

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 26 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOSE DANIEL FERNANDEZ-ARRIAGA,

No. 24-3323

Petitioner,

Agency No.

A073-389-888

v.

MEMORANDUM*

PAMELA BONDI, Attorney General,

Respondent.

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

Submitted August 22, 2025**
Portland, Oregon

Before: OWENS and VANDYKE, Circuit Judges, and SEEBORG, Chief District
Judge.***

Petitioner Jose Daniel Fernandez-Arriaga (“Fernandez-Arriaga”), a native and
citizen of Mexico, petitions for review of an April 30, 2024, Board of Immigration

* This disposition is not appropriate for publication and is not precedent except as
provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral
argument. *See* Fed. R. App. P. 34(a)(2). The parties’ joint motion to submit (Dkt.
Nos. 22, 23) is therefore **GRANTED**.

*** The Honorable Richard Seeborg, United States Chief District Judge for the
Northern District of California, sitting by designation.

Appeals (“BIA”) decision denying his motion to reissue its August 26, 2022, decision. We deny the petition.

A “petition for review must be filed not later than 30 days after the date of the final order of removal.” 8 U.S.C. § 1252(b)(1). Fernandez-Arriaga never filed a petition for review of the BIA’s August 26, 2022, decision. Thus, Fernandez-Arriaga did not comply with the 30-day deadline. While this 30-day deadline is not jurisdictional, *see Riley v. Bondi*, 145 S. Ct. 2190, 2202 (2025), it is still mandatory in the sense that once a failure to meet the requirement is raised, we must enforce it, *Alonso-Juarez v. Garland*, 80 F.4th 1039, 1046–47 (9th Cir. 2023).

Even assuming that equitable tolling can apply to § 1252(b)(1)’s 30-day deadline, Fernandez-Arriaga has failed to show that he is entitled to its benefit. To obtain equitable tolling, a petitioner must show both “that he has been pursuing his rights diligently, and ... that some extraordinary circumstance stood in his way and prevented timely filing.” *Holland v. Florida*, 560 U.S. 631, 649 (2010) (citation omitted). Fernandez-Arriaga is correct that ineffective assistance of counsel can serve as a basis for equitable tolling, *see Ray v. Gonzales*, 439 F.3d 582, 588 n.5 (9th Cir. 2006), but he provides only conclusory assertions that his counsel was ineffective by failing to file a petition for review, and the factual record does not provide the necessary support for his claim of ineffective assistance of counsel. The record shows that both Fernandez-Arriaga and his attorney were properly served the

BIA’s decision, and Fernandez-Arriaga’s counsel’s failure to file a petition for review was simply the result of a “garden variety claim of excusable neglect.” *Holland*, 560 U.S. at 651–52 (citation omitted). Thus, Fernandez-Arriaga has not shown any extraordinary circumstances warranting equitable tolling nor has he shown diligence based upon the delay in filing his motion to reissue.

Because Fernandez-Arriaga did not timely petition for review of the agency’s August 26, 2022, decision, and because he is not entitled to equitable tolling, we decline to consider his arguments concerning the merits of that decision.

Accordingly, we only consider on this petition for review the BIA’s April 30, 2024, decision denying Fernandez-Arriaga’s motion to reissue its prior order. We review the denial of a motion to reissue for abuse of discretion. *Li v. Bondi*, 139 F.4th 1113, 1120 (9th Cir. 2025). The BIA concluded that both Fernandez-Arriaga and his attorney received copies of its decision, that Fernandez-Arriaga had not introduced the necessary evidence to show his counsel was ineffective, and that Fernandez-Arriaga otherwise failed to comply with the agency’s procedural requirements for raising a claim of ineffective assistance of counsel. *See Castillo-Perez v. INS*, 212 F.3d 518, 525 (9th Cir. 2000) (noting “the BIA does not abuse its discretion when it denies a motion to remand or reopen based on alleged ineffective assistance of counsel where the petitioner fails to meet the [BIA’s procedural] requirements”). Thus, the BIA did not abuse its discretion in declining to reissue its

earlier decision.

PETITION DENIED.