

SEP 25 2015

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EMILIO AGUIRRE,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 10-72564

Agency No. A074-804-434

MEMORANDUM\*

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

Submitted September 21, 2015\*\*

Before: REINHARDT, LEAVY, and BERZON, Circuit Judges.

Emilio Aguirre, native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen deportation proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Mohammed v.*

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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 panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We deny in part, and dismiss in part, the petition for review.

The BIA did not abuse its discretion in denying Aguirre’s fifth motion to reopen, filed over seven years after his order of removal became final, as time- and number-barred. *See* 8 U.S.C. § 1229a(c)(7)(A), (C)(i). Nor has Aguirre established that any statutory or regulatory exception applies. *See* 8 U.S.C. § 1229a(c)(7)(C); 8 C.F.R. § 1003.2(c)(3).

We lack jurisdiction to consider Aguirre’s asylum claim, where he failed to exhaust the claim before the agency in his fifth motion to reopen. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

We also lack jurisdiction to review the BIA’s decision not to reopen proceedings sua sponte. *See Mejia-Hernandez v. Holder*, 633 F.3d 818, 823-24 (9th Cir. 2011).

Aguirre’s remaining contentions are unpersuasive.

To the extent Aguirre seeks to supplement the administrative record, any such request is denied. *See* 8 U.S.C. § 1252(b)(4)(A) (limiting review to “the administrative record on which the order of removal is based”).

All other pending motions are denied as moot.

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