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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JESUS ISRAEL SANTOS-
HERNANDEZ,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-73340

Agency No. A205-717-086

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.

Jesus Israel Santos-Hernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his applications for asylum, withholding of removal, relief under the Convention Against Torture, cancellation

* 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 removal, and adjustment of status. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings, *Silaya v. Mukasey*, 524 F.3d 1066, 1070 (9th Cir. 2008). We grant the petition for review and remand for further proceedings.

When the IJ and BIA evaluated the merits of this case, they did not have the benefit of the Supreme Court's decision in *Mellouli v. Lynch*, 135 S.Ct. 1980 (2015) or this court's decision in *Madrigal-Barcenas v. Lynch*, 797 F.3d 643 (9th Cir. 2015). Thus, we grant the petition for review, and remand for further proceeding consistent with this disposition, including a determination by the agency of the impact, if any, of *Mellouli* and *Madrigal-Barcenas* on its analysis of Santos-Hernandez's potential claims for relief. Further, the BIA's findings that the IJ afforded Santos-Hernandez five continuances prior to the merits hearing and that Santos-Hernandez stated that he wished to go forward pro se at the merits hearing are not supported by the record.

In light of this remand, we do not reach Santos-Hernandez's contentions regarding the merits of his claims for relief.

PETITION FOR REVIEW GRANTED; REMANDED.