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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>VICTOR MANUEL VARGAS- PLANCARTE,</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. 10-73508

Agency No. A093-178-451

MEMORANDUM\*

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

Submitted September 10, 2012\*\*

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Victor Manuel Vargas-Plancarte, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen. Our jurisdiction is governed by 8 U.S.C. § 1252. Reviewing de

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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).

novo questions of law, *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005), we deny in part and dismiss in part the petition for review.

The BIA properly concluded that Vargas-Plancarte was ineligible for suspension of deportation at the time he pled guilty to a violation of California Health & Safety Code § 11352. *See* 8 U.S.C. § 1254(a)(2) (repealed); *cf. Lopez-Castellanos v. Gonzales*, 437 F.3d 848, 852-54 (9th Cir. 2006) (repeal of suspension of deportation relief did not apply retroactively to alien where the offense to which he pled guilty would not have rendered him ineligible for suspension of deportation at the time of his guilty plea). In light of this determination, the BIA did not err by declining to address whether Vargas-Plancarte was entitled to equitable tolling of his untimely motion to reopen.

We lack jurisdiction to review the BIA's decision not to invoke its sua sponte authority to reopen proceedings under 8 C.F.R. § 1003.2(a). *See Mejia-Hernandez v. Holder*, 633 F.3d 818, 823-24 (9th Cir. 2011).

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