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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EFRAIN LEON MARTINEZ; PATRICIA
LEON,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-74941

Agency Nos. A095-307-596
A096-307-599

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges.

Efrain Leon Martinez and Patricia Leon, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and

* 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).

review de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying petitioners' April 26, 2006, motion to reopen on the ground that petitioners were statutorily ineligible for cancellation of removal because they overstayed their voluntary departure period. *See* 8 U.S.C. § 1229c(d). We do not consider petitioners' contentions regarding prejudice stemming from alleged ineffective assistance of counsel because petitioners' ineligibility for cancellation based on their failure to depart is dispositive.

Petitioners' pending motion for a stay of the voluntary departure period is denied. *See Garcia v. Ashcroft*, 368 F.3d 1157, 1159-60 (9th Cir. 2004) (order) (court lacks jurisdiction to grant a voluntary departure stay where the request is filed after expiration of the voluntary departure period).

PETITION FOR REVIEW DENIED.