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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FELIX CCAIHUARI-HOYOS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 07-74383

Agency No. A070-455-619

MEMORANDUM*

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

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Felix Ccaihuari-Hoyos, a native and citizen of Peru, petitions for review of the Board of Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s (“IJ”) removal order. Our jurisdiction is governed by 8 U.S.C. § 1252.

We review de novo legal questions and due process challenges. *Vasquez-Zavala v.*

* 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).

Ashcroft, 324 F.3d 1105, 1107 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

Ccaihuari-Hoyos's contention that the government should be estopped from placing him in removal proceedings rather than deportation proceedings is not persuasive. Ccaihuari-Hoyos has not shown that the Immigration and Naturalization Service ("INS") engaged in affirmative misconduct when it waited six years between issuing him an Order to Show Cause and lodging a Notice To Appear with the immigration court. *See Cortez-Felipe v. INS*, 245 F.3d 1054, 1057 (9th Cir. 2001) (holding that estoppel may be warranted against the government on account of affirmative misconduct, but not negligence).

We lack jurisdiction to consider Ccaihuari-Hoyos's contention regarding the IJ's duty to hold an evidentiary hearing because he did not raise that issue before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.