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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RAUL TORRES GARCIA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 09-70601

Agency No. A095-293-175

MEMORANDUM*

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

Submitted February 15, 2011**

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

Raul Torres Garcia, 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 under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen,

* 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).

Iturribarria v. INS, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA acted within its discretion in denying as untimely Torres Garcia's motion to reopen where Torres Garcia filed the motion almost two years after the BIA's final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and failed to establish that he acted with the due diligence required to warrant equitable tolling of the filing deadline, *see Iturribarria*, 321 F.3d at 897.

PETITION FOR REVIEW DENIED.