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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ANSELMO GAMEZ HERNANDEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 05-75859

Agency No. A095-175-962

MEMORANDUM\*

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

Submitted July 29, 2009\*\*

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

Anselmo Gamez Hernandez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for

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

cancellation of removal for failure to establish ten years of continuous physical presence in the United States. Our jurisdiction is governed by 8 U.S.C. § 1252. Reviewing for substantial evidence, *Gutierrez v. Mukasey*, 521 F.3d 1114, 1116 (9th Cir. 2008), we deny in part and dismiss in part the petition for review.

Substantial evidence supports the BIA's conclusion that Gamez Hernandez did not meet the continuous physical presence requirement because testimony shows that he knowingly and voluntarily accepted administrative voluntary departure in 1997, thereby interrupting his accrual of physical presence. *See* 8 U.S.C. § 1229b(b)(1)(A); *see also* *Gutierrez*, 521 F.3d at 1117-18.

We lack jurisdiction to review Gamez Hernandez's due process contention because he failed to raise that issue before the BIA. *See* *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (requiring exhaustion of administrative remedies).

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