

DEC 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARTHA LIMA-CORTEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 07-71771

Agency No. A078-253-693

MEMORANDUM*

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

Submitted December 15, 2009**

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

Martha Lima-Cortez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review

* 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).

for abuse of discretion the denial of a motion to reopen, *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008), and review de novo questions of law, *Dela Cruz v. Mukasey*, 532 F.3d 946, 948 (9th Cir. 2008) (per curiam). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying as untimely Lima-Cortez's motion to reopen because the motion was filed more than 10 months after the BIA's December 15, 2005, order dismissing the underlying appeal. *See* 8 C.F.R. § 1003.2; *see also Dela Cruz*, 532 F.3d at 949 (“[T]he pendency of a petition for review of an order of removal does not toll the statutory time limit for the filing of a motion to reopen with the BIA.”). Accordingly, Lima-Cortez's due process claim fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for a due process violation).

To the extent Lima-Cortez challenges the BIA's decision not to invoke its sua sponte authority to reopen proceedings, we lack jurisdiction. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

Lima-Cortez's remaining contentions are unpersuasive.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.