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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BERNARDINO GABRIEL-PEREZ; et al.,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 10-71817

Agency Nos. A076-356-337
A076-356-260
A072-402-852

MEMORANDUM*

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

Submitted February 21, 2012**

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Bernardino Gabriel-Perez, Venancia Perez De Gabriel and Eduardo Gabriel-Perez, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' order denying their motion to reopen proceedings based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252.

* 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).

Reviewing for abuse of discretion, *Ghahremani v. Gonzales*, 498 F.3d 993, 997 (9th Cir. 2007), we deny the petition for review.

The agency did not abuse its discretion in denying petitioners' motion to reopen because the motion was filed nearly five years after their deportation order became final, *see* 8 C.F.R. § 1003.2(c)(2), and petitioners failed to establish that they acted with the due diligence required for equitable tolling, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (equitable tolling available "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence").

PETITION FOR REVIEW DENIED.