

JAN 19 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARCO ANTONIO ROMERO-
ROMERO,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-70415

Agency No. A042-326-903

MEMORANDUM*

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

Argued and Submitted January 10, 2012
Pasadena, California

Before: KOZINSKI, Chief Judge, REINHARDT and W. FLETCHER,
Circuit Judges.

Marco Antonio Romero-Romero seeks review of an order by the Board of Immigration Appeals (“BIA”) denying his untimely motion to reopen removal proceedings. The BIA declined to exercise its *sua sponte* authority to reopen under 8 C.F.R. § 1003.2(a).

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Romero argues that the BIA erred by placing the burden on him to establish the reasons why the state court vacated his attempted rape conviction. However, his reliance on *Nath v. Gonzales*, 467 F.3d 1185 (9th Cir. 2006), is misplaced because that case did not involve an untimely motion or the BIA's *sua sponte* authority under § 1003.2(a).

We lack jurisdiction to review the BIA's discretionary decision whether to exercise its *sua sponte* authority under § 1003.2(a). *See, e.g., Mejia-Hernandez v. Holder*, 633 F.3d 818, 823-24 (9th Cir. 2011); *Ekimian v. INS*, 303 F.3d 1153, 1159-60 (9th Cir. 2002). Accordingly, we dismiss Romero's petition for lack of jurisdiction.

DISMISSED.