

JUN 09 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MANUEL JAIMES-MENDOZA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 06-72479

Agency No. A075-570-154

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Manuel Jaimes-Mendoza, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's removal order. We have jurisdiction under

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

8 U.S.C. § 1252. We grant the petition for review and remand for further proceedings.

The BIA concluded that Jaimes-Mendoza is inadmissible due to his conviction for being under the influence of cocaine pursuant to Cal. Health & Safety Code § 11550 despite his subsequent relief under Cal. Penal Code § 1203.4. The BIA, however, did not have the benefit of our intervening decision in *Rice v. Holder*, 597 F.3d 952, 957 (9th Cir. 2010), which held that an individual convicted of using or being under the influence of a controlled substance and who was subsequently granted relief under § 1203.4 is eligible for the same immigration treatment as individuals convicted of simple drug possession whose convictions are expunged under the Federal First Offender Act (FFOA). *See also Lujan-Armendariz v. INS*, 222 F.3d 728, 735 (9th Cir. 2000) (Under the FFOA, “the finding of guilt is expunged and no legal consequences may be imposed as a result of the defendant’s having committed the offense. The [FFOA’s] ameliorative provisions apply for all purposes.”).

We therefore remand for the BIA to reconsider Jaimes-Mendoza’s eligibility for relief from removal. *See generally INS v. Ventura*, 537 U.S. 12, 16-18 (2002).

PETITION FOR REVIEW GRANTED; REMANDED.