

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDMUNDO EVAN-SANGUINO,

Petitioner,

v.

**LORETTA E. LYNCH, Attorney
General,**

Respondent.

No. 09-72980

Agency No. A078-739-220

MEMORANDUM*

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

Argued and Submitted November 5, 2015
Portland, Oregon

Before: **KOZINSKI, BERZON and WATFORD**, Circuit Judges.

1. This case is **REMANDED** to the Board of Immigration Appeals for further proceedings in light of Correo-Ruiz v. Lynch, 809 F.3d 543 (9th Cir. 2015). The Board shall grant Petitioner an opportunity to supplement the record.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

2. We reject Evan-Sanguino's argument that the Board denied relief in derogation of the law of the case. See Merritt v. Mackey, 932 F.2d 1317, 1320 (9th Cir. 1991) (explaining the law-of-the-case doctrine and discussing its discretionary nature). There was no law of the case because neither our remand order nor the first Board decision definitively established that Evan-Sanguino was entitled to relief.

3. We also reject Evan-Sanguino's argument that the Board deprived him of due process by deciding his appeal based on the intervening authority of Matter of Briones, 24 I. & N. Dec. 355 (BIA 2007), without allowing him to brief the implications of that case. Even if there were a procedural problem, Evan-Sanguino cannot make the required showing of prejudice. See United States v. Cerda-Pena, 799 F.2d 1374, 1378–79 (9th Cir. 1986). Evan-Sanguino complains that he was never afforded an opportunity to argue that Briones should not apply retroactively in his case. Evan-Sanguino will have an opportunity to make that argument on remand.

Petition for review **GRANTED. REMANDED** with instructions.