FLORES-ALONSO V. U.S. ATTORNEY GENERAL: ELEVENTH CIRCUIT REINFORCES FEDERAL COURTS' LIMITED ROLE IN REMOVAL PROCEEDINGS BY DISMISSING NONCITIZEN'S INHERENTLY FACTUAL PETITION FOR REVIEW OF DENIAL OF CANCELLATION OF REMOVAL

COURTNEY N. POMEROY*

In *Flores-Alonso v. U.S. Attorney General*, noncitizen Esteban Flores-Alonso petitioned the United States Court of Appeals for the Eleventh Circuit for review of the Board of Immigration Appeals' ("BIA") decision to affirm the denial of Flores-Alonso's request for cancellation of removal.[1] The Eleventh Circuit dismissed the petition, explaining that judicial review of cancellation of removal decisions is "jurisdictionally limited to 'constitutional claims or questions of law.'"[2] In his petition, Flores-Alonso claimed the BIA committed legal error in rendering its decision and raised two arguments on appeal.[3] The Eleventh Circuit, however, found that Flores-Alonso's arguments were not questions of law.[4] Instead, the arguments were inherently factual.[5] Because the federal courts are precluded from disturbing factual findings upheld by the BIA,[6] the Eleventh Circuit concluded that it lacked jurisdiction over Flores-Alonso's appeal.[7]

Flores-Alonso, a Mexican citizen, came to the United States unlawfully in 2001.[8] After law enforcement stopped Flores-Alonso for driving without a license, the Department of Homeland Security initiated removal proceedings against Flores-Alonso.[9] When a noncitizen faces removal, the noncitizen may seek relief from removal from the

---

*Junior Editor, *Cumberland Law Review*; Candidate for Juris Doctor, May 2024, Cumberland School of Law; B.S., Business Management, December 2020, University of Alabama.

[1] Flores-Alonso v. U.S. Att'y Gen., 36 F.4th 1095, 1097–98 (11th Cir. 2022) (per curiam).

[2] *Id.* at 1100 (quoting 8 U.S.C. § 1252(a)(2)(D)).

[3] *Id.* at 1099.

[4] *Id.* at 1100.

[5] *Id.*

[6] Patel v. Garland, 142 S. Ct. 1614, 1618 (2022).

[7] *Flores-Alonso*, 36 F.4th at 1100.

[8] *Id.* at 1097.

[9] *Id.* If a noncitizen is found to have entered or remained in the United States unlawfully, the Department of Homeland Security may initiate removal proceedings against the noncitizen pursuant to 8 U.S.C. § 1229. Johnson v. Guzman Chavez, 141 S. Ct. 2271, 2280 (2021).

Attorney General.[10] The Attorney General has the power to grant relief to a noncitizen who has violated the rules by which noncitizens may enter and live in the United States at his or her discretion and has delegated this power to immigration judges.[11] Cancellation of removal for a deportable noncitizen is governed by 8 U.S.C. § 1229b and provides that the Attorney General may cancel removal of certain nonpermanent residents who establish that:

> (1) they have been continuously physically present in the United States for at least ten years; (2) they have been 'person[s] of good moral character' while present in the United States; (3) they have not been convicted of any specified criminal offenses; and (4) their 'removal would result in exceptional and extremely unusual hardship' to a qualifying relative who is a U.S. citizen or lawful permanent resident.[12]

Accordingly, Flores-Alonso sought cancellation of removal from the Attorney General.[13] His application for cancellation of removal under 8 U.S.C. § 1229b was denied by the Immigration Judge on March 21, 2018.[14] Although Flores-Alonso presented arguments at his immigration hearing that his two United States citizen children would suffer certain financial consequences and potential separation from their father if he were to be removed, the Immigration Judge found that Flores-Alonso failed to meet the exceptional and extremely unusual hardship standard.[15] The BIA did not adopt the Immigration Judge's decision but affirmed the finding that Flores-Alonso failed to establish the hardship standard.[16]

The hardship standard is exceedingly difficult to overcome.[17] For the BIA to determine if a noncitizen has met this standard, the BIA

---

[10] *See* 8 U.S.C. § 1229b; *Patel*, 142 S. Ct. at 1619.

[11] *Patel*, 142 S. Ct. at 1618–19.

[12] Hernandez-Gutierrez v. U.S. Att'y Gen., No. 21-10798, 2022 WL 706011, at *1 (11th Cir. Aug. 25, 2022) (per curiam) (quoting 8 U.S.C. § 1229b(b)(1)).

[13] *Flores-Alonso*, 36 F.4th at 1097.

[14] *Id.*

[15] *Id.*; *see* 8 U.S.C. § 1229b(b)(1)(D). The Immigration Judge also found that Flores-Alonso failed to meet the requisite ten-year period of continuous physical presence in the United States. *Flores-Alonso*, 36 F.4th at 1098; *see* 8 U.S.C. § 1229b(b)(1)(A). The BIA did not affirm this finding. *Flores-Alonso*, 36 F.4th at 1098. Accordingly, the Eleventh Circuit did not address it. *Id.*

[16] *Id.* at 1098–99. The court noted that when the BIA does not adopt the immigration judge's decision, but affirms it, the court only reviews the BIA's decision. *Id.* at 1099.

[17] *Id.* at 1098 ("'[V]ery serious health issues' or 'compelling special needs in school[]' are 'strong cases' while '[a] lower standard of living or adverse country conditions in the country of return' are usually 'insufficient in themselves to support a finding of exceptional and extremely unusual hardship.'" (quoting Matter of Monreal-Aguinaga, 23 I. & N. Dec. 56, 63–64 (B.I.A. 2001)).

must analyze "the ages, health, and circumstances" of qualifying relatives and should consider all hardship factors the qualifying relatives may face if the noncitizen is removed "in the aggregate."[18] Here, in evaluating whether the Immigration Judge properly held that Flores-Alonso failed to meet this requirement, the BIA took into consideration "the circumstances of Flores-Alonso's two children, the informal custody agreement with the daughter's mother, the health of the children, the educational opportunities of the daughter, and the financial situation of Flores-Alonso."[19] The BIA ultimately found that removal of Flores-Alonso would result in some degree of hardship to his children, but not the kind of hardship that was exceptional and extremely unusual as required by 8 U.S.C § 1229b(b)(1)(D).[20] The BIA thereby affirmed the Immigration Judge's decision.[21]

Flores-Alonso appealed the BIA's decision to the Eleventh Circuit.[22] On appeal, the court may "only review legal or constitutional challenges to cancellation of removal."[23] Flores-Alonso raised two arguments on appeal in an attempt to meet this standard.[24] First, he argued that the BIA committed *legal* error by "disregarding important facts in the hardship determination."[25] More specifically, Flores-Alonso argued the BIA "mischaracterize[d] [his daughter's] hardship" by failing to recognize that her hardship was not the standard of living she may face in Mexico but instead was the uncertainty of whether she would have the "legal ability to accompany [Flores-Alonso] to Mexico" given the informal custody agreement between Flores-Alonso and the daughter's mother.[26] "The problem with this argument," the Eleventh Circuit said, "is that it is inherently *factual*."[27] Therefore, it appeared that the only relevant "mischaracterization" present in Flores-Alonso's appeal was in Flores-Alonso's classification of the BIA's alleged error as a legal one and not a factual one.[28]

---

[18] *Id.* (quoting *Monreal-Aguinaga*, 23 I. & N. Dec. at 64).
[19] *Flores-Alonso*, 36 F.4th at 1099.
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Flores-Alonso*, 36 F.4th at 1099.
[26] *Id.* at 1099–1100.
[27] *Id.* at 1100 (emphasis added).
[28] *See id.*

Flores-Alonso's second argument was that the BIA did not "render a reasoned decision after reciting the proper legal standards."[29] More specifically, Flores-Alonso argued that the BIA did not consider all the hardship factors that his children may face in the aggregate when making the hardship determination.[30] The Eleventh Circuit explained that this second argument was also inherently factual and failed to raise any legal argument appropriate for the court's review.[31] Because the court lacked jurisdiction over purely factual challenges that were merely colored in legal language, the court necessarily dismissed Flores-Alonso's two purely factual challenges on appeal.[32]

As *Flores-Alonso v. U.S. Attorney General* illustrates, judicial review of the Attorney General's discretionary power to cancel removal proceedings is greatly limited.[33] Because only the Attorney General is afforded the power to grant relief from removal as an act of "mercy,"[34] the Eleventh Circuit, while "sympathetic [to Flores-Alonso's] plight,"[35] is not afforded the power to offer "mercy" to Flores-Alonso or to review his appeal without a constitutional claim or question of law.[36] Therefore, a noncitizen who fails to "persuade the immigration judge that he merits a favorable exercise of discretion" may be left without options for redress due to the limitations of judicial review over removal proceedings.[37]

---

[29] *Id.* at 1099.

[30] *Id.* at 1100.

[31] *Flores-Alonso*, 36 F.4th at 1100.

[32] *Id.*; Hernandez-Gutierrez v. U.S. Att'y Gen., No. 21-10798, 2022 WL 706011, at *1 (11th Cir. Aug. 25, 2022) (per curiam) (citing Arias v. U.S. Att'y Gen., 482 F.3d 1281, 1284 (11th Cir. 2007)) ("[A]rguments cloaked in . . . legal language . . . are not sufficient to invoke [the court's] jurisdiction.").

[33] *Flores-Alonso*, 36 F.4th at 1099–1100.

[34] Patel v. Garland, 142 S. Ct. 1614, 1618 (2022).

[35] *Flores-Alonso*, 36 F.4th at 1100.

[36] *See Patel*, 142 S. Ct. at 1618–19.

[37] *Id.* at 1619; *see* Shoba Sivaprasad Wadhia, *Justices Split over Question of Federal Court Review in Immigration Cases*, SCOTUSBLOG (May 19, 20212, 12:24 PM), https://www.scotusblog.com/2022/05/justices-split-over-question-of-federal-court-review-in-immigration-cases/ [https://perma.cc/7JU9-HM6F].