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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EDUARDO RAMOS-MARTINEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 10-73498

Agency No. A095-700-772

MEMORANDUM*

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

Submitted October 9, 2012**

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Eduardo Ramos-Martinez, a native and citizen of Mexico, petitions 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 to 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, *Lo v. Ashcroft*, 341 F.3d 934, 937 (9th Cir. 2003), and we grant the petition for review and remand for further proceedings.

The agency does not appear to have made any findings of fact regarding Ramos-Martinez's claim that he received erroneous information from his attorney's office with respect to the hearing date. It instead concluded that Ramos-Martinez failed to establish "exceptional circumstances" for his absence at his hearing because he was personally served with notice of the hearing. This is not supported by our case law. *See Lo*, 341 F.3d at 936-39; *see also Monjaraz-Munoz v. INS*, 327 F.3d 892, 896-97 (9th Cir. 2003), *as amended on reh'g*, 339 F.3d 1012 (9th Cir. 2003) (failure to appear based on negligent advice of attorney's agent constitutes an exceptional circumstance).

PETITION FOR REVIEW GRANTED; REMANDED.