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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MIGUEL ANGEL ORTEGA-FITZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 09-70689

Agency No. A077-093-651

MEMORANDUM*

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

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Miguel Angel Ortega-Fitz, 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 Ortega-Fitz did not meet the continuous physical presence requirement where the record contains a signed Notice and Request for Disposition form ("I-826") in Spanish stating that Ortega-Fitz was giving up his right to a hearing before an IJ and agreeing to return to Mexico, *see Vasquez-Lopez v. Ashcroft*, 343 F.3d 961, 974 (9th Cir. 2003) (per curiam), and Ortega-Fitz testified that the contents of the I-826 were explained to him, *see Gutierrez*, 521 F.3d 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).

Ortega-Fitz's remaining contentions are unavailing.

PETITION FOR REVIEW DENIED.