

APR 11 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ELLIOT NILSSON GARCIA-CASTRO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 11-73905

Agency No. A072-321-175

MEMORANDUM*

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

Submitted April 7, 2014**

Before: TASHIMA, GRABER, and IKUTA, Circuit Judges.

Elliot Nilsson Garcia-Castro, a native and citizen of El Salvador, petitions for review of an order of the Board of Immigration Appeals (“BIA”) denying his motion to reopen deportation proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo questions of law. *Vargas-Hernandez v.*

* 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).

Gonzales, 497 F.3d 919, 921 (9th Cir. 2007). We dismiss in part and deny in part the petition for review.

Garcia-Castro’s undisputed deportability for a controlled-substance violation under former 8 U.S.C. § 1231(a)(2)(B)(i) precludes us from considering his contention that the BIA abused its discretion by denying his motion to reopen. *See* 8 U.S.C. § 1252(a)(2)(C); *Bermudez v. Holder*, 586 F.3d 1167, 1169 (9th Cir. 2009) (per curiam); *see also Ghahremani v. Gonzales*, 498 F.3d 993, 998 n.5 (9th Cir. 2007) (“[W]ithdrawal of judicial review over final orders of deportation also withdraws jurisdiction from motions . . . to reopen deportation proceedings for those aliens deportable for having committed a crime enumerated in the statute.” (citation omitted)).

We retain jurisdiction to review questions of law and constitutional claims. *See* 8 U.S.C. § 1252(a)(2)(D). But in light of the BIA’s dispositive determination that Garcia-Castro’s motion was untimely, the BIA did not need to address his arguments and evidence regarding prosecutorial discretion. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (“As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.” (citation omitted)).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.