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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARIO ORLANDO GOCHES-MONTANO,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 08-73136

Agency No. A098-438-059

MEMORANDUM*

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

Submitted February 21, 2012**

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Mario Orlando Goches-Montano, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reconsider its underlying decision dismissing as untimely his appeal

* 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).

from an immigration judge's ("IJ") removal order. We have jurisdiction under 8 U.S.C. § 1252(a). We review for abuse of discretion the BIA's denial of a motion to reconsider. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We grant the petition for review.

The BIA dismissed Goches-Montano's appeal as untimely without the benefit of our decision in *Irigoyen-Briones v. Holder*, 644 F.3d 943, 948 (9th Cir. 2011), which held that the 30-day deadline for filing a notice of appeal with the BIA is not jurisdictional. We therefore remand for the BIA to reconsider whether, under the circumstances presented, it will hear the appeal from the IJ's decision in this case. *See INS v. Ventura*, 537 U.S. 12, 16 (2002).

PETITION FOR REVIEW GRANTED; REMANDED.