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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEOBARDO CANO; FANNY CANO, Petitioners, v. MICHAEL B. MUKASEY, Attorney General, Respondent.	No. 06-75419 Agency Nos. A076-844-300 A076-844-301 MEMORANDUM[*]

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

Submitted January 13, 2009[**]

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Leobardo Cano and Fanny Cano, brother and sister and natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen removal proceedings based on ineffective

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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 finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

assistance of counsel. We have jurisdiction pursuant to 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. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

We agree with the BIA's conclusion that former counsel's performance did not result in prejudice to petitioners, thus their ineffective assistance of counsel claim fails. *See id.* at 899-900, 901-03 (to prevail on an ineffective assistance of counsel claim a petitioner must demonstrate prejudice). Therefore, the BIA did not abuse its discretion in denying the motion to reopen proceedings. *See Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002) (The BIA's denial of a motion to reopen shall be reversed only if it is "arbitrary, irrational, or contrary to law.").

PETITION FOR REVIEW DENIED.