# U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2833

SARITA ESTEFANIA HUAMAN-HERNANDEZ,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

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On Petition for Review from Board of Immigration Appeals
Immigration Judge Maria I. Akalski, No. A241-811-125, et al.

Before: KRAUSE, FREEMAN, and ROTH , *Circuit Judges*
Submitted Jul. 6, 2026;

Decided Nov. 20, 2026

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NONPRECEDENTIAL OPINION[*]

KRAUSE, *Circuit Judge*. Petitioner Sarita Huaman-Hernandez, a citizen of Peru, seeks review of a Board of Immigration Appeals (BIA) decision which upheld the denial of a continuance by the Immigration Judge (IJ) in her removal proceedings. Because that denial was not an abuse of discretion, we will deny the petition for review.

## I. DISCUSSION[1]

Petitioner first argues the IJ should have granted a continuance based on the domestic violence she suffered at the hands of her former partner and because she was

[*] This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

[1] The BIA had jurisdiction over the final order of removal under 8 C.F.R. § 1003.1(b)(3) and over the IJ's discretionary decisions under 8 C.F.R. § 1003.1(b)(6). We have appellate

seven months pregnant. She additionally argues that the IJ's denial of the continuance required her to proceed without representation in violation of due process.[2] We review Petitioner's twofold challenge to the IJ's denial of a continuance for abuse of discretion, *see Nunez v. Att'y Gen.*, 35 F.4th 134, 142 (3d Cir. 2022), meaning we ask whether it was "arbitrary, irrational or contrary to law," *Hashmi v. Att'y Gen.*, 531 F.3d 256, 259 (3d Cir. 2008).

**A. The IJ's Denial of a Continuance Was Not an Abuse of Discretion.**

We consider in turn Petitioner's arguments that (1) the domestic violence she suffered or (2) her pregnancy warranted a continuance.

**1. Domestic Violence**

Petitioner contends that the IJ erred by failing to grant a continuance based on the domestic violence she and her daughter suffered. But a petitioner is required to have "exhausted all administrative remedies" by asserting and properly developing her arguments in front of the BIA before seeking our review. 8 U.S.C. § 1252(d)(1); *see Santos-Zacaria v. Garland*, 598 U.S. 411, 419 (2023) (describing § 1252(d)(1) as a claim-processing rule). Petitioner failed to do so.

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jurisdiction to review the final order of removal under 8 U.S.C. § 1252(a)(1) and to review "constitutional claims or questions of law" under 8 U.S.C. § 1252(a)(2)(d).

[2] In addition to denying a continuance, the IJ also denied Huaman-Hernandez's asylum, withholding of removal, and Convention Against Torture claims, and the BIA affirmed the denial of those claims. Before this Court, Huaman-Hernandez argues only that the IJ erred in denying a continuance, which she contends deprived her of the right to counsel in her removal proceedings, and that representation could have led to a different result. As a result, we constrain our review to Huaman-Hernandez's continuance argument.

Before the BIA, Petitioner did not argue that domestic violence justified a continuance. Instead, she raised two other grounds: (1) that "she was seven . . . months pregnant during her merits hearing," and (2) that the IJ "fail[ed] to consider [her] request for a continuance so that she can seek the assistance of counsel." A.R. 15. Neither of those reasons invokes the domestic violence that Petitioner now claims justified a continuance. Nor was the BIA asked to consider domestic violence as a basis to reverse the IJ's denial of a continuance. So, while Petitioner contends that the BIA "wholly ignored the issue of domestic violence in [her] case," Opening Br. 5, that is because she failed to raise it in connection with her argument for a continuance.[3]

While the Court recognizes that domestic violence may have played a role in Petitioner's failure to secure counsel, we are required to enforce the exhaustion requirement where, as here, it was timely raised. *See Gomez-Gabriel v. Att'y Gen.*, 146 F.4th 327, 330 (3d Cir. 2025) (applying § 1252(d)'s exhaustion requirement to "each particular issue" argued by the petitioner). Because Petitioner failed to exhaust the argument that the IJ erred in denying a continuance on account of the domestic violence she suffered, we cannot consider it further.

[3] Huaman-Hernandez's brief before the BIA included a cursory description in the background section about domestic violence that she experienced but made no argument from these facts that related to any need for a continuance. That is not enough to exhaust the issue and preserve it for our review. Rather, a petitioner needs to "place the Board on notice of a straightforward issue being raised on appeal" to satisfy § 1252(d)'s exhaustion requirement. *Gomez-Gabriel v. Att'y Gen.*, 146 F.4th 327, 330 (3d Cir. 2025) (per curiam) (quoting *Joseph v. Att'y Gen.*, 465 F.3d 123, 126 (3d Cir. 2006)). Here, mere mention of domestic violence among other background facts failed to do so.

### 2. Pregnancy

Petitioner also asserts that the IJ should have granted a continuance on account of her pregnancy. But an IJ has discretion to grant a continuance if "good cause" is shown, 8 C.F.R. § 1003.29, and Petitioner points to no caselaw suggesting that pregnancy alone constitutes good cause, or that the particular circumstances of her pregnancy met that standard.[4] As such, we see no abuse of discretion in the IJ's denial of a continuance on that basis.

## B. Denial of a Continuance Did Not Deprive Petitioner of Her Right to Counsel.

Petitioner next asserts that the IJ's denial of a continuance deprived her of due process and violated her right to counsel. Because this due process claim is based "solely on the IJ's decision to deny the continuance request," we treat "the two claims as one and the same." *Freza v. Att'y Gen.*, 49 F.4th 293, 299 (3d Cir. 2022) (citation modified). To establish a due process violation based on a deprivation of the right to counsel, a non-citizen generally must demonstrate "(1) that [s]he was prevented from reasonably presenting h[er] case, and (2) that substantial prejudice resulted." *Id.* at 298 (citation modified); *but cf. Aquino v. Att'y Gen.*, 53 F.4th 761, 766 (3d Cir. 2022) (holding that a violation of the right to counsel renders removal proceedings "fundamentally unfair" and therefore results in a "presumption of prejudice"); *Freza*, 49 F. 4th at 299 (same).

Petitioner has not made even the first showing because, as the BIA recognized, the IJ did not deprive Petitioner of her right to obtain counsel by denying the continuance. *See*

[4] After the IJ denied the continuance, Huaman-Hernandez confirmed she was healthy and well enough to go forward with the hearing and to testify.

Petitioner had fifteen months to secure counsel between her December 2023 master calendar hearing and the March 2025 merits hearing, and she was pregnant for only seven of those months. To be clear, the passage of time alone does not resolve the issue. But Petitioner presented no evidence that would explain why she was unable to secure counsel during that period, and current counsel's arguments do not constitute evidence.[5]

Petitioner's invocation of *Freza* is also unavailing: Unlike the non-citizen in *Freza*, Petitioner was not detained and did not present evidence of her efforts to obtain counsel. *Compare* 49 F.4th at 299-300, *with* A.R. 5; *see also Matter of L-A-B-R-*, 27 I. & N. Dec. 405, 415 (A.G. 2018) (considering petitioner's diligence as a factor in assessing good cause). Petitioner also stated that she "ha[d] somebody that's been helping [her]," *see* A.R. 180, suggesting that her pregnancy did not prevent her from seeking help in general.[6]

In short, Petitioner had a reasonable chance to secure counsel in the many months before her merits hearing, so the IJ's denial of a continuance did not violate her right to

[5] Our dissenting colleague would require the IJ to probe further into the reasons for Petitioner's failure to obtain counsel. Dissenting Op. at 2-4. But Petitioner stated only that "I was going to ask the Court for an adjournment, being the fact that I don't have an attorney and I am seven months pregnant." A.R. 132-33. While those circumstances might have garnered the IJ's empathy, Petitioner did not suggest that anything interfered with her ability to obtain counsel in the approximately eight months before she became pregnant. While we agree with the Dissent that the IJ generally has a duty to develop the record under § 8 U.S.C. § 1229(b)(1), under these circumstances it was not arbitrary, irrational or contrary to law for the IJ to deny another continuance without further inquiry, *Hashmi*, 531 F.3d at 259.

[6] Huaman-Hernandez made this statement when asking for an extension to file her appeal to the BIA. She explained that the person helping her "could do this for me." A.R. 180. In context, it is not clear whether "this" refers to filing the BIA appeal or "find[ing] an attorney," A.R. 180, but either explanation reinforces that she had a reasonable chance to secure counsel.

counsel. *See Matter of C-B-*, 25 I. & N. Dec. 888, 889 (B.I.A. 2012); *Matter of Madrigal-Calvo*, 21 I. & N. Dec. 323, 327-29 (B.I.A. 1996).

## II. CONCLUSION

For the foregoing reasons, we will deny Petitioner's petition for review.

ROTH, *Circuit Judge*, dissenting.

Huaman-Hernandez asked for more time to obtain counsel. The Immigration Judge denied her request for a continuance immediately, without asking a single question about her efforts to secure representation. I believe the IJ's summary denial was an abuse of discretion and therefore respectfully dissent.

A noncitizen in removal proceedings has a statutory and regulatory right to counsel at her own expense.[1] Where that right has not been waived, the IJ must afford an unrepresented respondent a "reasonable and realistic period of time" to seek and retain counsel.[2] In *Ponce-Leiva v. Ashcroft*, we rejected "bright-line rules" for deciding whether a denial of a continuance in an immigration proceeding constitutes an abuse of discretion, explaining our inquiry "must be resolved on a case by case basis according to the facts and circumstances of each case."[3]

At her December 2023 master calendar hearing, Huaman-Hernandez appeared without counsel and told the IJ, "I'm going to get an attorney. I'm going to try to get an attorney . . . ."[4] The IJ scheduled the merits hearing for March 2025.[5] At the outset of that hearing, Huaman-Hernandez told the IJ, "Well, I do not have an attorney, and I was going to ask the Court for an adjournment, being the fact that I don't have an attorney and

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[1] 8 U.S.C. §§ 1362, 1229(b); 8 C.F.R. § 1240.10(a)(1).
[2] *Matter of C–B–*, 25 I. & N. Dec. 888, 889 (B.I.A. 2012).
[3] 331 F.3d 369, 377 (3d Cir. 2003) (affirming denial where the respondent had already retained counsel and counsel, after agreeing to the hearing date eight months earlier, made a last-minute continuance request that identified no emergency or reason for his conflicting travel) (citation omitted).
[4] AR 129.
[5] AR 127.

I am seven months pregnant."[6] In response to Huaman-Hernandez's continuance request, the IJ ruled:

> Okay, ma'am, the Court is not going to continue your case. You have had over one year since you were last in this court and you've had sufficient time to find an attorney. Since you do not have an attorney today, the Court is going to proceed and ask that you speak for yourself.[7]

Huaman-Hernandez answered, "Okay, very well."[8] The IJ asked no questions about Huaman-Hernandez's efforts to obtain counsel before proceeding with the hearing.

Although the Majority concludes that Huaman-Hernandez "had a reasonable chance to secure counsel in the many months before her merits hearing," it also recognizes that "the passage of time alone does not resolve the issue."[9] On that much, we agree. The record, moreover, suggests significant upheaval in Huaman-Hernandez's personal life during those "many months."

At the calendar hearing, Huaman-Hernandez told the same IJ that her former partner was no longer part of the family group after an incident involving her daughter resulted in his arrest and detention.[10] Indeed, the Majority acknowledges that the violence Huaman-Hernandez and her daughter endured "may have played [a role] in [Huaman-Hernandez's] failure to secure counsel."[11] By the merits hearing, too, Huaman-Hernandez was seven months pregnant. However, the IJ never asked whether those

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[6] AR 132–33.
[7] AR 133.
[8] AR 133.
[9] Maj. Op. 5–6.
[10] AR 129–30.
[11] Maj Op. 3.

circumstances, or anything else, had affected her efforts to find counsel. She did not ask whether Huaman-Hernandez had contacted attorneys, what efforts she had made, what obstacles she may have encountered, or why she remained unrepresented. The IJ simply pronounced the time afforded sufficient, treating the elapsed time as dispositive.

Perhaps a brief inquiry would have confirmed that Huaman-Hernandez had made little effort to secure counsel. But the IJ never elicited the facts necessary to make that assessment. *Ponce-Leiva* calls for attention to the "facts and circumstances of each case,"[12] and *Matter of C–B–* asks whether the opportunity to obtain counsel was "reasonable and realistic."[13] In my view, the IJ could not assess Huaman-Hernandez's efforts without learning what they were.[14]

The Board nevertheless faulted Huaman-Hernandez for failing to produce evidence that she had retained or contacted counsel and for failing to "meaningfully

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[12] 331 F.3d at 377.

[13] 25 I. & N. Dec. at 889; *see also Freza v. Att'y Gen.*, 49 F.4th 293, 299–300 (3d Cir. 2022) (holding denial of a continuance an abuse of discretion where the detained respondent had diligently sought counsel, and newly retained counsel requested additional time to prepare).

[14] The Majority also relies on Huaman-Hernandez's later statement that she had "somebody that's been helping [her]," as support that she had a reasonable opportunity to obtain counsel. Maj. Op. 6 n.6. But that statement came after the merits hearing, while the IJ was explaining her appeal rights, and the record does not identify the person who was assisting her, the nature of the assistance, or when it began. *See* AR 180**.** I would not infer from that ambiguous, post-hearing remark that Huaman-Hernandez had a reasonable opportunity to secure counsel before the merits hearing.

explain[] why she could not obtain counsel in the time provided."[15] I have difficulty faulting Huaman-Hernandez for failing to develop an issue the IJ had already decided.[16]

Here, the IJ denied Huaman-Hernandez's request without learning why she remained unrepresented. A few questions may have confirmed the IJ's conclusion, but the merits hearing proceeded without ever examining the basis for it. I would therefore grant the petition insofar as Huaman-Hernandez challenges the denial of additional time to seek counsel and remand for a new hearing. For these reasons, I respectfully dissent.

[15] AR 290.

[16] *See Lu v. Ashcroft*, 259 F.3d 127, 132 (3d Cir. 2001) ("Congress has long recognized the importance of counsel in immigration proceedings."); *see also Ponce-Leiva*, 331 F.3d at 380–81 (Rendell, J., dissenting) (emphasizing the importance of representation in immigration proceedings).