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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GABRIEL PONCE-RODRIGUEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70059

Agency No. A091-115-690

MEMORANDUM*

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

Submitted October 19, 2010**

Before: O’SANNLAIN, TALLMAN, and BEA, Circuit Judges.

Gabriel Ponce-Rodriguez, 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 removal order. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law and constitutional claims. *Avila-*

* 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).*

Sanchez v. Mukasey, 509 F.3d 1037, 1040 (9th Cir. 2007). We deny the petition for review.

Because Ponce-Rodriguez’s June 18, 1996, deportation order was lawful when he was deported and the record reveals that his waiver of appeal of that order was “considered and intelligent,” the BIA did not err in concluding that he failed to demonstrate a “gross miscarriage of justice at the prior proceeding” and he therefore may not, at this point, collaterally attack his 1996 deportation order.

Ramirez-Juarez v. INS, 633 F.2d 174, 175-76 (9th Cir. 1980) (per curiam); *see also Alvarenga-Villalobos v. Ashcroft*, 271 F.3d 1169, 1172-73 (9th Cir. 2001); *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005) (waiver of right to appeal must be “considered and intelligent”).

We reject Ponce-Rodriguez’s constitutional challenge to 8 C.F.R. § 1003.44(k)(2). *See Avila-Sanchez*, 509 F.3d at 1040-41.

PETITION FOR REVIEW DENIED.