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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUAN MARTINEZ-BRUNO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 10-72653

Agency No. A096-229-501

MEMORANDUM*

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

Submitted July 12, 2011**

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

Juan Martinez-Bruno, 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. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for

* 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).

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

Substantial evidence supports the agency's determination that Martinez-Bruno 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 appear before an IJ but chose to depart instead is sufficient to establish presence-breaking voluntary departure).

We lack jurisdiction to review Martinez-Bruno's ineffective assistance of counsel claim because he failed to exhaust that issue before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Martinez-Bruno's remaining contentions are unavailing.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.