



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041

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Houston, TX 77098**

**DHS/ICE Office of Chief Counsel - HOU  
126 Northpoint Drive, Suite 2020  
Houston, TX 77060**

**Name: REYES MATA, NOEL**

**A 200-723-795**

**Date of this notice: 12/14/2017**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Kendall Clark, Molly

GilheanR  
Userteam: Docket

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Falls Church, Virginia 22041

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File: A200 723 795 – Houston, TX

Date: **DEC 14 2017**

In re: Noel REYES MATA a.k.a. Alberto Reyes Reyes

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Raed Gonzalez, Esquire

ON BEHALF OF DHS: John Donovan  
Assistant Chief Counsel

APPLICATION: Reopening

This case was last before us on June 27, 2013, at which time we denied the respondent's motion to reconsider our March 22, 2013, denial of his motion to reopen proceedings for ineffective assistance of counsel. The respondent has now filed an untimely and number-barred motion to reopen proceedings on May 25, 2017. The Department of Homeland Security (DHS) opposes the motion. The motion will be granted, and the record will be remanded for further proceedings.

The respondent argues that under *Lugo-Resendez v. Lynch*, 831 F.3d 337 (5th Cir. 2016), his untimely motion should be equitably tolled based on ineffective assistance of counsel. Specifically, he argues that he received ineffective assistance of counsel during his appeal to the United States Court of Appeals for the Fifth Circuit because his counsel failed to properly brief the issue of hardship under section 240A(b)(1)(D) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1)(D). He also argues that the record should be remanded for further proceedings regarding his eligibility for cancellation under section 240A(b) of the Act.

Given the particular circumstances in the respondent's case, including developments in pertinent law regarding the respondent's eligibility for cancellation of removal,<sup>1</sup> and the respondent's proffered evidence, including the evidence relating to the respondent's children, who were apparently abused and mistreated when in the custody of their mother, we will reopen proceedings under our sua sponte authority to provide the respondent a further opportunity to present evidence regarding his relief from removal. See 8 C.F.R. § 1003.2(a); see also *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997) (Board will exercise its sua sponte authority over an untimely motion only in an "exceptional situation"); *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002).

In so deciding, we note that the respondent has yet to present his hardship claim at a hearing, because he was previously found ineligible for the relief due to his conviction. Further, the Fifth

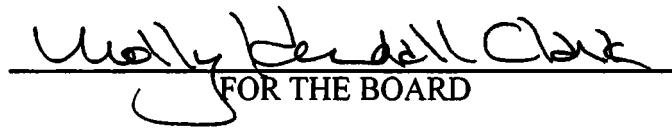
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<sup>1</sup> The parties do not dispute that the respondent's conviction under Texas Penal Code § 22.01(a) is no longer a crime involving moral turpitude that would bar his eligibility for cancellation of removal under section 240A(b) of the Act. See *Gomez-Perez v. Lynch*, 829 F.3d 323 (5th Cir. 2016).

Circuit has observed that the Board should take particular care in assessing whether equitable tolling should apply where an alien is seeking relief and it is evident that a bar to relief is no longer valid. *See Lugo-Resendez v. Lynch*, 831 F.3d at 345. Upon remand, both parties may submit evidence and argument regarding the respondent's statutory and discretionary eligibility for relief.

Accordingly, the following order will be entered.

ORDER: The motion to reopen is granted and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing decision.

  
FOR THE BOARD