

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 13 2020

FOR THE NINTH CIRCUIT

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

JAVIER MALDONADO MARTINEZ,

No. 18-70206

Petitioner,

Agency No. A095-300-405

v.

MEMORANDUM\*

WILLIAM P. BARR, Attorney General,

Respondent.

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

Submitted May 6, 2020\*\*

Before: BERZON, N.R. SMITH, and MILLER, Circuit Judges.

Javier Maldonado Martinez, a native and citizen of Mexico, petitions 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 based on ineffective assistance of counsel. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Mohammed v.*

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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).

*Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Maldonado Martinez's motion to reopen as untimely where his motion was filed nearly ten years after the IJ's November 26, 2007, in absentia removal order, *see* 8 C.F.R. § 1003.2(c)(2), and Maldonado Martinez failed to establish the due diligence required to warrant tolling of the filing deadline, *see Avagyan v. Holder*, 646 F.3d 672, 677 (9th Cir. 2011) (equitable tolling is available to a petitioner who is prevented from filing because of deception, fraud or error, and exercised due diligence in discovering such circumstances).

Maldonado Martinez has not shown a legal or constitutional error behind the BIA's decision denying his motion to reopen sua sponte. *See Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016).

**PETITION FOR REVIEW DENIED.**