NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FLAVIA BEATRIZ ROMERO ZUNIGA, Petitioner, v. TODD BLANCHE, Attorney General, Respondent.	No. 20-70478 Agency No. A095-291-083 MEMORANDUM[*]

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

Submitted October 26, 2026[**]
Pasadena, California

Before: R. NELSON and H.A. THOMAS, Circuit Judges, and MARTÍNEZ-OLGUÍN, District Judge.[***]

Flavia Beatriz Romero Zuniga is a native and citizen of Mexico. She petitions for review of the decision by the Board of Immigration Appeals (BIA) affirming the

[*] 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 Araceli Martínez-Olguín, United States District Judge for the Northern District of California, sitting by designation.

Immigration Judge's denial of her motion to reopen removal proceedings and of *sua sponte* reopening. We have jurisdiction under 8 U.S.C. § 1252(a). We deny the petition.

"We review the denial of a motion to reopen for abuse of discretion." *Calderon v. Blanche*, No. 24-7433, 2026 WL 2543389, at *3 (9th Cir. Aug. 28, 2026). "Factual findings underlying the adjudication of a motion to reopen are reviewed for substantial evidence, while legal questions are reviewed de novo." *Id.*

"Any alien who, after written notice . . . has been provided to the alien or the alien's counsel of record, does not attend a [removal] proceeding . . . , shall be ordered removed in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable . . . ." 8 U.S.C. § 1229a(b)(5)(A). However, "[s]uch an order may be rescinded" (1) "upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances" or (2) "upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice . . . ." *Id.* § (b)(5)(C)(i)–(ii).

1. Romero Zuniga argues that she qualifies for reopening her removal proceedings under § (b)(5)(C)(ii) because she lacked notice of the October 28, 2005 hearing. However, the BIA's contrary conclusion was legally correct and factually supported.

First, as the BIA noted, Romero Zuniga "[did] not dispute [before the BIA] that a Form EOIR-28 was filed on her behalf by her former counsel." In her brief to the BIA, Romero Zuniga argued only that "[Mr. Kim's] entry of appearance was limited to the filing of a Motion to Continue and Motion to Sever." If Romero Zuniga authorized Mr. Kim to enter an appearance, he did so by filing a Form EOIR-28, which is a "Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court." Romero Zuniga's argument before this court that she did not authorize Mr. Kim to file a Form EOIR-28 at all is thus contradicted by her admission and unexhausted before the BIA. *See Santana-Gonzalez v. Bondi*, 172 F.4th 736, 744 (9th Cir. 2026).

Second, Romero Zuniga did not authorize Mr. Kim to make only a limited entry of appearance. As the BIA noted, an attorney may not make a limited appearance in removal proceedings. Form EOIR-28 states: "Please note that appearances for limited purposes are not permitted." *See also Matter of Velasquez*, 19 I. & N. Dec. 377, 384 (BIA 1986). Further, while the evidence shows that Romero Zuniga paid Mr. Kim for a motion to continue and to sever, other services were not necessarily off the table. In the motion that Mr. Kim filed, he stated that he "needs additional time to prepare sufficiently for the hearing . . . ." Mr. Kim thus contemplated continued representation. And Romero Zuniga admitted to the BIA that she had a "retainer agreement" with Mr. Kim.

Third, as a consequence of Mr. Kim's representation of Romero Zuniga before the immigration court, the BIA's conclusion that Romero Zuniga had notice of the October 28, 2005 hearing through Mr. Kim was correct. *See Garcia v. I.N.S.*, 222 F.3d 1208, 1209 (9th Cir. 2000) (notice to counsel is constructive notice to represented party).

2. Romero Zuniga also argues that she qualifies for reopening under 8 U.S.C. § 1229a(b)(5)(C)(i) "due to exceptional circumstances stemming from ineffective assistance of counsel." Even if she were to establish exceptional circumstances, she still fails to meet the 180-day statutory deadline to move for rescission. While this deadline can be equitably tolled, Romero Zuniga must have demonstrated "due diligence" in discovering her attorney's error and seeking to remedy it. *Bonilla v. Lynch*, 840 F.3d 575, 582 (9th Cir. 2016); *Smith v. Davis*, 953 F.3d 582, 599 (9th Cir. 2020) (en banc). The BIA did not abuse its discretion in affirming the IJ's decision not to equitably toll based on a lack of due diligence.

Although Romero Zuniga "states that she was aware of the 'deportation order' and 'immediately' visited her former counsel's office, and then looked for legal help with 'multiple attorneys,'" the BIA agreed with the IJ "that this is insufficient evidence to establish that the respondent acted with due diligence during the 14 years between the in absentia order of removal and the filing of her motion to reopen." Romero Zuniga's arguments do not undermine this conclusion. She has not

explained how she "took reasonable steps to investigate [Mr. Kim's] suspected fraud or error, or, if [she was] ignorant of [his] shortcomings, whether [she] made reasonable efforts to pursue relief" during the almost 14 years between 2005 and 2018. *Bonilla*, 840 F.3d at 582 (cleaned up). She says she met with multiple attorneys, but the only law firm she names is one that she visited in 2007. As the Government notes, she "does not explain why she was unable to proceed pro se and does not detail the nature of her interaction with the attorneys she consulted . . . or the dates of these meetings . . . ." And *Iturribarria v. I.N.S.*, which she cites, does not support Romero Zuniga's case because the petitioner there "promptly retained new counsel" and "[l]ess than one month elapsed from the denial of the appeal to the date Mr. Iturribarria learned of [his attorney's] allegedly fraudulent and ineffective activities." 321 F.3d 889, 899 (9th Cir. 2003).

3. We have "jurisdiction to review Board decisions denying *sua sponte* reopening for the limited purpose of reviewing the reasoning behind the decisions for legal or constitutional error." *Bonilla*, 840 F.3d at 588. Romero Zuniga argues that the BIA committed legal error because, although she sought reopening based on "exceptional circumstances that existed at the time she was ordered removed," the BIA "misconstrued" her as arguing "based on after-acquired equities." But Romero Zuniga did make an after-acquired-equities argument. Romero Zuniga has not shown that there is a different "legal standard" for "after-acquired equities," and the

BIA clearly based its decision on "exceptional circumstances." Romero Zuniga fails to demonstrate that the BIA made a legal or constitutional error.

4. Finally, we will not review Romero Zuniga's various due process claims. She argues that Form EOIR-28 violates due process, but she did not exhaust this issue before the BIA. *See Santana-Gonzalez*, 172 F.4th at 744. She also argues that her removal would be fundamentally unfair, but that argument is underdeveloped and forfeited. *See United States v. Alameda Gateway Ltd.*, 213 F.3d 1161, 1168-69 (9th Cir. 2000). Finally, she argues that new agency rules limiting *sua sponte* reopening authority that were implemented during this appeal violate due process, but Romero Zuniga was not entitled to *sua sponte* reopening under the old rules, so this claim, for which she likely lacks standing, is beside the point.

PETITION DENIED.