

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 30 2018

FOR THE NINTH CIRCUIT

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

ORACIO AGUILAR-GABINO,

Petitioner,

v.

MATTHEW G. WHITAKER, Acting
Attorney General,

Respondent.

No. 17-71586

Agency No. A205-576-127

MEMORANDUM*

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

Submitted November 27, 2018**

Before: CANBY, TASHIMA, and FRIEDLAND, Circuit Judges.

Oracio Aguilar-Gabino, 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 ("IJ") decision denying his application for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We

* 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).

dismiss in part and grant in part the petition for review, and we remand.

We lack jurisdiction to consider Aguilar-Gabino's unexhausted contention that his attorney and the IJ failed to question him regarding his previous presence in the United States. *See Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in administrative proceedings before the BIA).

The BIA did not have the benefit of *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), which held that a notice to appear that does not specify the time and date of the hearing does not trigger the stop-time rule, when it denied cancellation of removal. Thus, we remand for further proceedings consistent with that disposition.

Each party shall bear its own costs for this petition for review.

**PETITION FOR REVIEW DISMISSED in part, GRANTED in part;
REMANDED.**