

# United States Court of Appeals for the Fifth Circuit

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No. 24-60477  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

June 11, 2025

Lyle W. Cayce  
Clerk

OSCAR MELENDEZ WILLIAM,

*Petitioner,*

*versus*

PAMELA BONDI, *U.S. Attorney General,*

*Respondent.*

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Petition for Review of an Order of the  
Board of Immigration Appeals  
Agency No. A246 127 123

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Before HIGGINBOTHAM, JONES, and OLDHAM, *Circuit Judges.*

PER CURIAM:\*

Oscar Melendez William, a native and citizen of El Salvador, petitions for review of a June 14, 2024 decision of the Board of Immigration Appeals (BIA) summarily dismissing his appeal of the immigration judge's (IJ) denial of his application for protection under the Convention Against Torture (CAT) as barred by an appeal waiver.

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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We review the BIA's decision and consider the IJ's decision only to the extent it influenced the BIA. *Singh v. Sessions*, 880 F.3d 220, 224 (5th Cir. 2018). Factual findings are reviewed under the substantial evidence standard. *Kohwarien v. Holder*, 635 F.3d 174, 178 (5th Cir. 2011). Under this standard, the court may not reverse a factual finding unless the evidence "compels" such a reversal. *Id.* Conclusions of law are reviewed de novo. *Id.*

Melendez William indicates in his pro se brief that he also challenges a September 6, 2024 decision of the BIA denying his motion to reopen his removal proceedings. His petition for review, filed in June 2024, pertains only to the BIA's June 14, 2024 decision, and he did not file a separate petition for review from the BIA's September 6, 2024 decision. Accordingly, the June 14, 2024 decision is the only decision under review here. *See Stone v. INS*, 514 U.S. 386, 394-406 (1995); *Ramos-Lopez v. Lynch*, 823 F.3d 1024, 1027 (5th Cir. 2016).

The Government contends that Melendez William's petition for review should be dismissed for lack of jurisdiction because it was untimely filed, as Melendez William's order of removal became final when he waived his appellate rights knowingly and intelligently before the IJ. Under 8 U.S.C. § 1252(b)(1), "[t]he petition for review must be filed not later than 30 days after the date of the final order of removal." We held in *Argueta-Hernandez v. Garland*, 87 F.4th 698, 705 (5th Cir. 2023), that § 1252(b)(1) is a nonjurisdictional claim-processing rule in light of *Santos-Zacaria v. Garland*, 598 U.S. 411 (2023). *See Inestroza-Tosta v. Att'y Gen.*, 105 F.4th 499, 512 (3d Cir. 2024) (recognizing *Argueta-Hernandez* as holding that § 1252(b)(1) is a nonjurisdictional claim-processing rule).

Under 8 C.F.R. § 1003.39, "the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first." Melendez William waived his

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appellate rights during his hearing before the IJ on April 24, 2023. He did not make any arguments before the BIA that his waiver was not made knowingly and intelligently. The BIA summarily dismissed his appeal on June 14, 2024, concluding that the appeal was not properly before it because Melendez William waived his appellate rights, and the IJ's decision "became administratively final" when he waived appeal. Melendez William filed his petition for review as early as June 24, 2024.

Although we indicated in *Kohwarien* that the BIA "lacks jurisdiction to review an immigration judge's decision if an alien has knowingly and intelligently waived his right to appeal," we exercised jurisdiction in that case to determine whether substantial evidence supported the BIA's determination that the alien's appeal waiver was knowing and intelligent. *See Kohwarien*, 635 F.3d at 179-80 (quote at 179). Here, however, Melendez William did not raise those issues before the BIA.

Melendez William's order of removal became final on April 24, 2023, and his petition for review was thus untimely filed. *See* § 1252(b)(1); § 1003.39. Because the Government raises untimeliness, we will enforce this claim-processing rule. *See Argueta-Hernandez*, 87 F.4th at 705.

Accordingly, the petition for review is DISMISSED as untimely.