Matter of Victor Manuel GOMEZ PACHECO, Respondent

Decided November 23, 2026

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

(1) Immigration Judges and the Board have no inherent equitable authority and thus lack authority to order or apply equitable remedies.

(2) The deadline for filing an appeal to the Board in 8 C.F.R. § 1003.38(b) is a nonjurisdictional, but mandatory, claims-processing rule and thus must be enforced if the opposing party properly invokes it. *Matter of Morales-Morales*, 28 I&N Dec. 714 (BIA 2023), overruled.

(3) The Board is not bound by circuit court decisions as precedent on issues that were not brought to the circuit court's attention, considered, or ruled upon.

FOR THE RESPONDENT: Joshua Crumbley, Esquire, Birmingham, Alabama

FOR THE DEPARTMENT OF HOMELAND SECURITY: Joshua Lunsford, Counsel

BEFORE: Board Panel: HUNSUCKER and VOLKERT, Appellate Immigration Judges, TERRIEN, Temporary Appellate Immigration Judge.

VOLKERT, Appellate Immigration Judge:

The respondent, a native and citizen of Honduras, has filed an untimely appeal from the Immigration Judge's February 20, 2026, decision denying his motion to reopen and rescind the in absentia order of removal entered against him on June 15, 2017. The respondent has also filed a motion to accept his late-filed appeal. The motion will be denied, and the appeal will be summarily dismissed.

I. FACTUAL AND PROCEDURAL HISTORY

The respondent did not appear for his initial removal hearing on June 15, 2017, and therefore an Immigration Judge ordered him removed in absentia.[1] Over 8 years later, the respondent filed a motion to reopen alleging that he never received notice of his removal hearing. The Immigration Judge denied

[1] Under section 240(b)(5)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229a(b)(5)(A) (2024), an Immigration Judge must "issue an in absentia order against an alien who does not appear for his or her removal hearing if the statutory requirements are met." *Matter of Orozco Becerra*, 29 I&N Dec. 600, 601 (BIA 2026).

the respondent's motion in an order dated February 20, 2026. The respondent was required to file any appeal of the Immigration Judge's decision within 30 days. *See* 8 C.F.R. § 1003.38(b) (2025). Because the 30th day fell on a Sunday, the respondent's appeal was due on Monday, March 23, 2026. *See id.* The respondent did not file his notice of appeal with the Board until May 1, 2026, which was 39 days after the appeal deadline.

In his motion to accept the late-filed appeal, counsel for the respondent claims that he did not receive the Immigration Judge's decision until March 9, 2026, which was still well within the time for filing an appeal. Counsel also claims that the respondent "was not immediately able to come to counsel's office" for some unspecified reason and that they eventually "reviewed the decision and determined to appeal on April 30, 2026." These claims are inconsistent with counsel's later statements in the motion that he filed an appeal on April 9, 2026, the Board rejected it on April 15, 2026, because it was not accompanied by a notice of appearance (Form EOIR-27), and he received the rejection notice on April 23, 2026. Counsel did not submit any evidence in support of his inconsistent claims.

II. DISCUSSION

A. Equitable Authority of the Board

In his motion to accept his late-filed appeal, the respondent argues that the appeal deadline should be equitably tolled. The Department of Homeland Security argues that the respondent's appeal should be summarily dismissed as untimely pursuant to 8 C.F.R. § 1003.1(d)(2)(i)(G) (2026) because he has not established that equitable tolling is warranted. This case requires us to address the extent of our authority to accept appeals filed past the 30-day deadline mandated by regulation. In doing so, we must consider both the applicability of equitable tolling and the relevance of any claims-processing rules.

"As a general matter, equitable tolling pauses the running of, or 'tolls,' a statute of limitations when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action." *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014). "Equitable tolling is a traditional feature of American jurisprudence and a background principle against which Congress drafts limitations periods." *Boechler, P.C. v. Comm'r*, 596 U.S. 199, 208–09 (2022). The authority to apply the doctrine of equitable tolling to a statutory deadline does not "derive from legislative enactments," but instead "from the traditional power of the courts to 'apply the principles . . . of equity jurisprudence.'"

Cal. Pub. Emps.' Ret. Sys. v. ANZ Sec., Inc., 582 U.S. 497, 507 (2017) (quoting *Young v. United States*, 535 U.S. 43, 50 (2002)).

Unlike Federal courts, which have the authority to grant "those sorts of equitable remedies 'traditionally accorded by *courts* of equity' at our country's inception," *Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025) (emphasis added) (citation omitted), the Board "is simply a regulatory creature of the Attorney General," *INS v. Doherty*, 502 U.S. 314, 327 (BIA 1992), and our authority is thus "limited by statute and regulation to that which has been delegated by the Attorney General." *Matter of G-K-*, 26 I&N Dec. 88, 93 (BIA 2013); *see also Negusie v. Holder*, 555 U.S. 511, 517 (2009) (noting that the Board exercises authority delegated by the Attorney General). Recognizing our limited authority, we have repeatedly held that we lack the authority to issue traditional equitable remedies. *See, e.g.*, *Matter of O-R-E-*, 28 I&N Dec. 330, 336 (BIA 2021) ("[W]e lack authority to recognize equitable defenses" because "we are an 'administrative body,' not a court of equity." (quoting *Matter of Cerda Reyes*, 26 I&N Dec. 528, 528 n.3 (BIA 2015))); *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338–39 (BIA 1991) (holding that we lack the power to apply traditional equitable doctrines independent of our limited authority "affirmatively granted by the regulations"). Our long-established understanding that we lack equitable authority "is consistent with the constant theme generally applicable to administrative agencies: that they are creatures of statute, bound to the confines of the statute that created them, and lack the inherent equitable powers that courts possess." *U.S. Fid. and Guar. Co. v. Lee Invs. LLC*, 641 F.3d 1126, 1135 (9th Cir. 2011); *see also Liu v. SEC*, 591 U.S. 71, 86 (2020) (explaining that "agencies are unlike federal courts," to which "inherent equitable powers" are available (citation omitted)); *Romero v. Barr*, 937 F.3d 282, 288 n.4 (4th Cir. 2019) (recognizing that Immigration Judges and the Board lack the "inherent equitable authority" possessed by Article III courts); *Int'l Union of Elec., Radio and Mach. Workers v. NLRB*, 502 F.2d 349, 352 n.* (D.C. Cir. 1974) (Bazelon, C.J., concurring in denial of rehearing en banc) ("An administrative agency possesses no such inherent equitable power, however, for it is a creature of the statute that brought it into existence; it has no powers except those specifically conferred upon it by statute.").

The doctrine of equitable tolling is rooted in the traditional power of the courts to apply principles of equity. While a court may apply that doctrine "to excuse the party's non-compliance [with a procedural rule] for equitable reasons," *Harrow v. Dep't of Def.*, 601 U.S. 480, 484 (2024), the Board is an administrative entity created by the Attorney General, and we lack the authority to apply traditional equitable doctrines in administrative removal

proceedings. Also, the Board is a creature of regulation, not statute, which is an additional reason that we do not possess equitable authority. We are not aware of any legal support for an agency (or an entity within an agency) to be able to exercise equitable authority based solely on a regulation. For the reasons discussed, we hold that Immigration Judges and the Board have no inherent equitable authority and thus lack authority to order or apply equitable remedies. We therefore cannot equitably toll the appeal deadline at 8 C.F.R. § 1003.38(b).

The respondent argues that we have "equitable powers ancillary to [our] delegated responsibilities." We are unpersuaded by the respondent's argument because it relies entirely on a line of inapposite cases recognizing the authority of administrative agencies to correct their own mistakes. *See United Gas Imp. Co. v. Callery Props., Inc.*, 382 U.S. 223, 229 (1965) (holding that an agency was permitted to "undo" its prior action that had "been overturned by a reviewing court"); *Am. Trucking Ass'ns v. Frisco Transp. Co.*, 358 U.S. 133, 145 (1958) (holding that an agency's "broad enabling statute . . . authorize[d] the correction of inadvertent ministerial errors"); *Gun South, Inc. v. Brady*, 877 F.2d 858, 862 (11th Cir. 1989) (recognizing that agencies can "reconsider and rectify errors even though the applicable statute and regulations do not expressly provide for such reconsideration"). None of those cases stand for the proposition that agencies have the inherent authority to apply traditional equitable doctrines in administrative proceedings. *See Civ. Aeronautics Bd. v. Delta Air Lines,* 367 U.S. 316, 322 (1961) ("[An agency] is entirely a creature of Congress and the determinative question is not what the [agency] thinks it should do but what Congress has said it can do.").

Our authority to correct our own errors does not come from equity or any inherent authority, but from the Attorney General's express delegation of authority to reconsider a case on our own motion under 8 C.F.R. § 1003.2(a) (2026) or on the motion of a party under 8 C.F.R. § 1003.2(b). Our regulatory power to reconsider a matter we have already decided does not somehow create or recognize an equitable authority which we do not otherwise possess. In short, "equitable tolling is a remedy founded in equity, and [the Executive Office for Immigration Review] does not possess inherent, non-statutory, free-floating equitable authority." *Matter of Bay Area Legal Services, Inc.*, 27 I&N Dec. 837, 843 (Dir. 2020).

In sum, as an administrative body whose authority is specifically limited by statute and regulation, we do not have the authority to extend deadlines under general principles of equity when such authority has not been granted by statute or regulation. However, even apart from the issue of our equitable

authority, equitable tolling of the regulatory appeal deadline is not permissible because the deadline is a mandatory claims-processing rule.

We have recognized that the appeal deadline at 8 C.F.R. § 1003.38(b) is a nonjurisdictional claims-processing rule. *See Matter of Morales-Morales*, 28 I&N Dec. 714, 716 (BIA 2023); *see also McIntosh v. United States*, 601 U.S. 330, 337 (2024) ("[G]enerally speaking, 'filing deadlines' are the 'quintessential claim-processing rules.'" (quoting *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 154 (2013))). "The mere fact that a time limit lacks jurisdictional force, however, does not render it malleable in every respect." *Nutraceutical Corp. v. Lambert*, 586 U.S. 188, 192 (2019). The Supreme Court of the United States has explained that "[t]hough subject to waiver and forfeiture, some claim-processing rules are 'mandatory'—that is, they are 'unalterable' if properly raised by an opposing party." *Id.* (quoting *Manrique v. United States*, 581 U.S. 116, 121 (2017)). "Rules in this mandatory camp are not susceptible" to equitable treatment. *Id.* For such mandatory claims-processing rules, if "the affected party alerts the court to the deadline and invokes its protection, the relevant action cannot be taken after the deadline has passed." *McIntosh*, 601 U.S. at 337; *see also Enbridge Energy, LP v. Nessel ex rel. Michigan*, 608 U.S. 67, 75 (2026) (noting that a regulation's "strict, mandatory terms" are "consistent with treating its deadline as mandatory.").

B. 8 C.F.R. § 1003.38(b) is a Mandatory Claims-Processing Rule

Some filing deadlines are "nonmandatory claims-processing deadlines, which are both subject to equitable tolling and flexible when raised by an opposing party." *Young v. SEC*, 956 F.3d 650, 655 (D.C. Cir. 2020) (citing *Bowles v. Russell*, 551 U.S. 205, 213 (2007), and *Nutraceutical Corp.*, 586 U.S. at 192–93). For example, the Supreme Court has held that there is a rebuttable presumption that "federal statutes of limitations are subject to equitable tolling." *Arellano v. McDonough*, 598 U.S. 1, 6 (2023) (citing *Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 95–96 (1990)). However, the Supreme Court has "never applied [this] presumption to an agency's internal appeal deadline." *Sebelius v. Auburn Regional Medical Center*, 568 U.S. 145, 158 (2013). "[I]f equitable tolling is inconsistent with the statutory scheme, courts cannot stop the clock for even the most deserving plaintiff." *Arellano*, 598 U.S. at 6–7. Indeed, the Court unanimously held "that the equitable tolling presumption . . . for suits brought in court does not similarly apply to administrative appeals of the kind" considered in *Auburn Regional*. *Auburn Regional*, 568 U.S. at 161.

Under the governing regulation,[2] a notice of appeal "shall be filed directly with the Board of Immigration Appeals within 30 calendar days" of an Immigration Judge's decision. 8 C.F.R. § 1003.38(b). The regulation's "strict, mandatory terms" are "consistent with treating its deadline as mandatory and not subject to equitable tolling." *Enbridge Energy, LP*, 608 U.S. 67, 76–77 (2026). While this mandatory language might not be "sufficient, on its own, to rebut the presumption of equitable tolling" in the case of a statutory deadline before a court with general equitable authority, *id.* at 76, it does not bestow equitable authority on the Board to toll the regulatory administrative appeal deadline. *See generally Auburn Regional*, 568 U.S. at 158, 161.

Moreover, the structure of the regulation cuts against any freestanding equitable authority to toll the deadline. In particular, 8 C.F.R. § 1003.38(d) enforces the deadline twice-over by providing that the Notice of Appeal "must be accompanied by the appropriate fee" or fee waiver request, and if one "is not filed within the specified time period indicated in paragraph (b) of this section, the appeal will not be deemed properly filed and the decision of the Immigration Judge shall be final to the same extent as though no appeal had been taken." And elsewhere, the Board *has* been granted discretionary authority to extend an otherwise mandatory deadline. Once a briefing schedule has been set, "[t]he Board shall not grant an extension of the briefing schedule except, as a matter of discretion, in exceptional circumstances as defined by section 240(e)(1) of the Act." 8 C.F.R. § 1003.3(c)(1) (2026). Thus, the Board does not even have general equitable authority to toll the deadline for filing a brief, and our limited ability to extend the deadline is cabined by statute. The regulations contain a single instance where the filing deadline for an appeal will be extended. In an electronically filed case, if the Executive Office for Immigration Review's electronic filing application is unavailable due to an unplanned system outage on the last day for filing in a specific case, then the filing deadline will be extended to the first day when the electronic filing application becomes accessible that is not a weekend or legal holiday. 8 C.F.R. § 1003.3(g)(2).

The express inclusion of a limited discretionary authority to toll the briefing deadline and a single mechanistic extension of the deadline to file the appeal highlights the absence of any general equitable authority to toll

[2] At the time of the respondent's appeal, the regulation had been changed in an Interim Final Rule, but that Interim Final Rule has been enjoined. *See Amica Ctr. for Immigrant Rts. v. Exec. Off. for Immigr. Rev.*, 822 F.Supp.3d 199 (D.D.C. 2026), *appeal dismissed*, No. 26-5156, 2026 WL 2582126 (D.C. Cir. Aug. 17, 2026). The change in the regulation does not affect our consideration of this appeal.

the appeal deadline. *See Enbridge Energy, LP*, 608 U.S. at 77 (explaining that when a statutory scheme contains exceptions to a general deadline, it would be inconsistent with the statute to extend the deadline further through the equitable tolling). And while our ultimate decision to summarily dismiss an untimely appeal is discretionary, *see* 8 C.F.R. § 1003.1(d)(2)(i)(G), our discretion to employ the streamlined summary dismissal procedure does not mean that we have discretion to refuse to enforce a mandatory rule. Nor does the Board's ability to take jurisdiction of any appeal by certification, *see* 8 C.F.R. § 1003.1(c), mean that we can then refuse to enforce a mandatory rule when deciding a certified appeal. *See* 8 C.F.R. § 1003.3(d) ("The certification of a case . . . shall not relieve the party affected from compliance with the provisions of this section . . . nor shall it serve to extend the time specified in the applicable parts of this chapter for the taking of an appeal.").

Ultimately, the mandatory language and overall structure of the regulation show that the deadline for filing an appeal is mandatory and not subject to equitable tolling. There is no contrary indication that the Attorney General intended the mandatory language in 8 C.F.R. § 1003.38(b) to be permissive or subject to equitable treatment, especially because the Board lacks authority to apply any equitable treatment. *Cf. Lozano*, 572 U.S. at 10 ("[W]hether equitable tolling is available is fundamentally a question of statutory intent."). Based on the mandatory language and structure of the regulation, the lack of express statutory or regulatory authority for the Board to extend the appeal deadline, the absence of any indication that the Attorney General intended the deadline to be subject to equitable remedies, and the Board's lack of any general equitable authority, we conclude that the appeal deadline is mandatory and "not susceptible to the equitable approach" argued by the respondent. *Nutraceutical Corp.*, 586 U.S. at 192. As a mandatory claims-processing rule, the deadline must be enforced if invoked by the appellee. *See McIntosh*, 601 U.S. at 337.

C. *Matter of Morales-Morales* is overruled

In *Matter of Morales-Morales*, 28 I&N Dec. 714, 715 (BIA 2023), we acknowledged that no statute or regulation granted us the authority to extend the time for filing appeals. Nonetheless, we construed the regulatory deadline to file an appeal as a claims-processing rule subject to equitable tolling. *Matter of Morales-Morales*, 28 I&N Dec. at 716–17. We did so with little explanation, based largely on our conclusion that the deadline was not "jurisdictional." *Id.* However, we did not have the benefit of *Enbridge Energy, LP*, where the Supreme Court explained that "not all nonjurisdictional rules can be equitably tolled." 608 U.S. at 83. Section 1003.38(b) of title 8 of the Code of Federal Regulations is such a

rule. In *Enbridge Energy, LP*, the Supreme Court explained that a statute's "text, structure, and surrounding context provide good reason to find the presumption [that equitable tolling is available] rebutted." 608 U.S. at 83–84. Because we lack general equitable tolling authority, we do not start from the presumption that it is available. Still, as explained above, the "text, structure, and surrounding context" of the regulatory deadline to file an appeal confirm that equitable tolling is not available. As we noted in *Matter of Morales-Morales*, "a deadline for filing a notice of appeal is essential for the overall working of an immigration court system in order to bring cases to a final conclusion." 28 I&N Dec. at 716. However, we strayed in *Matter of Morales-Morales* when we favorably compared our authority to the Supreme Court's authority to equitably relax procedural rules and "acknowledge[d] that the Board has authority to accept what are otherwise untimely appeals . . . because 8 C.F.R. § 1003.38(b) is a claims-processing rule and not a jurisdictional provision." *Id*. The deadline for filing an appeal to the Board in 8 C.F.R. § 1003.38(b) is a nonjurisdictional, but mandatory, claims-processing rule and thus must be enforced if the opposing party properly invokes it. Accordingly, we overrule our decision in *Matter of Morales-Morales.*

D. Existing Circuit Court Authority

In *Matter of Morales-Morales*, we were required to apply equitable tolling because we were governed by the law of the United States Court of Appeal for the Second Circuit, and the Second Circuit had previously held in *Attipoe v. Barr*, 945 F.3d 76, 80–82 (2d Cir. 2019), that the appeal deadline is subject to equitable tolling. *See Matter of U. Singh*, 25 I&N Dec. 670, 672 (BIA 2012) ("We apply the law of the circuit in cases arising in that jurisdiction, but we are not bound by a decision of a court of appeals in a different circuit."). The Fifth and Ninth Circuits are the only other circuits that have held that the regulatory deadline is subject to equitable tolling. *See Boch-Saban v. Garland*, 30 F.4th 411, 413 (5th Cir. 2022); *Irigoyen-Briones v. Holder*, 644 F.3d 943, 949 (9th Cir. 2011) (concluding that the filing deadline is a nonjurisdictional claims-processing rule).

This case arises in the Eleventh Circuit, so we are not bound by those decisions here. *See Matter of U. Singh*, 25 I&N Dec. at 672. However, the decisions are inapposite for another reason. The dispute in those cases centered solely on whether 8 C.F.R. § 1003.38(b) was jurisdictional. *See Boch-Saban*, 30 F.4th at 413 (disagreeing with the "current position of the BIA[] that it lacks jurisdiction over untimely appeals"); *Attipoe*, 945 F.3d at 82 (holding that because the filing deadline is a claims-processing rule and not jurisdictional, equitable tolling is available);

Irigoyen-Briones, 644 F.3d at 948–49 (holding that 8 C.F.R. § 1003.38 is a nonjurisdictional claim-processing rule). But as *Enbridge Energy, LP*, informs, not all nonjurisdictional rules can be equitably tolled. 608 U.S. at 83. Although all three decisions concluded that 8 C.F.R. § 1003.38 is a nonjurisdictional claims-processing rule, none considered whether it was a mandatory claims-processing rule to which equitable tolling would not apply. Nor did these decisions analyze the relevant body of Supreme Court caselaw on mandatory claims-processing rules, including *Auburn Regional*, in which the Court made clear that there is no presumption of equitable tolling applicable to an administrative appeals deadline. 568 U.S. at 158, 161. The decisions also do not explain the source of the Board's equitable authority or explain how an administrative appellate body, solely created by regulation, can possess equitable authority, in deciding that equitable tolling applied to 8 C.F.R. § 1003.38(b).

It appears that none of these issues or arguments were squarely presented to the circuit courts. In a case where issues were neither called to the court's attention nor ruled upon, the court's decision in that case cannot be deemed to be binding precedent on those specific issues. *See Webster v. Falls*, 266 U.S. 507, 511 (1925) ("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents."); *see also United States v. L.A. Tucker Truck Lines, Inc*., 344 U.S. 33, 38 (1952) (holding that a case in which an issue is not raised in briefs or argument nor discussed in an opinion of a court is not binding precedent). Thus, the Board is not bound by circuit court decisions as precedent on issues that were not brought to the circuit court's attention, considered, or ruled upon. Pursuant to the mandatory nature of 8 C.F.R. § 1003.38(b) as a claims-processing rule and the Board's lack of equitable authority, the Board is not bound by those decisions as precedent, and, respectfully, we will not apply them going forward.[3]

[3] For similar reasons, when there is tension or conflict between circuit court precedent and subsequent Supreme Court precedent, we are necessarily bound to apply Supreme Court precedent. Axiomatically, a circuit court precedent could not have considered an argument or issue raised by a subsequent Supreme Court decision, as the issue of a conflict would necessarily arise only after the initial circuit court decisions. Therefore, under *Webster*, the circuit court decision cannot be construed as precedent on the issue subsequently decided by the Supreme Court. In that situation, we are not extending a Supreme Court precedent in the face of contrary circuit court precedent; rather, under *Webster*, the subsequent Supreme Court precedent directs that the initial circuit court decision can no longer be considered precedent, at least until the circuit court addresses the Supreme Court precedent. To the extent we have suggested otherwise, in cases that did not address the *Webster* rule, *see, e.g.*, *Matter of Chairez*, 27 I&N Dec. 21, 22 (BIA 2017);

III. CONCLUSION

We cannot equitably toll the appeal deadline at 8 C.F.R. § 1003.38(b) because we have no authority to apply traditional equitable doctrines in administrative removal proceedings. Further, the deadline in 8 C.F.R. § 1003.38(b) is a mandatory claims-processing rule and must be enforced if the opposing party has raised it, which DHS has done in this case.[4] The appeal deadline is not subject to equitable tolling because it is a mandatory claims-processing rule. Accordingly, we will deny the respondent's motion to accept his late-filed appeal and summarily dismiss his appeal as untimely. *See* 8 C.F.R. § 1003.1(d)(2)(i)(G).

ORDER: The motion is denied.

FURTHER ORDER: The appeal is summarily dismissed.

Matter of Carachuri-Rosendo, 24 I&N Dec. 382, 385, 387–88 (BIA 2007), *aff'd,* 570 F.3d 263 (5th Cir. 2009), *rev'd*, 560 U.S. 563 (2010), we withdraw from that language in those decisions. At bottom, when we perceive a conflict between Supreme Court precedent and circuit court decisions, we will follow the Supreme Court. If we err in following the Supreme Court, then we are confident either the circuit court or the Supreme Court itself will tell us so.

[4] As a mandatory claims-processing rule, the deadline in 8 C.F.R. § 1003.38(b) is subject to enforcement if properly raised by the opposing party, regardless of which party filed the appeal.