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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE GUADALUPE PEREZ-CASTRO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-74084

Agency No. A095-724-957

MEMORANDUM*

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

Submitted June 15, 2011**

Before: CANBY, O’SANNLAIN, and FISHER, Circuit Judges.

Jose Guadalupe Perez-Castro, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s decision denying his motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252.

* 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).

We review for abuse of discretion the denial of a motion to reopen. *Sembiring v. Gonzales*, 499 F.3d 981, 985 (9th Cir. 2007). We grant the petition for review and remand for further proceedings.

The agency abused its discretion by denying Perez-Castro's motion to reopen where he submitted a sworn affidavit from his counsel attesting to non-receipt of the notice rescheduling his hearing, had a consistent record of appearing for prior proceedings, attempted to attend his hearing on its originally scheduled date, and promptly moved to reopen his proceedings after learning he had been ordered removed in absentia. *See id.* at 988-89 (the weaker presumption of service applicable to hearing notices sent by regular mail may be rebutted by a sworn affidavit and any relevant circumstantial evidence of non-receipt).

In light of our disposition, we need not address Perez-Castro's remaining contentions.

PETITION FOR REVIEW GRANTED; REMANDED.