

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 28 2026

FOR THE NINTH CIRCUIT

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

WENDY IBANIA SANTOS JUAREZ; M.
H. L. S.,

Petitioners,

v.

TODD BLANCHE, Acting Attorney
General,

Respondent.

No. 25-6761

Agency Nos.
A201-711-598
A201-711-599

MEMORANDUM*

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

Submitted August 14, 2026**
San Francisco, California

Before: LEE, MENDOZA, JR., and DE ALBA, Circuit Judges.

Wendy Ibania Santos-Juarez and her minor son M.H.L.S., citizens of Honduras, seek review of a Board of Immigration Appeals' ("BIA") decision summarily dismissing as untimely their appeal from an immigration judge's ("IJ")

* 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).

removal order. We have jurisdiction under 8 U.S.C. § 1252 and deny the petition.

“We review for abuse of discretion the BIA’s summary dismissal of an appeal.” *Nolasco-Amaya v. Garland*, 14 F.4th 1007, 1012 (9th Cir. 2021). “The BIA abuses its discretion when it acts arbitrarily, irrationally, or contrary to the law.” *Tadevosyan v. Holder*, 743 F.3d 1250, 1252–53 (9th Cir. 2014) (citation modified). Whether the summary dismissal violated Petitioners’ due process rights is a question of law that this court reviews de novo. *Singh v. Gonzales*, 416 F.3d 1006, 1009 (9th Cir. 2005).

1. Because of the lack of evidence corroborating Petitioners’ representations, the BIA did not abuse its discretion when it summarily dismissed Petitioners’ appeal. *See Goulart v. Garland*, 18 F.4th 653, 655 (9th Cir. 2021) (determining “there [wa]s no basis to conclude that the BIA abused its discretion in denying [petitioner’s] claim for equitable tolling” when the petitioner “failed to present any evidence suggesting that he diligently pursued his rights” such as “a declaration or any other evidence concerning his actions” to excuse his untimely motion). Here, the only evidence Petitioners submitted with their motion to accept the untimely Notice of Appeal (“NOA”) was a screenshot that listed the filing fee as \$110, but that is not evidence demonstrating their attempt to timely file their NOA. And the motion itself only contained Petitioners’ representations, via their attorney, which do not constitute evidence. *See Estrella v. Brandt*, 682 F.2d 814,

819 (9th Cir. 1982) (clarifying that “[l]egal memoranda” are not evidence).

2. Petitioners further assert that certification was warranted under 8 C.F.R. § 1003.1(c). However, “the decision of whether to certify a claim under 8 C.F.R. § 1003.1(c) is committed to agency discretion.” *Idrees v. Barr*, 923 F.3d 539, 543 (9th Cir. 2019). Although “the court may review the decision if there is ‘law to apply’ in doing so,” Petitioners “challenge[] only the BIA’s exercise of its discretion in refusing to certify [Petitioners’] claim, which is not subject to judicial review.” *Id.* at 543 n.3.

3. Finally, even assuming Petitioners did not have to exhaust their due process claim, it fails on the merits. Specifically, Petitioners do not point to any deficiencies in the BIA’s procedures. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 822 (9th Cir. 2003) (finding no due process violation where failure to file a brief was caused by counsel’s mistake, as opposed to a deficiency in the BIA’s procedures); *cf. Zetino v. Holder*, 622 F.3d 1007, 1013 (9th Cir. 2010) (“We have held that a petitioner’s due process rights are violated if the BIA refuses to accept a late brief where the [noncitizen] followed all procedures but the BIA sent the briefing schedule and transcript to an incorrect address.”).

PETITION DENIED.¹

¹ Petitioners’ motion to stay removal, Dkt. No. 2, is DENIED.