

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 19 2018

FOR THE NINTH CIRCUIT

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

OMAR RODRIGUEZ-BAHENA,

No. 17-70327

Petitioner,

Agency No. A087-594-893

v.

MEMORANDUM\*

JEFFERSON B. SESSIONS III, Attorney  
General,

Respondent.

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

Submitted September 12, 2018\*\*

Before: LEAVY, HAWKINS, and TALLMAN, Circuit Judges.

Omar Rodriguez-Bahena, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' decision dismissing his appeal from an immigration judge's removal order denying a motion to continue proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the

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

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

denial of a continuance and review de novo questions of law. *Ahmed v. Holder*, 569 F.3d 1009, 1012 (9th Cir. 2009). We deny the petition for review.

The agency did not abuse its discretion or violate due process in denying a continuance for failure to show good cause, where Rodriguez-Bahena had not shown he had yet filed a motion in state court to vacate his convictions and where he could still seek deferred action from the Department of Homeland Security with removal proceedings pending or with a final removal order. *See* 8 C.F.R.

§ 1003.29; *Ahmed*, 569 F.3d at 1012 (factors to consider when reviewing the denial of a continuance include the nature of the evidence excluded and reasonableness of the immigrant's conduct); *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (due process claims require showing that proceedings were "so fundamentally unfair that the alien was prevented from reasonably presenting his case" (internal citation omitted)).

**PETITION FOR REVIEW DENIED.**