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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HECTOR SALVADOR GUTIERREZ-
MORENO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-70866

Agency No. A075-494-448

MEMORANDUM*

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

Submitted December 5, 2022**
Pasadena, California

Before: KELLY,** IKUTA, and CHRISTEN, Circuit Judges.

* 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).

*** The Honorable Paul J. Kelly, United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

Hector Salvador Gutierrez-Moreno, a native and citizen of Honduras, petitions for review of the decision of the Board of Immigration Appeals (BIA) denying his third motion to reopen his removal proceedings sua sponte.¹

We generally have jurisdiction under 8 U.S.C. § 1252(a) to review the BIA’s denial of a motion to reopen. *See Perez-Camacho v. Garland*, 42 F.4th 1103, 1107 (9th Cir. 2022). But we have “no jurisdiction to review the BIA’s sua sponte authority,” *Lona v. Barr*, 958 F.3d 1225, 1232 (9th Cir. 2020), except “for the limited purpose of reviewing the reasoning behind the decision[] for legal or constitutional error,” *Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016).

We reject Gutierrez-Moreno’s argument that the BIA committed a legal error by describing his conviction for child molestation under Section 647 of the California Penal Code as “significant.” In this context, the BIA is not determining whether Gutierrez-Moreno’s offense is equivalent to a generic federal offense under the categorical approach. *Cf. Anaya-Ortiz v. Holder*, 594 F.3d 673, 680 (9th Cir. 2010) (holding that the BIA need not apply the categorical approach in determining what constitutes a “particularly serious crime” for purposes of 8

¹ The BIA also denied Gutierrez-Moreno’s motion to reopen as “untimely and number-barred.” On appeal, Gutierrez-Moreno challenges only the BIA’s denial of sua sponte reopening, but not the BIA’s determination that his third motion to reopen was time- and number-barred, and that no exception to those bars applied.

U.S.C. § 1158(b)(2)(A)(ii)). Because the BIA is not limited to evaluating “the least of the acts criminalized by the state statute,” *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1568 (2017), the BIA did not rely on erroneous legal reasoning when it concluded that Gutierrez-Moreno’s offense, which involved fondling the genitals of a nine-year-old girl under the influence of anesthesia at the dental office where he worked, was a significant offense, *see Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995) (rejecting argument that child molestation is “not among the most serious of crimes”); *see also Cacoperdo v. Demosthenes*, 37 F.3d 504, 508 (9th Cir. 1994) (describing sexual molestation of a child as a “very serious offense”).

Gutierrez-Moreno’s remaining arguments that the BIA improperly considered and weighed the equities of his case do not identify any legal error. “Because the BIA’s decision evinces no misunderstanding of the agency’s broad discretion to grant or deny sua sponte relief—that is, the BIA ‘exercise[d] its authority against the correct legal background’—there is nothing left for us to review.” *Lona*, 958 F.3d at 1235 (quoting *Bonilla*, 840 F.3d at 588, 592); *see also id.* at 1234 (holding there is no jurisdiction to review “those situations where it is obvious that the [BIA] has denied sua sponte relief . . . as a matter of discretion”).

PETITION DISMISSED.