

AUG 31 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SALVADOR ANGUIANO-MEDEL,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 04-72366

Agency No. A073-827-166

MEMORANDUM*

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

Submitted August 20, 2009**

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

Salvador Anguiano-Medel, 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 pursuant to 8

* 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).

U.S.C. § 1252(a)(2)(D) to review questions of law. Reviewing de novo, *Garcia-Jimenez v. Gonzales*, 488 F.3d 1082, 1085 (9th Cir. 2007), we grant the petition for review and remand.

Under the modified categorical approach employed by the agency, we cannot conclude that Anguiano-Medel pleaded guilty to a crime related to a drug listed in the Controlled Substances Act. *See Ruiz-Vidal v. Gonzales*, 473 F.3d 1072, 1078 (9th Cir. 2007). As the record of conviction did not establish the factual predicate for Anguiano-Medel's plea, it cannot form the basis of the agency's removal order. *See United States v. Vidal*, 504 F.3d 1072 (9th Cir. 2007) (en banc) (judgment must contain the critical phrase "as charged in the information" in order to incorporate facts alleged in the information); *see also Sandoval-Lua v. Gonzales*, 499 F.3d 1121, 1129-30 (9th Cir. 2007) (applying the modified categorical analysis in an immigration context).

In light of this determination, and our intervening decision in *Sandoval-Lua*, 499 F.3d at 1129-30 (alien seeking to demonstrate that criminal convictions do not bar relief from removal may do so by pointing to inconclusive record of conviction), we grant the petition for review, and remand to the BIA.

PETITION FOR REVIEW GRANTED; REMANDED.