

SEP 24 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE LUIS RANGEL-LEDESMA,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
--

Nos. 05-71966
05-75104

Agency No. A076-842-691

MEMORANDUM*

On Petitions for Review of Orders of the
Board of Immigration Appeals

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

In these consolidated petitions for review, Jose Luis Rangel-Ledesma, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ")

* 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).

removal order, and the BIA's order denying his motion to reopen proceedings based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen.

Maravilla-Maravilla v. Ashcroft, 381 F.3d 855, 857 (9th Cir. 2004) (per curiam).

We dismiss the petition for review in No. 05-71966, and grant the petition for review in No. 05-75104.

The BIA abused its discretion in determining that Rangel-Ledesma's ineffective assistance of counsel claim was not new and could have been presented during the pendency of the appeal. *See* 8 C.F.R. § 1003.2(c)(1) (evidence must not have been available to be presented "at the former hearing"); *see also Bhasin v. Gonzales*, 423 F.3d 977, 987 (9th Cir. 2005) (explaining that 8 C.F.R. § 1003.2(c)(1) requires that the evidence must not have been available to be presented at the former hearing before the IJ).

We do not address the petition for review in No. 05-71966 in light of our disposition in No. 05-75104.

IN NO. 05-71966: PETITION FOR REVIEW DISMISSED.

**IN NO. 05-75104: PETITION FOR REVIEW GRANTED;
REMANDED.**