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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EFREN CRUZ-HERRERA; et al.,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 08-73372

Agency Nos. A095-297-021
A095-297-022

MEMORANDUM*

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

Submitted January 20, 2009**

Before: O’SCHANLAIN, SILVERMAN and BYBEE, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals’ (“BIA”) order denying petitioners’ motion to reopen removal proceedings.

* 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 review the BIA's ruling on a motion to reopen for abuse of discretion. *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008).

An alien who is subject to a final order of removal is limited to filing one motion to reopen removal proceedings, and that motion must be filed within 90 days of the date of entry of a final order of removal. 8 U.S.C. § 1229a(c)(7)(A), (C)(i); 8 C.F.R. § 1003.2(c)(2). Because petitioners' motion to reopen was filed beyond the 90-day deadline, and petitioners have not contended that any exceptions to this time limit apply, the BIA did not abuse its discretion in denying petitioners' untimely motion to reopen. *See id.*

Accordingly, respondent's motion for summary disposition in part is granted because the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

To the extent petitioners challenge the BIA's decision declining to exercise its *sua sponte* authority to reopen and reconsider, we grant respondent's motion to dismiss in part for lack jurisdiction. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

The motion to proceed in forma pauperis is granted. The Clerk shall amend the docket to reflect this status.

All other pending motions are denied as moot. The temporary stay of removal shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.