

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NOT FOR PUBLICATION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>FEDERICO SANDOVAL DIAZ; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-73790

Agency Nos. A095-295-005  
A095-295-006  
A095-295-007  
A095-295-056

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.

Federico Sandoval Diaz, and his wife and their children, petition for review of the decision of the Board of Immigration Appeals denying petitioners' motion to reconsider the BIA's denial of their motion to reopen the underlying denial of their

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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).

applications for cancellation of removal. The BIA also construed petitioners' motion as a second motion to reopen, and denied it as numerically barred.

Petitioners sought to introduce additional evidence of their qualifying relatives' hardship if petitioners were removed. Petitioners contend that the BIA erred in finding no hardship.

The BIA properly denied the motion to reconsider based on petitioners' failure to allege any material or factual errors in the underlying decision. See 8 C.F.R. § 1003.2(b)(1). Petitioners have waived any challenge to the BIA's denial of their motion to reopen by failing to raise any arguments related to the BIA's dispositive determination that the motion was numerically barred. We do not consider the due process claims which petitioners raise for the first time in their reply brief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996). To the extent that petitioners challenge the underlying denial of their application for cancellation, those issues are not properly before us because the petition is not timely as to those orders, and we lack jurisdiction to consider them. *See* 8 U.S.C. § 1252(b)(1); *Membreno v. Gonzales*, 425 F.3d 1227, 1229 (9th Cir. 2005).

**PETITION FOR REVIEW DENIED IN PART; DISMISSED IN PART.**