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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>HUMBERTO GONZALEZ-CEVALA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 04-72807

Agency No. A078-025-198

MEMORANDUM*

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

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Humberto Gonzalez-Cevala, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ order summarily affirming an immigration judge’s (“IJ”) decision denying his application for cancellation of

* 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).

removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for substantial evidence the IJ's continuous physical presence determination. *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 618 (9th Cir. 2006). We grant the petition for review and remand.

An intervening change in the law requires us to remand on the issue of continuous physical presence. In *Ibarra-Flores*, we held that administrative voluntary departure under threat of deportation breaks the accrual of continuous physical presence only where the alien is informed of the departure's terms and knowingly and voluntarily accepts them. *See id.* at 619-20; *see also Tapia v. Gonzales*, 430 F.3d 997, 1002-04 (9th Cir. 2005).

The agency "should be given the first opportunity to assess the consequences of [Gonzalez-Cevala's] departures[s] under the 'knowing and voluntary' standard." *Ibarra-Flores*, 439 F.3d at 620. We therefore grant the petition for review and remand for further proceedings.

PETITION FOR REVIEW GRANTED; REMANDED.