

JUN 09 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAVIER FERNANDEZ-MIRANDA; et
al.,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70279

Agency Nos. A095-295-931

A095-295-932

A095-295-933

MEMORANDUM*

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

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Javier Fernandez-Miranda, Maria Virginia Guevara-Gabriel, and their daughter, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reissue. We have

* 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).

jurisdiction under 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008), we grant the petition for review.

The BIA abused its discretion by failing to specifically address Fernandez-Miranda's sworn statement that petitioners did not receive notice of the BIA's December 21, 2007, order. *See Singh v. Gonzales*, 494 F.3d 1170, 1172-73 (9th Cir. 2007) (presumption of proper mailing may be overcome by evidence of non-receipt by petitioner or counsel). We remand for the BIA to address the evidence of non-receipt in the first instance and determine whether it is sufficient to overcome the presumption of mailing. *See id.*

PETITION FOR REVIEW GRANTED; REMANDED