

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 26-1270

SUKHROB SIROJKULOVICH KHAMROKILOV,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of an Order of the
Board of Immigration Appeals
(Agency No. A062-531-040)
Immigration Judge: William McDermott

Submitted on Respondent's Motion for Summary Disposition Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6

September 10, 2026

Before: SHWARTZ, FREEMAN, and CHUNG, *Circuit Judges*

(Opinion filed: September 17, 2026)

OPINION*

PER CURIAM

Sukhrob Sirojkulovich Khamrokilov petitions for review of an order of the Board of Immigration Appeals (BIA) summarily dismissing his appeal from the Immigration

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Judge's (IJ) order denying his applications for relief from removal. The Government has filed a motion for summary disposition, arguing that the petition presents no substantial question. We agree, and we will therefore grant the Government's motion and summarily deny the petition for review. 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

Khamrokilov is a citizen of Uzbekistan who was admitted to the United States in 2013 as a lawful permanent resident. He departed the country in 2019, and, in October 2021, he sought re-entry and was paroled into the United States for purposes of criminal prosecution. In July 2022, Khamrokilov pleaded guilty to attempted kidnapping in violation of 18 U.S.C. § 1201(c) and was sentenced to 60 months' imprisonment. He was later charged as removable for being a noncitizen convicted of a crime involving moral turpitude, *see* 8 U.S.C. § 1182(a)(2)(A)(i)(I).

Proceeding pro se, Khamrokilov applied for asylum, withholding, and relief under the Convention Against Torture. He was later represented by counsel at hearings before the IJ. Following the proceedings on August 4, 2025, the IJ issued an oral decision denying all relief and ordering Khamrokilov removed to Uzbekistan. That same day, the IJ entered a written order summarizing the oral decision. The summary order also indicates that Khamrokilov reserved his right to appeal to the Board of Immigration Appeals (BIA). A summary of the Judge's oral decision was electronically served to his counsel on August 5, 2025, and mailed to Khamrokilov on October 8, 2025.

Khamrokilov filed a pro se notice of appeal (NOA) with the BIA on October 23, 2025. The BIA summarily dismissed the appeal as untimely. This petition for review

followed. The Government has filed a motion to summarily deny the petition, which Khamrokilov opposes.¹

Generally, a petitioner has 30 days to appeal an IJ's decision to the Board of Immigration Appeals (BIA). *See* 8 C.F.R. § 1003.38(b)(2). That time period runs "from the date of the stating of an Immigration Judge's oral decision or the mailing or electronic notification of an Immigration Judge's written decision." 8 C.F.R. § 1003.38(b)(3). Khamrokilov argues that his NOA was timely under that regulation because it was filed with the BIA within 30 days of when the IJ's written summary was mailed to him. The Government argues that the NOA was untimely under that regulation because it was filed more than 30 days after the IJ's oral decision was issued. The Government's argument is correct.

Section 1003.38(b)(3) unambiguously states that the time for filing begins to run when an IJ's *decision*, whether oral or written, is communicated. The preceding regulation, 8 C.F.R. § 1003.37(a), provides that an IJ may render a decision orally in the presence of the parties or in writing. If oral, then "a memorandum summarizing the decisions shall be served on the parties." If written, the decision "shall be served on the parties by personal service, mail, or electronic notification."

Here, the IJ issued an oral decision on August 4, 2025, so Khamrokilov had 30 days from that date to file his NOA with the BIA. The fact that, in compliance with 8

¹ We have jurisdiction over the petition for review pursuant to 8 U.S.C. § 1252(a)(1). We may take summary action if the petition for review fails to present a substantial question. *See* 3d Cir. I.O.P. 10.6.

C.F.R. § 1003.37(a), a summary of the oral decision was mailed to Khamrokilov on October 8, 2025, and electronically mailed to his attorney, did not alter the time to appeal. Indeed, the first page of the summary specifically stated that “This is a summary of the oral decision entered on 08/04/2025.” A.R. at 11. In sum, because the IJ issued an oral, not a written, decision, and Khamrokilov did not file his NOA within 30 days of its issuance, the BIA did not err in dismissing the appeal as untimely.

Khamrokilov notes correctly that the BIA considers § 1003.38(b)(2)’s 30-day filing deadline as a claims-processing rule, not a jurisdictional requirement, *see In re Morales-Morales*, 28 I. & N. Dec. 714, 715-16 (BIA 2023), and he argues that the BIA failed to consider whether the deadline should be equitably tolled in this case. But even assuming that § 1003.38(b)(2)’s deadline is subject to equitable tolling, we agree with the Government that Khamrokilov did not file anything with the BIA that could be read as requesting equitable tolling or putting forth any extraordinary circumstances. *See generally Nkomo v. Att’y Gen.*, 986 F.3d 268, 272-73 (3d Cir. 2021) (recognizing that equitable tolling requires a petitioner to show “that he has been pursuing his rights diligently” and “that some extraordinary circumstance stood in his way and prevented timely filing” (internal quotation marks and citation omitted)). Khamrokilov merely noted in his NOA that a copy of the IJ’s summary order was not mailed to him until

October 8, 2025. As discussed above, that demonstrates only a misunderstanding of the regulation. Thus, the BIA did not err in failing to address equitable tolling.²

Based on the foregoing, the petition for review fails to present a substantial question. Therefore, we grant the Government's motion for summary disposition and will deny the petition for review.³ *See* 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

² We note that, while Khamrokilov alleges that his counsel provided ineffective assistance in the immigration proceedings before the IJ, he does not argue that the failure to file a timely appeal was in any way attributable to his counsel's ineffectiveness. *See* Pet. for Review; Petitioner's Resp. at 8-9. In any event, as the Government notes, Khamrokilov did not put this issue before the BIA. *See* Gov't's Mot. at 9 (noting that "Petitioner does not assert that his attorney did not receive notification of the [IJ's] oral decision" and that his NOA "does not argue for equitable tolling"); *see also Aguilar v. Att'y Gen.*, 107 F.4th 164, 168-69 (3d Cir. 2024) (recognizing that we will enforce the requirement that a petitioner must exhaust all issues before the BIA, *see* 8 U.S.C. § 1252(d)(1), where the Government properly invokes it).

³ Khamrokilov's motion to compel the Government to file transcripts of the immigration hearings before the IJ is denied. As the Government notes, there was no duty to transcribe the immigration hearings because the BIA screened the appeal and summarily dismissed it. *See* 8 C.F.R. § 1003.1(e)(1), (3). Moreover, contrary to Khamrokilov's contention, he was not "hamper[ed]" by the lack of transcripts, as they are unnecessary to address the timeliness of his appeal to the BIA, the only issue before this Court. Petitioner's Resp. at 4; *see also Chukwu v. Att'y Gen.*, 484 F.3d 185, 193 (3d Cir. 2007) (recognizing that we review only the grounds on which the BIA relied). Khamrokilov's motion for an extension of time to file a brief and appendix also is denied.