

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 2 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

HERNAN LOPEZ-CABRERA,

No. 16-70035

Petitioner,

Agency No. A089-853-856

v.

MEMORANDUM*

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

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

Submitted September 26, 2017**

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

Hernan Lopez-Cabrera, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review de novo constitutional claims, and review for abuse of discretion the BIA's denial of a

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005).

We deny the petition for review.

The BIA did not abuse its discretion in denying the motion as untimely where the motion was filed over two years after the order of removal became final and Lopez-Cabrera has not established that his motion falls within any exception to filing deadline. *See* 8 C.F.R. § 1003.2(c)(3)(i)-(iv).

Contrary to Lopez-Cabrera's contention, the BIA did not mischaracterize the motion to reopen or fail to properly address his contentions. Accordingly the BIA did not violate due process in denying the motion. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (to prevail on a due process challenge, an alien must demonstrate error and substantial prejudice).

PETITION FOR REVIEW DENIED.