

DEC 29 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAVIER CEBALLOS,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-74711

Agency No. A073-440-012

MEMORANDUM*

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

Submitted December 17, 2008**

Before: GOODWIN, TROTT, and RYMER, Circuit Judges.

Javier Ceballos, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's deportation order. We have jurisdiction under 8 U.S.C. § 1252.

* 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).

Fernandez-Ruiz v. Gonzales, 468 F.3d 1159, 1163 (9th Cir. 2006). Reviewing de novo, *id.*, we deny the petition for review.

The agency correctly determined that Ceballos is ineligible for relief under the Federal First Offender Act (“FFOA”) because his conviction was not for simple possession of a controlled substance. *See de Jesus Melendez v. Gonzales*, 503 F.3d 1019, 1024 (9th Cir. 2007) (FFOA applies to “cases involving first-time simple possession of narcotics”). Ceballos’ due process contention therefore fails, as he was deportable as a controlled substance offender, *see* 8 U.S.C. § 1251(a)(2)(B)(i) (1995), and ineligible for a waiver under 8 U.S.C. § 1182(h).

PETITION FOR REVIEW DENIED.