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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SANTIAGO ALVARO-SOTOMAYOR,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-74406

Agency No. A098-761-340

MEMORANDUM*

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

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Santiago Alvaro-Sotomayor, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his request for a continuance.

* 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).

Our jurisdiction is governed by 8 U.S.C. § 1252. Because the BIA reviewed the IJ's decision for abuse of discretion, we review the IJ's decision directly. *See de Leon-Barrios v. INS*, 116 F.3d 391, 393 (9th Cir. 1997). We review for abuse of discretion the denial of a continuance, *Sandoval-Luna v. Mukasey*, 526 F.3d 1243, 1246 (9th Cir. 2008) (per curiam), and we deny in part and dismiss in part the petition for review.

The IJ did not abuse his discretion by denying a second continuance to allow Alvaro-Sotomayor to seek post-conviction relief. *See Grageda v. INS*, 12 F.3d 919, 921 (9th Cir. 1993); *Sandoval-Luna*, 526 F.3d at 1247. Alvaro-Sotomayor's contentions that the IJ failed to employ the correct legal standard and failed to specify an adequate reason for denying the continuance are not supported by the record.

We lack jurisdiction to consider Alvaro-Sotomayor's due process contention because he failed to exhaust it before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.