

MAR 25 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALFREDO GARCIA-MARTINEZ,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-72908

Agency No. A075-687-238

MEMORANDUM*

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

Submitted March 16, 2010**

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Alfredo Garcia-Martinez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his second motion to reopen. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

an abuse of discretion the denial of a motion to reopen, *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008), and we deny in part and dismiss in part the petition for review.

Garcia-Martinez has waived any challenge to the BIA's dispositive conclusion that his second motion to reopen was untimely and number-barred. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in a party's opening brief are waived).

We lack jurisdiction to review the BIA's decision not to invoke its sua sponte authority to reopen proceedings under 8 C.F.R. § 1003.2(a). *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

To the extent that Garcia-Martinez challenges the agency's previous orders, we lack jurisdiction because this petition for review is not timely as to those orders. *See* 8 U.S.C. § 1252(b)(1); *Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

Garcia-Martinez's contention that the BIA abused its discretion by incorrectly construing his motion, in the alternative, as a request for reinstatement of voluntary departure is unavailing.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.