

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 25 2008

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

ARMANDO GONZALEZ-GARCIA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 05-70262

Agency No. A76-338-825

MEMORANDUM \*

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

Submitted March 18, 2008\*\*

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Armando Gonzalez-Garcia, a native of Mexico and lawful permanent resident, petitions for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's ("IJ") removal order. We have

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

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

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jurisdiction under 8 U.S.C. § 1252. We grant the petition and remand for further proceedings.

The IJ concluded that Gonzalez-Garcia engaged in alien smuggling due to his “complicity with the actions of his uncle and [the alien].” Neither the IJ nor the BIA had the benefit, however, of this court’s decision in *Altamirano v. Gonzales*, 427 F.3d 586, 596 (9th Cir. 2005) (concluding that the alien smuggling statute requires more than knowledge and presence; it requires “an affirmative act of assistance or encouragement”). In accordance with *INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam), we remand for further proceedings in light of *Altamirano*.

**PETITION FOR REVIEW GRANTED; REMANDED.**