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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BERNARDO MARTINEZ-VELASCO;
TOMASA MARTINEZ,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-75498

Agency Nos. A077-302-649

A077-302-650

MEMORANDUM*

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

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Bernardo Martinez-Velasco and Tomasa Martinez, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motions to reopen and reconsider removal proceedings. Our

* 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).

jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion denials of motions to reopen and reconsider, and we review de novo claims of due process violations in immigration proceedings. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the BIA's February 2, 2006, order denying petitioners' cancellation of removal because this petition for review is not timely as to that order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

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

The BIA did not abuse its discretion in denying petitioners' motion to reopen based on ineffective assistance of counsel because petitioners failed to establish that former counsel provided them with ineffective assistance, *see Mohammed*, 400 F.3d at 793-94, and failed to establish that former counsel's representation resulted in prejudice, *see Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003) (petitioner must demonstrate prejudice to prevail on an ineffective assistance of counsel claim).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.