

AUG 26 2004

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JORGE VELASCO,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

No. 02-70438

Agency No. A70-046-247

ORDER

Before: BRUNETTI, T.G. NELSON, and SILVERMAN, Circuit Judges.

The Memorandum disposition filed January 16, 2004, is amended as follows:

1. At page 2, first paragraph beginning with “We conclude that reinstatement” delete the second sentence in its entirety.
2. At page 2, footnote 2, replace with the following:

See 8 U.S.C. § 1305(a). Velasco has not raised the argument before the BIA or this court that the INS never informed him of his obligation under 8 U.S.C. § 1305(a). His case is therefore distinguishable from our prior holding in *Urbina-Osejo v. INS*, 124 F.3d 1314, 1317 (9th Cir. 1997) (holding that “there is reasonable

cause for a failure to appear when an alien has not received notice of the time and place of the hearing due to a change of address, *and the alien was not informed of a requirement to advise the INS of any change of address.*”) (emphasis added). *See also Lahmidi v. INS*, 149 F.3d 1011 (9th Cir. 1998) (same).

With these amendments, the panel has voted to deny the petition for rehearing. Judge Silverman has voted to deny the petition for rehearing en banc and Judges Brunetti and T.G. Nelson so recommend.

The petition for rehearing and the petition for rehearing en banc are DENIED.

Petitioner’s “Motion for Reargument if Petition for Panel Rehearing is Granted” is DENIED as moot.