

SEP 28 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>PABLO IVAN HERNANDEZ-PALACIO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-71920

Agency No. A071-575-846

MEMORANDUM\*

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

Submitted September 13, 2010\*\*

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Pablo Ivan Hernandez-Palacio, a native and citizen of Guatemala, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order denying his motions to reconsider and reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to

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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).

reopen or reconsider, *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005), and we deny the petition for review.

The BIA acted within its discretion in denying Hernandez-Palacio's motion to reopen based on ineffective assistance of counsel because he failed to comply with the requirements set forth in *Matter of Lozada*, 19 I. & N. Dec. 637, 639 (BIA 1988), and the ineffective assistance he alleges is not plain on the face of the record. *See Reyes v. Ashcroft*, 358 F.3d 592, 597-99 (9th Cir. 2004).

In his opening brief, Hernandez-Palacio fails to address, and therefore has waived any challenge to, the BIA's determination that, construed as motion to reconsider, the motion was untimely filed. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in a party's opening brief are waived).

**PETITION FOR REVIEW DENIED.**