Non-Detained

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of	)	
Shayan Rashidi	)	**File No. A 249-259-874**
In Removal Proceedings	)	

RESPONDENTS' MOTION TO ACCEPT LATE APPEAL

UNITED STATES DEPARTMENT OF JUSTICE
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I. FACTUAL BACKGROUND

On August 21, 2026, the Immigration Judge denied Respondent's application for asylum, withholding of removal, and forms of protection under the Convention Against Torture, and issued him an order of removal. Respondent's deadline to file an appeal with the Board was **September 21, 2026**.

Undersigned counsel did not previously represent Respondent on his removal proceedings and had no access to his primary case on ECAS. On September 9, 2026, undersigned counsel submitted Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals, in connection with Respondent's case. The submission, however, has not been accepted or entered into the record to this day.

Counsel thereafter diligently attempted to prepare and submit Respondent's appeal through the Board's electronic filing system (ECAS) on September 18, 2026. However, counsel encountered technical difficulties that prevented the appeal from being successfully uploaded through ECAS.

In order to preserve Respondent's appellate rights and ensure that the appeal would reach the Board before the September 21, 2026 deadline, counsel immediately took an alternative measure. On September 18, 2026, counsel sent the appeal package to the Board by Federal Express ("FedEx") Overnight delivery. *See* Exhibit 1.

Counsel specifically selected overnight delivery so that the appeal would arrive at the

Board by the applicable deadline. The FedEx tracking documentation confirms that the package was delivered to the Board on September 21, 2026. A copy of the relevant delivery receipt is attached hereto as Exhibit 1 and tracking information confirming receipt as Exhibit 2.

On September 21, 2026, after confirming that the correspondence had been delivered, counsel contacted the Clerk's Office of the Board by telephone to verify receipt of the appeal.

During that call, counsel was informed by the Clerk's Office that the appeal had been received and would be included in Respondent's record within the following days.

Based on this representation from the Board's Clerk's Office, counsel reasonably understood that Respondent's appeal had been received and that no further filing was necessary at that time.

Counsel therefore refrained from submitting a second copy of the appeal through ECAS immediately thereafter in order to avoid creating a duplicate filing and potentially causing confusion in the record or leading to a rejection.

In the days following the September 21 deadline, however, the appeal did not appear on Respondent's record as anticipated.

Counsel is now submitting the appeal through ECAS so that Respondent's appellate rights are preserved and the Board has a complete copy of the Notice of Appeal and accompanying documents.

The present filing is therefore not the result of an intentional failure to comply with the applicable deadline. Rather, counsel took multiple affirmative steps to ensure timely filing, including sending the appeal by overnight courier before the deadline, confirming delivery, and contacting the Board's Clerk's Office to verify receipt.

Counsel's accompanying declaration, attached as Exhibit 3, further describes these efforts and the circumstances surrounding the filing.

II. THE APPEAL SHOULD BE DEEMED TIMELY BECAUSE THE PAPER APPEAL WAS RECEIVED BY THE BOARD ON SEPTEMBER 21, 2026

The Board's Practice Manual provides that an appeal is not deemed filed until it is received by the Board. A paper filing that is accepted by the Board is deemed filed on the date

it was received at the Board. *See* BIA Practice Manual, Ch. 2.1(a)(1).

The Manual likewise expressly provides that the deadline for an appeal is based on the date the filing is received by the Clerk's Office, rather than the date on which it is mailed. *See* BIA Practice Manual, Ch. 3.5(a).

Furthermore, Form EOIR-26 explicitly provides for the option to mail the appeal to the Board, at its physical address, noting that the correspondence must be received within thirty calendar days of the decision.

Here, counsel sent Respondent's appeal by FedEx Overnight on September 18, 2026, three days before the deadline, and the package was delivered to the Board on September 21, 2026, precisely the applicable filing deadline. *See* Exhibit 1.

Thus, counsel did not merely place the appeal in the mail before the deadline and hope that it would arrive in time. Counsel selected overnight delivery precisely to ensure receipt by the Board before the deadline, and the carrier's delivery record establishes that the package was in fact delivered on September 21.

Moreover, counsel did not rely solely upon the carrier's tracking information. On September 21, counsel contacted the Board's Clerk's Office and was affirmatively informed that the appeal had been received and would be entered into Respondent's record.

Under these circumstances, Respondent respectfully submits that the appeal should be treated as timely filed as of September 21, 2026. The fact that the paper submission was not subsequently entered into the electronic record does not reflect a failure by Respondent or counsel to timely submit the appeal.

Respondent should not lose the right to appellate review because a filing that was delivered to and acknowledged as received by the Board was not subsequently entered into the record.

III. ALTERNATIVELY, EQUITABLE TOLLING IS WARRANTED

To the extent the Board determines that the appeal must be treated as filed on the date of the present ECAS submission, Respondent respectfully requests that the Board accept the appeal pursuant to the equitable-tolling principles recognized in *Matter of Morales-Morales*, 28 I&N Dec. 714 (BIA 2023).

In *Morales-Morales*, the Board held that the 30-day appeal deadline is a claim-processing rule and that the Board has authority, in appropriate circumstances, to accept an otherwise untimely appeal. The Board adopted the equitable-tolling framework requiring a party to demonstrate both (1) diligence in pursuing the appeal and (2) an extraordinary circumstance that prevented timely filing. *Id*. at 717.

Respondent has demonstrated extraordinary diligence in preserving the right to appeal.

Counsel submitted the EOIR-27 on September 9, 2026. When counsel encountered technical difficulties attempting to upload the appeal through ECAS on September 18, counsel did not wait until after the deadline or abandon the electronic filing attempt. Instead, counsel immediately sent the appeal by FedEx Overnight, specifically to ensure that it would reach the Board by September 21.

The appeal was delivered to the Board on September 21. Counsel then contacted the Clerk's Office on that same date and was informed that the appeal had been received and would be entered into the record.

Counsel's subsequent decision not to immediately submit a duplicate appeal through ECAS was reasonable under the circumstances. Counsel had been expressly informed by the Board that the appeal had been received and would be added to the record. Submitting a duplicate appeal at that point could have resulted in unnecessary duplication and confusion in Respondent's record.

Upon learning that the appeal was not entered into the record, Counsel is filing the appeal, together with this motion, within only a week of the deadline.

The circumstances therefore do not involve neglect, abandonment, or a lack of diligence. To the contrary, the record demonstrates repeated and timely efforts by counsel to preserve Respondent's appellate rights.

The circumstances surrounding the ECAS difficulties, coupled with the Board's acknowledgment that the paper appeal had been received, constitute circumstances warranting equitable relief to the extent the Board determines that the present electronic submission is technically untimely.

Importantly, Respondent is not seeking to excuse a prolonged or unexplained delay. Counsel acted before the deadline, caused the appeal to be physically delivered to the Board by the deadline, confirmed receipt with the Board, and filed the present submission promptly

after discovering that the expected docketing had not occurred.

Under these circumstances, equitable tolling would serve the purpose recognized in *Morales-Morales*: preserving appellate review where a respondent has diligently pursued the right to appeal but circumstances outside the respondent's control have interfered with the formal processing of the appeal.

IV. CONCLUSION

Respondent respectfully requests that the Board:

a. deem Respondent's appeal timely filed as of September 21, 2026, based on the delivery of the paper appeal to the Board by that date;

b. alternatively, accept Respondent's appeal pursuant to equitable tolling under *Matter of Morales-Morales*, 28 I&N Dec. 714 (BIA 2023); and

c. accept and enter the Notice of Appeal and accompanying documents into Respondent's record; and

Respectfully submitted,



Otavio Haverroth Silva (Bar N.343486)
Attorney at Law
P.O. Box 90487, San Diego, CA 92169
(510) 241-9336
Counsel for Respondent

Exhibit list

Exhibits:	Pages:
Exhibit 1	
FEDEX receipt for overnight submission of appeal package	1
Exhibit 2	
Tracking information for appeal package, confirming delivery on September 21, 2026	2-4
Exhibit 3	
Affidavit of Counsel	5-6

Exhibit 1

ORIGIN ID:SDMA (619) 446-8626
OTAVIO H SILVA
YOUSA LAW FIRM
5051 LA JOLLA BLVD
202
SAN DIEGO, CA 92109
UNITED STATES US

SHIP DATE: 18SEP26
ACTWGT: 0.20 LB
CAD: 263044747/INET4535

BILL SENDER

TO **BIA CLERKS OFFICE**
NOTICE OF APPEAL FORM EOIR26
5107 LEESBURG PIKE
SUITE 2000
FALLS CHURCH VA 22041
(703) 605-1007 REF:
INV:
PO: DEPT:

58KJ0/01604484B

FedEx Express

J2510260120dv

MON - 21 SEP 5:00P
STANDARD OVERNIGHT

TRK# 0201 8774 4353 4720

22041
VA-US IAD

XA CKXA

After printing this label:
CONSIGNEE COPY - PLEASE PLACE IN FRONT OF POUCH
1. Fold the printed page along the horizontal line.
2. Place label in shipping pouch and affix it to your shipment.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is $1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; see current FedEx Service Guide.

Exhibit 2

Tracking ID: 877443534720

Delivered
Monday, 9/21/2026 at 10:18 am

Signed for by: M ROBINSON

→ View more details

Obtain proof of delivery

Report missing package

From
San Diego,CA US

To
FALLS CHURCH,VA US

© FedEx 1995-2026

FedEx

Tracking ID: 877443534720

Travel history

You're viewing the most updated information to help minimize the need for customer support.

Monday, 09/21/2026

11:18 AM
Delivered
HERNDON, VA

- 9:20 AM
  Delivery exception
  Rerouted to revised delivery address
  HERNDON, VA
- 8:18 AM
  At local FedEx facility
  HERNDON, VA

Saturday, 09/19/2026

- 10:19 AM
  At local FedEx facility
  HERNDON, VA
- 9:18 AM
  At local FedEx facility
  Your package is expected to arrive on the scheduled delivery date
  HERNDON, VA
- 7:32 AM
  At destination sort facility
  DULLES, VA
- 5:56 AM
  Departed FedEx hub
  MEMPHIS, TN
- 4:08 AM
  On the way
  MEMPHIS, TN
- 2:54 AM
  Arrived at FedEx hub
  MEMPHIS, TN

Friday, 09/18/2026

- 10:12 PM
  Left FedEx origin facility
  SAN DIEGO, CA
- 9:25 PM
  Picked up
  SAN DIEGO, CA
- 7:57 PM
  Shipment information sent to FedEx

ASSOCIATED RETURN TRACKING NUMBER
792760811004

RETURN REASON

ASSOCIATED RETURN TRACKING NUMBER
877443534720

RETURN REASON

Shipment facts

Shipment overview

TRACKING NUMBER 877443534720

DELIVERED TO FedEx Location

SHIP DATE 9/18/2026

STANDARD TRANSIT 9/21/2026 before 5:00 pm

DELIVERED 9/21/2026 at 10:18 am

Services

SERVICE FedEx Standard Overnight

TERMS Shipper

SPECIAL HANDLING SECTION Deliver Weekday

Package details

WEIGHT 0.5 lbs / 0.23 kgs

TOTAL PIECES 1

TOTAL SHIPMENT WEIGHT 0.5 lbs / 0.23 kgs

PACKAGING FedEx Envelope

Exhibit 3

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

AFFIDAVIT OF OTAVIO HAVERROTH SILVA IN SUPPORT OF RESPONDENT'S MOTION TO ACCEPT LATE APPEAL

I, Otavio Haverroth Silva, hereby declare under penalty of perjury as follows:

1. I am an attorney representing Respondent, Shayan Rashidi, in the above-captioned proceedings. I make this declaration based on my personal knowledge in support of Respondent's Motion to Accept Late Appeal.
2. On September 9, 2026, I submitted Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals, in Respondent's case.
3. After carefully revising the documentation provided by the Respondent and preparing his appeal, I subsequently attempted to submit Respondent's appeal through the Board's electronic filing system, ECAS, on September 18, 2026. However, I encountered technical difficulties that prevented me from successfully uploading the appeal through ECAS.
4. Because I was concerned about preserving Respondent's appeal rights, and considering the deadline for appeal was September 21, 2026, the next business day, I immediately took steps to submit the appeal by an alternative method. Thus, on September 18, 2026, I sent the appeal package to the Board by FEDEX Overnight delivery.
5. I selected overnight delivery specifically to ensure that the appeal would arrive at the Board by Respondent's September 21, 2026 filing deadline.
6. The package was delivered to the Board on September 21, 2026.
7. On September 21, 2026, after confirming that the package had been delivered, my team contacted the Board's Clerk's Office by telephone to verify that the appeal had been received.
8. During that telephone call, my team was informed that the appeal had been received and would be included in Respondent's record within the following days.
9. I make this statement based on my discussions with members of my team and my review of the recording of the telephone conversation with the Board's Clerk's Office.
10. Based on that information, I understood that Respondent's appeal had been successfully received by the Board and that no additional submission was necessary at that time.
11. I also understood that attempting a subsequent filing through ECAS at that point would produce the risk of a duplicate filing and rejection of the appeal.
12. I therefore relied on the information provided by the Clerk's Office that the appeal had already been received and would be entered into the record.

13. In the days that followed, however, the appeal still hadn't been entered into Respondent's record as anticipated.
14. In order to ensure that Respondent's appeal is properly before the Board and to avoid any further delay, I am now submitting the appeal through ECAS together with the accompanying Motion to Accept Late Appeal.
15. At all relevant times, I intended to timely preserve Respondent's right to appeal. I took affirmative steps to submit the appeal before the deadline, including attempting to file through ECAS and, when that was unsuccessful, sending the appeal by overnight delivery so that it would arrive at the Board by September 21, 2026.
16. I did not intentionally delay the filing of Respondent's appeal, nor did I knowingly disregard the applicable deadline.
17. My decision not to submit a duplicate appeal immediately after September 21 was based on my understanding, following my communication with the Board's Clerk's Office, that the appeal had already been received and would be entered into Respondent's record.
18. I respectfully submit this declaration to document the steps I took to preserve Respondent's appellate rights and the circumstances that resulted in the present ECAS submission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 28, 2026.



_____

Otavio Haverroth Silva
Attorney at Law
P.O. Box 90487
San Diego, CA 92169

Shayan Rashidi **File No. A 249-259-874**

Proof of Service

On this date, I, Otavio Haverroth Silva, served a copy of the following documents:

RESPONDENTS' MOTION TO ACCEPT LATE APPEAL

To the following:

Office Location:	**Mailing Address:**
Office of the Chief Counsel Department of Homeland Security 100 Montgomery Street, Suite 200 San Francisco, CA 94104	US Immigration and Customs Enforcement US Department of Homeland Security Office of the Chief Counsel P.O. Box 26449 San Francisco, CA 94126-644

by:

- Through the EOIR Courts and Appeals System (ECAS), which will automatically send service notification to both parties that a new document has been filed.



Otavio Silva (Bar N. 343486)
Attorney at Law
P.O. Box 90487
San Diego, CA 92169
Counsel for Respondent