

DEC 26 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>PEDRO J. MELENDEZ-ALVARADO,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 06-72456

Agency No. A029-133-326

MEMORANDUM*

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

Submitted December 17, 2008**

Before: GOODWIN, TROTT and RYMER, Circuit Judges.

Pedro J. Melendez-Alvarado, a native and citizen of El Salvador, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's order denying his motion to reopen deportation

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

proceedings conducted *in absentia*. We have jurisdiction pursuant to 8 U.S.C. § 1252 and we grant the petition for review and remand.

The agency denied Melendez-Alvarado's pro se motion to reopen on the ground that his notice of hearing had been properly served. Melendez-Alvarado's claim, however, was that he received no notice at all and was unaware of the initiation of deportation proceedings against him in 1988. We therefore remand for the agency to consider in the first instance whether the Order to Show Cause ("OSC") was properly served on Melendez-Alvarado. *See Matter of Heute*, 20 I.&N. Dec. 250, 253 (BIA 1991) (in order to effect personal service of an OSC sent by certified mail, return receipt requested, the receipt must be signed by the addressee or a responsible person at his or her address and returned).

Accordingly, we grant the petition and remand for further proceedings. *INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.