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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN LEAL-BURBOA, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 21-70279 Agency No. A213-086-339 MEMORANDUM[*]

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

Submitted December 6, 2022[**]
Pasadena, California

Before: BEA, IKUTA, and CHRISTEN, Circuit Judges.

1. Juan Leal-Burboa ("Petitioner") petitions this court to review the denial of his motion to suppress evidence and to terminate removal proceedings by the Board of Immigration Appeals ("BIA"). For the following reasons, we deny the petition.

2. The parties are familiar with the facts of the case, so we do not recite them

[*] 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).

here. All legal conclusions of the BIA, including the denial of a motion to suppress, are reviewed de novo. *Sanchez v. Sessions*, 904 F.3d 643, 649 (9th Cir. 2018). All factual determinations are reviewed under the substantial evidence standard. 8 U.S.C. § 1252(b)(4)(B).

3. Petitioner contends that the Immigration and Customs Enforcement ("ICE") officers who stopped his vehicle did not satisfy the requisite legal standard under the Fourth Amendment or agency regulations for an investigatory stop and that any evidence obtained is therefore inadmissible as a result because the officers violated a regulation promulgated for benefit of petitioners and violated Petitioner's protected interests and committed an "egregious" violation of his rights. *Sanchez*, 904 F.3d at 649. Petitioner fails to make out a *prima facie* claim that a regulation was violated or that his rights have been violated. The Form I-213 was admissible and presumed reliable. *Espinoza v. INS*, 45 F.3d 308, 310 (9th Cir. 1995). Because ICE officers believed "that the person being questioned . . . [wa]s an alien illegally in the United States," they needed only reasonable suspicion, and not probable cause as argued by Petitioner, to justify the stop. 8 C.F.R. § 287.8(b)(2); *see also Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019).[1] ICE officers were watching an

[1] Petitioner has forfeited his argument on appeal that the ICE officers unduly prolonged the investigatory stop by failing to raise the issue in his opening brief. *Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011), *overruled in part on other grounds by Alam v. Garland*, 11 F.4th 1133 (9th Cir. 2021) (en banc).

apartment complex for an individual suspected of being an alien illegally present in the United States—the target. The officers noted that Petitioner left the address associated with the intended target, met the physical descriptions of the intended target—independent of race—and entered and drove a vehicle that matched the description of the car used by the intended target. These non-racial factors were more than sufficient to provide the ICE officers individualized reasonable suspicion to stop Petitioner and to conduct an investigatory stop to determine if Petitioner was the target. *See Alabama v. White*, 496 U.S. 325, 331 (1990) (upholding an investigatory stop when defendant left the building and entered the car described in a tip); *United States v. Gonzales*, 749 F.2d 1329, 1337 (9th Cir. 1984) (holding that because defendant matched a robbery suspect's description, the district court's probable cause determination was supported).[2] It was during this investigatory stop that the officers learned of Petitioner's illegal presence in the United States. Petitioner's rights were not violated. And the regulation, 8 C.F.R. § 287.8(b)(2), was not violated. Thus, the BIA did not err in denying his motion to suppress.

4. Although Petitioner contests some aspects of the stop as memorialized in his I-213 form, the uncontested facts provide substantial evidence to support the

[2] Because the officers relied on these other factors beyond Petitioner's race to substantiate their basis for conducting an investigatory stop, Petitioner's central argument that they racially profiled him and thereby ran afoul of our holding in *Sanchez* is wholly without merit. 904 F.3d at 656 (holding "that race . . . alone can never serve as the basis for reasonable suspicion").

agency's determinations regarding Petitioner's alienage and illegal presence in the United States. *Matter of Barcenas*, 19 I. & N. Dec. 609, 611–12 (BIA 1988). Thus, the BIA properly relied on the uncontested evidence in the record to conclude that the agency has demonstrated by clear and convincing evidence that Petitioner is removable.[3]

5. For the foregoing reasons, we DENY the petition.

[3] Petitioner has forfeited his argument that the Immigration Judge lacked jurisdiction because he failed to raise the issue in his opening brief. *Rizk*, 629 F.3d at 1091 n.3.