

SEP 29 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>VALENTE RODRIGUEZ MONTOYA; et al.,</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>

No. 06-72508

Agency Nos. A097-101-951
A097-101-952
A097-101-953
A097-101-954

MEMORANDUM *

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

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Valente Rodriguez Montoya, his wife Maria Guadalupe Treto, and two of their children, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals’ (“BIA”) order denying their motion to reopen. We have

* 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 under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen because their failure to file the motion to reopen before the expiration of their voluntary departure period rendered them statutorily ineligible for the relief they sought. *See* 8 U.S.C. § 1229c(d); *de Martinez v. Ashcroft*, 374 F.3d 759, 763 (9th Cir. 2004).

Petitioners' remaining contentions are not persuasive. *See Dada v. Mukasey*, 128 S.Ct. 2307, 2319 (2008) (an alien may withdraw his application for voluntary departure only if his voluntary departure period has not yet expired).

We deny petitioners' second motion for a stay of removal.

PETITION FOR REVIEW DENIED.