

APR 29 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MAXIMIANO REYES GARCIA; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-72566

Agency Nos. A079-525-394  
A079-525-395  
A079-526-396  
A079-525-397

MEMORANDUM \*

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

Submitted April 13, 2009\*\*

Before: GRABER, GOULD, and BEA, Circuit Judges.

Maximiano Reyes Garcia, his wife Yolanda Gomez Montijo Garcia, and their two children, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen. We

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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).

have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition.

Petitioners filed their second motion to reopen more than two years after the BIA's order dismissing the underlying appeal. The BIA did not abuse its discretion in denying the motion because petitioners failed to establish eligibility for an exception to the filing limitations, *see* 8 C.F.R. § 1003.2(c)(2)-(3), or grounds for equitable tolling, *see Iturribarria*, 321 F.3d at 897 (equitable tolling is available "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence").

Petitioners' remaining contentions are not persuasive.

**PETITION FOR REVIEW DENIED.**