

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 28 2024

FOR THE NINTH CIRCUIT

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

DOMINGO ANDRES CANTO-GALVES,

No. 22-1307

Petitioner,

Agency No.
A209-138-759

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted February 21, 2024**

Before: FERNANDEZ, NGUYEN, and OWENS, Circuit Judges.

Domingo Andres Canto-Galves, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen.

* 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).

Najmabadi v. Holder, 597 F.3d 983, 986 (9th Cir. 2010). We deny the petition for review.

The BIA did not abuse its discretion in denying Canto-Galves's motion to reopen as untimely, where it was filed ninety-five days after the final removal order, *see* 8 U.S.C. § 1229a(c)(7)(C)(i) (motion to reopen must be filed within ninety days of the final removal order), and he has not established changed country conditions in Mexico to qualify for an exception to the filing deadline, *see* 8 U.S.C. § 1229a(c)(7)(C)(ii); *Toufighi v. Mukasey*, 538 F.3d 988, 996-97 (9th Cir. 2008) (movant must produce material evidence that conditions in country of nationality had changed).

The BIA did not abuse its discretion in declining to equitably toll the filing deadline based on ineffective assistance of counsel where he did not comply with the procedural requirements set forth in *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), and the ineffective assistance alleged is not plain on the face of the record. *See Tamang v. Holder*, 598 F.3d 1083, 1090-91 (9th Cir. 2010); *see also Avagyan v. Holder*, 646 F.3d 672, 679 (9th Cir. 2011) (deadline may be equitably tolled when petitioner is prevented from filing because of deception, fraud, or error).

Because Canto-Galves does not challenge the agency's determination not to exercise its sua sponte authority, we do not address it. *See Lopez-Vasquez v.*

Holder, 706 F.3d 1072, 1079-80 (9th Cir. 2013).

The temporary stay of removal remains in place until the mandate issues.

PETITION FOR REVIEW DENIED.