

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EDUARDO FRANCISCO SILVA-TORO,</p> <p>Petitioner,</p> <p>v.</p> <p>MERRICK B. GARLAND, Attorney General,</p> <p>Respondent.</p>

No. 17-70475

Agency No. A070-552-901

MEMORANDUM*

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

Submitted September 20, 2022**
Pasadena, California

Before: BOGGS, *** WARDLAW, and IKUTA, Circuit Judges.

Eduardo Francisco Silva-Toro seeks review of a decision of the Board of Immigration Appeals (BIA) denying his fourth motion to reopen his immigration

* 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).

*** The Honorable Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

proceedings to seek deferral of removal under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252 and deny the petition for review.

The BIA did not err in rejecting Silva-Toro's argument that his fourth motion to reopen is not time or number barred. *See* 8 C.F.R. § 1003.2(c); *see also Go v. Holder*, 744 F.3d 604, 609 (9th Cir. 2014) (discussing limitations and exceptions for motions to reopen CAT claims). The BIA conducted a sufficient review of the new country-conditions evidence and did not abuse its discretion in concluding that the evidence presented, which included news articles and Silva-Toro's declaration, showed that country conditions in Peru have not become materially worse since Silva-Toro's original proceedings in 1993. We reject Silva-Toro's argument that the BIA applied the wrong legal standard in making this determination, because the cases to which Silva-Toro cites for that proposition are inapposite.

The BIA did not err in denying Silva-Toro's claim that he received ineffective assistance of counsel for his first motion to reopen because his counsel at the time failed to submit certain evidence. That evidence could not have been considered on a motion to reopen because none of it "was previously undiscoverable or could not have been presented at Silva-Toro's 1993 deportation

hearing,” as we previously held. *Silva-Toro v. Lynch*, 642 Fed. App’x 767, 769 (9th Cir. 2016). Therefore, any deficient performance by Silva-Toro’s counsel was not prejudicial. *See Salazar-Gonzalez v. Lynch*, 798 F.3d 917, 920–22 (9th Cir. 2015).

PETITION DENIED.