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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOEL RIVERA-GOMEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-73815

Agency No. A078-751-381

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.

Joel Rivera-Gomez, 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 order denying his motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review

* 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).

for abuse of discretion the denial of a motion to reopen. *Singh v. Gonzales*, 491 F.3d 1090, 1095 (9th Cir. 2007), and we deny the petition for review.

The agency did not abuse its discretion in denying Rivera-Gomez's motion to reopen because the motion was filed more than five years after the IJ's March 14, 2002, removal order, *see* 8 U.S.C. § 1229a(b)(5)(C)(i), and Rivera-Gomez failed to establish that he lacked notice, *see* 8 U.S.C. § 1229a(b)(5)(C)(ii), or establish grounds for equitable tolling, *see Iturribarria v. INS*, 321 F.3d 889, 897-98 (9th Cir. 2003) (equitable tolling is available "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence").

PETITION FOR REVIEW DENIED.