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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BENITO ESTRADA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-74816

Agency No. A092-408-863

MEMORANDUM*

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

Submitted April 20, 2011**

Before: RYMER, THOMAS, and PAEZ, Circuit Judges.

Benito Estrada, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order sustaining the government's appeal from an immigration judge's ("IJ") decision. We have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review and remand.

* 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).

The BIA concluded that the IJ lacked jurisdiction to reopen proceedings without the benefit of our decision in *Reyes-Torres v. Holder*, Nos. 08-74452 & 09-70214, 2011 WL 1312570 (9th Cir. April 7, 2011) (mandate pending), in which we determined that 8 C.F.R. § 1003.2(d) did not apply to preclude a motion to reopen filed after the petitioner had been removed. *See Reyes-Torres*, 2011 WL 1312570, at *2-*3 (citing *Coyt v. Holder*, 593 F.3d 902 (9th Cir. 2010)); *see also Reynoso-Cisneros v. Gonzales*, 491 F.3d 1001, 1002 (9th Cir. 2007) (per curiam) (treating departure bars to motions under 8 C.F.R. §§ 1003.2(d) and 1003.23(b)(1) as substantively identical). We remand to the BIA in light of this intervening case law.

PETITION FOR REVIEW GRANTED; REMANDED.