



Fifth Circuit Finds Motions to Reopen Can Be Equitably Tolled *Court Urges the BIA Not to Apply Equitable Tolling Test “Too Harshly”*

The American Immigration Council and the National Immigration Project of the National Lawyers Guild applaud the Fifth Circuit Court of Appeals’ decision yesterday in *Lugo-Resendez v. Lynch*. The decision strongly reaffirms the importance of immigrants’ statutory right to file a motion to reopen, a procedural protection meant to ensure a proper and lawful outcome in an immigration proceeding. The court recognizes that the 90-day deadline for filing such motions can be “equitably tolled,” or extended. With this decision, the Fifth Circuit protected the right of immigrants who are unable to file within the 90-day window due to circumstances beyond their control.

Here is a link to the Fifth Circuit Court of Appeals’ *Lugo-Resendez* decision:
<http://www.ca5.uscourts.gov/opinions%5Cpub%5C14/14-60865-CV0.pdf>

Petitioner Sergio Lugo-Resendez was a long-time lawful permanent resident of the United States. The government previously deported him based on an interpretation of the law that the Supreme Court subsequently found to be erroneous. Within 90 days of learning that the law had changed, Mr. Lugo-Resendez filed a motion to reopen, asking an immigration court to equitably toll the deadline for filing his motion. Equitable tolling is a long-recognized legal principle through which courts can extend a filing deadline where a person acted diligently, but nonetheless was unable to comply with a deadline. The immigration court, and later the Board of Immigration Appeals, ignored his equitable tolling argument and instead found that Mr. Lugo-Resendez was barred from filing his motion because he already had been deported.

Agreeing with the points made in the amicus brief filed by the Council and the National Immigration Project, the Fifth Circuit overturned the agency’s decision and reaffirmed that, when an immigrant files a statutory motion to reopen, the agency cannot simply ignore the arguments presented in the motion. Furthermore, for the first time since the Supreme Court in *Reyes Mata v. Lynch* instructed the Fifth Circuit to decide the issue, the court recognized that the motion to reopen filing deadline is subject to equitable tolling and that, where an immigrant qualifies for tolling of the deadline, his motion will be treated as a timely filed statutory motion to reopen. The Fifth Circuit now joins nine other courts of appeals that have held that the immigration courts can equitably toll the motion to reopen deadline.

Here is a link to the Supreme Court’s *Reyes Mata v. Lynch* decision
https://www.supremecourt.gov/opinions/14pdf/14-185_i4dk.pdf

The Fifth Circuit remanded the petition to the Board of Immigration Appeals to determine if equitable tolling is appropriate in Mr. Lugo-Resendez’ case. Importantly, the Court instructed the Board not to apply the test “too harshly,” noting the difficulties faced by deported immigrants who may be “poor, uneducated, unskilled in the English language, and effectively unable to

follow developments in the American legal system—much less read and digest complicated legal decisions.”

The American Immigration Council and the National Immigration Project filed an amicus brief to the Fifth Circuit in support of Mr. Lugo-Resendez, and Trina Realmuto of the National Immigration Project argued the case before the Court on behalf of amici.