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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LUIS SANCHEZ-BAUTISTA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-73048

Agency No. A077-285-277

MEMORANDUM*

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

Submitted May 24, 2011**

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

Luis Sanchez-Bautista, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Iturribarria v. INS*, 321 F.3d

* 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).

889, 894 (9th Cir. 2003). We deny in part and grant in part the petition for review, and remand for further proceedings.

The BIA did not abuse its discretion in denying Sanchez-Bautista's motion to reopen as untimely where the motion was filed more than two years after the BIA's final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and Sanchez-Bautista did not show he was entitled to equitable tolling, *see Iturribarria*, 321 F.3d at 897.

Because the BIA failed to address Sanchez-Bautista's request to reopen his proceedings sua sponte, we remand for the BIA to consider Sanchez-Bautista's request in the first instance. *See Montes-Lopez v. Gonzales*, 486 F.3d 1163, 1165 (9th Cir. 2007).

Each party shall bear its own costs for this petition for review.

**PETITION FOR REVIEW DENIED in part; GRANTED in part;
REMANDED.**