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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>JAVIER CONTRERAS-MAGANA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p> |
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No. 11-72939

Agency No. A095-707-582

MEMORANDUM*

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

Submitted July 24, 2013**

Before: ALARCÓN, CLIFTON, and CALLAHAN, Circuit Judges.

Javier Contreras-Magana, a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals (“BIA”) dismissing his appeal from a decision of an immigration judge (“IJ”) denying his application for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We

* 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).

review for abuse of discretion the denial of a continuance and review de novo due process and equal protection claims. *Cruz Rendon v. Holder*, 603 F.3d 1104, 1109 (9th Cir. 2010). We deny in part and dismiss in part the petition for review.

The IJ did not abuse his discretion by not continuing Contreras-Magana's merits hearing, because Contreras-Magana did not request a continuance of that hearing, his counsel confirmed that he was prepared to proceed with the case, and the IJ had granted Contreras-Magana's request for a 3-month continuance at the previous hearing. *See Ahmed v. Holder*, 569 F.3d 1009, 1012 (9th Cir. 2009) (“[A] denial of a continuance . . . must be evaluated on a case by case basis”); *cf. United States v. Hernandez-Valenzuela*, 932 F.2d 803, 804 (9th Cir. 1991) (“Appellant cannot now claim that the district court abused its discretion in failing to grant a continuance that was never requested.”).

The IJ did not violate Contreras-Magana's right to due process or equal protection by not continuing the hearing, because Contreras-Magana did not request a continuance, received a full and fair hearing, and has not demonstrated that his treatment differed from that of similarly situated persons. *See Gutierrez v. Holder*, 662 F.3d 1083, 1090 n.11 (9th Cir. 2011); *Hammad v. Holder*, 603 F.3d 536, 546 (9th Cir. 2010); *Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 926-27 (9th Cir. 2007).

We lack jurisdiction to review the BIA's discretionary determination that Contreras-Magana failed to demonstrate the requisite hardship for cancellation of removal. *See Vilchiz-Soto v. Holder*, 688 F.3d 642, 644 (9th Cir. 2012) (order).

We also lack jurisdiction to consider Contreras-Magana's contention that his case warrants a favorable exercise of prosecutorial discretion. *See id.*

PETITION FOR REVIEW DENIED in part; DISMISSED in part.