Sample Equitable Tolling Argument for Motion to Reopen Removal Proceedings for DACA Recipients[1]

How to use this template: In most instances, respondents are limited to filing a motion to reopen only once. For that reason, practitioners should raise all viable arguments in the motion to reopen. This sample does not contain all possible arguments that should be included in a motion to reopen. Instead, it represents only a portion of a motion to reopen — it only contains arguments for equitable tolling of the filing deadline. Practitioners should thus only use this sample to inform the sections of a motion to reopen that address tolling of the filing deadline.

The sample contains fillable blanks for case-specific facts **in purple**. It also contains numerous possible arguments, but does not contain an exhaustive list of all possible arguments. Some suggested arguments in this template argument may be inapplicable to the practitioner's case. Practitioners should select only those arguments that pertain to the specific case they are working on. Practitioners must also ensure that all facts included in their motion stem from their case and that arguments are viable in their jurisdiction.

Disclaimer: Practitioners should not construe this Sample Equitable Tolling Argument for Motion to Reopen Removal Proceedings for DACA Recipients as legal advice. The cases cited in this sample do not constitute an exhaustive search of relevant case law in all jurisdictions. Practitioners must conduct legal research in their relevant jurisdiction based on the facts of their case and at the time of their filing.

[1] Catholic Legal Immigration Network, Inc. (CLINIC) issued this template on October 7, 2020. This template supplements and should be used in conjunction with CLINIC's Practice Advisory on Motions to Reopen for DACA Recipients with Removal Orders, which is available here: cliniclegal.org/resources/removal-proceedings/practice-advisory-motions-reopen-daca-recipients-removal-orders.

I. STANDARD FOR REOPENING

If the client has an *in absentia* order of removal: An *in absentia* order may be rescinded upon a motion to reopen filed within 180 days of the date of the order of removal if the respondent demonstrates that the failure to appear was because of exceptional circumstances; or upon a motion to reopen filed at any time if the respondent demonstrates: (1) that he or she did not receive notice in accordance with INA §§ 239(a)(1)-(2) or (c), or; (2) the respondent demonstrates that he or she was in federal or state custody and the failure to appear was through no fault of the respondent. INA § 240(b)(5)(C). The 180-day deadline for motions to rescind and reopen based on exceptional circumstances is subject to equitable tolling. *See, e.g., Avila-Santoyo v. Att'y Gen.*, 713 F.3d 1357, 1364 n.4 (11th Cir. 2013) (en banc); *Borges v. Gonzales*, 402 F.3d 398 (3d Cir. 2005); *Pervaiz v. Gonzales*, 405 F.3d 488 (7th Cir. 2005); *Lopez v. INS*, 184 F.3d 1097 (9th Cir. 1999); *Scorteano v. INS*, 339 F.3d 407 (6th Cir. 2003); *see also Mendoza v. Lynch*, 646 F. App'x 458 (6th Cir. 2016) (unpublished); *Gurung v. Holder*, 504 F. App'x 681 (10th Cir. 2012) (unpublished); *Idun v. Gonzales*, 232 F. App'x 31 (2d Cir. 2007); *Davies v. INS*, 10 F. App'x 223, 224 (4th Cir. 2001) (per curiam) (unpublished); *but see Pafe v. Holder*, 615 F.3d 967 (8th Cir. 2010) (declining to decide whether the 180-day deadline for *in absentia* orders of removal is subject to equitable tolling); *Fustaguio Do Nascimento v. Mukasey*, 549 F.3d 12 (1st Cir. 2008) (leaving open the question of "whether the BIA has either the authority or the obligation" to apply equitable tolling in the immigration context, but finding that the noncitizen did not exercise due diligence); *Jobe v. INS*, 238 F.3d 96 (1st Cir. 2001) (declining to rule on whether equitable tolling applies to the 180-day filing deadline). Moreover, in order for a removal order to be entered against a noncitizen who fails to attend a removal hearing, the government must establish "by clear, unequivocal, and convincing evidence . . . that the alien is removable." INA § 240(b)(5)(A).

If the Immigration Judge denied the client immigration relief: A respondent presenting new facts in his/her case may request that the case be reopened once, and usually must file his/her motion to

reopen within 90 days of the date on which the order of removal issued.[2] INA §§ 240(c)(7)(A)-(B), 240(c)(7)(C)(i); 8 C.F.R. § 1003.23(b)(1). However, this 90-day filing deadline may be equitably tolled. *See, e.g., Lugo-Resendez v. Lynch*, 831 F.3d 337, 344 (5th Cir. 2016); *Kuusk v. Holder*, 732 F.3d 302, 305 (4th Cir. 2013); *Avila-Santoyo v. Att'y Gen.*, 713 F.3d 1357, 1364 (11th Cir. 2013) (per curiam); *Alzaarir v. Att'y Gen.*, 639 F.3d 86, 90 (3d Cir. 2011) (per curiam); *Neves v. Holder*, 613 F.3d 30 (1st Cir. 2010) (assuming but not deciding that the time and number limits on motions to reopen on subject to equitable tolling); *Barry v. Mukasey*, 524 F.3d 721, 724 (6th Cir. 2008); *Gaberov v. Mukasey*, 516 F.3d 590, 594-597 (7th Cir. 2008); *Hernandez-Moran v. Gonzales*, 408 F.3d 496, 499–500 (8th Cir. 2005); *Riley v. INS*, 310 F.3d 1253, 1258 (10th Cir. 2002); *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2001); *Iavorski v. INS*, 232 F.3d 124, 127 (2d Cir. 2000); *see also Mata v. Lynch*, 135 S. Ct. 2150, 2155 n.3 (2015) (leaving open the possibility that the deadline can be equitably tolled).

In the adjudication of a motion to reopen, an immigration judge must identify and fully explain his or her decision so that the parties will not be deprived of the opportunity to contest the judge's determination on appeal and the Board of Immigration Appeals (BIA) will be able to meaningfully exercise its responsibility of reviewing the decision in light of the arguments advanced on appeal. *See Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994); *see also Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999).

[. . .]

III. ARGUMENT

A. The Court Should Treat the Motion as Timely Filed.

Although Respondent files this motion to reopen more than 90 (or 180 if *in absentia*) days after the entry of the prior final administrative order of removal, he/she warrants reopening under the

[2] Where a practitioner is raising multiple arguments, the practitioner should note that some arguments will require a tolling argument and others will not. For example, there is no filing deadline for requests for *sua sponte* reopening and reopening based on changed country conditions, and thus no tolling arguments are necessary.

doctrine of equitable tolling. *See, e.g., Socop-Gonzalez v. INS*, 272 F.3d 1176 (9th Cir. 2001) (en banc); *accord Lugo-Resendez v. Lynch*, 831 F.3d 337, 343-44 (5th Cir. 2016); *Kuusk v. Holder*, 732 F.3d 302 (4th Cir. 2013); *Avila-Santoyo v. Att'y Gen.*, 713 F.3d 1357 (11th Cir. 2013) (en banc); *Alzaarir v. Att'y Gen.*, 639 F.3d 86, 90 (3d Cir. 2011) (per curiam); *Barry v. Mukasey*, 524 F.3d 721, 724 (6th Cir. 2008); *Gaberov v. Mukasey*, 516 F.3d 590, 594-597 (7th Cir. 2008); *Hernandez-Moran v. Gonzales*, 408 F.3d 496 (8th Cir. 2005); *Riley v. INS*, 310 F.3d 1253, 1258 (10th Cir. 2002); *Iavorski v. INS*, 232 F.3d 124 (2d Cir. 2000). Where the filing deadline has been tolled, a motion to reopen must be treated as timely filed. *See, e.g., Singh v. Holder*, 658 F.3d 879, 884 (9th Cir. 2011); *Lugo-Resendez*, 831 F.3d at 342–43; *Ortega-Marroquin v. Holder*, 640 F.3d 814, 819-20 (8th Cir. 2011).

A litigant is entitled to equitable tolling, if he/she shows (1) that he/she has been pursuing his/her rights diligently and (2) that some extraordinary circumstance stood in his/her way and prevented timely filing. *See, e.g., Holland v. Florida*, 560 U.S. 631, 649 (2010).

1. **Extraordinary circumstances prevented the Respondent from timely filing.**

[Practitioners should insert a summary of the facts of their client's case that constitute an extraordinary circumstance that excuses the filing deadline. Such circumstances might include: age, ineffective assistance of counsel, the court's failure to protect the Respondent's due process rights, the court's failure to afford the Respondent the procedural protections required for minors, the Respondent's reliance on having DACA status, and/or the Respondent's confusion about his/her legal status. Practitioners should then choose the subsections below that pertain to their client's case].

a. Option 1: **The Respondent's young age is an extraordinary circumstance that prevented timely filing.**

The Respondent's young age is an extraordinary circumstance that prevented him/her from timely filing his/her motion to reopen. Courts have long recognized that young age can be a legal

disability that prevents timely filing and accordingly warrants tolling of the applicable filing deadlines. *See, e.g., William A. Graham Co. v. Haughey,* 646 F.3d 138 (3d Cir. 2011) (noting that tolling doctrines include those for infancy); *Young v. Davis,* 554 F.3d 1254, 1258 (10th Cir. 2009) (stating that under Oklahoma law, equitable tolling is available based on a legal disability, which is defined to include having not yet reached the age of majority). Treating youth as a legal disability is sensible in light of the Supreme Court's longstanding understanding that the juveniles' brains function differently than the brains of adults. *See Miller v. Alabama,* 132 S. Ct. 2455, 2465 n.4 (2012) ("It is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance"); *Graham v. Florida,* 560 U.S. 48, 68 (2010) (" . . . developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.").

Immigration agencies have similarly recognized that age is a legal disability that may excuse a filing deadline. Indeed, the regulations concerning the extraordinary circumstances exception to the asylum one-year filing deadline specify that a "legal disability" is an extraordinary circumstance. 8 C.F.R. § 208.4(a)(5)(ii) (offering as an example of a legal disability an applicant who "was an unaccompanied minor or suffered from a mental impairment."). A DHS training manual further expands on this point, explaining that all minors should be considered to be under a legal disability and meet the definition of an "extraordinary circumstance" for the purpose of satisfying the exception to the one-year asylum filing deadline. USCIS, RAIO Combined Training Course, Children's Claims, at 78 (Aug. 21, 2014), www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies_and_Manuals/RAIO_Directorate_Officer_Training_Manual.pdf ("The same logic underlying the legal disability ground listed in the regulations is relevant also to accompanied minors: minors, whether accompanied or not, are generally dependent on adults for their care and cannot be

expected to navigate adjudicatory systems in the same manner as adults.").[3] The BIA has similarly found that young age qualifies as extraordinary circumstance exception to the one-year filing deadline for asylum. In an unpublished decision, the BIA held that those under 18 years of age categorically qualify for the extraordinary circumstances exception to the one-year asylum filing deadline. *See A-D-*, AXXX-XXX-526, at 5 (BIA May 22, 2017) (unpublished), www.scribd.com/book/351904250/A-D-AXXX-XXX-526-BIA-May-22-2017. The BIA further held that the youth of a person between ages 18 and 21 remains a factor to consider in determining whether an applicant qualifies for the extraordinary circumstances exception. *Id.*

This Court should similarly find that the Respondent's young age constitutes an extraordinary circumstance that tolls the filing deadline for filing a motion to reopen. At the time the Immigration Judge entered a removal order, the Respondent was only [insert age] years old. [Insert facts highlighting the importance of Respondent's age in their inability to file on time, such "At the time the Immigration Judge ordered the Respondent removed, he had not yet learned to read" or "The Respondent was only in elementary school when she was ordered removed."]. The Respondent was thus unable to file his/her motion to reopen before the normal statutory deadline because of his/her young age. This Court should find that the Respondent's young age is an extraordinary circumstance that tolls the filing deadline.

b. Option 2: The Respondent was unable to present his/her case effectively due to ineffective assistance of counsel.

Noncitizens who are represented in removal proceedings have the right to effective assistance of counsel. *E.g. Gbaya v. U.S. Att'y Gen.*, 342 F.3d 1219, 1222 (11th Cir. 2003); *Rodriguez Lariz v. INS*, 282 F.3d 1218, 1226 (9th Cir. 2002). The BIA has determined that evidence of ineffective assistance of counsel merits reopening. *See, e.g., Matter of N-K- & V-S-*, 21 I&N Dec. 879 (BIA 1997); *Matter of Grijalva-Barrera*, 21 I&N Dec. 472 (BIA 1996). A motion to

[3] Practitioners should print and attach any cited articles, as well as unpublished cases, as exhibits to the motion.

reopen based on ineffective assistance of counsel must contain: (1) an affidavit explaining the agreement with former counsel and what prior counsel represented to the respondent; (2) an indication that prior counsel has been informed of the allegations of ineffective assistance of counsel and allowed an opportunity to respond; and (3) an indication of whether the respondent filed a complaint with the appropriate disciplinary authority regarding counsel's conduct, or, if a complaint was not filed, an explanation for not filing one. *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988); 8 C.F.R. § 1208.4(a)(5)(iii). In addition, the motion must demonstrate that prior counsel's conduct was ineffective and prejudiced the respondent. *Matter of Lozada*, 19 I&N Dec. at 638. The Respondent has met these requirements.

i. The Respondent has satisfied the procedural requirements under *Matter of Lozada*.

The exhibits attached to this motion demonstrate that the Respondent has complied with the procedural requirements of *Matter of Lozada*, *supra*, and 8 C.F.R. § 1208.4(a)(5)(iii). First, attached as [Insert Exhibit Number], is Respondent's declaration, in which he/she attests that: he/she retained [Insert Attorney name] to represent him/her [explain what the Respondent retained the attorney to do]. The Respondent trusted [Insert Attorney name to zealously and competently represent him/her in immigration court, making all essential arguments and presenting all necessary evidence on his/her behalf]. However, the attorney [insert 1 sentence summary of the facts showing that the attorney failed to zealously and competently represent the Respondent].

Second, attached as [Insert Exhibit Number], is an [email/ letter/ other communication] informing [Insert Attorney Name] of the allegations that the Respondent is making against him/her. [If attorney responded, insert: On [date], [Insert Attorney Name] responded, contesting/ admitting to the allegations. If attorney did not respond, insert: To date, [Insert Attorney Name] has not responded to these allegations.].[4]

[4] In the motion, practitioners should respond to any allegations raised by the prior attorney.

Third, the Respondent has filed a complaint against [Insert Attorney Name] with the [State] Bar. [Insert Exhibit Number], (Bar Complaint and Proof of Delivery).

ii. The Respondent's claim satisfies the substantive requirements for an ineffective assistance claim.

To make out a claim for ineffective assistance of counsel, the Respondent generally must also show that his/her attorney's performance fell below an objective standard of reasonableness and that this ineffective performance caused him/her prejudice. *See Strickland v. Washington*, 466 U.S. 668 (1984); *Matter of Lozada*, 19 I&N Dec. 637, 638 (BIA 1988).

i. [Insert Attorney Name]'s performance was ineffective.

The [State[5]] Rules of Professional Conduct require that a lawyer "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Rule. 1.1. [Insert Attorney Name] did not show the thoroughness and preparation reasonably necessary for representation. Respondent states that [insert facts demonstrating that the attorney did not provide competent representation. Such facts might include that the attorney:

- Failed to advise or misadvised the Respondent of the date of the hearing and the need to appear,
- Did not properly and thoroughly prepare such that he/she could competently represent the Respondent,
- Did not assist the Respondent in gathering and presenting sufficient evidence and corroboration,
- Did not properly advise the Respondent regarding what kind of evidence would be pertinent to obtain,
- Failed to advise the client of eligibility for relief,

[5] Practitioners should cite to the rules of professional conduct for the state in which the former attorney is licensed. The quotes in this template come from the ABA Model Rules of Professional Conduct, but most states have similar language.

- Did not competently elicit testimony to support many of the legal requirements,
- Failed to raise viable legal arguments,
- Has not kept abreast of relevant case law].

A reasonably competent attorney would have [add actions that contrast with the representation provided by the ineffective attorney, such as "had many meetings with the client to adequately put together a detailed I-589 application and supporting declaration, prepared the client to testify before the Immigration Court, and discussed other evidence needed for the case."].

Additionally, [State] Rule of Professional Conduct 1.4 requires that a lawyer "keep the client reasonably informed about the status of the matter" and "promptly comply with reasonable requests for information." [Insert facts showing that the Attorney did not communicate with the Respondent to keep him/her informed of the status of the case or reply to requests for information].

Moreover, [State] Rule 1.4 states that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." [Insert facts showing that the Attorney did not adequately explain to the Respondent what happened in his/her case, did not explain the Respondent's right to appeal or file a motion, and/or did not use a trained interpreter]. A competent attorney would have [Insert relevant comparison, such as: explained the outcome of the case in detail, along with all rights to file a motion or an appeal to ensure that the client could make an informed decision concerning next steps, and would have provided a copy of the case file should the Respondent have chosen a different attorney for an appeal; or utilized a trained interpreter who can competently interpret into the client's preferred language and dialect].

ii. The Respondent was prejudiced by his/her prior attorney's performance.

[Insert Attorney Name]'s performance was so deficient that but for his/her ineffective representation, the Respondent reasonably could have obtained [insert form of relief].[6] *Flores-Panameno v. Att'y Gen.*, 913 F.3d 1036 (11th Cir. 2019); *Martinez-Hernandez v. Holder*, 778 F.3d 1086 (9th Cir. 2015) (a noncitizen must show "counsel's performance was so inadequate that it 'may have affected the outcome of the proceedings.'") (internal citations omitted); *Jian Yun Zheng v. U.S. Dep't of Justice*, 409 F.3d 43, 46 (2d Cir. 2005) ("Thus, in order to prevail on an ineffectiveness claim, [a noncitizen] must show that [her] counsel's performance was so ineffective as to have impinged upon the fundamental fairness of the hearing.") (internal quotations and citations omitted); *Dakane v. U.S. Att'y Gen.*, 399 F.3d 1269, 1274-75 (11th Cir. 2005) ("Prejudice exists when the performance of counsel is so inadequate that there is a reasonable probability that but for the attorney's error, the outcome of the proceedings would have been different.").[7]

The Respondent was prejudiced by his/her attorney's ineffective assistance because [explain what the attorney did wrong and why the outcome of the case may have been different if the attorney had not made that mistake].[8]

The Respondent has complied with all *Lozada* requirements and shown that his/her attorney's deficient performance caused prejudice. This Court should accordingly treat the ineffective assistance of counsel as an extraordinary circumstance that merits tolling of the filing deadline for a motion to reopen.

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[6] Each circuit has a slightly different legal standard for demonstrating prejudice. It is important to identify the relevant U.S. court of appeals' standard.

[7] In the *in absentia* context, practitioners should argue that a showing of prejudice is not required. See *Matter of Grijalva-Barrera*, 21 I&N Dec. 472, 474 n.2 (BIA 1996); see also *Galvez-Vergara v. Gonzales*, 484 F.3d 798, n.6 (5th Cir. 2007). However, practitioners should argue in the alternative that the Respondent has demonstrated prejudice.

[8] This explanation of prejudice could comprise a full section that discusses *prima facie* eligibility for relief.

c. **Option 3: The Respondent was unable to present his/her case effectively because of the Court's failure to protect his/her Due Process rights.**

The Respondent was not able to effectively present his/her claim for [insert type of relief Respondent was seeking] because [insert procedural and due process violations that occurred during the hearing, such as lack of competent interpretation, the Immigration Judge's failure to provide required advisals, the Immigration Judge's hostile tone and constant interruptions, the Immigration Judge's refusal to permit the Respondent to present important evidence, etc]. He/she accordingly was not afforded due process and the Immigration Judge failed to comply with INA § 240(b)(4)(B) (providing that a noncitizen "shall have a *reasonable* opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government") (emphasis added). [Insert relevant legal standard for the specific type of due process violation alleged. For example: "[A] competent translation is fundamental to a full and fair hearing." *Matter of D-R-*, 25 I&N Dec.445, 461 (BIA 2011) (quoting *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000)). In challenging inadequate interpretation at a hearing, the respondent must demonstrate both that the interpreter did not perform competently and that her hearing was prejudiced by that failure. *Id.* (citing *Hartooni v. INS*, 21 F.3d 336, 339-40 (9th Cir. 1994). The Respondent here has satisfied both requirements.].

The Respondent was prejudiced by these due process violations and the Court's failure to comply with INA§ 240(b)(4)(B) because [explain why the outcome of the case may have been different if the Immigration Judge had ensured competent interpretation, provided required advisals, used an appropriate tone and not constantly interrupted testimony, permitted the Respondent to present important evidence, etc]. This Court should therefore recognize these due process violations as an extraordinary circumstance sufficient to toll the filing deadline.

d. Option 4: The Court failed to afford the Respondent the protections required for unrepresented minors.

The Immigration Judge failed to afford the Respondent the special procedural protections required for minors. The regulations prohibit an immigration judge from accepting an admission of removability from an unrepresented and unaccompanied child. 8 C.F.R. § 1240.10(c) (covering children "not accompanied by an attorney or legal representative, a near relative, legal guardian, or friend"). In *Matter of Amaya*, the BIA explained that the regulations presume that a minor is "incapable of determining whether a charge applies to him." 21 I&N Dec. 583, 586 (BIA 1996). The BIA thus held that an immigration judge "must exercise particular care" in determining removability, taking into account the child's "age and pro se and unaccompanied status," and conducting a "comprehensive and independent inquiry" to determine "where there is clear, unequivocal, and convincing evidence" to support the NTA charge(s). *Id.* at 587. Here, the Immigration Judge failed to conduct the required comprehensive and independent inquiry into removability. [Instead, the Immigration Judge accepted an admission of removability from the Respondent when he was only [insert age] years old. At such a young age, the Respondent was not capable of understanding the charges against him/her or determining whether those charges applied to him/her.] The Immigration Judge did not conduct the Respondent's hearing with the particular care required in determining removability of a *pro se* child, and that the ground(s) of removability was not established by "clear, unequivocal, and convincing evidence" as required to proceed. This failure to adhere to the procedural protections designed to ensure that children get a fair hearing is an extraordinary circumstance sufficient for equitable tolling.

e. Option 5: Obtaining DACA, and thereby gaining protection from removal through a DHS-sponsored program, constitutes an extraordinary circumstance.

The advent of DACA, and the Respondent's reliance on it, is an extraordinary circumstance warranting tolling of the filing deadline. After Congress failed to pass legislation to protect Dreamers, DHS created DACA to protect Dreamers, and even permitted those with removal orders to apply for

it and thereby obtain protection from removal. Immigration agencies have long recognized that having some form of lawful status, including temporary forms of status such as Temporary Protected Status (TPS) and even parole, can constitute an extraordinary circumstance that excuses the normal filing deadlines. *See* 8 C.F.R. § 208.4(a)(5)(iv) (exempting an asylum applicant from the one-year filing deadline if the applicant "maintained Temporary Protected Status, lawful immigrant or nonimmigrant status, or was given parole, until a reasonable period before the filing of the asylum application."); *see also* USCIS, Asylum Officer Basic Training Course, One-Year Filing Deadline, at 17 (Mar. 23, 2009), AILA Doc. No. 16102840, www.aila.org/infonet (explaining that the purpose of the "maintained lawful status" extraordinary circumstances exception is to "avoid forcing a premature application" by allowing individuals who might seek asylum to wait and see if conditions in their countries improve).

The Respondent became aware of [the removal order and/or the basis for reopening] during or after the DACA application process. He/She waited to file the instant motion to reopen until his/her DACA protection was rescinded [or otherwise terminated] because he/she reasonably relied on the existence of this government program, which expressly included and protected eligible individuals with removal orders. This Court should treat the fact that the Respondent had protection from removal through DACA as an extraordinary circumstance that excuses the filing deadline for motions to reopen just as it would treat having any other type of legal status (even temporary status) as an extraordinary circumstance that excuses the one-year filing deadline for asylum.

f. Option 6: The Respondent's confusion about the legal requirements for reopening their case also constitutes an extraordinary circumstance.

Furthermore, given all the developments regarding the status of the DACA program following litigation and President Trump's vows to find a permanent solution for DACA youth,[9] many DACA

[9] *See, e.g.*, Katie Reilly, *Here's What President Trump Has Said About DACA in the Past*, TIME, Sept. 5, 2017, time.com/4927100/donald-trump-daca-past-statements/ (stating, for example, that the administration would show

recipients, including the Respondent, were confused about the status of the DACA program. This Court should recognize that confusion rendering one "unable to follow developments in the American legal system—much less read and digest complicated legal decisions" may constitute an extraordinary circumstance that tolls the filing deadline. *See Lugo-Resendez v. Lynch*, 831 F.3d 337, 345 (5th Cir. 2016). [Insert other reasons the particular Respondent may have also been confused, such as receiving misinformation from family or others in the community, confusing media coverage, etc]. This confusion is an extraordinary circumstance that warrants tolling of the filing deadline.

2. The Respondent acted with reasonable diligence in pursuing his/her right to file a motion to reopen.

The Respondent acted diligently in pursuing his/her rights. The Supreme Court has explicitly stated that the standard required for equitable tolling is "reasonable diligence," not "maximum feasible diligence." *Holland v. Florida,* 560 U.S. 631, 656 (2010). The Respondent acted with reasonable diligence in pursuing his/her rights. [Insert relevant facts from the Respondent's declaration or other evidence submitted with the motion that show that the Respondent acted with reasonable diligence given the circumstances, such as:

- Respondent's age,
- Lack of ability to search for, pay for, and/or arrange transportation to visit an attorney given the Respondent's age
- Scarcity of free or low price legal services in the area where the Respondent lived during the relevant period
- Respondent consulted with or at least tried to contact attorneys

"great heart," that DACA recipients were "mostly" "absolutely incredible kids," that he "love[s] these kids," that they "shouldn't be very worried" and would be taken care of); Statement from President Donald J. Trump (Sept. 5, 2017), www.whitehouse.gov/the-press-office/2017/09/05/statement-president-donald-j-trump (promising to deal with the "DACA issue with heart and compassion – but through the lawful Democratic process"); *The Latest: Trump Vows to Revisit DACA If Congress Stumbles,* U.S. NEWS & WORLD REPORT, Sept. 5, 2017, www.usnews.com/news/politics/articles/2017-09-05/the-latest-trump-says-congress-needs-to-act-on-immigration.

- Respondent consulted with trusted adults in the community, such as school guidance counselors or teachers, about legal status
- Respondent consulted with and was defrauded by a notario
- Respondent's lack of education and familiarity with legal system
- Parent or guardian's lack of education and familiarity with legal system
- Any medical or mental health conditions that may have made timely filing more difficult
- Respondent's inability to access immigration records because a parent or former attorney does not have them or will not release them
- Any delays caused by the government, such as delays in responding to FOIA requests, that delayed filing
- Respondent diligently requested and maintained DACA protection
- Respondent diligently maintained work authorization].

These actions demonstrate that the Respondent acted with due diligence in light of his/her circumstances and is accordingly entitled to equitable tolling of the filing deadline.