

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 14, 2026

Christopher M. Wolpert
Clerk of Court

DAVES ERNESTO VALENCIA
GARCIA; D.G.F.; K.E.V.G.,

Petitioners,

v.

TODD BLANCHE,
United States Attorney General

Respondent.

No. 26-9514
(Petition for Review)

ORDER AND JUDGMENT*

Before **HARTZ**, **MATHESON**, and **ROSSMAN**, Circuit Judges.

Daves Ernesto Valencia Garcia and his derivative beneficiaries, D.G.F. and K.E.V.G., petition pro se for review of the dismissal of their appeal by the Board of Immigration Appeals (BIA). Exercising jurisdiction under 8 U.S.C. § 1252(a)(1), we deny the petition.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Lead Petitioner Daves Ernesto Valencia Garcia and his derivative beneficiaries are citizens of Colombia who entered the United States without authorization. On September 9, 2024, an immigration judge found Petitioners inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and ordered them removed to Colombia. The immigration judge's order stated that any appeal was due by October 9. On October 7 Petitioners filed a timely appeal with the BIA, but the BIA rejected it on October 8 because of a filing defect, stating that "Proof of Service is not signed." A.R., Vol. 1 at 18. Although the notice permitted "timely correction of the defect(s)," it advised that the rejection did not extend the filing deadline and that any corrected appeal filed after the deadline must include a request to the BIA to accept a late appeal. *Id.* The form also stated that such a request "must clearly establish both diligence in the filing of the notice of appeal and that an extraordinary circumstance prevented timely filing," with support by "affidavits, declarations, and other evidence." *Id.*

On October 22 and November 7 Petitioners attempted to refile the appeal but the BIA rejected both attempts for filing defects and returned them for correction. Both rejection notices again included instructions that to file an untimely appeal, Petitioners had to include a request for the BIA to accept the late filing. Neither the October 22 nor November 7 filings included such a request.

On December 16 Petitioners properly filed a third corrected appeal. But as with the other untimely appeals, Petitioners included neither a request that the BIA accept the late appeal, nor any discussion of diligence or of circumstances that may have prevented the filing of a timely appeal. On January 28, 2026, the BIA

summarily dismissed Petitioners' appeal under 8 C.F.R. § 1003.1(d)(2)(i)(G) because it was untimely and Petitioners had not filed a request for the BIA to accept a late filing.

Petitioners seek review of the BIA's decision to dismiss their appeal.¹ "We review the BIA's summary dismissal for abuse of discretion." *Nazakat v. I.N.S.*, 981 F.2d 1146, 1148 (10th Cir. 1992). The BIA abuses its discretion "when its decision provides no rational explanation, inexplicably departs from established policies, is devoid of any reasoning, or contains only summary or conclusory statements." *Berdiev v. Garland*, 13 F.4th 1125, 1130–31 (10th Cir. 2021) (internal quotation marks omitted).

We see no abuse of discretion. Under 8 C.F.R. § 1003.1(d)(2)(i)(G), the BIA may summarily dismiss an appeal when "[t]he appeal is untimely." Petitioners do not offer any explanation for their failure to file a request for late acceptance, and there is nothing in their brief or the record to suggest that they acted diligently or that extraordinary circumstances prevented the filing of a timely and nondefective appeal. They utterly fail to argue that their timely October 7 filing was improperly rejected, nor do they challenge the conclusion that the accepted appeal was untimely. The summary dismissal was a mine-run application of the regulations, not an abuse of discretion.

¹ Petitioners also moved for a stay of removal, which was denied.

We need not address the merits of a claim that is procedurally barred. *See Galvez Pineda v. Gonzales*, 427 F.3d 833, 837 (10th Cir. 2005) (“[W]e will not permit the petitioner to circumvent proper procedural requirements of the BIA by presenting contentions that were procedurally barred by the Board.”). But even the issues Petitioners do raise are not supported by sufficiently developed argument. Petitioners state in general terms that “important humanitarian, factual, and procedural issues relevant to the immigration proceedings were not fully considered” below. Pet’r. Br. at 4. Even construed liberally, however, their brief does not allege any specific error by the BIA.²

Similarly, Petitioners claim that “prior proceedings failed to properly apply the principles of due process and fundamental fairness.” Pet’r. Br. at 4. When the historical facts are not in dispute, we review such a claim de novo. *See Lucio-Rayos v. Sessions*, 875 F.3d 573, 576 (10th Cir. 2017). But Petitioners do not develop this argument, and they point to no specific error. “[C]onclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991); *see also Iliev v. Holder*, 613 F.3d 1019, 1026 n.4 (10th Cir. 2010) (when a pro se opening brief suggested “in passing that the BIA’s decision might raise ‘serious constitutional concerns,’” the issue was waived when it was not sufficiently developed).

² Because Petitioners proceed pro se, we liberally construe their filings but we do not act as their advocate. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

We **DENY** the petition for review, **GRANT** Petitioners' motion to proceed *in forma pauperis*, and **DENY** as moot the government's motion to strike.

Entered for the Court

Harris L Hartz
Circuit Judge