

SEP 07 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BERTHA SOTO-DE TAPIA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 09-71429

Agency No. A077-077-629

MEMORANDUM\*

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

Submitted August 23, 2010\*\*

Before: LEAVY, HAWKINS, and THOMAS, Circuit Judges.

Bertha Soto-De Tapia, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to remand based on ineffective assistance of counsel. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to

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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).

remand. *Romero-Ruiz v. Mukasey*, 538 F.3d 1057, 1062 (9th Cir. 2008). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review Soto-De Tapia's contention that her statements taken at the border violated 8 C.F.R. § 287.3(c) because she failed to exhaust this issue before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

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

**PETITION FOR REVIEW DISMISSED in part; DENIED in part.**