

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 23 2026

FOR THE NINTH CIRCUIT

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

KAREN GABRIELA UMANZOR
ESCOBAR,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 22-2068

Agency No.
A094-287-754

MEMORANDUM*

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

Submitted October 21, 2026**
Pasadena, California

Before: BUMATAY, VANDYKE, and MENDOZA, Circuit Judges.

Petitioner Karen Gabriela Umanzor Escobar, a native and citizen of Honduras, petitions for review of a decision by the Board of Immigration Appeals (BIA) dismissing her appeal of an Immigration Judge's (IJ) order denying her motion to reopen and rescind her in absentia removal order. We review denials of motions to

* 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).

reopen for abuse of discretion, *Sembring v. Gonzales*, 499 F.3d 981, 985 (9th Cir. 2007), and will grant the petition only if the agency’s decision is “arbitrary, irrational, or contrary to law,” *Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002). We have jurisdiction under 8 U.S.C. § 1252 and we deny the petition.

We conclude that the agency correctly denied Petitioner’s motion because it was not properly filed within the 180-day statutory deadline.¹ The IJ may rescind an in absentia removal order “upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances.” 8 U.S.C. § 1229a(b)(5)(C)(i). If the “alien has the requisite notice, failure to move for reopening within [the statutory] 180-day period precludes relief from deportation. There are no exceptions to this statutory time bar.” *Singh-Bhathal v. INS*, 170 F.3d 943, 946 (9th Cir. 1999) (citation omitted).² Federal regulations require that a motion to reopen “be in writing

¹ Because we conclude the agency properly denied Petitioner’s motion to reopen as untimely, we need not address the agency’s alternative, dispositive finding that Petitioner’s motion failed to establish that exceptional circumstances beyond her control caused her failure to appear. *See Stoyanov v. INS*, 172 F.3d 731, 735 (9th Cir. 1999) (recognizing that a reviewing court may uphold BIA’s alternative basis for decision).

² *Singh-Bhathal* applied a previous version of the 180-day statutory deadline for filing motions to reopen that has since been repealed. *See Singh-Bhathal*, 170 F.3d at 946; *Sanchez Rosales v. Barr*, 980 F.3d 716, 720 n.2 (9th Cir. 2020). But that provision is substantively identical to the statute currently in force. *Compare* 8 U.S.C. § 1252b(c)(3)(A) (1995), *repealed by* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, tit.

and signed by the affected party or the attorney . . . of record, if any.” 8 C.F.R. § 1003.23(b)(1)(i). And where, as here, “the moving party . . . is *represented*, a Form EOIR-28, Notice of Appearance as Attorney or Representative Before an Immigration Judge *must* be filed with the motion.” *Id.* § 1003.23(b)(1)(ii) (emphasis added); *see also* U.S. Dep’t of Just., Exec. Off. of Immigr. Rev., Immigration Court Practice Manual Chapter 4.7(b)(1) (2026), available at <https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-4-7> [<https://perma.cc/KJH9-EKJZ>], (“[I]f the alien is represented by a practitioner of record or has received document assistance from a practitioner, the motion *must* be accompanied by a Form EOIR-28.” (emphasis added)). In *Cui v. Garland*, a panel of this court held that a motion to reopen was not timely filed when (1) the immigration court rejected the filing because the petitioner’s attorney did not properly enter an appearance and (2) the petitioner’s attorney did not correct the error before the 180-day filing period ended. 13 F.4th 991, 997–98 (9th Cir. 2019).

Here, the IJ ordered Petitioner removed in absentia on July 3, 2019. On December 27, 2019, Petitioner’s counsel attempted to file a motion to reopen without submitting the required notice of appearance. On the next business day, December

III, § 308(b)(6), 110 Stat. 3009, 3009–615 (providing that an in absentia removal order “may be rescinded . . . upon a motion to reopen filed within 180 days after the date of the order of deportation if the alien demonstrates that the failure to appear was because of exceptional circumstances”) *with* 8 U.S.C. § 1229a(b)(5)(C)(i).

30, 2019—the last day of the 180-day filing period—the immigration court gave notice that it had rejected the motion because it lacked the required notice-of-appearance form and mailed the rejection notice to Petitioner’s counsel. Petitioner’s counsel did not attempt to refile the motion with the required notice-of-appearance form until January 10, 2020—several days after the 180-day statutory deadline expired. The agency thus did not act arbitrarily, irrationally, or contrary to law when it enforced its regulation requiring a notice to appear and found that Petitioner failed to timely file a motion to reopen. *See Cui*, 13 F.4th at 997–98; *Singh-Bhathal*, 170 F.3d at 946.³

Petitioner argues that the agency should have “looked to the rules regarding timely filing of an asylum application for guidance” in construing the deadlines for filing her motion to reopen, and that the agency should have equitably tolled the 180-day filing deadline based on the “unique circumstances” in this case. But Petitioner raised neither argument before the agency. *See Magana-Magana v. Bondi*, 129 F.4th

³ Petitioner argues that, unlike in *Cui*, her attorney received notice of the rejected filing after the 180-day deadline expired. *See Cui* 13 F.4th at 997–98 (counting the day the rejection notice was mailed, Cui’s counsel had “fourteen days left before the [180-day deadline expired] to refile a motion to reopen”). But this distinction doesn’t help Petitioner. Petitioner’s counsel waited until the Friday before the deadline to file the motion to reopen. In doing so, she ran the risk that she would not receive notice of a rejected filing before the deadline expired the following Monday. And Petitioner—who is represented by the same attorney before this court—does not bring an ineffective assistance claim; nor does she offer any reason her attorney could not have attempted to file the motion to reopen earlier.

557, 574 (9th Cir. 2025) (argument that petitioner faced extraordinary circumstances was insufficient to put BIA on notice of tolling argument, when petitioner never mentioned tolling). Because she failed to exhaust these arguments, we may not consider them. 8 U.S.C. § 1252(d)(1); *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023).

PETITION DENIED.