

APR 29 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE LUIS MIRANDA-VARGAS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-72310

Agency No. A095-300-941

MEMORANDUM*

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

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

Jose Luis Miranda-Vargas, a native and citizen of Mexico, petitions for review of the decision of the Board of Immigration Appeals denying, as untimely

* 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).

filed, his motion to reopen the underlying denial of his application for cancellation of removal.

Petitioner has waived any challenge to the BIA's order denying his motion to reopen by failing to raise any arguments related to the BIA's dispositive determination that the motion to reopen was untimely. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996). This court lacks jurisdiction to review the BIA's refusal to reopen proceedings *sua sponte*. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002). We do not consider the due process claim which petitioner raises for the first time in his reply brief. *See Martinez-Serrano*, 94 F.3d at 1259-60.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.