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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GILBERTO CARRANZA-PINEDA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 09-73018

Agency No. A099-630-126

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.

Gilberto Carranza-Pineda, 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 motion to reopen based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for

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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).

abuse of discretion the denial of a motion to reopen, and review de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The agency did not abuse its discretion in denying Carranza-Pineda's motion to reopen because he failed to comply with the requirements set forth in *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), and the ineffective assistance he alleges is not plain on the face of the record. *See Reyes v. Ashcroft*, 358 F.3d 592, 597-99 (9th Cir. 2004).

Carranza-Pineda's request under 8 C.F.R. § 1240.26(b)(3)(iii) is unavailing because Carranza-Pineda's voluntary departure period had expired before that regulation took effect. *See* 73 Fed. Reg. 76,927, 76,936 (Dec. 18, 2008) (regulation terminating a voluntary departure order upon filing of a motion to reopen took effect on January 20, 2009, and does not apply retroactively).

We have no authority to reinstate voluntary departure. *See* 8 C.F.R. § 1240.26(f).

**PETITION FOR REVIEW DENIED.**