Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

REYES MATA *v.* LYNCH, ATTORNEY GENERAL

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 14–185. Argued April 29, 2015—Decided June 15, 2015

After petitioner Noel Reyes Mata, an unlawful resident alien, was convicted of assault in a Texas court, an Immigration Judge ordered him removed to Mexico. Mata's attorney filed a notice of appeal with the Board of Immigration Appeals (BIA or Board), but never filed a brief, and the appeal was dismissed. Acting through different counsel, Mata filed a motion to reopen his removal proceedings, as authorized by statute. See 8 U. S. C. §1229a(c)(7)(A). Acknowledging that he had missed the 90-day deadline for such motions, see §1229a(c)(7)(C)(i), Mata argued that his previous counsel's ineffective assistance was an exceptional circumstance entitling him to equitable tolling of the time limit. But the BIA disagreed and dismissed the motion as untimely. The BIA also declined to reopen Mata's removal proceedings *sua sponte* based on its separate regulatory authority. See 8 CFR §1003.2(a). On appeal, the Fifth Circuit construed Mata's equitable tolling claim as an invitation for the Board to exercise its regulatory authority to reopen the proceedings *sua sponte*, and—because circuit precedent forbids the court to review BIA decisions not to exercise that authority—dismissed Mata's appeal for lack of jurisdiction.

Held: The Fifth Circuit erred in declining to take jurisdiction over Mata's appeal. A court of appeals has jurisdiction to review the BIA's rejection of an alien's motion to reopen. *Kucana* v. *Holder*, 558 U. S. 233, 253. Nothing about that jurisdiction changes where the Board rejects a motion as untimely, or when it rejects a motion requesting equitable tolling of the time limit. That jurisdiction likewise remains unchanged if the BIA's denial also contains a separate decision not to exercise its *sua sponte* authority. So even assuming the Fifth Circuit is correct that courts of appeals lack jurisdiction to review BIA decisions not to reopen cases *sua sponte*, that lack of jurisdiction does not

Syllabus

affect jurisdiction over the decision on the alien's motion to reopen. It thus follows that the Fifth Circuit had jurisdiction over this case.

The Fifth Circuit's contrary decision rested on its construing Mata's motion as an invitation for the Board to exercise its *sua sponte* discretion. Court-appointed *amicus* asserts that the Fifth Circuit's recharacterization was based on the premise that equitable tolling in Mata's situation is categorically forbidden. In *amicus*'s view, the court's construal was therefore an example of the ordinary practice of recharacterizing a doomed request as one for relief that may be available. But even if equitable tolling is prohibited, the Fifth Circuit's action was not justified. If Mata is not entitled to relief on the merits, then the correct disposition is to take jurisdiction and affirm the BIA's denial of his motion. For a court retains jurisdiction even if a litigant's request for relief lacks merit, see *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 89, and a federal court has a "virtually unflagging obligation," *Colorado River Water Conservation Dist.* v. *United States*, 424 U. S. 800, 817, to assert jurisdiction where it has that authority. Nor can the established practice of recharacterizing pleadings so as to offer the possibility of relief justify an approach that, as here, renders relief impossible and sidesteps the judicial obligation to assert jurisdiction. Pp. 4–8.

558 Fed. Appx. 366, reversed and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, GINSBURG, BREYER, ALITO, and SOTOMAYOR, JJ., joined. THOMAS, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 14–185

NOEL REYES MATA, PETITIONER *v.* LORETTA E. LYNCH, ATTORNEY GENERAL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 15, 2015]

JUSTICE KAGAN delivered the opinion of the Court.

An alien ordered to leave the country has a statutory right to file a motion to reopen his removal proceedings. See 8 U. S. C. §1229a(c)(7)(A). If immigration officials deny that motion, a federal court of appeals has jurisdiction to consider a petition to review their decision. See *Kucana* v. *Holder*, 558 U. S. 233, 242, 253 (2010). Notwithstanding that rule, the court below declined to take jurisdiction over such an appeal because the motion to reopen had been denied as untimely. We hold that was error.

I

The Immigration and Nationality Act (INA), 66 Stat. 163, as amended, 8 U. S. C. §1101 *et seq.*, and its implementing regulations set out the process for removing aliens from the country. An immigration judge (IJ) conducts the initial proceedings; if he orders removal, the alien has the opportunity to appeal that decision to the Board of Immigration Appeals (BIA or Board). §§1229a(a)(1), (c)(5). "[E]very alien ordered removed" also

"has a right to file one motion" with the IJ or Board to "reopen his or her removal proceedings." *Dada* v. *Mukasey*, 554 U. S. 1, 4–5 (2008); see §1229a(c)(7)(A). Subject to exceptions not relevant here, that motion to reopen "shall be filed within 90 days" of the final removal order. §1229a(c)(7)(C)(i). Finally, the BIA's regulations provide that, separate and apart from acting on the alien's motion, the BIA may reopen removal proceedings "on its own motion"—or, in Latin, *sua sponte*—at any time. 8 CFR §1003.2(a) (2015).

Petitioner Noel Reyes Mata is a Mexican citizen who entered the United States unlawfully almost 15 years ago. In 2010, he was convicted of assault under the Texas Penal Code. The federal Department of Homeland Security (DHS) immediately initiated removal proceedings against him, and in August 2011 an IJ ordered him removed. See App. 6–13. Mata's lawyer then filed a notice of appeal with the BIA, indicating that he would soon submit a written brief stating grounds for reversing the IJ's decision. But the attorney never filed the brief, and the BIA dismissed the appeal in September 2012. See App. 4–5.

More than a hundred days later, Mata (by then represented by new counsel) filed a motion with the Board to reopen his case. DHS opposed the motion, arguing in part that Mata had failed to file it, as the INA requires, within 90 days of the Board's decision. Mata responded that the motion was "not time barred" because his first lawyer's "ineffective assistance" counted as an "exceptional circumstance[]" excusing his lateness. Certified Administrative Record in No. 13–60253 (CA5, Aug. 2, 2013), p. 69. In addressing those arguments, the Board reaffirmed prior decisions holding that it had authority to equitably toll the 90-day period in certain cases involving ineffective representation. See App. to Pet. for Cert. 7; see also, *e.g., In re Santa Celenia Diaz*, 2009 WL 2981747 (BIA, Aug. 21,

2009). But the Board went on to determine that Mata was not entitled to equitable tolling because he could not show prejudice from his attorney's deficient performance; accordingly, the Board found Mata's motion untimely. See App. to Pet. for Cert. 7–8. And in closing, the Board decided as well that Mata's case was not one "that would warrant reopening as an exercise of" its *sua sponte* authority. *Id.,* at 9 (stating that "the power to reopen on our own motion is not meant to be used as a general cure for filing defects" (internal quotation marks omitted)).

Mata petitioned the Court of Appeals for the Fifth Circuit to review the BIA's denial of his motion to reopen, arguing that he was entitled to equitable tolling. The Fifth Circuit, however, declined to "address the merits of Mata's equitable-tolling . . . claim[]." *Reyes Mata* v. *Holder*, 558 Fed. Appx. 366, 367 (2014) (*per curiam*). It stated instead that "[i]n this circuit, an alien's request [to the BIA] for equitable tolling on the basis of ineffective assistance of counsel is construed as an invitation for the BIA to exercise its discretion to reopen the removal proceeding *sua sponte*." *Ibid.* And circuit precedent held that courts have no jurisdiction to review the BIA's refusal to exercise its *sua sponte* power to reopen cases. See *ibid.* The Court of Appeals thus dismissed Mata's appeal for lack of jurisdiction.

Every other Circuit that reviews removal orders has affirmed its jurisdiction to decide an appeal, like Mata's, that seeks equitable tolling of the statutory time limit to file a motion to reopen a removal proceeding.[1] We granted

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[1] See, *e.g., Da Silva Neves* v. *Holder*, 613 F. 3d 30, 33 (CA1 2010) (*per curiam*) (exercising jurisdiction over such a petition); *Iavorski* v. *INS*, 232 F. 3d 124, 129–134 (CA2 2000) (same); *Borges* v. *Gonzales*, 402 F. 3d 398, 406 (CA3 2005) (same); *Kuusk* v. *Holder*, 732 F. 3d 302, 305–306 (CA4 2013) (same); *Barry* v. *Mukasey*, 524 F. 3d 721, 724–725 (CA6 2008) (same); *Pervaiz* v. *Gonzales*, 405 F. 3d 488, 490 (CA7 2005) (same); *Hernandez-Moran* v. *Gonzales*, 408 F. 3d 496, 499–500 (CA8

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