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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUAN ALBERTO VILLA-FLORES,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 10-71094

Agency No. A099-829-368

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.

Juan Alberto Villa-Flores, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s (“IJ”) decision denying his application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial

* 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).

evidence the agency's continuous physical presence determination, *Gutierrez v. Mukasey*, 521 F.3d 1114, 1116 (9th Cir. 2008), and we deny the petition for review.

Substantial evidence supports the agency's determination that Villa-Flores did not meet the continuous physical presence requirement where he testified that he accepted voluntary departure instead of appearing before an IJ during the relevant statutory time period. *See id.* at 1117-18 (petitioner's testimony that he had the opportunity to go before an IJ and chose to depart instead is sufficient to establish presence-breaking voluntary departure).

We do not consider Villa-Flores' hardship contentions because his failure to establish continuous physical presence is dispositive. *See* 8 U.S.C. § 1229b(b)(1)(A).

PETITION FOR REVIEW DENIED.

