NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CRISTINA GUADALUPE PEREIRA-ROMERO, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 20-73296 Agency No. A208-274-074 MEMORANDUM[*]

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

Submitted November 15, 2022[**]
San Francisco, California

Before: McKEOWN and PAEZ, Circuit Judges, and MOLLOY,[***] District Judge.

[*] 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 Honorable Donald W. Molloy, United States District Judge for the District of Montana, sitting by designation.

Cristina Guadalupe Pereira-Romero, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") denial of her motion to reopen for abuse of discretion. We have jurisdiction under 8 U.S.C. § 1252 and review for abuse of discretion. *Nababan v. Garland*, 18 F.4th 1090, 1094 (9th Cir. 2021). "The BIA abuses its discretion when it acts arbitrarily, irrationally, or contrary to the law, and when it fails to provide a reasoned explanation for its actions." *B.R. v. Garland*, 26 F.4th 827, 835 (9th Cir. 2022) (internal citations omitted). Pereira-Romero also challenges the BIA's declination to reopen under its *sua sponte* authority. "[T]his court has jurisdiction to review [BIA] decisions denying *sua sponte* reopening for the limited purpose of reviewing the reasoning behind the decisions for legal or constitutional error." *Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016). We deny the petition in part and dismiss the petition in part.

1. The BIA did not abuse its discretion in finding that Pereira-Romero failed to present new, previously unavailable evidence. *See* 8 C.F.R. § 1003.2(c)(1) ("A motion to reopen proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing."). The substance of Pereira-Romero's motion concerns events that occurred prior to her final merits hearing. Furthermore, Pereira-Romero does not offer viable

arguments as to why she could not have presented this evidence earlier. *See Goel v. Gonzales*, 490 F.3d 735, 738 (9th Cir. 2007) (holding that evidence regarding prior events could have been obtained and presented at the earlier hearing and thus, was not "previously unavailable").

The BIA also denied Pereira-Romero's motion to reopen for failing to demonstrate prima facie eligibility for special rule cancellation of removal under the Violence Against Women Act. However, we need not address this issue, as the BIA may deny a motion to reopen for "failure to introduce previously unavailable, material evidence" alone. *I.N.S. v. Doherty*, 502 U.S. 314, 323 (1992). Accordingly, we deny Pereira-Romero's petition on this ground.

2. To the extent that Pereira-Romero challenges the BIA's decision to deny *sua sponte* reopening, she asserts no legal or constitutional error in the BIA's reasoning. *See Bonilla*, 840 F.3d at 588. The BIA declined to reopen her case under its *sua sponte* authority as she did not present any "exceptional situations." *See Matter of J-J-*, 21 I. & N. Dec. 976, 984 (BIA 1997). We lack jurisdiction over such discretionary decisions. *See Lara-Garcia v. Garland*, 49 F.4th 1271, 1277 (9th Cir. 2022). Accordingly, we dismiss Pereira-Romero's petition on this ground.

PETITION FOR REVIEW DISMISSED IN PART AND DENIED IN PART.