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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BERNARDO MARTINEZ RAMOS;
MARIA DE LOURDES RAMOS
HERNANDEZ,

Petitioners,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

No. 08-71970

Agency Nos. A075-759-477
A075-759-478

MEMORANDUM*

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

Submitted April 20, 2011**

Before: RYMER, THOMAS, and PAEZ, Circuit Judges.

Bernardo Martinez Ramos and Maria De Lourdes Ramos Hernandez, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen removal proceedings. Our

* 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).

jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion by denying petitioners' motion to reopen on the ground that they did not establish prejudice from the alleged ineffective assistance of their former counsels. *See id.* at 899-900 (petitioner must show prejudice to prevail on an ineffective assistance claim). Contrary to petitioners' contention, a presumption of prejudice does not apply. *Cf. Singh v. Ashcroft*, 367 F.3d 1182, 1189 (9th Cir. 2004) (applying presumption of prejudice where counsel failed to file a brief on appeal).

We lack jurisdiction to review the BIA's decision not to invoke its sua sponte authority to reopen proceedings under 8 C.F.R. § 1003.2(a). *See Mejia-Hernandez v. Holder*, 633 F.3d 818, 824 (9th Cir. 2011). Petitioners' contention that the BIA applied an incorrect standard in making that decision is not subject to our review. *See id.*

PETITION FOR REVIEW DENIED in part; DISMISSED in part.