

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 28 2021

FOR THE NINTH CIRCUIT

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

NICOLAS PABLO CALMO,

Petitioner,

v.

ROBERT M. WILKINSON, Acting
Attorney General,

Respondent.

No. 18-71905

Agency No. A089-299-998

MEMORANDUM*

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

Submitted January 20, 2021**

Before: McKEOWN, CALLAHAN, and BRESS, Circuit Judges.

Nicolas Pablo Calmo, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision finding him removable and denying his application for asylum, withholding of removal, and relief under the Convention Against

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

Torture. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law. *Cerezo v. Mukasey*, 512 F.3d 1163, 1166 (9th Cir. 2008). We grant the petition and vacate the removal order.

Pablo Calmo was charged with removability based on his conviction under California Penal Code § 32. Our decision in *Valenzuela Gallardo v. Barr*, 968 F.3d 1053, 1069 (9th Cir. 2020), clarifies that “California Penal Code § 32 is not a categorical match with obstruction of justice under [Immigration and Nationality Act] § 101(a)(43)(S)” Thus, the sole charge of removability against Pablo Calmo cannot be sustained.

PETITION FOR REVIEW GRANTED; VACATED.