

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JOSE GARCIA-CHAIDEZ,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 10-71313

MAY 23 2016

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

Agency No. A020-450-532

ORDER

Before: WARDLAW and PAEZ, Circuit Judges and KENNELLY,* District Judge.

Page 2 of the memorandum filed on January 20, 2016 is amended as follows:

Line 6: After <and ordering him removed.>, add the following footnote:
<Pursuant to California Penal Code section 1192.7(c)(8), “any felony in which the defendant personally inflicts great bodily injury on any person” constitutes a “serious felony.” Garcia-Chaidez pleaded guilty to violating California Penal Code section 273a(a) with an admission that his conviction qualified as a serious felony under section 1192.7(c)(8). Because section 1192.7(c)(8) did not serve as a basis for the BIA’s decision, however, we do not address it here. *See Navas v.*

* The Honorable Matthew F. Kennelly, District Judge for the U.S. District Court for the Northern District of Illinois, sitting by designation.

I.N.S., 217 F.3d 646, 658 n.16 (9th Cir. 2000) (“this court cannot affirm the BIA on a ground upon which it did not rely.”).>

The amended memorandum is filed concurrently with this order.

With the above amendment, the petition for rehearing is DENIED. No further petitions for rehearing shall be entertained.

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LORETTA E. LYNCH, Attorney General,

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AMENDED MEMORANDUM*

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

Submitted November 20, 2014**
Pasadena, California

Before: WARDLAW and PAEZ, Circuit Judges and KENNELLY,** District
Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Matthew F. Kennelly, District Judge for the U.S. District Court for the Northern District of Illinois, sitting by designation.

Jose Garcia-Chaidez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals's ("BIA") decision that his conviction under California Penal Code section 273a(a) was a "crime of violence" under 18 U.S.C. § 16, and therefore qualified as an aggravated felony. The BIA affirmed the IJ's decision preterminating Garcia-Chaidez's application for cancellation of removal, and ordering him removed.¹

In *Ramirez v. Lynch*, No. 08-72896, we held that California Penal Code section 273a(a) is categorically overbroad and indivisible, and therefore is not a "crime of violence" and cannot constitute an aggravated felony. Because Garcia-Chaidez appealed to the BIA only the determination that his conviction qualified as an aggravated felony, we do not reach the IJ's decision that he was also removable for having committed a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E).

We therefore grant the petition and remand to the BIA for further proceedings.

Petition GRANTED and REMANDED.

¹ Pursuant to California Penal Code section 1192.7(c)(8), "any felony in which the defendant personally inflicts great bodily injury on any person" constitutes a "serious felony." Garcia-Chaidez pleaded guilty to violating California Penal Code section 273a(a) with an admission that his conviction qualified as a serious felony under section 1192.7(c)(8). Because section 1192.7(c)(8) did not serve as a basis for the BIA's decision, however, we do not address it here. *See Navas v. I.N.S.*, 217 F.3d 646, 658 n.16 (9th Cir. 2000) ("this court cannot affirm the BIA on a ground upon which it did not rely.").