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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ISMAEL CARRAZCO GUTIERREZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 07-70032

Agency No. A095-300-413

MEMORANDUM*

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

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Ismael Carrazco Gutierrez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reissue. We have jurisdiction under 8 U.S.C. § 1252. Reviewing for

* 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).

abuse of discretion, *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008), we grant the petition for review and remand.

The BIA abused its discretion by failing to specifically address Carrazco Gutierrez's allegations that he did not receive notice of the BIA's May 12, 2006, order. *See Singh v. Gonzales*, 494 F.3d 1170, 1172-73 (9th Cir. 2007) (presumption of proper mailing may be overcome by evidence of non-receipt by petitioner or counsel). We remand for the BIA to address Carrazco Gutierrez's allegations of non-receipt in the first instance and determine whether it is sufficient to overcome the presumption of mailing. *See id.*

PETITION FOR REVIEW GRANTED; REMANDED.