

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 13 2023

FOR THE NINTH CIRCUIT

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

GERARDO GARCIA-ORTIZ,

No. 19-72388

Petitioner,

Agency No. A034-614-679

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted January 11, 2023**
Pasadena, California

Before: WATFORD, FRIEDLAND, and BENNETT, Circuit Judges.

* 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).

Gerardo Garcia-Ortiz petitions for review of a Board of Immigration Appeals (BIA) order denying as untimely his motion to reconsider and remand proceedings. We deny the petition.

The BIA did not abuse its discretion in holding that, whether considered a motion to reopen or a motion to reconsider, Garcia-Ortiz's motion was untimely as he filed it nearly seven years after the underlying BIA decision and failed to demonstrate that an applicable exception applied. *See* 8 U.S.C. § 1229a(c)(6)(B) (30-day deadline for motions to reconsider); § 1229a(c)(7)(C)(i) (90-day deadline for motions to reopen).

Garcia-Ortiz argues that the Supreme Court's decision in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), warrants equitable tolling. But that case has no application here. A Notice to Appear need not contain the date, place, and time of the hearing to vest jurisdiction with the immigration court. *See United States v. Bastide-Hernandez*, 39 F.4th 1187, 1188 (9th Cir. 2022) (en banc); *Aguilar Fermin v. Barr*, 958 F.3d 887, 889 (9th Cir. 2020). Nor does the stop-time rule at issue in *Pereira* have any bearing on this case for it is undisputed that Garcia-Ortiz was statutorily eligible for cancellation of removal.

PETITION FOR REVIEW DENIED.