

JAN 30 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE ANTONIO MEZA-CASTILLO,</p> <p>Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p>Respondent.</p>

No. 04-72407

Agency No. A072-312-894

AMENDED
MEMORANDUM *

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

Submitted December 20, 2007**

Filed December 28, 2007

Amended January 30, 2009

Before: GOODWIN, WALLACE, and HAWKINS, Circuit Judges.

Jose Antonio Meza-Castillo, a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals affirming without opinion an immigration judge’s removal order. We have jurisdiction pursuant to 8 U.S.C.

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

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

§ 1252, *Fernandez-Ruiz v. Gonzales*, 468 F.3d 1159, 1163 (9th Cir. 2006), and we grant the petition for review.

The agency's decisions preceded our determination in *United States v. Vidal*, 504 F.3d 1072 (9th Cir. 2007) (en banc), that a conviction under Cal. Vehicle Code § 10851(a) is not categorically an aggravated felony. *See id.* at 1086. Moreover, the record of conviction in this case does not establish the factual predicate for Meza-Castillo's plea. *See Penuliar v. Mukasey*, 528 F.3d 603, 612-14 (9th Cir. 2008). Accordingly, we grant the petition for review and remand for further proceedings consistent with this disposition. *See Ruiz-Vidal v. Gonzales*, 473 F.3d 1072, 1079-80 (9th Cir. 2007).

PETITION FOR REVIEW GRANTED; REMANDED.