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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JORGE ALBERTO GUTIERREZ COLOCHO,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 06-74781

Agency No. A073-967-978

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.

Jorge Alberto Gutierrez Coloch, a native and citizen of El Salvador,
petitions for review of the Board of Immigration Appeals’ (“BIA”) order
dismissing his appeal from an immigration judge’s (“IJ”) decision denying his

* 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).

motion to reopen and rescind an in absentia removal order. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 786, 791 (9th Cir. 2005). We deny the petition for review.

The agency acted within its discretion in denying as number barred Gutierrez Colocho's second motion to reopen before the IJ. *See* 8 C.F.R. § 1003.23(b)(1). The BIA did not abuse its discretion in declining to equitably toll the numerical limitation on motions to reopen because the record does not support Gutierrez Colocho's claim that prior counsel either filed Gutierrez Colocho's first motion to reopen pro se, or otherwise provided ineffective legal assistance. *See Rodriguez-Lariz v. INS*, 282 F.3d 1218, 1224 (9th Cir. 2002) (number bar amenable to equitable tolling).

Petitioner's remaining contentions lack merit.

PETITION FOR REVIEW DENIED.