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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE ERNESTO LUNA-ACEVEDO,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 09-70545

Agency No. A094-205-624

MEMORANDUM\*

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

Submitted February 15, 2011\*\*

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Jose Ernesto Luna-Acevedo, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's order finding that he knowingly participated in alien smuggling in violation of 8 U.S.C. § 1227(a)(i)(E)(i). Our jurisdiction is governed

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\* 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).

by 8 U.S.C. § 1252. We review de novo claims of due process violations in immigration proceedings. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

Luna-Acevedo's due process rights were not violated by admission of the Form I-213 because the form was probative and its admission was not fundamentally unfair. *See Espinoza v. INS*, 45 F.3d 308, 310-11 (9th Cir. 1995) (noting that "[t]he sole test for admission of evidence [in a deportation proceeding] is whether the evidence is probative and its admission is fundamentally fair").

Luna-Acevedo's due process rights were not violated when he was not given an opportunity to question the preparer of the I-213, because he failed to produce probative evidence casting doubt on the reliability of the form. *See id.*

We lack jurisdiction to review Luna-Acevedo's unexhausted contention regarding the government's alleged 8 C.F.R § 287.3(a) violation and related hearsay contention. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**