

14-510 MENOMINEE INDIAN TRIBE OF WI V. UNITED STATES

DECISION BELOW: 764 F.3d 51

LOWER COURT CASE NUMBER: 12-5217

QUESTION PRESENTED:

Holland v. Florida, 560 U.S. 631, 649 (2010), established that equitable tolling of a non-jurisdictional statute of limitations is warranted where a party shows (1) diligence in pursuing its rights, and (2) that some extraordinary circumstance stood in the way of timely filing. In its decision below, the D.C. Circuit applied the *Holland* test and concluded that the Menominee Indian Tribe did not establish the necessary grounds for obtaining equitable tolling of the statute of limitations for filing claims against the Indian Health Service ("IHS") under the Contract Disputes Act ("CDA") for unpaid contract support costs ("CSC"). As acknowledged in its opinion, the D.C. Circuit's application of *Holland* and its ultimate ruling was in direct conflict with the Federal Circuit's opinion in *Arctic Slope Native Ass'n, Ltd. v. Sebelius*, 699 F.3d 1289 (Fed. Cir. 2012) (Pet. App. 75a-97a), which found that the plaintiff tribal organization in that case was entitled to equitable tolling of the CDA statute of limitations under materially similar facts.

The Federal Circuit's opinion and the D.C. Circuit's opinion below are in irreconcilable conflict with one another. Unless and until reconciled by this Court, the conflict will almost certainly undermine fairness and consistency in the administration of justice in the wide array of civil and criminal contexts in which equitable tolling arises. Meanwhile, the D.C. Circuit's decision denies the Menominee Indian Tribe the right to full recovery under its Indian Self-Determination contract based on a narrow and inflexible application of *Holland*, even as other tribes and tribal organizations may vindicate that right by filing their claims in a different forum. The Tribe therefore seeks this Court's review of the following critical question:

Whether the D.C. Circuit misapplied this Court's *Holland* decision when it ruled - in direct conflict with a holding of the Federal Circuit on materially similar facts - that the Tribe did not face an "extraordinary circumstance" warranting equitable tolling of the statute of limitations for filing of Indian Self-Determination Act claims under the Contract Disputes Act?

LIMITED TO THE FOLLOWING QUESTION: Whether the D. C. Circuit misapplied this Court's *Holland* decision when it ruled that the Tribe was not entitled to equitable tolling of the statute of limitations for filing of Indian Self-Determination Act claims under the Contract Disputes Act?

CERT. GRANTED 6/30/2015