

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 18 2023

FOR THE NINTH CIRCUIT

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

EDER BAUTISTA HERNANDEZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-340

Agency No.
A214-093-842

MEMORANDUM*

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

Submitted October 16, 2023**
San Francisco, California

Before: SILER, NGUYEN, and R. NELSON, Circuit Judges.***

Eder Bautista Hernandez, a native and citizen of Mexico, petitions for review of a decision by the Board of Immigration Appeals (“BIA”) affirming the

* 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).

*** The Honorable Eugene E. Siler, United States Circuit Judge for the Court of Appeals, 6th Circuit, sitting by designation.

immigration judge's ("IJ") denial of his motion to suppress and motion for a continuance, and affirming his corresponding order of removal. We have jurisdiction under 8 U.S.C. § 1252. Reviewing the agency's factual findings for substantial evidence and its legal conclusions de novo, *see Flores Molina v. Garland*, 37 F.4th 626, 632 (9th Cir. 2022), we deny the petition for review.

1. The agency did not err in denying Bautista Hernandez's motion to suppress Forms I-213 and I-877 and to terminate proceedings. The exclusionary rule generally does not apply to removal proceedings, except (1) when the agency violates a regulation promulgated for the benefit of petitioners and the violation prejudices the petitioner's protected interests or (2) when the agency egregiously violates a petitioner's Fourth Amendment rights. *Sanchez v. Sessions*, 904 F.3d 643, 649 (9th Cir. 2018).

Bautista Hernandez has not shown a regulatory violation. Bautista Hernandez contends that CBP violated § 287.8(b)(2) by detaining him well beyond the "brief" detention permitted under the regulation. But § 287.8(b)(2) pertains to interrogations and detention not amounting to arrest. CBP officers clearly arrested Bautista Hernandez as soon as he attempted to smuggle his friend's daughter across the border.

Bautista Hernandez did not offer evidence demonstrating that the information in Form I-213 was obtained through an egregious violation of the

Fourth Amendment. *See In re Barcenas*, 19 I. & N. Dec. 609, 611 (B.I.A. 1988) (holding that the petitioner bears the initial burden to “come forward with proof establishing a prima facie case” of a constitutional violation that would require suppression of evidence). The mere fact that CBP officers interviewed Bautista Hernandez more than 24 hours after first detaining him cannot, without some further evidence of coercion, establish that his will was overborne. *See Schneekloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973). Nor does the single typographical error in the I-213 render the form inherently unreliable. *See Espinoza v. INS*, 45 F.3d 308, 310 (9th Cir. 1995).

2. The agency did not violate Bautista Hernandez’s due process rights during the administrative proceedings. The agency properly treated Bautista Hernandez as an applicant for admission rather than a returning Legal Permanent Resident because he engaged in an unlawful alien smuggling scheme after departing the United States. 8 U.S.C. § 1101(a)(13)(C)(iii); *see also Gonzaga-Ortega v. Holder*, 736 F.3d 795, 801 (9th Cir. 2013). The IJ did not violate Bautista Hernandez’s due process rights by admitting the I-213 and I-877 into evidence where the forms were probative, their admission was fundamentally fair, and Bautista Hernandez did not show that the form contained information that was inaccurate or obtained by coercion. *Sanchez v. Holder*, 704 F.3d 1107, 1109 (9th Cir. 2012). Moreover, Bautista Hernandez had the opportunity to rebut the

contents of the I-213 and I-877 by filing his own declaration or any other evidence that could undermine the forms. He submitted no evidence. And because Bautista Hernandez produced no evidence contradicting anything material in the forms, he had no right to confront the officers who prepared the forms at a hearing. *See Espinoza*, 45 F.3d at 311.

Finally, the agency did not violate Bautista Hernandez's due process rights when it denied his motion for a continuance because Bautista Hernandez failed to show prejudice. Bautista Hernandez's counsel never articulated how the information in his A-File would differ from the information recorded by officers in the I-213 and I-877, nor why she could not simply rely on a declaration from Bautista Hernandez himself to establish his recollection of the relevant events. *Rendon v. Holder*, 588 F.3d 669, 675 (2009) ("[Prejudice] means that the outcome of the proceedings may have been affected by the alleged violation.").

PETITION DENIED.