

FILED

UNITED STATES COURT OF APPEALS

SEP 13 2010

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MOISES NAVARRO-SOQUI, aka Moises
Navarro aka Jose Manuel Cota,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 04-76126

Agency No. A044-776-648

ORDER

Before: PREGERSON, HALL, and N.R. SMITH, Circuit Judges.

Petitioner's petition for rehearing is hereby GRANTED. The memorandum disposition and dissent filed on January 20, 2010, are hereby withdrawn. The new memorandum disposition submitted concurrently with this order shall be filed.

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MEMORANDUM*

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

Submitted October 2, 2008**
Pasadena, California

Before: PREGERSON, HALL, and N.R. SMITH, Circuit Judges.

An immigration judge found Moises Navarro-Soqui (“Navarro-Soqui”) removable as an aggravated felon due to his conviction under Cal. Penal Code § 288(c)(1) and ordered him removed to Mexico. The Board of Immigration

* 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).

Appeals (“BIA”) affirmed the immigration judge and dismissed Navarro-Soqui’s appeal. Navarro-Soqui petitions this court for review. This Court has jurisdiction pursuant to 8 U.S.C. § 1252, and we grant the petition.

In determining whether a state criminal conviction constitutes an aggravated felony under federal law, this court applies the categorical approach set out in *Taylor v. United States*, 495 U.S. 575, 599-602 (1990). We recently held that Cal. Penal Code § 288(c)(1) is not a categorical match with the generic crime of sexual abuse of a minor. *United States v. Castro*, 607 F.3d 566 (9th Cir. 2010). Accordingly, Navarro-Soqui’s conviction under this statute is not an aggravated felony under 8 U.S.C. § 1101(a)(43), and he is not removable under 8 U.S.C. § 1227(a)(2)(A)(iii).

We **GRANT** the petition for review and **REMAND** to the BIA for further proceedings.