



Martinez v. Holder

323 Fed.Appx. 625 (2009) | Cited 0 times | Ninth Circuit | April 24, 2009

NOT FOR PUBLICATION

MEMORANDUM¹

Submitted April 13, 2009²

Before: GRABER, GOULD, and BEA, Circuit Judges.

Mauro Bravo Martinez and Maria Guadalupe Bravo-Ayala, husband and wife and natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen alleging ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law including claims of due process violations due to ineffective assistance of counsel, see *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005), and we deny the petition for review.

Contrary to petitioners' contention, the BIA evaluated whether petitioners' three former attorneys performed with sufficient competence. Moreover, the BIA correctly concluded that petitioners failed to establish they were prejudiced by the performance of their former attorneys. See *Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring prejudice for a petitioner to prevail on a due process claim).

To the extent petitioners seek an extension of the voluntary departure period, the request is denied. See *Zazueta-Carrillo v. Ashcroft*, 322 F.3d 1166, 1172 (9th Cir. 2003) (court lacks authority to extend voluntary departure period). Moreover, the request was made after the departure period had expired. See *Garcia v. Ashcroft*, 368 F.3d 1157, 1159 (9th Cir. 2004).

PETITION FOR REVIEW DENIED.

1. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.
2. The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

