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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FRANCISCO RIVERA-MATA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 05-75686

Agency No. A029-229-885

MEMORANDUM\*

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

Submitted May 12, 2009\*\*

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

Francisco Rivera-Mata, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's ("IJ") decision pretermining his application for cancellation of

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\* 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. Reviewing for substantial evidence, *Ibarra-Flores*, 439 F.3d 614, 618 (9th Cir. 2006), we grant the petition for review and remand.

After the BIA order in this case, we held in *Ibarra-Flores* that administrative voluntary departure under threat of deportation breaks the accrual of continuous physical presence only where the alien is informed of the terms of the departure 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 record does not contain substantial evidence that Rivera-Mata was informed of the terms of his departure or that he accepted them knowingly and voluntarily.

The agency “should be given the first opportunity to assess the consequences of [Rivera-Mata’s] departure 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.**