

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 23 2019

FOR THE NINTH CIRCUIT

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

FREDIS JOEL MARTINEZ-
HERNANDEZ,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 15-73776

Agency No. A206-022-140

MEMORANDUM*

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

Submitted April 17, 2019**

Before: McKEOWN, BYBEE, and OWENS, Circuit Judges.

Fredis Joel Martinez-Hernandez, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' order denying his appeal from an immigration judge's decision denying his motion to reopen removal proceedings conducted in absentia. Our jurisdiction is governed by 8 U.S.C.

* 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).

§ 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion in denying Martinez-Hernandez's motion to reopen, where he has not shown that his failure to appear at his hearing was due to circumstances beyond his control. *See* 8 U.S.C. § 1229a(b)(5)(C)(i), (e)(i) (exceptional circumstances warranting reopening of an in absentia removal order must be beyond the control of the alien). We lack jurisdiction to consider Martinez-Hernandez's unexhausted contention that the agency erred in not considering his fear of returning to El Salvador in its analysis. *See Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) ("We lack jurisdiction to review legal claims not presented in an alien's administrative proceedings before the BIA.").

Martinez-Hernandez's motion to remand (Docket Entry No. 48) is denied. *See Karingithi v. Whitaker*, 913 F.3d 1158, 1160-62 (9th Cir. 2019) (initial notice to appear need not include time and date information to vest jurisdiction in the immigration court).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.