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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JIMY ANTONIO NUNEZ-CASTRO,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70028

Agency No. A095-682-937

MEMORANDUM*

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

Argued and Submitted February 14, 2013
Pasadena, California

Before: GOODWIN, KLEINFELD, and SILVERMAN, Circuit Judges.

Nunez-Castro petitioned for review of the BIA's decision denying his application for asylum. Prior to oral argument, the government informed the court that Nunez-Castro voluntarily returned to Honduras, which petitioner's counsel did

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

not dispute. Since Nunez-Castro left voluntarily and was not “excluded, deported, or removed,” our holding in Mendez-Alcaraz v. Gonzales, 464 F.3d 842, 844 (9th Cir. 2006), does not apply.

The facts surrounding Nunez-Castro’s departure are not in the administrative record, and the BIA never ruled on whether his departure makes this petition moot or abandoned. See 8 C.F.R. § 1208.8(a) (“An applicant who leaves the United States without first obtaining advance parole . . . shall be presumed to have abandoned his or her application under this section.”). We therefore remand to the BIA to consider the legal effect, if any, of Nunez-Castro’s departure. See Fernandez–Ruiz v. Gonzales, 468 F.3d 1159, 1170 (9th Cir. 2006). We express no opinion on the merits of Nunez-Castro’s asylum application.

REMANDED.