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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>AURA SANTOS-RIVAS, a/k/a Ada<br/>Martinez,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p> |
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No. 07-70651

Agency No. A028-956-466

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.

Aura Santos-Rivas, a native and citizen of Guatemela, petitions for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's decision denying her motion to reopen. Our jurisdiction is

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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).

governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo claims of constitutional violations in immigration proceedings. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion in denying Santos-Rivas' motion to reopen as untimely because it was filed in 2006, 18 years after the final order of deportation, *see* 8 C.F.R. § 1003.23(b)(1) (motion to reopen must be filed within ninety days of final order of deportation or prior to September 30, 1996), and Santos-Rivas failed to establish that any of the regulatory exceptions apply, *see* 8 C.F.R. § 1003.23(b)(4). It follows that the denial of Santos-Rivas' motion to reopen did not violate due process. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for a due process violation).

We lack jurisdiction to review the agency's decision not to invoke its sua sponte authority to reopen proceedings under 8 C.F.R. § 1003.2(a). *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

Santos-Rivas' remaining contentions are unavailing.

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