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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHART MIGUEL GUTIERREZ
CADENA; ZOILA DEL ROSARIO
GUTIERREZ,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-72272

Agency Nos. A096-345-271
A096-345-272

MEMORANDUM*

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

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Richart Miguel Gutierrez Cadena and Zoila Del Rosario Gutierrez, natives and citizens of Ecuador, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen 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. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo constitutional 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' motion because they presented insufficient evidence to establish prejudice. *See id.* at 793-94 (petitioner must demonstrate prejudice to prevail on an ineffective assistance of counsel claim). It follows that petitioners' due process claim fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000).

PETITION FOR REVIEW DENIED.