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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>AVELENO GARCIA-GUZMAN,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-72985

Agency No. A099-579-566

MEMORANDUM*

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

Submitted August 1, 2011**

Before: LEAVY, THOMAS, and MURGUIA, Circuit Judges.

Aveleno Garcia-Guzman, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) 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).

Reviewing for abuse of discretion, *Sembiring v. Gonzales*, 499 F.3d 981, 985 (9th Cir. 2007), we deny the petition for review.

The agency did not abuse its discretion in denying Garcia-Guzman's motion to reopen, where he failed to overcome the presumption of delivery of his notice of hearing, *see id.* at 986-88, and he failed to establish exceptional circumstances to excuse his appearance arising from notice not being served on counsel because counsel had not filed a notice of appearance with the immigration court. *See* 8 C.F.R. §§ 1003.19(d), 1003.17.

PETITION FOR REVIEW DENIED.