18-1015 OVALLES V. BARR

DECISION BELOW: 741 Fed.Appx. 259

LOWER COURT CASE NUMBER: 17-60438

QUESTION PRESENTED:

Following this Court's judgment in *Mata v. Lynch*, 135 S. Ct. 2150 (2015), the Fifth Circuit joined all of its sister circuits in holding that the statutory deadline for filing a motion to reopen a removal order is subject to equitable tolling. *Lugo-Resendez v. Lynch*, 831 F 3d 337 (CA5 2016). In so doing, the Fifth Circuit adopted this Courts standard for equitable tolling from *Menominee Indian Tribe of Wis. v. United States*, 136 S. Ct 750 (2016).

Thereafter, the Fifth Circuit held that it lacked jurisdiction to review the merits of whether a movant (with criminal removability) pursued their rights diligently, thus further dividing a split between the courts of appeals. *Penalva v. Sessions*, 884 F 3d 521 (CA5 2018). The question presented here is:

1. Whether the application of a legal standard to an undisputed set of facts is a question of law, or a pure question of fact that may be barred from judicial review.

Or, more specifically:

2. Whether the criminal alien bar, 8 U.S.C. §1252(a)(2)(C), tempered by §1252(a)(2)(D), prohibits a court from reviewing an agency decision finding that a movant lacked diligence for equitable tolling purposes, notwithstanding the lack of a factual dispute.

GRANTED LIMITED TO QUESTION 2 PRESENTED BY THE PETITION, AND CONSOLIDATED WITH 18-776 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 6/24/2019