

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14-1128

ERIC FLORES,

Petitioner

v.

UNITED STATES DEPARTMENT OF EDUCATION, *et al.*,

Respondents

ON PETITION FOR REVIEW FROM THE UNITED STATES DEPARTMENT
OF EDUCATION, OFFICE FOR CIVIL RIGHTS, DALLAS OFFICE

THE UNITED STATES DEPARTMENT OF EDUCATION'S
RESPONSE IN OPPOSITION TO PETITIONER'S
RENEWED MOTION FOR PRELIMINARY INJUNCTION

The United States Department of Education (Department) respectfully responds in opposition to petitioner Eric Flores's renewed motion for a preliminary injunction pending appeal, pursuant to Federal Rule of Appellate Procedure 27(a)(3). In support of this response, the Department submits the following:

1. On June 27, 2014, pro se petitioner Eric Flores filed a petition for review (Pet. for Rev.) in this Court requesting review of the discretionary decision of the Department's Office of Civil Rights (OCR) dismissing and closing his Title VI

OCR complaint against the University of Texas El-Paso (UTEP) in Case No. 06142007. The petition asked this Court, *inter alia*, to issue a preliminary injunction prohibiting UTEP faculty members from using “advanced [satellite] technology” to cause “severe mental or physical pain * * * equivalent in intensity to organ failure or impairment of body functions” to Flores or his immediate relatives in retaliation for his “invocation of [his] constitutional rights.” Pet. for Rev. 585-586. On the same day, Flores filed in this Court a motion (Mot. Prelim. Inj.) he characterized as a “Motion Seeking Relief from Imminent Danger Such as Torture and Death.” This motion requested this Court enter a preliminary injunction prohibiting UTEP faculty members “from using deadly technology to torture [Flores] or his immediate relatives and/or using deadly technology to torture to death [Flores] or his immediate relatives.” Mot. Prelim. Inj. 7.

On July 17, 2014, the Department filed in this Court a motion to dismiss Flores’s petition for lack of subject matter jurisdiction (Mot. to Dismiss), arguing that neither the Administrative Procedure Act (APA) nor any other statute authorizes direct appellate review of a funding agency’s discretionary decision not to take enforcement action on an individual’s discrimination complaint. The Department’s motion to dismiss also requested that this Court dismiss as moot Flores’s pending motions, including his “Motion Seeking Relief from Imminent Danger Such as Torture and Death.” Mot. to Dismiss 12.

On July 23, 2014, Flores filed in this Court a motion (Renewed Mot. Prelim. Inj.) he characterized as a “Renewal of Motion for Preliminary Injunction.” This renewed motion for preliminary injunction reiterates Flores’s request that this Court preliminarily enjoin UTEP faculty members “during the pendency of the petition for review” from using “deadly technology to torture to death” Flores or his immediate relatives in retaliation for his seeking judicial review of the Department’s dismissal of his complaint. Renewed Mot. Prelim. Inj. 1-3. This Court ordered the Department to respond to this motion by August 7, 2014.

2. As the Department’s motion to dismiss makes clear, this Court lacks jurisdiction to consider Flores’s petition for review because neither the APA nor any other statute confers authority on this Court to review OCR’s dismissal of Flores’s complaint. This Court therefore should dismiss Flores’s petition for review for lack of appellate jurisdiction, and dismiss his pending motions as moot.¹ See Mot. to Dismiss 12.

¹ As noted in our motion to dismiss, Flores recently petitioned the Fifth Circuit to review an OCR dismissal of a nearly identical administrative complaint, to which the Department responded by filing a motion to dismiss for lack of jurisdiction. See Mot. to Dismiss 5. Flores subsequently filed in the Fifth Circuit a motion he characterized as a “Renewal of Motion Seeking Relief from Imminent Danger Such as Death in the Public Interest of Health and Safety,” which asserted the same allegations and claims for relief as the renewed motion for preliminary injunction he filed in this Court and which the Fifth Circuit treated as a motion for injunction pending appeal. On July 30, 2014, the Fifth Circuit issued a per curiam order granting the Department’s motion to dismiss, denying Flores’s motion for
(continued...)

3. Alternatively, Flores’s renewed motion for a preliminary injunction during the pendency of his petition for review fails on the merits because it is frivolous and incredible on its face. See *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992) (court may dismiss claim as factually frivolous when its allegations are “fanciful, fantastic, and delusional” – *i.e.*, “the facts alleged rise to the level of the irrational or the wholly incredible”) (internal quotation marks and citations omitted). Flores alleges in his renewed motion that UTEP faculty members have threatened to use “deadly technology” to torture him or his immediate relatives in retaliation for his seeking judicial review of the Department’s dismissal of his complaint, and that a preliminary injunction is necessary because their use of this technology to torture his grandmother to death demonstrates a “substantial likelihood” that they will carry out this threat.² Renewed Mot. Prelim. Inj. 2-3.

(...continued)

injunction pending appeal and his motion to present substantive guidelines under Title VI, and denying as moot Flores’s other pending motions. See Order, *Flores v. United States Dep’t of Educ.*, No. 14-60390 (July 30, 2014).

² To these allegations regarding “deadly technology” that Flores asserted in his “Motion Seeking Relief from Imminent Danger Such as Torture and Death,” Flores added in his renewed motion the delusional claim that UTEP faculty members have “participated in school shootings resulting in the death of several students” to induce legislatures to pass gun-control laws, requiring a preliminary injunction to prevent these “faculty members * * * from causing [sic] the death of another student.” Renewed Mot. Prelim. Inj. 3.

This Court has previously described a complaint by Flores that made similar fantastic and baseless claims as “clearly frivolous.” See *Flores v. Attorney Gen. of the United States*, 473 F. App’x 5 (D.C. Cir. 2012). Another federal court of appeals has previously dismissed as frivolous a pro se appeal by Flores that made comparable claims. See *Flores v. United States Att’y Gen.*, 434 F. App’x 387 (5th Cir. 2011).

* * * * *

For the foregoing reasons, the Department respectfully requests that this Court dismiss the petition for review for lack of appellate jurisdiction and dismiss Flores’s pending motions as moot. Alternatively, if this Court elects not to decide the jurisdictional issue at this time, this Court should deny his renewed motion for preliminary injunction during the pendency of this appeal.

Respectfully submitted,

JOCELYN SAMUELS
Acting Assistant Attorney General

s/ Christopher C. Wang
DENNIS J. DIMSEY
CHRISTOPHER C. WANG
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, DC 20044-4403
(202) 514-9115

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2014, I electronically filed the foregoing THE UNITED STATES DEPARTMENT OF EDUCATION'S RESPONSE IN OPPOSITION TO PETITIONER'S RENEWED MOTION FOR PRELIMINARY INJUNCTION with the Clerk of the Court using the appellate CM/ECF system.

I further certify that, within two business days of July 31, 2014, I will cause to be hand-delivered four paper copies of the foregoing response to the United States Court of Appeals for the District of Columbia Circuit.

I further certify that petitioner listed below will be served via e-mail and U.S. Mail postage prepaid at the following address:

Eric Flores
8401 Boeing Drive
El Paso, TX 79910

s/ Christopher C. Wang
CHRISTOPHER C. WANG
Attorney