

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 11 2008

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

ROBERTO RUBIO ALCARAZ, aka  
Roberto Rubio; aka Rubio Alcaraz,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 05-77156

Agency No. A90-516-647

MEMORANDUM\*

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

Submitted July 1, 2008\*\*

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Roberto Rubio Alcaraz, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his untimely motion to reopen. We dismiss the petition for review.

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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 finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

We lack jurisdiction to review the BIA's decision not to exercise its sua sponte authority to reopen proceedings. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

To the extent Rubio Alcaraz challenges the BIA's March 11, 2003 order, we lack jurisdiction because this petition is not timely as to that order. *See* 8 U.S.C. § 1252(b)(1). We previously reviewed this order in No. 03-71310, *Rubio Alcaraz v. Gonzales*, 123 Fed. Appx. 330 (9th Cir. Feb. 24, 2005).

**PETITION FOR REVIEW DISMISSED.**