

OCT 26 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GERARDO ORTIZ CUENCA; MARIA GRISELDA ESPINOZA,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 08-72393

Agency Nos. A079-280-760  
A079-280-761

MEMORANDUM\*

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

Submitted October 19, 2010\*\*

Before: O’SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

Gerardo Ortiz Cuenca and Maria Griselda Espinoza, 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

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\* 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).

reopen, and review de novo constitutional claims, including ineffective assistance of counsel claims. *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' February 13, 2008, motion to reopen for lack of prejudice. *See Iturribarria v. INS*, 321 F.3d 889, 899-90 (9th Cir. 2003) (prejudice results when the performance of counsel "was so inadequate that it may have affected the outcome of the proceedings") (internal quotation marks omitted).

**PETITION FOR REVIEW DENIED.**