

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

December 3, 2009

Charles R. Fulbruge III
Clerk

No. 08-60549

Summary Calendar

SERGIO MARTIN PINEDA-GALVAN

Petitioner

v.

ERIC H. HOLDER, JR., U.S. ATTORNEY GENERAL

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A70 603 549

Before DAVIS, SMITH and OWEN, Circuit Judges.

PER CURIAM:*

Sergio Martin Pineda-Galvan, a native and citizen of Mexico, petitions this court for review of the decision of the Board of Immigration Appeals (BIA) dismissing his appeal of the immigration judge's order that Pineda-Galvan is removable pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii) and ineligible for cancellation of removal pursuant to 8 U.S.C. § 1229b(a)(3) because he committed an aggravated felony.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Pineda-Galvan argues that the BIA improperly characterized his 2000 Texas conviction for possession of cocaine as an aggravated felony punishable under 21 U.S.C. § 844(a) because he was not charged or convicted as a state recidivist; the BIA should not have followed the hypothetical approach used by this court in *United States v. Sanchez-Villalobos*, 412 F.3d 572 (5th Cir. 2005); and the procedure under which he was convicted did not correspond to federal procedure for recidivist drug convictions under 21 U.S.C. § 851. As we recently explained in *Carachuri-Rosendo v. Holder*, 570 F.3d 263 (5th Cir. 2009), *petition for cert. filed* (July 15, 2009) (No. 09-60), Pineda-Galvan's arguments are unavailing.

Pineda-Galvan's petition for review is DENIED.