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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICARDO ERNESTO AVALOS-
PADILLA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-73165

Agency No. A092-810-118

MEMORANDUM*

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

Submitted June 15, 2011**

Before: CANBY, O’SCANNLAIN, and FISHER, Circuit Judges.

Ricardo Ernesto Avalos-Padilla, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s (“IJ”) decision denying his application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review de novo claims

* 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).

of due process violations in immigration proceedings, *Sandoval-Luna v. Mukasey*, 526 F.3d 1243, 1245-46 (9th Cir. 2008), and we deny the petition for review.

Avalos-Padilla's due process claim fails because Avalos-Padilla was given the opportunity to present witnesses on his behalf, he failed to request a continuance when they did not appear, and he failed to demonstrate that the absence of their testimony prejudiced him. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice for a petitioner to prevail on a due process claim).

Avalos-Padilla's contention that the IJ improperly judged his application on the basis of his witnesses' failure to appear at his hearing is not supported by the record.

PETITION FOR REVIEW DENIED.