

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 18 2022

FOR THE NINTH CIRCUIT

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

NICOLAS NAVARRO-NAVARRETE,

No. 18-70361
19-71181

Petitioner,

Agency No. A089-815-349

v.

MERRICK B. GARLAND, Attorney
General,

MEMORANDUM*

Respondent.

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

Submitted November 15, 2022**
Phoenix, Arizona

Before: BYBEE and OWENS, Circuit Judges, and RAKOFF,*** District Judge.

Petitioner Nicolas Navarro-Navarrete, a native and citizen of Mexico,
petitions for review from the Board of Immigration Appeals' ("BIA") dismissal

* 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).

*** The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

and denial, respectively, of his two motions to reopen his reinstated removal order. Navarro-Navarrete's two petitions were consolidated before this court. The BIA dismissed his appeal from the immigration judge's ("IJ") denial of his first motion to reopen his reinstated removal order for lack of jurisdiction. The BIA denied his second motion to reopen on the merits, rejecting Navarro-Navarrete's claim that the IJ in the underlying removal proceeding lacked jurisdiction because of a defective Notice to Appear. As the parties are familiar with the facts, we do not recount them here. We deny the petitions for review.

In general, noncitizens have the right to file one motion to reopen their removal proceedings. 8 U.S.C. § 1229a(c)(7)(A). However, the provision providing for reinstatement of a removal order, *id.* § 1231(a)(5), overrides this right and prevents the reopening of a reinstated removal order. Section 1231(a)(5) "unambiguously bar[s] reopening a reinstated prior removal order' and . . . divest[s] the BIA 'of jurisdiction to reopen a removal proceeding after reinstatement of the underlying removal order.'" *Bravo-Bravo v. Garland*, 40 F.4th 911, 917 (9th Cir. 2022) (quoting *Cuenca v. Barr*, 956 F.3d 1079, 1084 (9th Cir. 2020)). "Accordingly, the BIA is required to deny such a motion to reopen for lack of jurisdiction," and "we will deny a petition to review that denial." *Id.* at 914-15.

Except for statutory exceptions not relevant here, no collateral attack on a removal order which has been reinstated is permissible in a motion to reopen, not even for a gross miscarriage of justice. *Id.* at 916; *see also Cuenca*, 956 F.3d at 1085-87 (distinguishing a case in which this court reviewed a reinstated removal order because it “came . . . as a petition for review of a reinstatement order itself, not from the denial of a motion to reopen”).

While the BIA dismissed Navarro-Navarrete’s first motion to reopen on the ground that the IJ lacked jurisdiction, the BIA denied his second motion on the merits, and typically, under the *Chenery* doctrine, our review is limited to the grounds on which the agency’s action was based. *Gutierrez-Zavala v. Garland*, 32 F.4th 806, 810 (9th Cir. 2022). However, “where we review the denial of a motion to reopen that the BIA did not have jurisdiction to consider, we need not remand for the agency to reach that same conclusion because to do so would be an idle and useless formality.” *Id.* (internal quotations and citation omitted). Thus, there is no need to remand to the BIA to reconsider the question.

In sum, we deny Navarro-Navarrete’s petitions for review because the IJ and BIA lacked jurisdiction over his motions to reopen his reinstated removal order.

PETITIONS FOR REVIEW DENIED.