

DEC 08 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FRANCISCO JAVIER NAJERA-JALOMA,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 07-72471

Agency No. A072-308-514

MEMORANDUM*

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

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Francisco Javier Najera-Jaloma, 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. We have jurisdiction pursuant to

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

8 U.S.C. § 1252. We review de novo questions of law, *Sandoval-Lua v. Gonzales*, 499 F.3d 1121, 1126-27 (9th Cir. 2007), and we deny the petition for review.

Because Najera-Jaloma's 2002 conviction for possession of a controlled substance in violation of California Health & Safety Code § 11350(a) was his second drug-related conviction, it would not have qualified for treatment under the Federal First Offenders Act, 18 U.S.C. § 3607, if he had been prosecuted in federal court. *See Aguiluz-Arellano v. Gonzales*, 446 F.3d 980, 983-84 (9th Cir. 2006). Accordingly, the agency did not err in considering it to be a conviction for the purpose of sustaining the charge of removability under 8 U.S.C. § 1227(a)(2)(B)(i). *Id.*

In light of our disposition, we need not address Najera-Jaloma's remaining contention.

PETITION FOR REVIEW DENIED.