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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>JOSE ALFREDO RODRIGUEZ-PEREZ,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p> |
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No. 09-71071

Agency No. A037-803-987

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, O’SCANNLAIN, and BYBEE, Circuit Judges.

Jose Alfredo Rodriguez-Perez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review 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 the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA did not abuse its discretion by denying Rodriguez-Perez's motion to reopen as untimely because it was filed over 90 days after the BIA's final order, *see* 8 C.F.R. § 1003.2(c)(2), and because Rodriguez-Perez failed to establish the due diligence required for equitable tolling, *see Iturribarria*, 321 F.3d at 897.

PETITION FOR REVIEW DENIED.