

SEP 22 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PEDRO ANTONIO PEREZ -
VELASQUEZ; ANA BERTHA PEREZ,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-74495

Agency Nos. A076-366-359
A076-366-360

MEMORANDUM*

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

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Pedro Antonio Perez-Velasquez and Ana Bertha Perez, husband and wife and natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We

* 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).

review for abuse of discretion the denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying petitioners' third motion to reopen as untimely and number-barred where the motion was filed more than three years after the final administrative order was entered in their case, *see* 8 C.F.R. § 1003.2(c)(2), and petitioners failed to demonstrate that they were eligible for equitable tolling of the filing deadline, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003).

The BIA did not abuse its discretion in denying petitioners' untimely request to withdraw from their grant of voluntary departure. *See Dada v. Mukasey*, 128 S.Ct. 2307, 2319 (2008).

PETITION FOR REVIEW DENIED.