

MAR 29 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RAFAEL GARCIA-ROJAS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-72070

Agency No. A029-192-572

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.

Rafael Garcia-Rojas, a native and citizen of Guatemala, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s (“IJ”) decision denying his motion to reopen

* 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).

deportation proceedings held in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review de novo due process claims, *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005), and for an abuse of discretion the denial of motions to reopen, *Hernandez-Vivas v. INS*, 23 F.3d 1557, 1560 (9th Cir. 1994). We deny the petition for review.

The BIA did not abuse its discretion by denying Garcia-Rojas' motion to reopen for failure to establish reasonable cause for his absence from the June 7, 1990 deportation hearing. *See Hernandez-Vivas*, 23 F.3d at 1559 (mistaken belief that a timely motion to change venue negated court appearance does not constitute reasonable cause excusing failure to appear). Garcia-Rojas' argument that the BIA and IJ rejected his motion under an incorrect legal standard is not supported by the record.

Garcia-Rojas' contention that the BIA erred by determining that he was ineligible for relief under NACARA is without merit. *See* 8 C.F.R. § 1003.43(e) (establishing filing deadlines for motions to reopen seeking relief under NACARA).

Garcia-Rojas' contention that the BIA's denial of his motion to reopen

violates his due process rights is also without merit. *See Martinez-Rosas*, 424 F.3d at 930.

PETITION FOR REVIEW DENIED.