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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| RICARDO E. EGUIZABAL,<br><br>Petitioner,<br><br>v.<br><br>ERIC H. HOLDER Jr., Attorney General,<br><br>Respondent. | No. 08-72461<br><br>Agency No. A072-241-954<br><br>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.

Ricardo E. Eguizabal, a native and citizen of El Salvador, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's removal order. We have jurisdiction under 8 U.S.C. § 1252.

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[*] 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).

JTK/Research

We review de novo whether a particular conviction constitutes an aggravated felony, *Randhawa v. Ashcroft*, 298 F.3d 1148, 1151 (9th Cir. 2002), and we grant the petition for review.

Eguizabal's conviction does not categorically support his removability under 8 U.S.C. § 1227(a)(2)(A)(iii) for a crime of violence, because California Penal Code § 69 is not limited to the use or threat of force against the person or property of another. *See* 8 U.S.C. § 1101(a)(43)(F); 18 U.S.C. § 16; *Jordison v. Gonzales*, 501 F.3d 1134, 1135 (9th Cir. 2007). Moreover, because the state offense is missing this element of the generic offense, the modified categorical approach is inapplicable. *See Navarro-Lopez v. Gonzales*, 503 F.3d 1063, 1073 (9th Cir. 2007) (en banc).

We grant Eguizabal's May 15, 2009 motion to supplement his opening brief.

**PETITION FOR REVIEW GRANTED.**