

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 21 2019

FOR THE NINTH CIRCUIT

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

ENRIQUE BRISENO GARCIA,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

Nos. 14-73286

15-71690

16-70985

Agency No. A077-420-700

MEMORANDUM*

On Petition for Review of an Order of the Immigration Judge and
Orders of the Board of Immigration Appeals

Submitted February 19, 2019**

Before: FERNANDEZ, SILVERMAN, and WATFORD, Circuit Judges.

In these consolidated petitions, Enrique Briseno Garcia, a native and citizen of Mexico, petitions for review of an immigration judge's ("IJ") determination that he did not have a reasonable fear of persecution or torture in Mexico (petition No. 14-73286) and the Board of Immigration Appeals' ("BIA") denial of his motions to reopen proceedings (petition Nos. 15-71690, 16-70985). Our jurisdiction is

* 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).

governed by 8 U.S.C. § 1252. In petition Nos. 14-73286 and 15-71690, we dismiss. In petition No. 16-70985, we grant and remand.

As to petition No. 14-73286, we lack jurisdiction to review the IJ's reasonable fear determination because Briseno Garcia failed to timely file his petition for review as to that decision. *See* 8 U.S.C. § 1252(b)(1) (providing that petition for review must be filed within 30 days of final order of removal); *see also Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003) (30-day deadline is “mandatory and jurisdictional”); *cf. Ayala v. Sessions*, 855 F.3d 1012, 1019-20 (9th Cir. 2017) (holding that BIA's dismissal was operative agency decision, and petition for review was timely, because petitioner was misled regarding right of administrative appeal); *Martinez v. Sessions*, 873 F.3d 655, 660 (9th Cir. 2017) (applying *Ayala*). We therefore dismiss the petition for review in No. 14-73286.

As to petition No. 16-70985, the agency denied Briseno-Garcia's motion to reopen for lack of jurisdiction to reopen proceedings. When the BIA and IJ issued their decisions, they did not have the benefit of this court's decision in *Bartolome v. Sessions*, 904 F.3d 803, 815 (9th Cir. 2018) (holding that 8 C.F.R. § 1003.23(b)(1) provides an IJ with sua sponte authority to reopen “any case in which he or she has made a decision”). Thus, we grant the petition in No. 16-70985, and remand to the agency for further proceedings consistent with this disposition. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam). In light

of our disposition, we dismiss No. 15-71690 as moot.

Each party shall bear its own costs in these petitions for review.

No. 14-73286: **PETITION FOR REVIEW DISMISSED.**

No. 15-71690: **PETITION FOR REVIEW DISMISSED.**

No. 16-70985: **PETITION FOR REVIEW GRANTED; REMANDED.**