

JUN 09 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JORGE LOZANO VALLE,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 09-73606

Agency No. A075-648-885

MEMORANDUM\*

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

Submitted May 24, 2011\*\*

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

Jorge Lozano Valle, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's order denying his motion to reopen based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for

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\* 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).

abuse of discretion the denial of a motion to reopen, *Ghahremani v. Gonzales*, 498 F.3d 993, 997 (9th Cir. 2007), and we grant the petition for review.

The agency appears to adopt an incorrect legal standard, conflating events that warrant suspicion of former counsel's conduct with actual knowledge of former counsel's alleged errors. *See Singh v. Gonzales*, 491 F.3d 1090, 1096 (9th Cir. 2007) (“[S]uspicion of the deficient representation does not constitute definitive knowledge of the alleged fraud.”). Accordingly, we grant the petition for review and remand to the agency. *See generally INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam) (“[T]he proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation.”) (citation omitted).

**PETITION FOR REVIEW GRANTED; REMANDED.**