

APR 22 2011

MOLLY C. DWYER, CLERK
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NOT FOR PUBLICATION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>
--

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.