

**FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NICOLAS RODRIGUEZ-LARIZ; MARIA
DE JESUS GUEVARA-MARTINEZ,

Petitioners,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,
Respondent.

On Petition for Review of an Order of the
Immigration and Naturalization Service

Argued and Submitted
December 5, 2001--Pasadena, California

Filed March 13, 2002

Before: Harry Pregerson, A. Wallace Tashima, and
Marsha S. Berzon, Circuit Judges.

Opinion by Judge Tashima

No. 01-70006

INS Nos.
A74-810-151
A74-810-152

OPINION

COUNSEL

Victor D. Nieblas Pradis, Los Angeles, California, for the petitioners.

Heather R. Phillips, Civil Division. U.S. Department of Justice, Washington, D.C., for the respondent.

OPINION Victor D. Nieblas Pradis, Los Angeles, California, for the petitioners.

time. Petitioners are married with two citizen-children, Nico and Janet.

In their motion to reopen filed with the BIA, petitioners made a series of factual allegations that form the basis of this appeal. The government does i -13.8lctly13.spute these allegations, which are set forth below.

Petitioners allege that in an attempt to legalize their immi-

date, I shall consider the [petitioners] have waived their

On December 23, 1998, Rodriguez filed a pro se motion for reconsideration, which he claims was prepared by Torres. The

pending before IIRIRA's April 1, 1997 effective date are governed by special "transitional changes in judicial review" that apply to final orders of deportation or exclusion entered after October 30, 1996). Under § 309(c) of IIRIRA, this Court has jurisdiction to review a BIA decision under pre-IIRIRA § 106(a) of the INA, 8 U.S.C. § 1105a(a), unless a specified exception applies. One of the specified exceptions precludes

ty--which form the underlying basis for the grant of voluntary departure--arose under § 241(a)(1)(B). The jurisdictional bar of IIRIRA § 309(c)(4)(E), therefore, does not apply to this case. We thus have jurisdiction to review the merits of the

While the respondents are correct that this Board
may act sua sponte

association with Torres. Ineffective assistance of counsel in a deportation proceeding is a violation of the Fifth Amendment if the

"To establish ineffective assistance of counsel in a motion to

