From: (b)(6);
To: OPLA HQ Personnel; OPLA Field Personnel
Subject: Broadcast Message: Implementing Matter of Thomas and Thompson, 27 I&N Dec. 674 (A.G. 2019)
Date: Tuesday, December 31, 2019 1:16:42 PM

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Disseminated on behalf of Ken Padilla and Adam Loiacono . . .

On October 25, 2019, the Attorney General (AG) issued a published decision in *Matter of Thomas and Thompson*, 27 I&N Dec. 674 (A.G. 2019), holding that state court orders modifying, clarifying, or otherwise altering a criminal alien's sentence will be given effect for immigration purposes *only* when the orders are based on a procedural or substantive defect in the underlying criminal proceeding. Such state court orders will have no effect for immigration purposes when based on reasons unrelated to the merits of the underlying criminal proceeding, such as rehabilitation or immigration hardship. In so ruling, the AG explicitly overruled the contrary Board of Immigration Appeals (BIA) precedents in *Matter of Cota-Vargas*, 23 I&N Dec. 849 (BIA 2005); *Matter of Song*, 23 I&N Dec. 173 (BIA 2001); and *Matter of Estrada*, 26 I&N Dec. 749 (BIA 2016). The AG also overruled *Matter of Adamiak*, 23 I&N Dec. 878, 880 (BIA 2006), and *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378, 1380 (BIA 2000), insofar as they suggest that the Full Faith and Credit Act applies to proceedings before immigration judges (IJs) and the BIA.

In short, the AG held that, "[g]oing forward, immigration courts should apply the test articulated in *Matter of Pickering*[, 23 I&N Dec. 621, 624 (BIA 2003), *rev'd on other grounds*, *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006)] in determining the immigration consequence of any change in a state sentence, no matter how the state court describes its order." *Matter of Thomas and Thompson*, 27 I&N Dec. at 675. The AG's opinion can be found here.

In light of the AG's opinion, OPLA attorneys should consider the practice pointers below. These practice pointers, as well as the above summary, can also be found here.

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