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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PABLO ABNER VILLALBA-ORTEGA,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-73134

Agency No. A035-651-121

MEMORANDUM\*

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

Submitted November 18, 2015\*\*

Before: TASHIMA, OWENS, and FRIEDLAND, Circuit Judges.

Pablo Abner Villalba-Ortega, a native and citizen of Ecuador, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo

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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).

constitutional claims and questions of law. *Vilchez v. Holder*, 682 F.3d 1195, 1198 (9th Cir. 2012) (order). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the agency's discretionary denial of cancellation of removal. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *see also Vilchez*, 682 F.3d at 1198. Villalba-Ortega's contentions that the agency applied the incorrect standard in evaluating his claim for cancellation and failed to consider all of the evidence are not supported by the record.

Villalba-Ortega has not established prejudice from alleged ineffective assistance by his former attorney, where he has not demonstrated how additional testimony or different conduct by his attorney may have affected the outcome. *See U.S. v. Lopez-Chavez*, 757 F.3d 1033, 1041 (9th Cir. 2014) ("To establish ineffective assistance of counsel in immigration proceedings in violation of the right to due process, a petitioner must show (1) that 'the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case,' and (2) prejudice.").

Lastly, we lack jurisdiction to consider Villalba-Ortega's unexhausted contentions regarding voluntary departure. *See Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010).

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