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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RAFAEL RODRIGUEZ PEDRAZA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-71439

Agency No. A095-406-729

MEMORANDUM\*

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

Submitted May 25, 2010\*\*

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Rafael Rodriguez Pedraza, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's denial of his application for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for

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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 concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

substantial evidence the BIA's continuous physical presence determination, *Lopez-Alvarado v. Ashcroft*, 381 F.3d 847, 850-51 (9th Cir. 2004), and review de novo constitutional claims, *Iturribarría v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the BIA's conclusion that Rodriguez Pedraza did not meet his burden of establishing continuous physical presence, *see* 8 U.S.C. § 1229b(b)(1)(A), where the testimony of his three witnesses was materially inconsistent regarding Rodriguez Pedraza's place and duration of residence after entry, *cf. Lopez-Alvarado*, 381 F.3d at 851-52.

We do not consider Rodriguez Pedraza's hardship contention because his failure to establish continuous physical presence is dispositive. *See* 8 U.S.C. § 1229b(b)(1)(A).

We lack jurisdiction to review the BIA's July 18, 2007, order denying Rodriguez Pedraza's motion to reconsider because he failed to timely petition for review of that decision. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

Rodriguez Pedraza's due process claim is foreclosed by *Falcon-Carriche v. Ashcroft*, 350 F.3d 845 (9th Cir. 2003).

We lack jurisdiction to review Rodriguez Pedraza's contention that the agency acted arbitrarily and capriciously in violation of the Administrative

Procedure Act in issuing its streamlining regulations. *See* 5 U.S.C. §§ 702, 703; 28 U.S.C. § 1331.

Rodriguez Pedraza's remaining contentions are unavailing.

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**