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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GABRIEL NAVA GARCIA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 10-70546

Agency No. A070-783-976

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.

Gabriel Nava Garcia, a native and citizen of Guatemala, petitions pro se for review of a Board of Immigration Appeals order denying his motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We dismiss in part and deny in part the petition for 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).

The Board did not abuse its discretion in denying Garcia's motion to reopen because it was untimely and because it did not establish prima facie eligibility for relief. *See* 8 C.F.R. § 1003.2(c) (setting forth 90-day period for filing motion to reopen).

We dismiss for lack of jurisdiction Garcia's challenge to the Board's refusal to reopen proceedings sua sponte. *Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.