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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HERMINIO FLORES SANCHEZ; et al.,
Petitioners,
v.
ERIC H. HOLDER, JR., Attorney General,
Respondent.

No. 08-73838

Agency Nos. A079-523-742  
                  A079-523-743  
                  A079-523-744  
                  A079-523-745

MEMORANDUM \*

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

Submitted February 23, 2009 \*\*

Before: KOZINSKI, Chief Judge, HAWKINS and GOULD, Circuit Judges.

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

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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 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. *See* 8 U.S.C. § 1229a(c)(7)(A), (C)(i); 8 C.F.R. § 1003.2(c)(2). Petitioners' second motion to reopen exceeded the numerical limitations on motions to reopen and was filed beyond the 90-day deadline. Because petitioners have not contended that any exceptions to the time and number limit apply, the BIA did not abuse its discretion in denying petitioners' untimely second motion to reopen. *See* 8 U.S.C. § 1229a(c)(7)(A), (C)(i); 8 C.F.R. § 1003.2(c)(2). Accordingly, respondent's unopposed 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).

Respondent's unopposed motion to dismiss in part is granted because this court lacks jurisdiction to review the BIA's decision not to reopen proceedings *sua sponte*. *See Ekimian v. INS*, 303 F.3d 1153 (9th Cir. 2002).

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.**