

MAR 25 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| |
|--|
| <p>JOSE GERMAN BENAVIDES-MOLINA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p> |
|--|

No. 09-71258

Agency No. A028-720-981

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, O’SANNLAIN, and BYBEE, Circuit Judges.

Jose German Benavides-Molina, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his motion to reopen deportation proceedings conducted in absentia. We have jurisdiction under

* 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).

8 U.S.C. § 1252. We review for abuse of discretion the BIA's denial of the motion, and we review de novo questions of law. *Hernandez-Vivas v. INS*, 23 F.3d 1557, 1561 (9th Cir. 1994). We deny the petition for review.

The BIA did not abuse its discretion in denying Benavides-Molina's second motion to reopen for failure to establish reasonable cause to excuse his failure to appear. *See Hernandez-Vivas*, 23 F.3d at 1559. Benavides-Molina did not dispute the hearing notice was sent to the address he provided, *see* 8 U.S.C. § 1252b(c)(1) (repealed) (stating that written notice shall be considered sufficient if provided at the most recent address provided by respondent), and he submitted insufficient evidence to support an affirmative defense of nondelivery or improper delivery, *see Arrieta v. INS*, 117 F.3d 429, 431 (9th Cir.1997) (per curiam) (notice of hearing sent to an alien's last known address may be sufficient).

PETITION FOR REVIEW DENIED.