NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

JAVIER HERRERA-CASTANEDA, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 17-72755 Agency No. A095-723-057 MEMORANDUM[*]

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

Submitted December 8, 2022[**]
Pasadena, California

Before: R. NELSON, BADE, and FORREST, Circuit Judges.

Petitioner Javier Herrera-Castaneda, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' (BIA) denial of his second motion to reopen proceedings. We have jurisdiction under 8 U.S.C. § 1252.

Although this appeal is taken from Herrera-Castaneda's *second* motion to

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

reopen, the entirety of Herrera-Castaneda's briefing addresses the BIA's denial of his *first* motion to reopen. The issues surrounding the denial of that motion to reopen have already been the subject of a petition for review before this court, which was denied. *See Herrera-Castaneda v. Sessions*, 678 F. App'x 514, 514–15 (9th Cir. 2017). To the extent Herrera-Castaneda intended to appeal the BIA's denial of his first motion to reopen, that request is both untimely under 8 U.S.C. § 1252(b)(1) and foreclosed by our prior decision in 2017.

As to the second motion to reopen, Herrera-Castaneda's petition is deficient on its face. The BIA denied Herrera-Castaneda's second motion to reopen because he failed to present sufficient evidence to show that the harm he might experience upon returning to Mexico would be "on account of" his inclusion in a particular social group, he failed to demonstrate that it is more likely than not that he would be tortured in Mexico by or with the acquiescence of the government, and there were no exceptional circumstances warranting sua sponte reopening. Because Herrera-Castaneda's briefing exclusively discusses the bases for the BIA's decision on his first motion to reopen rather than his second, Herrera-Castaneda fails to argue, much less demonstrate, that the BIA's denial of his second motion to reopen was "arbitrary, irrational, or contrary to law." *See, e.g.*, *Cui v. Garland*, 13 F.4th 991, 995–96 (9th Cir. 2021) ("The BIA only abuses its discretion [in denying a motion to reopen] when the decision is arbitrary, irrational or contrary to law."

(internal quotation marks and citation omitted)). Accordingly, we deny the petition for review.

PETITION FOR REVIEW DENIED.