

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11th day of March, two thousand twenty.

PRESENT:

DENNIS JACOBS,
JOSÉ A. CABRANES,
JOSEPH F. BIANCO,
Circuit Judges.

RICARDO BARRIGA,
Petitioner,

v.

WILLIAM P. BARR, UNITED STATES
ATTORNEY GENERAL,
Respondent.

19-2048
NAC

FOR PETITIONER: Pankaj Malik, Warshaw Burstein,
LLP, New York, NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant Attorney
General; Mary Jane Candaux,
Assistant Director; Nicole J.
Thomas-Dorris, Trial Attorney,

1 Office of Immigration Litigation,
2 United States Department of
3 Justice, Washington, DC.

4 UPON DUE CONSIDERATION of this petition for review of a
5 Board of Immigration Appeals ("BIA") decision, it is hereby
6 ORDERED, ADJUDGED, AND DECREED that the petition for review
7 is DISMISSED.

8 Petitioner Ricardo Barriga, a native and citizen of
9 Peru, seeks review of a June 28, 2019, decision of the BIA
10 summarily dismissing Barriga's appeal of a January 2, 2019,
11 decision of an Immigration Judge ("IJ") denying asylum,
12 withholding of removal, and relief under the Convention
13 Against Torture ("CAT"). *In re Ricardo Barriga*, No. A076
14 563 917 (B.I.A. June 28, 2019), *aff'g* No. A076 563 917
15 (Immig. Ct. Batavia Jan. 2, 2019). His appeal was
16 summarily dismissed because, after indicating in the notice
17 of appeal that he would file a brief, his lawyer missed an
18 already extended deadline, and later filed an untimely
19 brief without making the requisite motion to file out of
20 time. The dismissal was authorized by regulation.¹ We

1 The BIA may summarily dismiss any appeal in which "[t]he party concerned indicates on Form EOIR-26 or Form EOIR-29 that he or she will file a brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his or her failure to do

1 assume the parties' familiarity with the underlying facts
2 and procedural history.

3 Our jurisdiction is limited to constitutional claims
4 and questions of law because Barriga is removable by reason
5 of a controlled substance conviction. See 8 U.S.C.
6 § 1252(a)(2)(C), (D). We review such claims *de novo*.
7 *Pierre v. Holder*, 588 F.3d 767, 772 (2d Cir. 2009).

8 This Court lacks jurisdiction because Barriga has
9 raised no constitutional issue or question of law. His
10 challenge to the BIA's summary dismissal implicates the
11 BIA's discretionary authority to refuse to accept untimely
12 briefs. See 8 C.F.R. § 1003.3(c)(1) ("In its discretion,
13 the Board may consider a brief that has been filed out of
14 time."). Critically, Barriga makes no claim that the BIA
15 applied an incorrect legal standard, such as by
16 misunderstanding the scope of its authority to excuse a
17 late brief.

18 Barriga's argument is that the BIA's refusal to accept
19 his late brief "constitutes an abuse of discretion because
20 the denial is partially based on an error of fact," namely,

so, within the time set for filing." 8 C.F.R. §
1003.1(d)(2)(i)(E).

1 the BIA's determination that his brief exceeded the 25-page
2 limit. (Pet'r Br. at 28.) But Barriga distorts the BIA's
3 decision. His motion to file an untimely brief was denied
4 because the BIA had already granted his lawyer's first
5 request for an extension, and because she filed the motion
6 to accept a late brief more than two weeks after the
7 extended deadline. The page limit was an ancillary point.
8 In any event, Barriga's compliance with the page limit is a
9 point of fact, not a constitutional issue or legal
10 question.

11 Nor do Barriga's underlying challenges to the IJ's
12 removal decision implicate constitutional issues or
13 questions of law. Barriga complains that the IJ did not
14 allow his expert witness to testify by telephone, noting
15 that the expert would have provided key evidence for his
16 CAT claim: the "archaic and barbaric treatment of
17 individuals in Peru with serious mental disabilities."
18 (Pet'r Br. at 30.) But he cannot claim that the IJ erred
19 as a matter of law in precluding telephonic testimony.
20 Likewise, Barriga's criticism of the IJ's adverse
21 credibility determination is purely factual: that the IJ
22 relied on "minor and basically immaterial" inconsistencies

1 in his testimony. (Pet'r Br. at 31.)

2 Likewise unavailing is Barriga's argument that the IJ
3 erroneously concluded that his 2017 convictions for third-
4 degree assault and felony DWI are "particularly serious
5 crime[s]." (Pet'r Br. at 30.) Barriga contends that the
6 IJ erred by "fail[ing] to apply a case-by-case analysis to
7 a crime that is not per se particularly serious." (Pet'r
8 Br. at 30.) But he does not cite the record to
9 substantiate the contention, nor any legal authorities to
10 explain how it would be error if it were so. In any event,
11 the IJ did consider the particular circumstances of his
12 crimes: "I'm looking at the indictment, I'm looking at the
13 police report, and I'm going to look at the facts of the
14 case to determine whether . . . these were particularly
15 [serious] offenses." (CAR at 206.) Accordingly, since
16 none of Barriga's challenges implicate constitutional
17 issues or legal questions, we lack jurisdiction to
18 entertain his petition for review.

1 For the foregoing reasons, the petition for review is
2 DISMISSED. All pending motions and applications are DENIED
3 and stays VACATED.

4

5 FOR THE COURT:
6 Catherine O'Hagan Wolfe,
7 Clerk of Court
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