

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 24 2023

FOR THE NINTH CIRCUIT

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

VICENTE PEREZ-VARGAS,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-1101

Agency No.
A076-345-760

MEMORANDUM*

On Petition for Review of an Order of the
Department of Homeland Security

Submitted August 22, 2023**
San Francisco, California

Before: BUMATAY, KOH, and DESAI, Circuit Judges.

Vincente Perez-Vargas, a native and citizen of Mexico, petitions for review of the United States Customs and Border Protection (“CBP”)’s decision to decline to reopen and rescind his Final Administrative Removal Order (“FARO”). We

* 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).

dismiss the petition.

The former Immigration and Naturalization Service issued a FARO against Perez-Vargas in October 1999. The Department of Homeland Security reinstated the 1999 FARO on November 21, 2018. In August 2021, Perez-Vargas requested that CBP reopen and rescind the 1999 FARO. CBP denied the request to reopen on October 21, 2021. Perez-Vargas filed the petition for review after receiving the CBP denial letter.

CBP lacked jurisdiction to reopen the reinstated FARO. *See* 8 U.S.C. § 1231(a)(5); *see also Cuenca v. Barr*, 956 F.3d 1079, 1088 (9th Cir. 2020) (holding that “§ 1231(a)(5) bars reopening a removal order that has been reinstated following an alien’s unlawful reentry into the United States”). And because Perez-Vargas filed the petition for review more than 30 days after the FARO was reinstated, we lack jurisdiction to consider any collateral attack on his underlying removal order. *See* 8 U.S.C. § 1252(b)(1); *see also Bravo-Bravo v. Garland*, 54 F.4th 634, 638 & n.5 (9th Cir. 2022) (holding that an “alien may collaterally attack the removal order underlying the reinstatement order” if the alien “file[s] a *timely* petition for review of [the] reinstated removal order” (emphasis added)).

PETITION DISMISSED.