

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 31 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ORLANDO TURCIOS, aka Orlando
Arauz, Orlando Salcedo,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 05-72258

Agency No. A018-473-869

MEMORANDUM*

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

Argued and Submitted April 15, 2009
San Francisco, California

Before: SILER,** KLEINFELD, and M. SMITH, Circuit Judges.

The Board of Immigration Appeals erred as a matter of law in concluding that it lacked jurisdiction to hear Turcios's case because his notice of appeal was received late due to delivery service error. The thirty-day time limit contained in 8

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Eugene E. Siler, Senior Circuit Judge for the Sixth Circuit, sitting by designation.

C.F.R. § 1003.38 is a claim-processing rule, not a jurisdictional limitation.

Irigoyen-Briones v. Holder, 07-71806, slip op. (9th Cir. 2011). We remand to the agency to permit it fully to reconsider whether, under the circumstances presented, it will hear the appeal from the Immigration Judge's decision in this case.

The **PETITION IS GRANTED**, the Board's decision **VACATED**, and the case **REMANDED**.