NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12440
Non-Argument Calendar

ANGIELIH ESTEFANIA GODOY-CARTAGENA,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A099-676-488

Before JORDAN, NEWSOM, and BRASHER, Circuit Judges.

PER CURIAM:

Angielih Godoy-Cartagena petitions for review of an order of the Board of Immigration Appeals that deemed her to have withdrawn her appeal from the Immigration Judge's order denying her

motion to reopen removal proceedings. Ms. Godoy-Cartagena contends that the BIA failed to give reasoned consideration to her timely motion to cancel her withdrawal of appeal because its order finalized the withdrawal without mentioning her motion to cancel. She also contends that failure to consider the motion to cancel violated her due process rights. For the reasons that follow, we grant the petition, vacate the decision of the BIA, and remand for proceedings consistent with this opinion.

I

On July 24, 2006, Ms. Godoy-Cartagena, a Honduran citizen, entered the United States without inspection. The next day, the Department of Homeland Security served on Ms. Godoy-Cartagena a Notice to Appear ("NTA"), charging her with being removable under 8 U.S.C. § 1182(a)(6)(A)(i) for being present in the United States without admission or parole. The NTA ordered her to appear for a removal hearing at a date and time "to be set." Ms. Godoy-Cartagena did not appear at the hearing that was later scheduled, and in February of 2007, the IJ entered a removal order in absentia.

On March 17, 2025, Ms. Godoy-Cartagena filed a motion to reopen the in absentia removal order. The IJ denied that motion, and Ms. Godoy-Cartagena timely appealed to the BIA on May 1, 2025. A few weeks later, she filed an emergency motion to stay removal with the BIA. The BIA denied that motion.

On May 23, 2025, Ms. Godoy-Cartagena filed an emergency motion to withdraw her appeal, as permitted by 8 C.F.R. § 1003.4.

In her motion, she explained that when she attempted to file emergency motions to reconsider and stay removal with the IJ, the immigration court clerk informed her that those motions could not be received while her appeal was pending before the BIA because the BIA now had jurisdiction over the case.

Three days later, on May 26, 2025, Ms. Godoy-Cartagena was removed to Honduras. The next day, through counsel, she filed with the BIA an emergency motion to cancel her motion to withdraw the appeal. She sought to maintain the appeal so that she could seek relief from her deportation.

On June 24, 2025, the BIA issued an order that stated, in its entirety: "The respondent, through counsel, has withdrawn her appeal of the Immigration Judge's decision dated April 2, 2025. *See* C.F.R. § 1003.4. Since there is now nothing pending before the Board, the record is returned to the Immigration Court without further action."

Ms. Godoy-Cartagena now argues that the BIA erred in ordering her appeal withdrawn without giving reasoned consideration to her motion to cancel her withdrawal of appeal and, in so doing, violated her right to due process by depriving her of a meaningful opportunity to appeal. The government maintains that the BIA properly deemed her appeal withdrawn.

II

We have jurisdiction to "review whether the Board properly deemed an appeal withdrawn when a petition for review follows from a withdrawal order." *Clement v. U.S. Att'y Gen.*, 75

F.4th 1193, 1198 (11th Cir 2023). "[A]n assertion that the agency failed to give reasoned consideration to an issue is a question of law that we review *de novo*." *Jeune v. U.S. Att'y Gen.*, 810 F.3d 792, 799 (11th Cir. 2016), *overruled in part on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411, 415 n.2, 419–23 (2023). "We review constitutional challenges, including alleged due process violations, *de novo*." *Lapaix v. U.S. Att'y Gen.*, 605 F.3d 1138, 1143 (11th Cir. 2010).

The BIA must extend "reasoned consideration" to a petitioner's claims. *See Jathursan v. U.S. Att'y Gen.*, 17 F.4th 1365, 1372 (11th Cir. 2021). "To determine whether the Board gave reasoned consideration to a petition, we inquire only whether the Board considered the issues raised and announced its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted." *Id.* For purposes of this review, we do not analyze the BIA's legal conclusions; we ask only whether the BIA has adequately explained its reasoning and made sufficient findings to permit our review. *See Ali v. U.S. Att'y Gen.*, 931 F.3d 1327, 1333–34 (11th Cir. 2019).

"We have found a lack of reasoned consideration in three types of circumstances—when the BIA: (1) 'misstates the contents of the record,' (2) 'fails to adequately explain its rejection of logical conclusions,' or (3) 'provides justifications for its decision which are unreasonable and which do not respond to any arguments in the record.'" *Martinez v. U.S. Att'y Gen.*, 992 F.3d 1283, 1294 (11th Cir. 2021) (quoting *Ali*, 931 F.3d at 1334). Although the BIA need not

discuss all the record evidence to demonstrate reasoned consideration, it must consider all the evidence, and in some situations in can be "practically impossible for the [BIA] to write a reviewable decision without discussing 'highly relevant' evidence." *Ali*, 931 F.3d at 1334. Failure to discuss such evidence renders the decision incapable of review and demonstrates a lack of reasoned consideration. *Id.* When the BIA fails to give reasoned consideration to a petitioner's claims, we remand the claims. *See Jathursan*, 17 F.4th at 1372.

III

Ms. Godoy-Cartagena contends that the BIA abused its discretion when it failed to provide reasoned consideration to her motion to cancel withdrawal of her appeal. The government responds that the BIA is entitled to a "presumption of regularity" in the performance of its duties, so we may presume that the BIA considered Ms. Godoy-Cartagena's motion to cancel when it nonetheless determined that she had withdrawn her appeal. The government further contends that the BIA did not err in deeming Ms. Godoy-Cartagena's appeal withdrawn notwithstanding her motion to cancel and that, even assuming the BIA had authority to allow noncitizens to cancel their appeal withdrawals, that decision would be discretionary.

A

To start, nothing in the INA, its implementing regulations, or the BIA's Practice Manual specifically addresses whether a motion to withdraw an appeal can be cancelled. The regulation that outlines the procedure for withdrawal of an appeal provides that:

> In any case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the office at which the notice of appeal was filed. . . . If the record has been forwarded on appeal, the withdrawal of the appeal shall be forwarded to the Board and, if no decision in the case has been made on the appeal, the record shall be returned and the initial decision shall be final to the same extent as if no appeal had been taken. If a decision on the appeal has been made by the Board in the case, further action shall be taken in accordance therewith.

8 C.F.R. § 1003.4.

The BIA's Practice Manual distinguishes between this process—withdrawing an appeal—and filing a motion to remand. *See* BIA Prac. Man. Ch. 4, 1999 WL 33435429 at *20 (E.O.I.R. 2022) ("While a motion to withdraw appeal is filed by a party who chooses to accept the decision of the immigration judge, a motion to remand is filed by a party who wants the case returned to the immigration judge for further consideration."). *See also* BIA Prac. Man. Ch. 5, 1999 WL 33435430 at *10 (E.O.I.R. 2022) ("Parties are reminded not to confuse a motion to withdraw an appeal with a

motion to remand. If a party wishes a case returned to the immigration judge for consideration of a newly available form of relief (e.g., adjustment of status), the correct motion is a motion to remand."). Based on the reasons Ms. Godoy-Cartagena provided in her motion to withdraw, it is possible that she filed a withdrawal when she instead intended to accomplish what a motion to remand would have accomplished. *See* BIA Prac. Man. Ch. 5, 1999 WL 33435430 at *9 ("A motion to remand seeks to return jurisdiction of a case pending before the Board to the immigration judge.").

In several unpublished decisions, the BIA has considered issues similar, though not identical, to the one presented here. In one appeal, when presented with the erroneous filing of a motion to withdraw, the BIA denied the motion to withdraw and instead construed the motion in accordance with the actual relief sought. *See In re Addil Gibbs*, 2007 WL 3318656, at *1 (BIA Sept. 14, 2007) (denying an erroneously filed motion to withdraw, construing the same as a motion to withdraw as counsel, and granting the motion as construed). In other circumstances, the BIA has indicated that a withdrawal can be vacated or reconsidered when, for example, the appellant did not intend or consent to withdraw their appeal. *See, e.g.*, *In re Walter Crimi*, 2014 WL 3889565, at *1 & n.1 (BIA June 27, 2014) (ordering appeal withdrawn as alternatively requested by respondent but advising that "[i]f [withdrawal] is not the respondent's intent, he should notify the Board immediately"); *Matter of Carlos Anderson Beneth-Garcia*, 2023 WL 8826893, at *1–2 (BIA Apr. 17, 2023) (vacating prior order finding the appeal withdrawn and

adjudicating the remaining arguments raised in the motion to reopen as a motion to remand). There is no similar analysis here because the BIA did not address Ms. Godoy-Cartagena's cancellation motion.

It may be that Ms. Godoy-Cartagena's intent to continue her appeal should have resulted in denial of her motion to withdraw the appeal. Or, it may be that the preceding unpublished cases involved an exercise of discretion that the BIA need not make—i.e., the BIA has discretion (1) not to construe Ms. Godoy-Cartagena's initial motion to withdraw in light of her intent to continue her appeal, as evidenced by her cancellation motion, and/or (2) not to vacate or reconsider an otherwise effective withdrawal on the basis of a subsequent request for relief therefrom. In other words, the BIA may have been justified in rejecting Ms. Godoy-Cartagena's motion. However, because the BIA failed to address Ms. Godoy-Cartagena's motion to cancel, we do not know whether the BIA considered the motion at all. Without any discussion of the motion, we are left to speculate as to whether the BIA considered it and, if so, how it may have implicitly disposed of it. And that gap demonstrates a lack of reasoned consideration. *See Ali*, 931 F.3d at 1334 ("We have sustained reasoned-consideration claims . . . when the Board . . . 'fails to adequately explain its rejection of logical conclusions.'").

Because it failed to discuss the motion to cancel the withdrawal, we cannot say that the BIA did, in fact, give it any consid-

eration, let alone consideration sufficient for us to evaluate the bases for its decision. That is the kind of difficulty that our reasoned-consideration requirement is intended to address. *See Ali*, 931 F.3d at 1333 ("[W]hen we remand for a lack of reasoned consideration, we hold that the decision is incapable of review and thus do not proceed to analyze the Board's legal or factual conclusions."). *See also Jathursan*, 17 F.4th at 1376 ("We must remand when the BIA 'flatly ignores the grounds presented by the petitioner' or otherwise fails to give reasoned consideration to a petitioner's claim.").

B

The government seeks to avoid this conclusion. It argues that because the motion to cancel was stamped as received and is contained within the certified administrative record, we may presume that the BIA considered it when ruling on withdrawal. That is so, the government says, because its officials are entitled to a "presumption of regularity" in the performance of their duties. *See United States Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001). In other words, it is presumed that administrative agencies "will act properly and accordingly to law." *F.C.C. v. Schreiber*, 381 U.S. 279, 296 (1965). For instance, when notice of a deportation proceeding is sent via certified mail, the United States Postal Service is entitled to a strong presumption of effective service provided there is proof of attempted delivery and notification of certified mail. *See Matter of Grijalva*, 21 I. & N. Dec. 27, 37 (BIA 1995). So, the argument goes, without evidence that the BIA did *not* consider the motion to cancel, Ms. Godoy-Cartagena has not overcome the presumption of regularity to which the BIA is entitled.

Even if we were to apply the presumption of regularity to these circumstances, it would not extend as far as the government urges. Just as compliance with certified mail procedures entitles the government to a presumption of effective service, *see id.*, compliance with the usual filing procedures demonstrates only that the BIA *received* Ms. Godoy-Cartagena's cancellation motion. But receipt of a motion does not entitle the BIA to the presumption that it then, in fact, gave reasoned consideration to that motion. None of our prior reasoned consideration cases places a burden on the petitioner to demonstrate that the BIA did *not* consider evidence received in the record when the BIA's decision fails to address it in order to overcome any presumption to the contrary. *See Ali*, 931 F.3d at 1333–34. *See also Jathursan*, 17 F.4th at 1372, 1375–77 (failure to address argument raised with respect to claim of protection under the Convention Against Torture demonstrated lack of reasoned consideration). Absent some indication from the BIA, we cannot presume that it gave reasoned consideration to Ms. Godoy-Cartagena's motion by the mere fact that her motion was received and placed in the record.

Of course, the BIA need not cite every piece of evidence in the record to demonstrate reasoned consideration. *See Martinez*, 992 F.3d at 1294. Likewise, it "need not 'write an exegesis on every contention.'" *Ali*, 931 F.3d at 1336 n.9 (quoting *Min Yong Huang v. Holder*, 774 F.3d 1342, 1349 (11th Cir. 2014)). But it must consider the evidence before it and the contentions raised and provide justifications for its decision. *See id.* at 1333–34. It is odd, we think, for the BIA to grant a motion for withdrawal without noting that the

petitioner has filed a motion to cancel that withdrawal. The BIA's decision here does not indicate whether, by reference or implication, it considered the motion to cancel or any arguments raised therein, and a presumption of regularity cannot cover that absence.

The government next argues that the BIA did not err in granting Ms. Godoy-Cartagena's withdrawal because no law, regulation, or practice governs whether the Board may or must cancel a withdrawal. But our reasoned-consideration review does not assess the correctness of the BIA's ultimate legal conclusions, so whether the BIA erred in allowing Ms. Godoy-Cartagena's withdrawal despite her attempted cancellation is beside the point. *See id.* at 1333 ("[W]hen we remand for lack of reasoned consideration, it is not because we have reviewed the Board's decision and disagreed with its legal conclusions.") (quoting *Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1302 (11th Cir. 2015)). The issue is only whether the BIA should have noted and considered her cancellation motion—even if only to explain, as the government asserts, why it need not, under existing law, regulations, or practice, grant it.

Finally, the government asserts that, even assuming that the BIA had authority to allow noncitizens to cancel their withdrawals, such a decision would likely be discretionary. The government relies on *Luna-Flores v. U.S. Att'y Gen.*, 859 F. App'x 869 (11th Cir.

2021), for the proposition that the BIA's authority to reopen or reconsider an appeal is committed to its discretion by law.[1]

In *Luna-Flores*, the petitioner applied for asylum and withholding of removal. *See id.* at 870. Before the IJ could rule on that application, Mr. Luna-Flores withdrew it and requested to be removed to Mexico. The IJ ordered him deported to Mexico, but he appealed that decision to the BIA. *See id.* Mr. Luna-Flores's attorney emailed DHS asking why he had not yet been deported despite the removal order. *See id.* DHS informed Mr. Luna-Flores's attorney that Immigration and Customs Enforcement "cannot remove him to Mexico until a decision has been rendered by the BIA." *Id.* at 871. He then filed a motion to withdraw his appeal, and, three days later, the BIA returned the record to the immigration court. *See id.* Mr. Luna-Flores was removed to Mexico soon thereafter. *Id.*

After his removal, Mr. Luna-Flores moved to reinstate his appeal. *See id.* He argued that he had withdrawn his appeal because DHS had refused to deport him, effectively coercing him to withdraw his appeal in exchange for obtaining his freedom from detention. The BIA denied his motion to reinstate his appeal. *See id.* It concluded that Mr. Luna-Flores's motion did not show he

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[1] Unpublished decisions of this Court are not binding authority, and they are "persuasive only to the extent that a subsequent panel finds the rationale expressed in that opinion to be persuasive after an independent consideration of the legal issue." *Collado v. J. & G. Transp., Inc.*, 820 F.3d 1256, 1259 n.3 (11th Cir. 2016) (quoting *Twin City Fire Ins. Co. v. Ohio Cas. Ins. Co.*, 480 F.3d 1254, 1260 n.3 (11th Cir. 2007)).

was coerced, and that his withdrawal merely reflected his unwillingness to remain in ICE custody while the appeal was pending. *See id.*

We then dismissed Mr. Luna-Flores's petition for lack of jurisdiction because Mr. Luna-Flores's motion to reinstate required the BIA to reopen a case in which it had rendered a decision—authority provided to the BIA in 8 C.F.R. § 1003.2(a), which explicitly states that that authority "is committed to agency discretion by law." *Id.* at 872 (quoting 8 C.F.R. § 1003.2(a)). Thus, we lacked jurisdiction to review the BIA's decision not to reopen (i.e., not reinstate) Mr. Luna-Flores's appeal. *Id.* (citing *Lenis v. U.S. Att'y Gen.*, 525 F.3d 1291, 1294 (11th Cir. 2008)).

Luna-Flores is distinguishable. In that case, the BIA returned the record to the immigration court three days after receiving the motion to withdraw. Only after the record had been returned did Mr. Luna-Flores move to reinstate his appeal. In contrast, the BIA here received Ms. Godoy-Cartagena's motion to cancel four weeks before it ruled on the motion to withdraw and before the record was returned to the immigration court. The motion to cancel cannot reasonably be construed as a request for the BIA to sua sponte reopen or reconsider, a decision committed to agency discretion by law over which this Court has no jurisdiction, *see Lenis v. U.S. Att'y Gen.*, 525 F.3d 1291, 1294 (11th Cir. 2008), because at the time of filing the cancellation motion, Ms. Godoy-Cartagena's withdrawal was still pending (the BIA had not yet granted it, nor had it returned the record to the IJ), so there was nothing to reopen.

Furthermore, even if the government is ultimately correct, legally, that the decision to allow a motion to cancel withdrawal is committed to agency discretion by law, we need a decision on that issue by the BIA. We "give substantial deference to the BIA's interpretation of its statutes and regulations," *Lyashchynska*, 676 F.3d at 970 (citing *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945)), but we still need a decision capable of review to make that assessment. Indeed, even if the decision on Ms. Godoy-Cartagena's motion to cancel is committed to the BIA's discretion by law, meaning—as the government seems to imply but does not explicitly argue—that we would lack jurisdiction to review that decision, *see Lenis*, 525 F.3d at 1294, the government points to no authority suggesting that the BIA may ignore or fail to consider altogether a motion that seeks relief that is committed to its discretion. While it may be that we would lack jurisdiction to review the BIA's decision to deny Ms. Godoy-Cartagena's motion to cancel, the problem is we cannot tell if that is what is presented here because it failed to consider the motion at all.

C

This Court has held that where the BIA states that "[e]vidence in [a] case consists of" certain evidence and fails to mention other evidence in the record, it has misstated the record and demonstrated a lack of reasoned consideration. *Tan v. U.S. Att'y Gen.*, 446 F.3d 1369, 1375 (11th Cir. 2006). Although the BIA here did not misstate *substantive* evidence, it failed to note or address a motion that contended Ms. Godoy-Cartagena should be allowed to continue her appeal and stated, in granting Ms. Godoy-Cartagena's

motion to withdraw without mention of the cancellation motion, that "there is nothing now pending before the Board."

Even if Ms. Godoy-Cartagena for some reason could not cancel her withdrawal, nothing in the BIA's decision says so. Perhaps the BIA determined that withdrawals are effective immediately upon filing. Perhaps it determined that the regulations do not authorize an appellant to cancel a withdrawal of her appeal. Perhaps the BIA determined that a withdrawal may be cancelled but, under the circumstances, cancellation was unwarranted. We do not know because the BIA's decision was not announced in terms "sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted." *Jathursan*, 17 F.4th at 1372 (quoting *Perez-Guerrero v. U.S. Att'y Gen.*, 717 F.3d 1224, 1232 (11th Cir. 2013)).

IV

We conclude that the BIA failed to give reasoned consideration to Ms. Godoy-Cartagena's appeal by deeming Ms. Godoy-Cartagena's appeal withdrawn without any discussion of her motion to cancel the withdrawal. We therefore grant the petition, vacate the decision of the BIA, and remand for proceedings consistent with this opinion.[2]

PETITION GRANTED. ORDER VACATED AND REMANDED.

[2] We need not and do not reach Ms. Godoy-Cartagena's due process claim.