

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**October 7, 2026**

**Christopher M. Wolpert**  
**Clerk of Court**

ERIKA DANIELA CELIS-NINO;  
WILMER ALEXANDER OCHOA-  
GALAN; JANE DOE,

Petitioners,

v.

TODD BLANCHE, United States  
Attorney General\*,

Respondent.

No. 25-9521  
(Petition for Review)

**ORDER AND JUDGMENT\*\***

Before **TYMKOVICH, MATHESON, and PHILLIPS**, Circuit Judges.

Petitioners seek review of a final removal order the Board of Immigration Appeals (“BIA”) issued upholding an immigration judge’s denial of their applications for asylum, withholding of removal, and protection under regulations implementing

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\* Todd Blanche is now the Attorney General of the United States and has been substituted as Respondent. *See* Fed. R. App. P. 43(c)(2).

\*\* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

the United Nations Convention Against Torture. The government has filed a motion to dismiss the petition for review because Petitioners filed it more than 30 days after the date the BIA issued the final removal order. We grant the motion and dismiss the petition.

## **I. BACKGROUND**

A “petition for review must be filed not later than 30 days after the date of the final order of removal.” 8 U.S.C. § 1252(b)(1). The BIA issued Petitioners’ final order of removal on October 9, 2024, so their petition for review was due by November 8, 2024. However, they did not file their petition until February 10, 2025, along with a “Motion to Reinstate Petition for Review” and a motion to stay the removal order pending resolution of this matter. In the motion to reinstate, Petitioners, then proceeding pro se, explained that they sent their petition “via FedEx on October 17, 2024, and it was delivered to the Court on October 18, 2024, as confirmed by [an] attached FedEx tracking receipt.” Mot. to Reinstate at 2 (emphasis omitted).<sup>1</sup> They further explained that they had “only recently [become] aware that the Court did not process the filing properly,” apparently when Immigration and Customs Enforcement (“ICE”) detained the lead petitioner on February 7, 2025. *Id.* (emphasis omitted). They claimed that “due to an administrative error, the case was not docketed.” *Id.* (emphasis added). They also referred to equitable tolling.

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<sup>1</sup> The attached receipt shows that on October 17, 2024, Petitioners had deposited with FedEx what we assume was their petition and that it was to be delivered to both this court and to the government, with a scheduled delivery date of October 18, 2024. It does not show an actual delivery date.

The government opposed the stay motion and moved to dismiss the petition for lack of jurisdiction because it was not timely filed. The government argued that because § 1252(b)(1)'s filing deadline is jurisdictional, it was not subject to equitable tolling. Petitioners opposed the motion, arguing that they timely submitted their petition by sending it to this court via FedEx on October 17, 2024, only to learn in February 2025 that “the petition had not been processed due to external logistical errors” beyond their control. Pet’rs’ Opp’n at 2. They asked the court to equitably toll the filing deadline because, upon learning of the problem, they acted immediately and in good faith to correct it.

We granted a stay of removal. We also abated this matter and suspended merits briefing pending the Supreme Court’s issuance of a decision in *Riley v. Bondi*, No. 23-1270, and this court’s disposition of *Nava-Capilla v. Bondi*, No. 24-9534. After both of those cases were decided, we lifted the abatement, appointed counsel for Petitioners, and obtained supplemental briefing on Petitioners’ motion to reinstate and the government’s motion to dismiss. This matter is now ready for disposition.

## II. DISCUSSION

We have long held that § 1252(b)(1)'s filing deadline “is ‘mandatory and jurisdictional’ and is ‘not subject to equitable tolling.’” *Nahatchevska v. Ashcroft*, 317 F.3d 1226, 1227 (10th Cir. 2003) (quoting *Stone v. INS*, 514 U.S. 386, 405 (1995)); see also, e.g., *Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1271 (10th Cir. 2018) (same); *Arostegui-Maldonado v. Garland*, 75 F.4th 1132, 1140 (10th Cir. 2023) (same). But in *Riley v. Bondi*, the Supreme Court held that § 1252(b)(1)'s

“30-day filing rule is not jurisdictional,” 606 U.S. 259, 263 (2025), but instead a “claim-processing rule,” *id.* at 273 (brackets and internal quotation marks omitted). Thus, *Riley* abrogated our cases holding that § 1252(b)(1)’s filing deadline is jurisdictional. But *Riley* left open the question of whether equitable tolling applies to § 1252(b)(1) because the government elected “not to seek dismissal of Riley’s case” as untimely. *Id.* at 263; *see also id.* at 302–03 (Sotomayor, J., dissenting) (“[T]he courts of appeals should consider applying standard principles of equitable tolling, which *are likely available* now that the court has recognized that § 1252(b)(1)’s appeal deadline is not jurisdictional.” (emphasis added)).

Here, Petitioners argue that § 1252(b)(1) is subject to equitable tolling, and the government argues it is not. Among other things, the government contends that although *Riley* did away with the understanding that the deadline is jurisdictional, it did not jettison the notion that § 1252(b)(1) is mandatory and not subject to equitable tolling.

We decline to resolve the issue. Of course, “we are bound to follow both the holding and the reasoning, even if dicta, of the Supreme Court.” *Navajo Nation v. Dalley*, 896 F.3d 1196, 1208 n.6 (10th Cir. 2018) (emphasis omitted). And although “[w]e are generally bound by prior panel precedent,” that “rule does not apply . . . when the Supreme Court issues an intervening decision that is contrary to or invalidates our previous analysis.” *Jimenez v. Sessions*, 893 F.3d 704, 710 (10th Cir. 2018). *Riley* may invalidate the analysis in our pre-*Riley* precedents, which traces to *Stone*, that the deadline is mandatory and not subject to equitable tolling. That view

was tethered to the erroneous conclusion that the deadline was also jurisdictional, so we had no occasion to examine whether § 1252(b)(1), as a claims-processing deadline, would permit equitable tolling. Nor did the Supreme Court in *Stone* have cause to consider whether the statute at issue before it (the predecessor to § 1252(b)(1)) was subject to equitable tolling. We are therefore reluctant to merely follow *Stone* or our pre-*Riley* precedent on this issue. That reluctance is further fueled by a split among the circuits that have considered the issue post-*Riley*. Compare *Navarro v. Blanche*, 186 F.4th 209, 228 (4th Cir. 2026) (equitable tolling available), and *Oxlaj-Perez v. Blanche*, 174 F.4th 516, 520 (6th Cir. 2026), (same), and *E.E.V. v. Blanche*, 180 F.4th 954, 974 (7th Cir. 2026) (same), with *Liao v. Bondi*, 162 F.4th 519, 524 (5th Cir. 2025) (§ 1252(b)(1) is a mandatory claims-processing deadline, but no express discussion of equitable tolling), and *B.P. v. Blanche*, \_\_\_ F.4th \_\_\_, No. 25-2778, 2026 WL 2590508, at \*4–5 (8th Cir. Sept. 2, 2026) (§ 1252(b)(1) is a mandatory claims-processing deadline; equitable tolling unavailable).

Ultimately, however, we need not decide the issue for our circuit today. Instead, we may assume § 1252(b)(1)’s filing deadline is subject to equitable tolling because Petitioners have not fulfilled their burden to show they are entitled to it.<sup>2</sup>

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<sup>2</sup> We took this same path in the other case that informed our abatement of this case, *Nava-Capilla v. Bondi*, which we issued before *Riley*. See No. 24-9534, 2025 WL 1088136, at \*2 (10th Cir. Apr. 11, 2025).

“Equitable tolling is appropriate where the movant shows (1) that she has been pursuing her rights diligently, and (2) that some extraordinary circumstance stood in her way and prevented timely filing.” *Estrada-Cardona v. Garland*, 44 F.4th 1275, 1287 (10th Cir. 2022). Petitioners have not made either showing.

In their supplemental brief, filed through counsel, Petitioners argue that they diligently pursued their rights because they sent their petition for review and the filing fee to the court via FedEx just eight days after the BIA’s final order of removal, and they “had every reason to expect that their petition would be delivered to the Court well before the statutory deadline” given that the “scheduled delivery date” shown on the FedEx receipt was “October 18, 21 days before the deadline.” Pet’rs’ Suppl. Br. at 18. They also note that at the same time, they sent a copy of their petition to ICE in Centennial, Colorado, and “FedEx tracking information indicated that those materials were delivered.” *Id.* They add that because they were then pro se and “had no access to CM/ECF or PACER,” they “did not expect to hear immediately once their petition was docketed, and they were unaware of how long it would take for them to hear from the Court about their petition.” *Id.* at 19. They further point out that “[j]ust three days after learning that their petition was not docketed by the Court,” they “succeeded in filing the petition, along with [the] motion to reinstate.” *Id.*

Petitioners were diligent about timely sending their petition via FedEx. And we credit their representation that they did not have electronic access to the court’s

docket. But they were not reasonably diligent in following up on their shipment.<sup>3</sup> Although they note that FedEx tracking information showed their petition was delivered to ICE, they do not address any tracking information for the petition sent to this court. And critically, the government asserts that the tracking information shows that on October 29, 2024, which was 11 days before the petition was due, “there was a ‘shipment exception’ and FedEx *never delivered* the petition for review.” Resp’t Suppl. Br. at 15–16 (quoting tracking information). Petitioners have not disputed that assertion or suggested they lacked access to FedEx’s tracking information.<sup>4</sup> In these circumstances, Petitioners did not demonstrate reasonable diligence because they did not use FedEx’s tracking information to confirm their petition’s timely delivery to the court.

The availability of FedEx’s tracking system undermines Petitioners’ reliance on *Burger v. Scott*, 317 F.3d 1133 (10th Cir. 2003). In that case, Burger, a state

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<sup>3</sup> Neither party suggests what standard applies to the diligence component of an equitable-tolling analysis. We will assume the correct standard is the one set out in *Holland v. Florida*—“reasonable diligence, not maximum feasible diligence,” 560 U.S. 631, 653 (2010) (citation and internal quotation marks omitted). See *Berdiev v. Garland*, 13 F.4th 1125, 1132 (10th Cir. 2021) (assuming, for purposes of analysis, that the *Holland* standard applied in an immigration case).

<sup>4</sup> We note that, although the government has provided a hyperlink to the tracking information for the shipment to the court, that information is no longer available on the FedEx website. And we recognize that the parties filed their supplemental briefs simultaneously, so they are not responsive to each other. But if Petitioners wanted to dispute the government’s assertion about the tracking information, they could have sought leave to file an additional brief. They did not. We therefore take as true the government’s assertion regarding the tracking information.

prisoner, placed his application for state post-conviction relief in the prison mail over a month before the applicable deadline. *See id.* at 1135, 1142. However, the state application was not officially filed in the state court until four months later, well after the cut-off date. *Id.* at 1143. We concluded Burger was entitled to equitable tolling because he “attempted to file . . . what he believed to be a sufficient state habeas petition,” and the state presented no evidence “that the four month delay was . . . due to circumstances within Burger’s control.” *Id.* at 1142–43. But, unlike Petitioners here, Burger could not track the delivery of his state habeas petition. Instead, he was forced “to rely on the good faith of not only prison officials, but also of state court employees to see that [his petition was] expeditiously processed.” *Id.* at 1143. *Burger*, therefore, does not advance Petitioners’ cause.

Because the requirements for equitable tolling are phrased in the conjunctive, *see Estrada-Cardona*, 44 F.4th at 1287, Petitioners’ failure to demonstrate reasonable diligence is sufficient for us to conclude that they are not entitled to equitable tolling. But their argument that extraordinary circumstances prevented timely filing is also unpersuasive.

Petitioners direct us to several cases in which courts have said that a commercial delivery service’s failure to fulfill its guarantee of overnight delivery could, or does, constitute unique or extraordinary circumstances excusing an untimely filing. But those cases are distinguishable for two reasons.

First, the FedEx receipt Petitioners submitted to the court shows they sent their petition via FedEx ground service, not its overnight service. And although the

scheduled delivery date was the next day, it does not appear there was any guarantee of overnight delivery.

Second, even assuming it was reasonable for Petitioners to expect the petition to be delivered to the court on the scheduled delivery date, FedEx's failure to meet that expectation did not result in expiration of the filing deadline, as was the situation with the carriers in the cases on which Petitioners rely. *See Zhong Guang Sun v. U.S. Dep't of Just.*, 421 F.3d 105, 106, 111 (2d Cir. 2005) (promised delivery on date of deadline but delivered five days late); *Vasquez Salazar v. Mukasey*, 514 F.3d 643, 645 (6th Cir. 2008) (promised delivery day before deadline but delivered six days late); *Mojica v. Sec'y of Health & Hum. Servs.*, 102 Fed. Cl. 96, 97 (2011) (promised delivery two days before deadline, notified litigant one day after deadline that filing was lost, and litigant promptly sent a replacement filing via overnight service that also was lost and then delivered five days after deadline); *Raspberry v. Sec'y of Dep't of Health & Hum. Servs.*, 32 Fed. Cl. 777, 778 (1995) (promised delivery the day before the deadline but delivered one day late), *effectively overruled on other grounds as stated in Decker v. Sec'y of Dep't of Health & Hum. Servs.*, 51 Fed. Cl. 288, 296 (2001). Thus, in these cases the delivery failure left little or no opportunity for the litigant to take timely corrective action. In contrast here, had Petitioners exercised reasonable diligence and checked the FedEx tracking information, they would have had at least 10 days (as measured from the date of the delivery exception, October 29, 2024) and as much as 22 days (as measured from the date after the scheduled delivery date, October 19, 2024) to timely file their petition for review.

But apparently they never checked the tracking information, because they admit they only became aware of the delivery failure on February 7, 2025, some three months after the November 8, 2024, filing deadline.<sup>5</sup>

If Petitioners had sent their petition via an overnight service on the eve of the filing deadline, only to find out after the deadline had passed that it had not been delivered, this might be a different case. But under the circumstances here, reasonable diligence would have been to check the tracking information on or soon after the scheduled delivery date. Had Petitioners done that, they would have discovered the petition had not been delivered on the scheduled date. And had they kept checking, they would have discovered the delivery exception, which occurred with plenty of time remaining for them to timely file the petition by some other means of transmitting it to the court. Instead, they did not keep tabs on their petition to ensure that it actually was delivered, either on the scheduled delivery date or by the filing deadline. That does not show the sort of diligence that warrants equitable tolling. And FedEx's failure to deliver the petition on the scheduled delivery date

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<sup>5</sup> In further support of their extraordinary-circumstances argument, Petitioners rely on *Talamantes-Penalver v. INS*, 51 F.3d 133 (8th Cir. 1995), and *Sandvik v. United States*, 177 F.3d 1269 (11th Cir. 1999). Each of these cases involved the use of regular mail that resulted in filings being one day late, but the courts suggested that the use of an overnight service could have been adequate to protect the litigants' interests in timely filing. See *Talamantes-Penalver*, 51 F.3d at 134, 136; *Sandvik*, 177 F.3d at 1270, 1272. But neither case addresses whether equitable tolling requires a litigant who uses a commercial delivery service to nonetheless check the tracking information to confirm delivery, at least where, as here, there remains adequate time between a scheduled delivery date and the filing deadline in which a litigant can make a timely filing by some other means.

does not constitute an extraordinary circumstance justifying equitable tolling of the filing deadline.

### **III. CONCLUSION**

We grant the government's motion to dismiss this matter due to the late-filed petition for review. We deny Petitioners' motion to reinstate the petition. We lift the stay of removal previously granted.

Entered for the Court

Timothy M. Tymkovich  
Circuit Judge