

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 4 2024

FOR THE NINTH CIRCUIT

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

MARIO BORJA-TREJO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 23-1747

Agency No.
A092-607-245

MEMORANDUM*

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

Submitted March 26, 2024**

Before: TASHIMA, SILVERMAN, and KOH, Circuit Judges.

Mario Borja-Trejo, a native and citizen of Mexico, petitions pro se 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.*

* 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).*

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 petitioner’s motion to reopen as untimely where it was filed over one year after the final removal order, and petitioner has not established that any statutory or regulatory exception applies. *See* 8 U.S.C. § 1229a(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) (listing exceptions); *cf.* 8 U.S.C. § 1229a(c)(7)(C)(ii) (“There is no time limit on the filing of a motion to reopen if the basis of the motion is to apply for [asylum or withholding of removal] and is based on changed country conditions arising in the country of nationality.”).

Our jurisdiction to review the BIA’s discretionary decision not to reopen proceedings *sua sponte* is limited to contentions of legal or constitutional error. *See Lona v. Barr*, 958 F.3d 1225, 1227 (9th Cir. 2020). We find no legal or constitutional error on the face of the BIA’s decision.

The temporary stay of removal remains in place until the mandate issues. The motion for a stay of removal is otherwise denied.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.