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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ISMAEL RAMIREZ-BERMUDEZ,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-73538

Agency No. A075-252-491

MEMORANDUM*

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

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Ismael Ramirez-Bermudez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen based on ineffective assistance of counsel. We have jurisdiction pursuant

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

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

to 8 U.S.C. § 1252. We review for abuse of discretion the BIA's denial of a motion to reopen and review de novo constitutional claims. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Ramirez-Bermudez's second motion to reopen as time- and number-barred where he filed the motion over five years after the final order of removal, *see* 8 U.S.C. § 1229a(c)(7)(C)(i), and failed to establish the due diligence required for equitable tolling, *see Iturribarria*, 321 F.3d at 897.

We lack jurisdiction to review Ramirez-Bermudez's contention that the BIA should have invoked its sua sponte authority to reopen his proceedings. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.