

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 18 2019

FOR THE NINTH CIRCUIT

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

FERMIN GONZALEZ VASQUEZ,

No. 17-72804

Petitioner,

Agency No. A070-669-661

v.

MEMORANDUM\*

MATTHEW G. WHITAKER, Acting  
Attorney General,

Respondent.

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

Submitted January 15, 2019\*\*

Before: TROTT, TALLMAN, and CALLAHAN, Circuit Judges.

Fermin Gonzalez Vasquez, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's order denying his motion to reopen deportation proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252.

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\* 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).

We review for abuse of discretion the denial of a motion to reopen, and we review de novo constitutional claims. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The agency did not abuse its discretion or violate due process in denying Gonzalez Vasquez's motion to reopen as untimely, where he filed it 21 years after his final order of deportation, and he failed to show diligence for equitable tolling of the filing deadline. *See* 8 C.F.R. § 1003.23(b)(4)(iii)(A)(1); *Avagyan v. Holder*, 646 F.3d 672, 679 (9th Cir. 2011) (equitable tolling is available to an alien who is prevented from timely filing a motion to reopen due to deception, fraud, or error, as long as the alien exercises due diligence in discovering such circumstances); *Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and substantial prejudice to prevail on a due process challenge).

Because the timeliness determination is dispositive, we do not reach Gonzalez Vasquez's contentions regarding exceptional circumstances. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts and agencies are not required to reach non-dispositive issues).

**PETITION FOR REVIEW DENIED.**