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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RAMON CANIZALEZ CHAVEZ; FLORENCIA CANIZALEZ,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 05-75930

Agency Nos. A095-302-125  
A096-345-855

MEMORANDUM\*

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

Submitted February 18, 2009\*\*

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Ramon Canizalez Chavez and Florencia Canizalez, husband and wife and natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen 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. *Reyes v. Ashcroft*, 358 F.3d 592, 595 (9th Cir. 2004). We grant the petition for review and remand for further proceedings.

The BIA abused its discretion in denying petitioners' motion to reopen because strict compliance with the requirements of *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), would have been futile. *See Morales Apolinar v. Mukasey*, 514 F.3d 893, 897 (9th Cir. 2008) (“[W]here a petitioner’s attorney has been suspended after failing to respond to prior charges of ineffective assistance, it would be futile for the petitioner to inform counsel of the accusations or file a complaint.”). We therefore remand for the BIA to reconsider petitioners’ motion to reopen. *See INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam).

**PETITION FOR REVIEW GRANTED; REMANDED.**