

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 28 2022

FOR THE NINTH CIRCUIT

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

JOSE M. DAVID SUAZO, AKA Jose Mario  
David Suazo,

No. 19-73114

Petitioner,

Agency No. A074-985-223

v.

MEMORANDUM\*

WILLIAM P. BARR, Attorney General,

Respondent.

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

Submitted November 15, 2022\*\*

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Jose M. David Suazo, a native and citizen of Honduras, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen.<sup>1</sup> Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of

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\* 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).

<sup>1</sup> David Suazo's unopposed motion to reinstate this petition for review (Docket Entry No. 28) is granted, and the petition is reinstated.

discretion the denial of a motion to reopen. *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying David Suazo's second motion to reopen as numerically barred and untimely where petitioner has not established that any statutory or regulatory exception applies. *See* 8 U.S.C. § 1229a(c)(7)(A) (only one motion to reopen allowed), (c)(7)(C)(i) (motion to reopen must be filed within ninety days of the final removal order); 8 C.F.R. § 1003.2(c)(3) (exceptions).

We generally lack jurisdiction to review the BIA's decision not to reopen proceedings sua sponte. *See Lona v. Barr*, 958 F.3d 1225, 1227 (9th Cir. 2020) (denial of sua sponte reopening is committed to agency discretion and unreviewable).

We also lack jurisdiction to consider David Suazo's challenge to the agency's 2008 denial of his application for cancellation of removal because he failed to file a timely petition for review as to that final order. *See Anderson v. Holder*, 673 F.3d 1089, 1094 (9th Cir. 2012).

We do not consider the materials David Suazo references in his opening brief that are not part of the administrative record. *See Fisher v. INS*, 79 F.3d 955, 963 (9th Cir. 1996) (en banc) (court's review is limited to the administrative record).

The court, in its discretion, denies the motion for appointment of pro bono counsel (Docket Entry No. 33).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**