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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE LUIS ALBERTO-CANACA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70968

Agency No. A097-315-383

MEMORANDUM*

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

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

Jose Luis Alberto-Canaca, a native and citizen of Honduras and a resident of El Salvador, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for an abuse of discretion the BIA's denial of a

* 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).

motion to reconsider and review de novo claims of due process violations. *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Alberto-Canaca's motion to reconsider because the motion failed to identify any error of fact or law in the BIA's prior order. *See* 8 C.F.R. § 1003.2(b)(1).

We lack jurisdiction to review any challenge Alberto-Canaca makes to the BIA's underlying order dismissing his appeal from the immigration judge's decision, because this petition is not timely as to that order. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1258 (9th Cir. 1996) (BIA's underlying order is final when issued, irrespective of the filing of a reconsideration motion, and petitioner must seek judicial review of the order within the specified period).

Finally, in light of the foregoing, Alberto-Canaca's contention that the agency violated his due process rights is unavailing.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.