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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GREGORIO RAMOS MARQUEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 06-74002

Agency No. A079-290-660

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.

Gregorio Ramos Marquez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his applications for cancellation of

* 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).

removal and voluntary departure. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we grant the petition for review.

An intervening change in the law requires remand. In concluding that Ramos Marquez was statutorily ineligible for cancellation of removal based on his 1990 conviction for possession of a controlled substance in violation of section 11350 of the California Health and Safety Code, the agency did not have the benefit of our decision in *Sandoval-Lua v. Gonzales*, 499 F.3d 1121 (9th Cir. 2007), in which we held that an alien seeking to establish that a criminal conviction under a divisible statute does not bar cancellation of removal under the modified categorical analysis may do so by pointing to inconclusive conviction records. *Id.* at 1130. We reject the government's contention that we should not reach this issue. *See Huerta-Guevara v. Ashcroft*, 321 F.3d 883, 886 (9th Cir. 2003).

We thus remand for the agency to reconsider Ramos Marquez's eligibility for cancellation of removal. In light of our disposition, we need not address Ramos Marquez's remaining contentions.

The parties shall bear their own costs on this petition for review.

PETITION FOR REVIEW GRANTED; REMANDED.