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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AVELINO FERNANDES, Petitioner, v. ERIC H. HOLDER Jr., Attorney General, Respondent.	No. 06-73517 Agency No. A078-307-855 MEMORANDUM[*]

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

Submitted September 14, 2009[**]

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Avelino Fernandes, a native and citizen of India, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his motion to reopen removal proceedings

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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).

conducted in absentia. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo claims of constitutional violations in immigration proceedings. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The agency did not abuse its discretion in denying Fernandes' motion to reopen for failure to establish "exceptional circumstances." *See* 8 U.S.C. § 1229a(e)(1).

It follows that the denial of Fernandes' motion to reopen did not violate due process. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for a due process violation).

PETITION FOR REVIEW DENIED.