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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JULIO CESAR MORENO-HEREDIA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 09-72427

Agency No. A079-543-611

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.

Julio Cesar Moreno-Heredia, a native and citizen of Peru, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order denying his third motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the BIA’s denial of a 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).

He v. Gonzales, 501 F.3d 1128, 1130-31 (9th Cir. 2007). We deny the petition for review.

The BIA did not abuse its discretion in denying Moreno-Heredia's third motion to reopen as untimely and numerically barred where the motion was filed nearly five years after the BIA's final administrative order, *see* 8 C.F.R. § 1003.2(c)(2), and Moreno Heredia failed to establish changed circumstances in Peru to qualify for the regulatory exception to the time and numerical bar for filing motions to reopen. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *see also Malty v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004) ("The critical question is . . . whether circumstances have changed sufficiently that a petitioner who previously did not have a legitimate claim for asylum now has a well-founded fear of future persecution.").

PETITION FOR REVIEW DENIED.