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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOEL MERCADO-TORREZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 04-70935

Agency No. A028-693-808

MEMORANDUM*

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

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Joel Mercado-Torrez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from 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. We review de novo questions of law, *Altamirano v. Gonzales*, 427 F.3d 586, 591 (9th Cir. 2005), and we grant the petition for review.

Mercado-Torrez's convictions do not categorically support his removability under 8 U.S.C. § 1227(a)(2)(A)(iii) for sexual abuse of a minor. *See Estrada-Espinoza v. Mukasey*, 546 F.3d 1147, 1159 (9th Cir. 2008) (en banc); *United States v. Pallares-Galan*, 359 F.3d 1088, 1102-03 (9th Cir. 2004). Moreover, the modified categorical approach cannot be used to conform his convictions to the generic definition of "sexual abuse of a minor." *See Estrada-Espinoza*, 546 F.3d at 1160.

Respondent's motion to remand or hold the case in abeyance is denied.

PETITION FOR REVIEW GRANTED.