

FEB 14 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GERARDO GARNICA-VARGAS,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 11-72576

Agency No. A097-707-983

MEMORANDUM\*

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

Submitted February 11, 2013\*\*

Before: FERNANDEZ, TASHIMA, and WARDLAW, Circuit Judges.

Gerardo Garnica-Vargas, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's removal order. We dismiss the petition for review.

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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).

Because Garnica-Vargas does not challenge that he was convicted of an aggravated felony, we lack jurisdiction to review the contention that the agency abused its discretion in denying his request for a continuance to seek post-conviction relief, because it does not constitute a question of law or constitutional claim that would establish our jurisdiction. *See* 8 U.S.C. § 1252(a)(2)(D); *see also Malilia v. Holder*, 632 F.3d 598, 604 (9th Cir. 2011) (despite the 8 U.S.C. § 1252(a)(2)(C) jurisdictional bar, under 8 U.S.C. § 1252(a)(2)(D) the court retains jurisdiction to review the denial of a continuance that is based on an error of law).

**PETITION FOR REVIEW DISMISSED.**