

JUN 28 2011

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RODRIGO DIAZ and CATALINA DIAZ  
MENDEZ,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70641

Agency Nos. A070-915-784  
A070-915-785

MEMORANDUM\*

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

Submitted June 15, 2011\*\*

Before: CANBY, O’SCANNLAIN, and FISHER, Circuit Judges.

Rodrigo Diaz and Catalina Diaz Mendez, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals’ order dismissing their appeal from an immigration judge’s (“IJ”) order denying their motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of

---

\* 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).

discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The agency did not abuse its discretion in denying petitioners' motion to reopen because the motion was filed more than thirteen years after the IJ's June 13, 1995, deportation order, *see* 8 C.F.R. § 1003.23(b)(4)(iii), and petitioners failed to establish that they acted with the due diligence required for equitable tolling, *see Iturribarria*, 321 F.3d at 897 (deadline can be equitably tolled "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence"). Petitioners' due process claim therefore fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for a due process violation).

**PETITION FOR REVIEW DENIED.**