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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE SOCORRO URRUTIA-
DELGADO; MARIA SILVA RIOS,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-72137

Agency Nos. A075-508-501
A075-508-502

MEMORANDUM*

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

Submitted July 12, 2011**

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

Jose Socorro Urrutia-Delgado and Maria Silva Rios, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals’ (“BIA”) order dismissing their appeal from an immigration judge’s order denying their motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8

* 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).

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 for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen because the motion was filed more than ten years after the final removal 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 (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' due process claim therefore fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for a due process violation).

In light of this disposition we do not reach petitioners' contentions regarding ineffective assistance of counsel.

PETITION FOR REVIEW DENIED.