

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2323

NIDIAN NORILDA MENDEZ-CHACON,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of an Order of the
Board of Immigration Appeals
(Agency No. A206-804-375)
Immigration Judge: John B. Carle

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
April 28, 2026

Before: CHAGARES, *Chief Judge*, ROTH, and RENDELL, *Circuit Judges*.

(Filed: October 27, 2026)

OPINION¹

¹ This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

RENDELL, *Circuit Judge*.

Nidian Norilda Mendez-Chacon petitions this Court for review of a Board of Immigration Appeals order denying her untimely motion to reopen. We will dismiss the petition.

I.

The petitioner, a native and citizen of Honduras, entered the United States without inspection or authorization on June 23, 2014. Shortly after entry, the Department of Homeland Security issued a Notice to Appear to her and charged her with removal. She later conceded her removability but sought asylum, withholding of removal, and relief under the Convention Against Torture. Ultimately, after a hearing, an immigration judge denied all relief to the petitioner. She appealed. On March 22, 2024, the BIA affirmed the IJ's denial of her claims. Petitioner did not seek further review of that decision.

Nearly ten months later, on January 13, 2025, the petitioner filed a motion to reopen and remand before the BIA. She sought to introduce purportedly new evidence of her eligibility for cancellation of removal. In particular, she urged that over *six months earlier*, on June 23, 2024, she had finally become eligible for cancellation of removal relief having been continuously present in the United States for ten years. Moreover, she wished to adduce additional evidence regarding her U.S. citizen children including, among other things, information about their asthma, which she urged could not be treated in Honduras were she to bring her children with her. She further urged that her husband would not be able to care for their children and, thus, she would be forced to take them

with her to Honduras. Alternatively, she requested that the BIA exercise its discretion and reopen her proceedings sua sponte.

The BIA denied her motion as untimely. The BIA explained that unless the petitioner established an exception to the deadline for such a motion, she was required to file it within 90 days of the conclusion of her case. As the petitioner failed to claim, let alone establish, an exception to the deadline, the BIA denied the motion as untimely.² Moreover, the BIA rejected the petitioner's request that it exercise its "discretionary authority" and "invoke[] [the] extraordinary remedy" of sua sponte reopening. AR4.

She petitioned this Court for review of the BIA's order denying her motion to reopen.

II.

The BIA had jurisdiction over the petitioner's motion to reopen under 8 C.F.R. § 1003.2. "We ordinarily have jurisdiction to review the BIA's denial of such a motion, conducting a 'highly deferential' review for abuse of discretion; the BIA's decision is not disturbed unless found to be 'arbitrary, irrational, or contrary to law.' As always, we are limited in our review to 'the rationale that the agency provides.'" *Sang Goo Park v. Att'y Gen.*, 846 F.3d 645, 650 (3d Cir. 2017).

² Unsurprisingly, the BIA did not address whether equitable tolling would apply because the petitioner neither raised, nor adduced evidence to support, the application of tolling to her motion.

III.

The petitioner urges that the BIA committed two errors. First, she argues that the BIA abused its discretion in denying her motion to reopen on the ground of timeliness because it should have inferred that she was requesting that the BIA find equitable tolling excused her dilatoriness. Second, she argues that the BIA erred in failing to exercise its discretion to grant her motion to reopen sua sponte. We reject both arguments.

A.

We will not consider the petitioner's first argument, which she never presented to the BIA. The petitioner herself concedes that it is "true that [she] d[id] not claim that her motion is subject to a statutory exception to the motion to open time limitation," Mendez Br. 12, nor did she "explicitly ask" that the BIA find that her motion was subject to equitable tolling, *id.* at 16. This alone dooms her claim as it is well-established that it is the movant's burden to establish her entitlement to such equitable relief. *Nkomo v. Att'y Gen. of the U.S.*, 986 F.3d 268, 272-73 (3d Cir. 2021). Accordingly, we will not consider this argument because the petitioner failed to raise it before the BIA.³ 8 U.S.C. § 1252(d)(1).

³ Even if the petitioner had expressly requested that the BIA find equitable tolling applied, she adduced no evidence to support its application. She urges, for the first time, before this Court, that she "exercised . . . reasonable diligence" in pursuing the reopening of her case. Mendez Br. 16. But she did not file her motion until over six months after she purportedly became eligible for relief. While she now represents that her delay in filing may have been due to her having hired a new attorney and the time necessary to "work[] with the lawyer to prepare all of the documentation necessary," evidence to support this proposition was never presented to the BIA. *Id.*

B.

Second, the Court lacks jurisdiction to address her next argument as she has not established any exception to the generally unfettered discretion of the BIA to grant sua sponte or deny motions to reopen. *Darby v. Att’y Gen.*, 1 F.4th 151, 164 (3d Cir. 2021). She admits that “[t]he BIA did not rely on an incorrect legal premise to deny the motion to reopen sua sponte,” but argues that the Court can still review the matter because the BIA has reopened other similar cases in exercise of its discretion. Mendez Br. 20. She reasons that the BIA’s pattern of reopening in other cases creates an agency course of conduct that satisfies the “settled course of adjudication” exception to the discretion of the BIA to deny sua sponte reopening. Gov’t Br. 14. But to show that the BIA has constrained its own discretion through the “settled course of adjudication” exception, a petitioner must make a showing “persuasive enough to allow the reasonable inference that the [Board’s] discretion has in fact been limited.” *Sang Goo Park*, 846 F.3d at 653. Here, Mendez-Chacon cites a handful of cases, which are plainly distinguishable. This smattering of cases “does not a settled course make.” *Id.* at 654. Accordingly, we lack jurisdiction to consider her argument that the BIA erred in failing to reopen her case sua sponte.

IV.

For these reasons, we will dismiss the petition for review.