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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JULIO DE JESUS GENARO; ANGELINA DE JESUS MARTINEZ,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 06-75446

Agency Nos. A095-200-697  
A095-200-696

MEMORANDUM\*

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

Submitted June 16, 2009\*\*

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Julio De Jesus Genaro and Angelina De Jesus Martinez, husband and wife and natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reconsider. Our

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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).

jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002), and we deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in construing petitioners' October 2, 2006, "motion to reopen" as a motion to reconsider. *See Mohammed v. Gonzales*, 400 F.3d 785, 793 (9th Cir. 2005) (where a petitioner improperly titles a motion to reopen or reconsider, the BIA should construe the motion based on its underlying purpose). So construed, the BIA did not abuse its discretion in denying petitioners' motion to reconsider as untimely. *See* 8 U.S.C. § 1229a(c)(6)(B) (a motion to reconsider must be filed within 30 days of the date of entry of a final administrative order of removal).

To the extent that petitioners are seeking review of the BIA's August 21, 2006, order dismissing their appeal, we lack jurisdiction because the petition for review is not timely as to that order. *See* 8 U.S.C. § 1252(b)(i); *Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**