

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JERONIMO HERNANDEZ-LUPERCIO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-70185

Agency No. A077-288-819

MEMORANDUM\*

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

Submitted December 14, 2010\*\*

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Jeronimo Hernandez-Lupercio, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for cancellation of removal.

We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law,

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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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*Castillo-Cruz v. Holder*, 581 F.3d 1154, 1158-59 (9th Cir. 2009), and we grant the petition for review.

Because indecent exposure as defined by Cal. Penal Code § 314(1) is not categorically a crime involving moral turpitude, *Nunez v. Holder*, 594 F.3d 1124, 1138 (9th Cir. 2010), the agency erred in determining on the record before it that Hernandez-Lupercio was statutorily ineligible for cancellation of removal under 8 U.S.C. § 1229b(b)(1)(C). We reject the government's contention that Hernandez-Lupercio has waived challenge to this issue. We therefore grant the petition and remand for further proceedings consistent with this opinion.

In light of our disposition, we need not address Hernandez-Lupercio's remaining contentions.

**PETITION FOR REVIEW GRANTED; REMANDED.**