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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAFAEL ANTONIO ROSALES,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-74412

Agency No. A072-520-753

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 Antonio Rosales, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's order denying his motion to reopen removal proceedings held

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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).

in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of motions to reopen, *Karapetyan v. Mukasey*, 543 F.3d 1118, 1129 (9th Cir. 2008), and de novo questions of law, *Cerezo v. Mukasey*, 512 F.3d 1163, 1166 (9th Cir. 2008). We deny the petition for review.

The agency did not abuse its discretion in denying Rosales' motion to reopen because he had received both oral and written notice of his next scheduled hearing at which he did not appear. *See Khan v. Ashcroft*, 374 F.3d 825, 828-29 (9th Cir. 2004) (notice proper where INS adhered to statutorily imposed procedural requirements). Rosales' due process claim therefore fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice to prevail on a due process challenge).

**PETITION FOR REVIEW DENIED.**