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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RODOLFO RUIZ MONTES DE OCA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-73088

Agency No. A097-357-699

MEMORANDUM\*

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

Submitted June 16, 2009\*\*

Before: PAEZ, TALLMAN and N. R. SMITH, Circuit Judges.

Rodolfo Ruiz Montes De Oca, a native and citizen of Mexico, petitions pro  
se for review of a Board of Immigration Appeals decision denying, as untimely and  
without merit, his motion to reopen proceedings to apply for protection under the  
Convention Against Torture (CAT), following the denial of his application for

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\* 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).

cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review the denial of a motion to reopen for abuse of discretion, *He v. Gonzales*, 501 F.3d 1128, 1130-31 (9th Cir. 2007), and we deny the petition for review.

Montes De Oca contends his motion to reopen was timely because there is no time limit for motions to reopen that seek relief under the CAT, and because he only recently became aware of “widespread torture” in Mexico. The motion was untimely because Montes De Oca filed it outside the ninety-day time limit set forth in 8 C.F.R. § 1003.2(c)(2), which does not specifically exclude CAT claims from the time limit. Moreover, the exception to the time limit based on changed country conditions does not apply because Montes De Oca did not present material evidence of changed country conditions that was not available and could not have been presented at the previous proceeding. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *He*, 501 F.3d at 1131.

Montes De Oca also contends the Board erred in concluding that even if the motion to reopen were timely, he did not establish a prima facie case of eligibility for relief under the CAT. We are unpersuaded, because the generalized evidence attached to the motion did not establish Montes De Oca would more likely than not be tortured if removed to Mexico. *See Nuru v. Gonzales*, 404 F.3d 1207, 1216

(9th Cir. 2005); *Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003) (requiring movant to establish prima facie case for eligibility for CAT relief).

**PETITION FOR REVIEW DENIED.**