

MAR 25 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EMILIO VERGARA-RAMIREZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-70992

Agency No. A092-505-537

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, O'SCANNLAIN, and BYBEE, Circuit Judges.

Emilio Vergara-Ramirez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's removal order and denying his motion to reopen. We have

* 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).

jurisdiction under 8 U.S.C. § 1252, and we grant the petition for review and remand for further proceedings.

Vergara-Ramirez does not challenge the agency's determination that he is removable under 8 U.S.C. §§ 1227(a)(2)(A)(i) and (ii).

The agency determined that Vergara-Ramirez's 1993 conviction for violating California Penal Code § 288(c) was an aggravated felony under 8 U.S.C. § 1101(a)(43)(A) that rendered him ineligible for relief under former section 212(c), 8 U.S.C. § 1182(c) (repeal effective April 1, 1997). Subsequent to the agency's decision in this case, we held in *United States v. Castro*, 607 F.3d 566, 569-70 (9th Cir. 2010), that a conviction under California Penal Code § 288(c) does not categorically constitute "sexual abuse of a minor." We therefore grant the petition for review and remand to the agency for reconsideration in light of *Castro*.

PETITION FOR REVIEW GRANTED; REMANDED.