NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIGUEL SANCHEZ-ANTUNEZ, aka Miguel Sanchez Antunez, Petitioner, v. WILLIAM P. BARR, Attorney General, Respondent.	Nos. 16-70274, 16-72681 Agency No. A200-154-662 MEMORANDUM[*]

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

Submitted March 5, 2019[**]
Pasadena, California

Before: COLE, Chief Judge,[***] FISHER and NGUYEN, Circuit Judges.

Miguel Sanchez Antunez petitions for review of the Board of Immigration

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. Rule 36-3.

[**] The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

[***] The Honorable R. Guy Cole, Jr., Chief Judge for the United States Sixth Circuit Court of Appeals, sitting by designation.

Appeals' ("BIA") decision affirming the Immigration Judge's ("IJ") denial of Sanchez Antunez's claims for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"), and denying his motions to continue and remand. Sanchez Antunez also petitions for review of the BIA's denial of his motion to reopen. We have jurisdiction under 8 U.S.C. § 1252(a)(1), and we deny the petitions.

The BIA's factual findings are reviewed for substantial evidence. *Ali v. Holder*, 637 F.3d 1025, 1028–29 (9th Cir. 2011). A finding is not supported by substantial evidence when "any reasonable adjudicator would be compelled to conclude to the contrary based on the evidence in the record." *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059 (9th Cir. 2017) (internal quotation marks omitted) (quoting *Zhi v. Holder*, 751 F.3d 1088, 1091 (9th Cir. 2014)). Purely legal questions and "mixed questions of law and fact requiring us to exercise judgment about legal principles" are reviewed de novo. *Mendoza-Pablo v. Holder*, 667 F.3d 1308, 1312 (9th Cir. 2012) (quoting *United States v. Ramos*, 623 F.3d 672, 679 (9th Cir. 2010)). Motions to continue, remand, and reopen are reviewed for abuse of discretion. *Ahmed v. Holder*, 569 F.3d 1009, 1012 (9th Cir. 2009); *Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005). The BIA abuses its discretion when it acts "arbitrarily, irrationally, or contrary to the law." *Movsisian*, 395 F.3d at 1098 (quoting *Lainez-Ortiz v. INS*, 96 F.3d 393, 395 (9th Cir. 1996)).

The BIA's decision affirming the denial of a continuance was not an abuse of discretion. First, Sanchez Antunez's claim that his hearing should have been continued pending the outcome of his application for Deferred Action for Childhood Arrivals ("DACA") is moot, because his application was denied during the pendency of this appeal.[1] *See Calderon v. Moore*, 518 U.S. 149, 150 (1996). Second, Sanchez Antunez did not establish good cause for a continuance to obtain a mental competency evaluation because he did not exhibit any indicia of incompetency. *See Salgado v. Sessions*, 889 F.3d 982, 988 (9th Cir. 2018) (finding no abuse of discretion when petitioner "did not show an inability to answer questions or a high level of distraction"); *Matter of M-A-M-*, 25 I. & N. Dec. 474, 477 (BIA 2011). Finally, the IJ did not abuse its discretion in refusing to allow Sanchez Antunez additional time to present documentation regarding his mental health because the record already contained evidence of his diagnosis, and Sanchez Antunez had already sought, and been granted, continuances. *See Ahmed*, 569 F.3d at 1012 (citing factors to consider); *Singh v. Holder*, 638 F.3d 1264, 1273 (9th Cir. 2011) (rejecting motion to continue because petitioner "had already received a continuance of three and a half weeks to get whatever he needed").

[1] Because the accuracy of the notice of denial of consideration of DACA cannot reasonably be questioned, and Sanchez Antunez does not oppose the motion to take judicial notice, the government's motion for judicial notice of materials establishing mootness (ECF No. 21) is **GRANTED**. *See* Fed. R. Evid. 201.

The BIA did not err in denying Sanchez Antunez's claims for asylum and withholding of removal. Even if Sanchez Antunez had timely filed his asylum application, the BIA did not err in holding he failed to establish a cognizable particular social group. *See Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1228–29 (9th Cir. 2016); *Mendoza-Alvarez v. Holder*, 714 F.3d 1161, 1164 (9th Cir. 2013).

The BIA did not err in denying Sanchez Antunez's request for relief under CAT because he did not establish the requisite likelihood that he would be subject to torture with the consent or acquiescence of a public official. *See Villegas v. Mukasey*, 523 F.3d 984, 989 (9th Cir. 2008).

Sanchez Antunez did not establish a due process violation. He was able to present his case and has not demonstrated that the outcome of his application would have been affected by any alleged violation. *See Rizo v. Lynch*, 810 F.3d 688, 693 (9th Cir. 2016).

The BIA did not abuse its discretion in denying Sanchez Antunez's motion to remand on the basis that the reports he sought to admit into the record would not have changed the outcome of the proceedings. *See Matter of Coelho*, 20 I. & N. Dec. 464, 471–73 (BIA 1992).

The BIA did not abuse its discretion in denying Sanchez Antunez's motion to reopen. Sanchez Antunez did not explain why the new evidence he sought to introduce was previously unavailable, why he could not have discovered it sooner,

or how it is qualitatively different than evidence he has already presented. *See* 8 C.F.R. § 1003.2(c)(1).

PETITIONS DENIED.