

JUL 16 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GERARDO A. DIAZ JAVIER,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-72121

Agency No. A079-160-876

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.

Gerardo A. Diaz Javier, 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 removal order. We have jurisdiction under 8 U.S.C. § 1252.

---

\* 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).

We review de novo questions of law. *Altamirano v. Gonzales*, 427 F.3d 586, 591 (9th Cir. 2005). We deny the petition for review.

Contrary to Diaz Javier's contention, the BIA properly determined that he participated in alien smuggling as defined in 8 U.S.C. § 1182(a)(6)(E)(i).

According to his Record of Sworn Statement, Diaz Javier knew that one passenger in the vehicle he drove lacked legal documentation to enter the United States, yet, when the immigration agent asked him for documentation to enter, he nonetheless presented the agent with that passenger's fraudulent documentation. Thus, Diaz Javier "provided some form of affirmative assistance to the illegally entering alien." *Altamirano*, 427 F.3d at 592.

**PETITION FOR REVIEW DENIED.**