

JAN 16 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOAQUIN PENA DE LOS SANTOS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
--

No. 11-71998

Agency No. A077-123-105

MEMORANDUM\*

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

Submitted January 15, 2013\*\*

Before: SILVERMAN, BEA, and NGUYEN, Circuit Judges.

Joaquin Pena De Los Santos, a native and citizen of the Dominican Republic, petitions for review of an order of the Board of Immigration Appeals (“BIA”) dismissing his appeal from an immigration judge’s removal order. We

---

\* 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).

have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review and remand.

Because it is unclear whether the agency applied the modified categorical approach to Pena De Los Santos's conviction, we remand the case to the BIA for further proceedings. *See United States v. Castillo-Rivera*, 244 F.3d 1020, 1022-23 (9th Cir. 2001) (recognizing that the conduct encompassed by section 12021(a)(1) of the California Penal Code may not categorically constitute an aggravated felony); *see also* 8 U.S.C. § 1101(a)(43)(E)(ii) (including firearms offenses described in 18 U.S.C. § 922(g)(1) in the definition of an aggravated felony); 18 U.S.C. § 922(g)(1) (punishing possession of a firearm by any person who has been convicted of a crime "punishable by imprisonment for a term exceeding one year").

In light of this disposition, we decline to address Pena De Los Santos's remaining challenges to the BIA's order. *See Mendez-Alcaraz v. Gonzales*, 464 F.3d 842, 844 (9th Cir. 2006) (declining to reach nondispositive challenges to a BIA order).

**PETITION FOR REVIEW GRANTED; REMANDED.**