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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>TOMAS JACINTO FRANCISCO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 06-74087

Agency No. A075-712-453

MEMORANDUM*

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

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Tomas Jacinto Francisco, a native and citizen of Guatemala, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from

* 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).

an immigration judge's removal order. We have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review and remand for further proceedings.

Reviewing de novo, *Fernandez-Ruiz v. Gonzales*, 468 F.3d 1159, 1163 (9th Cir. 2006), we conclude that the agency erred in determining that Francisco was ineligible for cancellation of removal because he was convicted of an aggravated felony "crime of violence . . . for which the term of imprisonment [is] at least one year." 8 U.S.C. § 1101(a)(43)(F). Francisco's conviction record states that he was convicted of a misdemeanor violation of Cal. Penal Code § 273.5(a) and sentenced to 60 days in jail.

We therefore grant the petition for review and remand for further proceedings. In light of our disposition, we need not address Francisco's remaining contentions.

PETITION FOR REVIEW GRANTED; REMANDED.