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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GILBERTO LEYVA SERRATO; et al.,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 06-72626

Agency Nos. A95-306-339
A95-306-340
A95-306-341
A95-306-342

MEMORANDUM *

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

Submitted June 18, 2008**

Before: REINHARDT, LEAVY, and CLIFTON, Circuit Judges.

Gilberto Leyva Serrato, his wife Reyna Leyva and their two children,
natives and citizens of Mexico, petition pro se for review of the Board of

* 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).

Immigration Appeals' ("BIA") decision denying their motion to reconsider its prior order affirming the immigration judge's denial of their application for cancellation of removal.

Even construed liberally, petitioners' pro se brief does not challenge the BIA's determination that their motion should be deemed a motion to reconsider, and as such, was untimely. Accordingly, petitioners have waived any challenge to the BIA's denial of their motion. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

To the extent petitioners seek review of the BIA's underlying order dismissing their appeal from the immigration judge's decision denying their applications for cancellation of removal, we lack jurisdiction. *See id.* at 1258 (an alien's filing of a motion to reopen and reconsider does not toll statutory time to appeal underlying final order).

PETITION FOR REVIEW DENIED in part, DISMISSED in part.