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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIGUEL ANGEL GUTIERREZ
ESCOBAR,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-76942

Agency No. A97-859-374

MEMORANDUM*

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

Submitted March 18, 2008**

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Miguel Angel Gutierrez Escobar, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision preterminating his application for

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

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We grant in part and deny in part the petition for review and remand.

An intervening change in the law requires us to remand on the issue of continuous physical presence. In *Ibarra-Flores*, we held that administrative voluntary departure under threat of deportation breaks the accrual of continuous physical presence only where the alien is informed of the terms of the departure and knowingly and voluntarily accepts them. *See Ibarra-Flores v. Gonzales*, 439 F.3d 614, 619 (9th Cir. 2006); *see also Tapia v. Gonzales*, 430 F.3d 997, 1004 (9th Cir. 2005). Because there is no indication that Gutierrez Escobar was informed of the terms of his departure or that he accepted them knowingly and voluntarily, we remand for further proceedings consistent with *Ibarra-Flores*.

We review constitutional claims de novo. *See Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). Gutierrez-Escobar's contention that the Illegal Immigration Reform and Immigrant Responsibility Act's repeal of suspension of deportation violates equal protection or due process is unpersuasive. *See id.* at 517. ("Line-drawing decisions made by Congress or the President in the context of immigration must be upheld if they are rationally related to a legitimate government purpose."); *see also Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) (holding that the court lacks jurisdiction over challenges to the

agency's timing of initiation of proceedings).

**PETITION FOR REVIEW GRANTED in part; DENIED in part;
REMANDED.**