

FEB 21 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE DE JESUS AVILA SANDOVAL,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-72904

Agency No. A079-537-376

MEMORANDUM\*

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

Argued and Submitted February 12, 2013  
Pasadena, California

Before: BERZON and WATFORD, Circuit Judges, and CARR, Senior District  
Judge.\*\*

Jose de Jesus Avila Sandoval (“Avila”) petitions for review from the  
decision of the Board of Immigration Appeals (“BIA”) denying as untimely his  
motion to reopen removal proceedings. This Court previously instructed the BIA

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The Honorable James G. Carr, Senior United States District Judge for  
the Northern District of Ohio, sitting by designation.

to consider whether Avila's motion should be deemed timely based on equitable tolling of the filing period. The BIA abused its discretion by rejecting the application of equitable tolling without any supporting factual or legal analysis. *See Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005). On remand, the BIA shall, after considering arguments from the parties, reconsider whether Avila is entitled to equitable tolling and explain the reasons for its decision.

**PETITION FOR REVIEW GRANTED AND REMANDED.**