

MAR 31 2009

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CARLOS GUILLEN-VALDIVIA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 04-74130

Agency No. A077-177-936

MEMORANDUM*

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

Argued and Submitted December 7, 2007
San Francisco, California

Before: D.W. NELSON and BEA, Circuit Judges, and OBERDORFER,** District
Judge.

Though the charging document alleged Petitioner Carlos Guillen-Valdivia's
victim was a minor, his plea of *nolo contendere* to a single misdemeanor count of
sexual battery in violation of California Penal Code Section 243.4(d) was not,

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

** The Honorable Louis F. Oberdorfer, Senior United States District
Judge for the District of Columbia, sitting by designation.

under either the categorical or modified categorical approaches, a conviction for an aggravated felony because nothing in the record proves Guillen-Valdivia “necessarily admitted” the charges as alleged in the charging document. *See Vidal v. United States*, 504 F.3d 1072, 1087 (9th Cir. 2007) (en banc). Accordingly the petition for review is GRANTED and we REMAND Guillen-Valdivia’s case to the Board of Immigration Appeals for further proceedings.

PETITION GRANTED.