

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 20 2023

FOR THE NINTH CIRCUIT

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

PABLO GUERRERO SAGAL,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 22-1293

Agency No.  
A205-711-406

MEMORANDUM\*

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

Submitted November 14, 2023\*\*  
Pasadena, California

Before: RAWLINSON, HURWITZ, and OWENS, Circuit Judges.

Pablo Guerrero Sagal, a native and citizen of Mexico, petitions for review of a decision of the Board of Immigration Appeals (“BIA”) dismissing his appeal from an order of an immigration judge denying his application for cancellation of

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\* 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).

removal based on a disqualifying conviction. As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 8 U.S.C. § 1252 and deny the petition.

To be eligible for cancellation of removal, an applicant like Guerrero Sagal must have “not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3).” 8 U.S.C. § 1229b(b)(1)(C). The applicant has the burden to establish eligibility. *Id.* § 1229a(c)(4); *Pereida v. Wilkinson*, 141 S. Ct. 754, 760-61 (2021).

Guerrero Sagal was arrested and charged with violating California Penal Code § 273.5, which is categorically a crime of domestic violence covered by 8 U.S.C. § 1227(a)(2). *See Carrillo v. Holder*, 781 F.3d 1155, 1159 (9th Cir. 2015); *Valdez v. Garland*, 28 F.4th 72, 77-78 (9th Cir. 2022). Despite diligent efforts, Guerrero Sagal was unable to obtain records for the disposition of his arrest.

Guerrero Sagal argues that he met his burden because he provided all available conviction records and the record is inconclusive as to whether he was convicted under California Penal Code § 273.5. However, Guerrero Sagal’s argument is foreclosed by the Supreme Court’s decision in *Pereida*, which held that “evidentiary gaps . . . work against the [noncitizen] seeking relief from a lawful removal order” even if the “record of conviction is unavailable or incomplete through no fault of his own.” 141 S. Ct. at 766; *see also Marinelarena*

*v. Garland*, 6 F.4th 975, 978 (9th Cir. 2021) (“ambiguity is insufficient” to meet the applicant’s burden to show the absence of a disqualifying conviction).

Guerrero Sagal’s due process argument is not properly before this court because he failed to raise it to the BIA. *See* 8 U.S.C. § 1252(d)(1) (exhaustion of administrative remedies required); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 417-19 (2023) (section 1252(d)(1) is a non-jurisdictional claim-processing rule).

The temporary stay of removal remains in place until the mandate issues. The motion for a stay of removal (Dkt. No. 9) is otherwise denied.

**PETITION DENIED.**