

JAN 21 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>IGNACIO MORFIN-BERNABE; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
--

No. 07-72104

Agency Nos. A095-591-568  
A095-591-569

MEMORANDUM\*

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

Submitted January 11, 2010\*\*

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Ignacio Morfin-Bernabe and Alicia Perez-Lopez, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen removal proceedings based on ineffective

---

\* 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).

assistance of counsel. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo due process claims. *Reyes v. Ashcroft*, 358 F.3d 592, 595 (9th Cir. 2004). We deny in part and dismiss in part the petition for review.

We agree with the BIA's determination that petitioners failed to comply with the requirements in *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), and did not establish that former counsel's performance violated due process. *See id.* at 596. The BIA did not abuse its discretion in denying petitioners' motion to reopen.

We lack jurisdiction to review the BIA's decision not to exercise its sua sponte power. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

Petitioners' contention that the BIA failed to consider the evidence newly submitted with their motion is not supported by the record.

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