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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CESAR GOMEZ-RIVAS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 10-70197

Agency No. A041-830-317

MEMORANDUM\*

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

Submitted May 24, 2011\*\*

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

Cesar Gomez-Rivas, 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 removal order. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo questions of law, *Cerezo v. Mukasey*, 512

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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).

F.3d 1163, 1166 (9th Cir. 2008), and we deny in part and dismiss in part the petition for review.

We agree with the agency's conclusion that Gomez-Rivas' 2009 controlled substance offense is not amenable to treatment under the Federal First Offender Act, 18 U.S.C. § 3607. *See de Jesus Melendez v. Gonzales*, 503 F.3d 1019, 1025-27 (9th Cir. 2007).

The agency properly determined that Gomez-Rivas was ineligible for cancellation of removal because he had previously received that form of relief. *See* 8 U.S.C. § 1229b(c)(6).

In his opening brief, Gomez-Rivas fails to address, and therefore has waived any challenge to, the agency's determination that his convictions for being under the influence of a controlled substance involved federally-defined controlled substances. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in a party's opening brief are deemed waived).

We lack jurisdiction to review Gomez-Rivas' contention that his 2009 conviction was not a "conviction" as defined in 8 U.S.C. § 1101(a)(48) because he failed to exhaust this claim before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

Gomez-Rivas' remaining contentions are not persuasive.

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