

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 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 7th day of October, two thousand twenty-six.

PRESENT: RAYMOND J. LOHIER, JR.,
Chief Judge,
JON O. NEWMAN,
GUIDO CALABRESI,
Circuit Judges.

JOSE HUMBERTO SASAGUAY
LIMA,

Petitioner,

v.

No. 25-2874-ag

TODD BLANCHE, UNITED STATES
ATTORNEY GENERAL,

Respondent.

FOR PETITIONER:

S. BERNARD SCHWARZ, Law
Offices of S. Bernard Schwarz
& Associates, P.C., New York,
NY

FOR RESPONDENT:

TIMOTHY G. HAYES, Senior
Litigation Counsel, Office of
Immigration Litigation (Cindy
S. Ferrier, Assistant Director,
on the brief), for Brett A.
Shumate, Assistant Attorney
General, United States
Department of Justice,
Washington, DC

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
AND DECREED that the petition for review is DENIED.

Petitioner Jose Humberto Sasaguay Lima, a native and citizen of Ecuador,
seeks review of the October 31, 2025 decision of the Board of Immigration
Appeals (BIA) (1) affirming the decision of an immigration judge (IJ) to deny
Sasaguay Lima's request for administrative closure of his removal proceedings,
and (2) declining to administratively close Sasaguay Lima's proceedings in the
first instance.¹ We assume the parties' familiarity with the underlying facts and

¹ On the merits, the BIA affirmed the IJ's denial of asylum, withholding and cancellation of removal, and relief under the Convention Against Torture. On appeal, Sasaguay Lima challenges only the BIA's denial of his request for a remand to pursue administrative closure. We therefore consider only that part of the BIA's decision

procedural history, to which we refer only as necessary to explain our decision to deny the petition.

We review the BIA's denial of a motion for remand, as well as the BIA's denial of administrative closure in the first instance, for abuse of discretion. *See Li Yong Cao v. U.S. Dep't of Just.*, 421 F.3d 149, 157 (2d Cir. 2005) (motion for remand); *Garcia v. Garland*, 64 F.4th 62, 69 (2d Cir. 2023) (motion for administrative closure). "The agency abuses its discretion when its decision rests on an error of law or a clearly erroneous factual finding or cannot be located within the range of permissible decisions." *Garcia*, 64 F.4th at 69 (citation modified).

On appeal to the BIA, Sasaguay Lima sought a remand in light of a change in law—occurring after the IJ's decision issued but before the BIA heard his appeal—that restored the authority of IJs and the BIA to grant administrative closure. *See Matter of Cruz-Valdez*, 28 I. & N Dec. 326, 328 (A.G. 2021) (overruling and vacating *Matter of Castro-Tum*, 27 I. & N. Dec. 271 (A.G. 2018)).

Administrative closure "temporarily removes a case from an [IJ's] active calendar or from the BIA's docket." *Garcia*, 64 F.4th at 65 (citation modified). The agency

concerning administrative closure. *See Al Saidi v. Blanche*, 185 F.4th 286, 303 (2d Cir. 2026).

has discretion to grant administrative closure to, for example, “await an action or event that is relevant to immigration proceedings but is outside the control of the parties or the court,” *id.* (quotation marks omitted), or “to facilitate the exercise of prosecutorial discretion, allowing *government counsel* to request that certain low-priority cases be removed from . . . active calendars or the [BIA’s] docket,” *Matter of Cruz-Valdez*, 28 I. & N. Dec. at 327 (emphasis added). When considering a request for administrative closure, the agency weighs circumstances such as:

(A) [t]he reason administrative closure is sought; (B) [t]he basis for any opposition to administrative closure; (C) [a]ny requirement that a case be administratively closed . . . ; (D) [t]he likelihood the alien will succeed on any petition, application, or other action . . . outside of proceedings before the [BIA]; (E) [t]he anticipated duration of the administrative closure; (F) [t]he responsibility of either party, if any, in contributing to any current or anticipated delay; (G) [t]he ultimate anticipated outcome of the case pending before the [BIA] . . . ; and (H) [t]he ICE detention status of the alien.

8 C.F.R. § 1003.1(l)(3)(i) (2025).²

After asserting that the IJ “concluded that administrative closure was not warranted,” the BIA purported to “affirm the [IJ’s] denial of [Sasaguay Lima’s] request for administrative closure.” Cert. Admin. R. 3–4. In fact, however, the IJ never denied administrative closure and, indeed, did not even have the authority

² Throughout this decision, our citations to 8 C.F.R. § 1003 refer to the regulations that were in force at the time of the BIA’s October 31, 2025 decision.

to grant administrative closure at the time Sasaguay Lima appeared for his hearing. *See Matter of Castro-Tum*, 27 I. & N. Dec. at 274. To the contrary, the IJ denied Sasaguay Lima's request for a continuance (that is, an adjournment) alone. *See* Cert. Admin. R. 105 ("[Y]ou can incorporate by reference . . . my reasons for not granting an *adjournment*." (emphasis added)); Cert. Admin. R. 106 ("I'm just focusing on whether or not an *adjournment* of today's proceeding is justified." (emphasis added)). The BIA erred in construing the IJ's comments as tantamount to a denial of administrative closure.

To the extent the Government maintains that the IJ's grounds for denying a continuance also justified the BIA's affirmance of a denial of administrative closure, we are not persuaded. The standards governing administrative closure overlap with but are not identical to those governing continuances. *See Matter of Avetisyan*, 25 I. & N. Dec. 688, 696 (B.I.A. 2012) (noting that the BIA's guidance on "requests for continuances is useful when adapted to the administrative closure context"). The BIA thus erred in construing the IJ's denial of Sasaguay Lima's request for a continuance as a denial of his request for administrative closure.

Nevertheless, we conclude that remanding would be futile. Despite the BIA's error in interpreting the IJ's decision, the BIA independently concluded

that “there is no basis” under then-controlling regulations “for [the BIA] to administratively close [Sasaguay Lima’s] proceedings.” Cert. Admin. R. 4 (citing 8 C.F.R. § 1003.1(l)(3)(i)); see *Cao He Lin v. U.S. Dep’t of Just.*, 428 F.3d 391, 402 (2d Cir. 2005). The BIA correctly determined that Sasaguay Lima failed to satisfy the factors for administrative closure listed in 8 C.F.R. § 1003.1(l)(3)(i).

To the extent that Sasaguay Lima contends that the BIA’s denial of a remand to pursue administrative closure otherwise deprived him of due process, we disagree. “[A] benefit is not a protected entitlement if government officials may grant or deny it in their discretion.” *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005); see *Yuen Jin v. Mukasey*, 538 F.3d 143, 156–57 (2d Cir. 2008).

Sasaguay Lima’s only claimed basis for administrative closure is that the DHS should have granted it as a favorable exercise of prosecutorial discretion. But the exercise of prosecutorial discretion lies within the authority of DHS, and 8 U.S.C. § 1252(g) “prohibits [any court] from hearing” a “challenge to DHS’s decision to commence removal proceedings” unless that challenge “involves a constitutional claim or question of law.” *Ali v. Mukasey*, 524 F.3d 145, 150 (2d Cir. 2008) (citation modified); *Matter of J-A-B- & I-J-V-A-*, 27 I. & N. Dec. 168, 170 (B.I.A. 2017) (“[N]either the [IJs] nor the [BIA] may review a decision by the DHS to . . .

initiate removal proceedings in a particular case.”). Sasaguay Lima has failed to show that prosecutorial discretion is a protected entitlement that implicates his due process rights, and we lack jurisdiction to review the exercise of prosecutorial discretion here. *See* 8 U.S.C. § 1252(g).

We have considered Sasaguay Lima’s remaining arguments and conclude that they are without merit. For the foregoing reasons, the petition for review is DENIED.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court