Thomas

completed his sentence. *Id.* at 2. Years later, an immigration judge ordered Mr. Thomas to be removed from the United States. *Id.* But Mr. Thomas appealed to the BIA, presenting a newly-drafted judicial alteration: a consent order from a state judge saying that Mr. Thomas’s years-old conviction “*is hereby clarified* to reflect that Defendant was sentenced to a cumulative term of 11 months and 28 days of probation.” *Id.* (emphasis added). This judicial alteration—an order “clarifying” the sentence—purported to place the term of Mr. Thomas’s completed sentence beneath the 12-month threshold of deportability under the INA. But the BIA and the immigration judge “declined to give any effect to the clarifying order.” *Thomas*, \_\_\_ B.I.A. at 2.

Mr. Thompson also committed a violent crime of domestic battery, namely, “Family Violence Battery.” *Joseph Lloyd Thompson*, Removal Proceedings at 3 (Sep. 2018). Mr. Thompson was sentenced to confinement for a period of 12 months, which he was allowed to serve on probation. *Thompson*, \_\_\_ B.I.A. at 2 (Mar. 2019). He completed his sentence. *Id.* Years later, Mr. Thompson was placed in federal removal proceedings. *Joseph Lloyd Thompson*, Removal Proceedings at 2. During these removal proceedings, Mr. Thompson filed a motion in state court for a judicial alteration of his years-old original sentence. *Id.* at 3. The state court obligingly issued an order that Mr. Thompson’s “sentence be modified [*nunc pro tunc*] to a total period of 11 months and 27 days.” *Thompson*, \_\_\_ B.I.A. at 2. This judicial alteration—an order *nunc pro tunc*—purported to place the term of Mr. Thompson’s imprisonment beneath the 12-month threshold of deportability under the INA. *Id.* The immigration judge disregarded this order, but the BIA reversed the immigration judge and held that, because the judicial alteration was labeled as a *nunc pro tunc* sentencing modification, it must be taken into consideration to determine the immigration consequences of Mr. Thompson’s criminal conviction. *Id.* (“Our binding decision in *Matter of*

*Cota-Vargas*, 23 I. & N. Dec. 849 (B.I.A. 2005), requires that we give full effect to nunc pro tunc sentencing modifications irrespective of the reasons for the modification.”).

### **SUMMARY OF THE ARGUMENT**

Judicial alteration of a criminal conviction or sentence—whether labeled “vacatur,” “modification,” “clarification,” or some other term—should not be taken into consideration in determining the immigration consequences of a conviction.

Congress already determined the immigration consequence for criminal convictions: deportation. Accordingly, Congress instructs the Attorney General to remove certain convicted criminal aliens from the United States. Congress does not authorize the Attorney General to take judicial alterations into consideration in such removal proceedings. In fact, Congress deliberately excluded such consideration in the INA. Therefore, the Attorney General should not take judicial alterations into consideration, and should instead enforce the INA as written.

Prerogative over deportation decisions is vested exclusively in the political branches of government. Under the U.S. Constitution, Congress determines which aliens are deportable, and the President executes this determination. The consideration of judicial alterations in removal proceedings—especially without authorization from Congress or the President—contradicts this separation of powers. It also undermines federalism by injecting myriad state standards into a purportedly uniform federal system. For this reason, also, the Attorney General should exclude judicial alterations from consideration when exercising his constitutional duty to enforce the INA.

## ARGUMENT

### **I. Judicial alteration of criminal convictions or sentences should not be taken into consideration when determining immigration consequences because doing so violates the Immigration and Nationality Act.**

Under the U.S. Constitution, Congress possesses the power “to establish an uniform Rule of Naturalization.” U.S. CONST. art. I, § 8, cl. 4. In the INA, Congress determined that deportation is the immigration consequence for certain criminal convictions and sentences. “Congress has made a legislative choice that . . . every alien who commits an aggravated felony must be removed from the United States.” *United States v. Aleskerova*, 300 F.3d 286, 301 (2d Cir. 2002). But Congress did not authorize the use of judicial alterations to block this consequence. “Courts do not have the authority to cast aside this legislative decision. . . . Just as a district court is not free to undermine a statutory prohibition by directly contravening its command, it may not do so indirectly by fashioning a sentence specifically to ensure that the statute does not apply.” *Id.* To the contrary, Congress drafted the INA to exclude judicial orders from the Attorney General’s consideration. So, irrespective of judicial alterations, removal is the immigration consequence for congressionally-defined convictions and sentences.

Congress spelled out detailed, specific instructions to the Attorney General about the immigration consequences of a criminal conviction or sentence. First, Congress determined that certain convicted criminals shall be deportable from the United States. “Any alien . . . shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens.” 8 U.S.C. § 1227(a). Second, Congress defined which circumstances qualify as a “conviction” and “sentence” under the INA. At a minimum, “the term ‘conviction’ means . . . a formal judgment of guilt of the alien entered by a court.” 8 U.S.C. § 1101(a)(48)(A).

Yet the INA’s definition of “conviction” encompasses more than just this most basic minimum circumstance. “The most remarkable thing about how the INA defines ‘conviction’ is that it defines it at all. ‘Conviction’ is a commonly used word among lawyers and laymen. . . . By adding this definition, Congress must have intended it to displace any intuitive, popular, or commonsense understanding.” *Renteria-Gonzalez v. INS*, 310 F.3d 825, 833-34 (5th Cir. 2002). Thus, a “conviction” also exists under the INA even “if adjudication of guilt has been withheld.” 8 U.S.C. § 1101(a)(48)(A). A conviction exists merely when “a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt.” 8 U.S.C. § 1101(a)(48)(A)(i). All a conviction requires in these circumstances is that “the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.” 8 U.S.C. § 1101(a)(48)(A)(ii).

In short, a “conviction” under the INA exists when there has been a factual finding of criminal misconduct and a restraint imposed upon an alien’s liberty. “When those criteria are met, the government may remove the alien.” *Ramos v. Gonzales*, 414 F.3d 800, 805 (7th Cir. 2005). Even when a judicial alteration—such as a vacatur or expungement—completely eliminates “a formal judgment of guilt,” there still exists a conviction under the INA because the alien has in fact been “ordered some form of punishment.” 8 U.S.C. § 1101(a)(48)(A). “Every court that has considered the subject believes that [expungements] under state law do not negate a ‘conviction’ for purposes of immigration law.” *Ramos*, 414 F.3d at 805-06 (quoting *Gill v. Ashcroft*, 335 F.3d 574, 577 (7th Cir. 2003)). A conviction that is subsequently vacated or reclassified as something-other-than-a-conviction still meets the INA’s definition of the term: the existence of a “conviction” hinges on whether a “restraint on the alien’s liberty” was imposed, not on the form or status of the judicial order that caused (or later ameliorated) this imposition. 8 U.S.C. § 1101(a)(48)(A)(ii).

Congress also defines sentences—not just convictions—broadly under the INA. A sentence is a “sentence” even if a criminal alien does not actually serve time in prison, or even if the sentence is suspended altogether. “Any reference to a term of imprisonment or a sentence . . . is deemed to include the period of incarceration or confinement ordered by a court of law *regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.*” 8 U.S.C. § 1101(a)(48)(B) (emphasis added). Thus, even when a judicial alteration formally suspends an alien’s sentence—regardless of whether he has actually been imprisoned for any period of time—his circumstance is unambiguously still a “sentence” under the INA. But “if Congress had meant to restrict the applicability of the Act to only those aliens who are convicted and required to serve a sentence, it could have said so very easily.” *Wood v. Hoy*, 266 F.2d 825, 827 (9th Cir. 1959). Judicial alteration is therefore inconsequential: no matter the exact form of a judicial alteration, a criminal alien’s circumstances will satisfy Congress’ definition of convictions and sentences under the INA.

Congress intentionally drafted these definitions in order to prevent judicial alterations from determining immigration consequences. “Aliens who have clearly been guilty of criminal behavior and whom Congress intended to be considered ‘convicted’ have escaped the immigration consequences normally attendant upon a conviction” simply because “there exist in the various States a myriad of provisions for ameliorating the effects of a conviction.” *Uritsky v. Gonzales*, 399 F.3d 728, 733 (6th Cir. 2005) (quoting H.R. CONF. REP. 104-828, at 224 (1996)). To solve this problem, “Congress amended the INA significantly with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,” which “deliberately broadens the scope of the definition of ‘conviction.’” *Id.* See also *Saleh v. Gonzales*, 495 F.3d 17, 23 (2d Cir. 2007) (“Over the last 20 years, there has been a consistent broadening of the meaning of ‘conviction’ in the

INA.”); *Garcia-Gonzales v. INS*, 344 F.2d 804, 807 (9th Cir. 1965) (“Congress intended to do its own defining (of ‘conviction’) rather than leave the matter to variable state statutes.”) (quoting *Arrellano-Flores v. Hoy*, 262 F.2d 667, 668 (9th Cir. 1958)). Continued consideration of judicial alterations contradicts Congress’s express language and intent under the INA.

Still, even before Congress defined “convictions” and “sentences” specifically to withstand judicial alteration, Congress had already barred judges from determining immigration consequences more generally through their judicial orders. Decades ago, Congress allowed judges to order judicial recommendations against deportation (“JRAD”) within 30 days of imposing a sentence upon a criminal alien. STEPHEN H. LEGOMSKY & CRISTINA M. RODRIGUEZ, IMMIGRATION AND REFUGEE LAW AND POLICY 572 (5th ed. 2009). The INS deferred to JRAD orders and abstained from deporting such convicted aliens. “Authorizing judges to issue binding JRADs thus shifts some measure of power from the immigration officials to the courts.” *Id.* at 573. But Congress eliminated this practice with the Immigration Act of 1990. *Id.* Today, the INA contains no such device for judicial amelioration of the immigration consequences of a conviction or sentence. Taking judicial alterations into consideration in determining immigration consequences is tantamount to reviving a mechanism that Congress deliberately eliminated.

Congress even eliminated courts’ jurisdiction to review orders of removal against criminal aliens. “No court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense.” 8 U.S.C. § 1252(a)(2)(C). *E.g.*, *Barakat v. Holder*, 621 F.3d 398, 403 (6th Cir. 2010) (“This court therefore lacks jurisdiction to consider the final order of removal against Barakat . . . except to the extent that he seeks ‘review of constitutional claims or questions of law.’”). Thus, a judicial order—especially one conjured up during removal proceedings—ought to have no bearing upon the outcome of a removal

proceeding. Taking these judicial alterations into consideration puts judges back into a process from which Congress deliberately decided to exclude them.

Every instance of taking judicial alterations into consideration for determining immigration consequences violates the INA. Even when it appears unfair or illogical to deport an alien—such as when his conviction has been expunged or vacated—the INA does not empower judicial alterations to prevent an alien’s removal. *Brownrigg v. United States INS*, 356 F.2d 877, 878 (9th Cir. 1966) (“There was no error in admitting evidence of appellant’s conviction despite ‘expungement;’ no matter how illogical appellant thinks it may be.”); *Planes v. Holder*, 652 F.3d 991, 995-96 (9th Cir. 2011) (“Planes also urges that a plain-language interpretation . . . would lead to unfair results because an alien could be ‘convicted’ and removed from the United States even when an appeal as of right was pending. . . . This argument also fails. Regardless of our view on the wisdom or efficacy of Congress’s policy choices, we are not free to read in additional elements where the legislature has declined to include them.”). Wisely or not, the INA unmistakably makes a conviction depend on historical facts. Whatever the power of judges, they cannot alter the past.

Instead of empowering judges, the INA provides a different mechanism of ameliorization: executive pardon. “If anyone is to have this kind of discretion in the enforcement of the immigration laws, it should be the executive branch, which ‘must exercise especially sensitive political functions that implicate foreign relations.’” *Renteria-Gonzalez*, 322 F.3d at 814 (quoting *INS v. Abudu*, 485 U.S. 94, 110 (1988)). Congress determined that the deportability of criminal aliens “shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.” 8 U.S.C. § 1227(a)(2)(A)(vi). Congress did not extend this power to every one of the thousands of judges

presiding over criminal courts across the country. Instead, this power is reserved to the offices of the 50 governors of the United States, and to the President. “A purely equitable order to vacate a conviction also encroaches on the President’s power and discretion to pardon. . . . That [Congress] included no exception for judicially vacated convictions likely indicates that it merely wanted to restrict to only the most directly accountable officers the power to negate a conviction and thereby block deportation.” *Renteria-Gonzalez*, 322 F.3d at 812-13.

Besides executive pardons, the INA also provides many other provisions through which the Attorney General may waive the immigration consequences for a deportable alien. For example, a deportable alien—for whom removal from the United States is the presumptive immigration consequence—may seek a waiver from removal for reasons such as: extreme hardship, 8 U.S.C. § 1227(a)(1)(D)(ii); family reunification, 8 U.S.C. § 1227(a)(1)(E)(ii); or good-faith mistake, 8 U.S.C. § 1227(a)(3)(D)(ii). “[T]he INA proves that Congress knew how to write exceptions for certain kinds of post-conviction relief.” *Renteria-Gonzalez*, 322 F.3d at 813. The fact that Congress did not create an exception for judicial alterations is telling against this background.

The INA’s provisions regarding criminal aliens are nothing unusual in the context of the statute as a whole. Indeed, an alien need not be convicted of a crime at all in order to be deportable. “Removal is not a criminal punishment.” *Yasay v. Holder*, 368 F. App’x 727, 730 (9th Cir. 2010) (unpublished) (citing *Briseno v. INS*, 192 F.3d 1320, 1323 (9th Cir. 1999)); *see also Reno v. Am.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 491 (1999) (“While the consequences of deportation may assuredly be grave, they are not imposed as a punishment.”).

Rather, deportation depends upon a finding by the Attorney General that an alien falls under any deportability category described in the INA. Some of these categories are based on

conduct that is not inherently criminal, or even would be protected under the First Amendment. For example, an alien is deportable if he: overstays his non-immigrant visa, 8 U.S.C. § 1227(a)(1)(C); fails to report a change-of-address, 8 U.S.C. § 1227 (a)(3)(A); succumbs to drug addiction, 8 U.S.C. § 1227 (a)(2)(B)(ii); practices polygamy, 8 U.S.C. § 1227 (a)(10)(A); becomes a public charge, 8 U.S.C. § 1227(a)(5); misrepresents himself as a U.S. citizen, 8 U.S.C. § 1227 (a)(3)(D); or has been a member of a Communist political party, 8 U.S.C. § 1182(a)(3)(D)(i), *Langhammer v. Hamilton*, 295 F.2d 642, 644 (1st Cir. 1961) (finding an alien deportable because “at the time of entry he was a member of one of the excludable classes of aliens, to wit, an alien who had been a member of the Communist Party of a foreign state.”).

Similarly, an alien is deportable if, at the time of his admission to the United States, or during subsequent adjustment of his immigration status, 8 U.S.C. § 1227(a)(1)(A), he: carries a communicable disease, 8 U.S.C. § 1182(a)(1)(A)(i); fails to get vaccinated, 8 U.S.C. § 1182(a)(1)(A)(ii); suffers a mental disorder, 8 U.S.C. § 1182(a)(1)(A)(iii); or has a suspected drug trafficker or human trafficker in his immediate family, 8 U.S.C. § 1182(a)(2)(C)(ii), 8 U.S.C. § 1182(a)(2)(H)(ii). Some deportability categories appear to cover criminal behavior but do not necessarily require an actual conviction. For example, an alien is deportable if he has merely been suspected of: money laundering, 8 U.S.C. § 1182(a)(2)(I); drug trafficking, 8 U.S.C. § 1182(a)(2)(C); human trafficking, 8 U.S.C. § 1182(a)(2)(H); espionage, 8 U.S.C. § 1182(a)(3)(A)(i); soliciting membership in a terrorist organization, 8 U.S.C. § 1182(a)(3)(B)(iv)(V); or if he: participated in the commission of severe violations of religious freedom, 8 U.S.C. § 1227 (a)(4)(E); engages in prostitution, 8 U.S.C. § 1182(a)(2)(D); or even is *immune from criminal prosecution* for his crimes, 8 U.S.C. § 1182(a)(2)(E). It is not incongruous

under the INA that an alien who was actually convicted of certain crimes is deportable, too, even if his conviction was judicially altered later.

**II. Judicial alteration of criminal convictions or sentences should not be taken into consideration when determining immigration consequences because doing so violates separation of powers and federalism under the U.S. Constitution.**

Under the U.S. Constitution, only Congress and the President may determine immigration consequences. “For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government.” *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). “To deny or qualify the Government's power of deportation . . . should not be initiated by judicial decision. . . Reform in this field must be entrusted to the branches of the Government in control of our international relations and treaty-making powers.” *Harisiades v. Shaughnessy*, 342 U.S. 580, 591 (1952). The Attorney General should not consider judicial alterations when interpreting and executing the INA. “In other words, the prerogative of setting the immigration policy of this country belongs to Congress, not sentencing judges.” *United States v. Maung*, 320 F.3d 1305, 1309 (11th Cir. 2003). Considering judicial alterations when determining immigration consequences diminishes the exclusive and complementary powers of Congress and the President, while involving courts in a fundamentally political process to which they are unsuited.

Accordingly, judges defer to the Attorney General in this area: not the other way around. “[F]ederal judges—who have no constituency—have a duty to respect legitimate policy choices made by those who do.” *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 866 (1984). “[We] have recognized that judicial deference to the Executive Branch is especially appropriate in the immigration context where officials ‘exercise especially sensitive political functions that implicate

questions of foreign relations.” *Uritsky v. Gonzales*, 399 F.3d 728, 731-32 (6th Cir. 2005) (quoting *INS v. Abudu*, 485 U.S. 94, 110 (1988)). “Deference to the agency’s interpretation is particularly apropos here because the immigration laws have ‘produced a complex and highly technical regulatory program’ entailing policy determinations that fall within the ambit of agency expertise.” *Akindemowo v. INS*, 61 F.3d 282, 284-85 (4th Cir. 1995) (quoting *Pauley v. Bethenergy Mines*, 501 U.S. 680, 697 (1991)). Executive deference to judicial alterations turns the proper relationship between judges and the Attorney General in this field upside-down.

The exclusion of judicial alterations from consideration also respects federalism: their consideration would inject 50 different state standards into federal policy, undermining uniformity in immigration law. “The manner in which [a state] chooses to deal with a party subsequent to his conviction is simply not of controlling importance insofar as a deportation proceeding—a function of federal, not state, law—is concerned.” *Gonzalez de Lara v. United States*, 439 F.2d 1316, 1318 (5th Cir. 1971). The consideration of judicial alterations is inappropriate because it “would make the deportability of the alien depend upon the vagaries of state law.” *Garcia-Gonzales v. INS*, 344 F.2d 804, 809 (9th Cir. 1965); *Will v. INS*, 447 F.2d 529, 531 (7th Cir. 1971) (“We must, however, agree with other circuits that Congress intended the term ‘convicted’ to be given meaning in light of federal law and policies rather than on the basis of ‘all the peculiarities of the laws of the various states.’”) (quoting *Garcia-Gonzales*, 344 F.2d at 808-09).

Instead, disregarding judicial alterations preserves the federal prerogative over federal immigration law, and the supremacy of federal law. “[I]n the interest of a uniform application of the federal statute, the meaning of the word ‘convicted’ is a federal question to be determined upon due consideration of the policy which . . . the Immigration and Nationality Act was designed to serve.” *Pino v. Nicolls*, 215 F.2d 237, 243 (1st Cir. 1954), *superseded by statute, as stated in Moosa*

v. *INS*, 171 F.3d 994, 1009 (5th Cir. 1999) (“Earlier judicial interpretations of the term ‘conviction’ in immigration laws were made without the clear definition enacted in 1996; finality is no longer a requirement.”). The meaning of “convicted” in the INA could hardly remain a federal question if the application of that word were subject to state judicial manipulation.

### CONCLUSION

For the foregoing reasons, the Attorney General should abolish the consideration of judicial alterations of criminal sentences or convictions when determining immigration consequences.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that, on July 12, 2019, I electronically submitted the foregoing *amicus curiae* brief to the United States Department of Justice via email to AGCertification@usdoj.gov, and, via first class mail, sent three copies to the Office of the Attorney General at the United States Department of Justice for distribution to the parties.

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