

DEC 23 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JULIAN FUENTES CARRENO,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 14-73498

Agency No. A079-536-437

MEMORANDUM*

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

Submitted December 14, 2016**

Before: WALLACE, LEAVY, and FISHER, Circuit Judges.

Julian Fuentes Carreno, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Najmabadi v. Holder*, 597

* 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).

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 Fuentes Carreno's motion as untimely, where Fuentes Carreno has not established that any statutory or regulatory exception to the filing deadline applies. *See* 8 U.S.C. § 1229a(c)(7)(C); 8 C.F.R. § 1003.2(c)(3) (setting forth exceptions to the filing limitations for motions to reopen); *cf. Poblete Mendoza v. Holder*, 606 F.3d 1137, 1141 (9th Cir. 2010) (“A conviction vacated for reasons ‘unrelated to the merits of the underlying criminal proceedings’ may be used as a conviction in removal proceedings whereas a conviction vacated because of a procedural or substantive defect in the criminal proceedings may not.” (internal citation omitted)).

We 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); *cf. Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016) (“[T]his court has jurisdiction to review Board decisions denying sua sponte reopening for the limited purpose of reviewing the reasoning behind the decisions for legal or constitutional error.”).

In light of our disposition, we need not reach Fuentes Carreno's remaining contentions regarding the basis of the vacatur of his conviction or his eligibility for cancellation of removal.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.