



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041*

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**DHS/ICE Office of Chief Counsel - LOS  
606 S. Olive Street, 8th Floor  
Los Angeles, CA 90014**

**Name: ANTUNEZ DELGADO, ANTONIO**

**A 096-342-377**

**Date of this notice: 4/29/2020**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Grant, Edward R.

Schwartz  
User team: Docket

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Falls Church, Virginia 22041

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File: A096-342-377 – Los Angeles, CA

Date: **APR 29 2020**

In re: Antonio ANTUNEZ DELGADO

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Andrew M. Knapp, Esquire

APPLICATION: Voluntary departure; remand

This case is before the Board pursuant to a June 27, 2019, unpublished decision of the United States Court of Appeals for the Ninth Circuit. In its decision, the court found that the respondent's 2000 conviction for possession of a controlled substance, his second such conviction, was not an aggravated felony, citing *Carachuri-Rosendo v. Holder*, 560 US. 563, 566 (2010). In light of this finding, the court remanded the case to the Board for consideration of the respondent's claim for voluntary departure.

Subsequently, the respondent filed with the Board a motion to remand to which the Department of Homeland Security (DHS) filed no response. In his motion, the respondent seeks to apply for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b), and adjustment of status under section 245(i) of the Act, 8 U.S.C. § 1255(i). He contends that he is now eligible for such relief in light of the court's decision regarding his 2000 conviction and the May, 25, 2018, California court order which vacated his 1998 conviction. The respondent attached to his motion the court order and other documentation related to his claims for relief.

The court order reflects that the court vacated the conviction because the conviction and plea (in 1997) were "legally invalid due to a prejudicial error damaging the defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty under California Penal Code section 1473.7(3)." Respondent's motion at Exh. 11. As the court order was vacated due to a substantive legal reason and not for rehabilitative purposes, the conviction is no longer valid for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003). Given this evidence and the absence of a response from the DHS, the motion to remand will be granted.

Accordingly, the following order will entered.

ORDER: The motion to remand is granted and the record is remanded to the Immigration Judge for further proceedings and the entry of a new decision.

  
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FOR THE BOARD