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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLAUDIO ALBERTO GUTIERREZ,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 15-71462

Agency No. A089-430-072

MEMORANDUM\*

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

Submitted January 18, 2017\*\*

Before: TROTT, TASHIMA, and CALLAHAN, Circuit Judges.

Claudio Alberto Gutierrez, a native and citizen of Argentina, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Mohammed v.*

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Gutierrez’s motion to reopen on the ground that Gutierrez did not establish prejudice resulting from his prior attorney’s alleged ineffective assistance. *See id.* at 793 (to prevail on an ineffective assistance of counsel claim, a petitioner must demonstrate that he was prejudiced by counsel’s performance).

We lack jurisdiction to review the BIA’s refusal to reopen proceedings sua sponte. *See Mejia-Hernandez v. Holder*, 633 F.3d 818, 823-24 (9th Cir. 2011); *cf. Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**