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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROGELIO SIMON-FRANCISCO,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-70528

Agency No. A070-942-853

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, O'SCANNLAIN, and BYBEE, Circuit Judges.

Rogelio Simon-Francisco, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' 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. We review for

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

abuse of discretion the denial of a motion to reopen, and review de novo due process claims. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The agency did not abuse its discretion in denying Simon-Francisco's motion to reopen because the record shows that he was personally served with an Order to Show Cause and Notice of Hearing, *see* 8 U.S.C. §§ 1252b(a)(1)-(3) (1995), and he also failed to allege exceptional circumstances for missing his hearing, *see* 8 U.S.C. § 1252b (c)(3)(A) (1995).

Simon-Francisco's contention that the agency violated due process by failing to consider his declaration fails where the record shows that a declaration was never filed with the agency. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2003) (requiring error to prevail on a due process violation).

Simon-Francisco's remaining contention is unavailing.

PETITION FOR REVIEW DENIED.