

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 27 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FRANCISCO DANIEL RIVAS,

Petitioner,

v.

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

No. 16-72648

Agency No. A205-720-703

MEMORANDUM*

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

Submitted October 23, 2017**

Before: McKEOWN, WATFORD, and FRIEDLAND, Circuit Judges.

Francisco Daniel Rivas, a native and citizen of El Salvador, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his motion for a continuance.

Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

discretion the denial of a continuance. *Sandoval-Luna v. Mukasey*, 526 F.3d 1243, 1246 (9th Cir. 2008). We dismiss in part and deny in part the petition for review.

The court lacks jurisdiction to consider Rivas' contentions regarding the merits of his claims because he did not raise them to the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

We lack jurisdiction to review Rivas' unexhausted ineffective assistance of counsel claim. *See Ontiveros-Lopez v. INS*, 213 F.3d 1121, 1124 (9th Cir. 2000) (an ineffective assistance of counsel claim must first be presented to the BIA).

The agency did not abuse its discretion by denying Rivas' third request for a continuance because he failed to show good cause. *See* 8 C.F.R. § 1003.29; *Sandoval-Luna*, 526 F.3d at 1247 (finding the agency did not abuse its discretion in denying petitioner's request for a continuance).

We do not consider the materials Rivas attached to his opening brief that are not part of the administrative record. *See Fisher v. INS*, 79 F.3d 955, 963-64 (9th Cir. 1996) (en banc).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.