NOT FOR PUBLICATION

FILED

DEC 19 2025

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALFONSO SANCHEZ, Petitioner, v. PAMELA BONDI, Attorney General, Respondent.	No. 25-654 Agency No. A088-051-625 MEMORANDUM[*]

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

Submitted December 8, 2025[**]
San Francisco, California

Before: BUMATAY, JOHNSTONE, and DE ALBA, Circuit Judges.

Alfonso Sanchez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") decision to deny his motion to reopen. We review the BIA's decision not to reopen based on equitable tolling for abuse of discretion. *See Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). Further,

[*] 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).

we lack jurisdiction to review the BIA's discretionary decision not to reopen sua sponte. *Magana-Magana v. Bondi*, 129 F.4th 557, 575 (9th Cir. 2025). We thus deny the petition in part and dismiss in part.

1. The BIA did not abuse its discretion in denying equitable tolling of the deadline to file a motion for reopening. Generally, a petitioner must file a motion to reopen with 90 days of a final removal order. 8 U.S.C. § 1229a(c)(7)(C)(i). After the deadline, "[a] petitioner seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Bent v. Garland*, 115 F.4th 934, 941 (9th Cir. 2024) (internal quotations and citation omitted).

The BIA reasonably concluded that Sanchez failed to show he was diligent in pursuing his rights after waiting over seven years to file his motion to reopen. *See, e.g.*, *Goulart v. Garland*, 18 F.4th 653, 654–655 (9th Cir. 2021). First, Sanchez failed to seek vacatur of his criminal conviction until two years after the BIA's initial immigration decision. And even after vacatur of his conviction, he waited another four-and-a-half years to file his motion to reopen. Second, while his adult daughters' medical conditions are unfortunate, Sanchez has not shown why this factor prevented him from timely filing his motion to reopen. Thus, the BIA did not abuse its discretion by not equitably tolling the filing deadline.

2. We lack jurisdiction to review the BIA's refusal to reopen the case sua sponte. *See Lara-Garcia v. Garland*, 49 F.4th 1271, 1277 (9th Cir. 2022); *see also Magana-Magana,* 129 F.4th at 575 (9th Cir. 2025) ("[T]he BIA's decision of whether or not to reopen a removal proceeding *sua sponte* is a purely discretionary decision."). The only exception is when the BIA's decision "was based on a legally erroneous premise." *Bonilla v. Lynch*, 840 F.3d 575, 579 (9th Cir. 2016). In this case, Sanchez merely challenges the BIA's discretion and does not identify a "legal or constitutional error." *Id*. at 581–82.

DENIED IN PART AND DISMISSED IN PART.[1]

[1] Petitioner's Motion to Stay Removal, Dkt. No. 2, is DENIED effective upon issuance of the mandate from this Court.