

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CORNELIO ARCOS MEMIJE; MARIA
DEL ROSARIO RENDON VELEZ,
Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,
Respondent.

No. 06-71282

Agency Nos.
A96-059-340
A96-059-341

ORDER

Filed March 26, 2007

Before: Harry Pregerson, Richard C. Tallman and
Consuelo M. Callahan, Circuit Judges.

Order;
Dissent by Judge Pregerson

ORDER

On July 3, 2006, we dismissed this petition for review for lack of jurisdiction. Since that time, petitioners have filed three motions for reconsideration of our July 3, 2006 order. Because petitioners have not identified any points of law or fact overlooked by the court, these motions are denied. *See* 9th Cir. R. 27-10.

Section 242(a)(2)(B)(i) of the Immigration and Naturalization Act expressly eliminates our jurisdiction over decisions by the Board of Immigration Appeals that involve the exercise of discretion. *See* 8 U.S.C. § 1252(a)(2)(B)(i). We lack jurisdiction to review the Immigration Judge's discretionary determination that Cornelio Arcos Memije and Maria Del

Rosario Renden Velez failed to establish the requisite exceptional and extremely unusual hardship to their United States citizen children, and are therefore ineligible for cancellation of removal. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005); *Romero-Torres v. Ashcroft*, 327 F.3d 887, 892 (9th Cir. 2003).

For the same reasons, we lack jurisdiction to decide the issues raised in Judge Pregerson’s dissent. While we empathize with Judge Pregerson’s heartfelt sentiments, Congress has delegated to the Attorney General the discretion to consider them and it has restricted our power to overturn them. *See* 8 U.S.C. § 1252(a)(2)(B)(i). As our colleague, Judge Farris, so eloquently put it in another immigration case, “My brother and I differ on what is the appropriate appellate function. He would retry. I am content to review.” *Li v. Ashcroft*, 378 F.3d 959, 964 n.1 (9th Cir. 2004).

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

PREGERSON, Circuit Judge, dissenting:

I dissent. The decision in this case, if carried out, will inflict egregious harm on four children born in the United States. Our government’s refusal to grant the children’s undocumented parents cancellation of removal tramples on the children’s substantive due process rights—rights our government routinely ignores. By denying undocumented parents cancellation of removal, our government effectively deports their United States citizen children and denies those children their birthrights. *See Cerrillo v. INS*, 809 F.2d 1419, 1426-27 (9th Cir. 1987). The government’s conduct violates due process by forcing the children to accept de facto expulsion from their native land or give up their constitutionally protected

right to remain with their parents. *See, e.g., Moore v. City of E. Cleveland*, 431 U.S. 494, 503-05 (1977) (plurality opinion) (“Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.”); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (recognizing that “[t]he integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment”).

Petitioners, Cornelio Arcos Memije and his wife Maria Rendon, have lived in the United States since the mid-1980s. They are married and have four children: Ruby age 17, Erica age 16, Noe age 12, and Giselle age 6. All four children are United States citizens.

Petitioners and their children have attained the American dream. Cornelio has worked as a cook and recently took a second job with Hewlett Packard. Maria, has been steadily employed, most recently as a parts assembler at Jacuzzi Whirlpool Bath. Cornelio and Maria are federal and state taxpayers. In 2002, Cornelio and Maria purchased a home in Corona, California. Despite her busy work schedule, Maria has volunteered at the local elementary school. She has also served as a member of the PTA and School Site Council.

Despite having lived in this country for nearly a quarter of a century, the Arcos family now faces forced removal to Mexico. Removal to Mexico will turn their American dream into a nightmare. While Cornelio may find a job in the agricultural fields of Mexico, Maria’s work prospects are slim.

Removal of Cornelio and Maria will have a devastating effect on their four minor children. Ruby, their oldest daughter, is now in her senior year of high school. She is taking Honors and Advanced Placement classes and hopes to attend college. She has lived in California her entire life. If her parents are removed to Mexico, circumstances will force her to

go with them. This will prevent her from gaining a college education and realizing her dream of becoming a nurse or a doctor. In a letter to this Court dated October 21, 2005, Ruby stated that she was experiencing symptoms of severe depression as a result of her family's impending removal to Mexico.¹

Her sister, Erica, also a high school student, will suffer a similar fate. She too has only known life in California. She worries about adjusting to life in Mexico, a country where her parents are likely to be poor, and whose culture, language, and way of life are foreign to her.² If her parents are removed, she will be forced to go with them. This will prevent Erica from fulfilling her dream of joining the U.S. Army.

Moreover, removal of their parents would also have a devastating effect on the family's two youngest children: Noe and Giselle. Because of the high costs of uniforms, textbooks, and school supplies in Mexico, Cornelio and Maria do not believe that they could earn enough money to support the family *and* enroll their children in school. Therefore, removal would deprive Noe and Giselle of an education altogether — a right that is both provided and mandated by all U.S. states. *See* Lawrence Kotin & William E. Aikman, *Legal Foundations of Compulsory School Attendance* 34 (1980).

Removal of the petitioners will result in extreme and unusual hardship to their four United States citizen children. Removal of the parents will deny all four children the opportunity to develop their full potential in the country of their birth.³

¹See Appendix A and B, the transcribed text of handwritten letters to this court from Ruby.

²See Appendix C, the transcribed text of a handwritten letter to this Court from Erica.

³To demonstrate the potential of the Arcos children and provide a better understanding of the extreme and unusual hardship that these children would suffer should their parents be removed, please refer to the attached appendices. Appendix D is a letter of recommendation for Ruby. Appendix E is a letter of recommendation for Erica. Appendix F is a letter of recommendation for Maria. Appendix G is a letter of recommendation for Noe.

Accordingly, I vote to grant petitioners' motions for reconsideration of our previous order dismissing their petition for review for lack of jurisdiction. *See Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1004 (9th Cir. 2003) (“[W]e retain jurisdiction to consider whether the BIA’s interpretation of the hardship standard violates due process.”).

As I have said before, “I pray that soon the good men and women in our Congress will ameliorate the plight of families like the [petitioners] and give us humane laws that will not cause the disintegration of such families.” *Cabrera-Alvarez v. Gonzalez*, 423 F.3d 1006, 1015 (9th Cir. 2005).

Appendix A — Redacted Text of Handwritten Letter from Ruby to the Ninth Circuit Court of Appeals

Oct. 21, 2005

Dear Judge,

My name is Ruby Arcos and the reason I am writing you this letter is so that hopefully you will give my parents their residence cards.

The reason my parents came to the U.S. is so that they could have a better life. They both met here in the U.S. They did not know each other in Mexico. The reason I am saying this is because I have nothing to do with Mexico. I was conceived and born here in America. I don't even speak much Spanish at all. I only talk to my parents in Spanish.

I don't even want to imagine myself in Mexico. I wouldn't be able to communicate with anyone, and my education would be finished. I want to graduate from high school and go to college. I also want my little brothers and sisters to study here so that they can be educated people when they're

grown up. I see how hard my parents work and how little they get paid for not having had to opportunity to study because they had to work instead.

My mom. She lost her dad at the age of 5. Her mom was with child and 5 kids to support on her own. My mom had to help my grandma and started working when she was 6 years old! I think my mom at least deserves a residence card.

This is really affecting me mentally. My grades are starting to go down because I can't concentrate on doing my homework and I can't pay attention in class. I can't imagine leaving all my cousins, uncles, and friends. They are really important to me. When I was depressed they were the one who helped me out. This is really personal and I feel bad []! I DO NOT WANT TO MOVE TO MEXICO. I would not survive. Instead of paying attention in class I would [think about the effects of moving to Mexico and how to avoid them].

I am not making this up! It's just the thought of living in Mexico is unbearable to me. From what I've heard if we were deported (I mean my parents) we would live in my dad's village and a lot of bad stuff has happened there. My dad's brother got killed (shot to death!) because someone want to steal his truck, and my grandma has been pointed a gun to the head because someone wanted her money and her gold necklace with a charm of the cross.

I have a lot of dreams like every 16-year-old, and if there's one thing I know is that they can come true here in the United States. I want to become somebody in life. I am not sure yet but I want something to do in the medicine field. It's sounds dumb, but I want to be called Dr. Ruby Arcos. I want to go to a community college, work to have enough money to be able to transfer to U.C. Davis. It's going to be extremely hard, I know, and I'll have to apply myself on school work. But I promise that if you take this stress away from me by giving my parents their residence card. I will become a doctor, if not

a medical on a PH.D. I am begging you from the bottom of my heart. Let my dream come true. My dream is for my parents to have their residency and them being proud of me for becoming somebody in the world.

Sincerely,

/S/ Ruby Arcos
Ruby Arcos

P.S. []

Appendix B — Complete Text of Handwritten Letter from Ruby to the Ninth Circuit Court of Appeals

Dear Judge,

My name is Ruby Arcos and I am sixteen years old. The reason I am writing this letter is so that you can hopefully find it in your heart to give my parents the right to stay in the United States legally.

I hope my parents can be forgiven for entering the U.S. illegally. The reason my mom and dad came here was because they wanted to make their lives better and progress. They have never done any crimes in this country except for entering it.

This is so much more than a citizenship case. It is affecting us in everything we do, and it will certainly affect our future.

If our parents are given deportation, I will not be able to graduate highschool. I will be turning 17 in August and in September I am suppose to start my senior year in highschool. It is the most important year to me because it means I have achieved my goal and I can attend college. Next year I will

be taking Honors and Above Placement (AP) classes. All my efforts to get into these classes will have been for nothing if my parents are deported because we will have to go with them to Mexico.

The reason so many people leave Mexico is because there is no future or a chance to progress in life. I do not want to go there and have to live there. I have never even been to Mexico. I don't know anything or anyone. I only know that my parents decided to come here because they saw better opportunities in the U.S.

Please do not deport my parents because you will also deport a girl who only has a year left of highschool and a dream to become something more than the daughter of illegal immigrants. I want my dream and my parents dream to come true. To see me be a doctor, or a nurse or something more. I want to go to U.C. Davis but all this will be impossible if my parents aren't granted the right to remain in the U.S. legally.

Please let me be all that I can be. My future lies in your hands and decision over my parents case. I will be forever grateful if I am allowed to graduate highschool. Santiago H.S. is a distinguished California school. A highschool diploma from this school will be worth more than one anywhere in Mexico.

Don't let all these 11 years of hard work go to nothing.

Thank you for taking the time to read this letter.

Sincerely,

/S/ Ruby Arcos
Ruby Arcos

**Appendix C — Complete Text of Handwritten Letter
from Ruby to the Ninth Circuit Court of Appeals**

April 7, 2006

Dear Judge,

My name is Erica Arcos. I am 15 and I currently live in Corona. My parents are immigrants who immigrated from Mexico. It was a wrong thing for them to do that but they had a reason for that, they needed money and a good work to get paid enough so they could have sent it to their family back in Mexico because they didn't have money, food or clothes. Please your honor think of how everyone would feel if my parents had to leave and my brother and my sisters and me had to leave with them it would affect us in every way such as family members, friends, teachers and personally me and my brothers. How would I survive in a place where I don't really understand the language. I don't know anyone, and the food is different back there from what I've heard is that you have to grow it on your own and if you want to eat meat you have to kill the animal. I wouldn't never eat meat in Mexico if I had to kill the animal for me it would be like killing a pet that you've had and then cook it and eat it. How would I survive? How would I have money to buy clothes and shoes if you don't get paid enough money by working in Mexico. Also what would my future be like? One important reason that my parents should receive their residence is because I want to go to the army, like they say "I am the army" how would I be "an army of one" if I have to go to Mexico. Please think of how me and my brothers would suffer? How would my little sister adapt to the living at Mexico, how would she have a career if she is in Mexico or even go to school? And my brother he would have to grow up to be working and not study. Also my older sister has one more year of high school. Think about it going to school from kinder though high school all those years going to school getting ready to graduate thinking at what she might want for her career and then all at once

having to leave everything back. So please your honor I beg you think of how my parents would feel having to leave how would they make money to buy all the necessary things for us such as food, clothes, shelter, everything that a person needs. Will please think of everything I wrote my feelings, my thoughts, and what I want to do when I grow up. Its all up to you your honor.

Sincerely,

/S/ Erica Arcos
Erica Arcos

**Appendix D — Complete Text of Letter from Ruby's
History Teacher**

California Distinguished School
Santiago High School
Home of Scholars, Achievers, & Champions
1395 Foothill Parkway — Corona, CA 92881
(951) 739-5600 — Fax (951) 739-5639

April 6, 2006

To whom it may concern,

I have had the pleasure of having Ruby Arcos in my U.S. History class since Sept. 2005. Ruby is a fine young woman and has proven to be an outstanding student. She has been responsible and consistent in her academic/class preparations and responsibilities.

Ruby earned an "A" for her 1st SEMESTER grade and is currently earning an 84%, a strong "B" for 3rd quarter. She hopes to earn an "A" by June 2006, the end of 2nd SEMES-

TER. She certainly has the skills and drive to be able to meet this goal.

It is my hope that Ruby be able to continue her education here at Santiago High School as she is highly motivated to succeed. It is her dream to continue her education in the United States and become a nurse. Ruby has a desire, dedication and drive to make her dreams come true. It is my belief that she will become a hard-working, contributing member of our country.

Most Sincerely,

/S/ E. Miller

Mrs. E. Miller
U.S. History
Santiago High School

**Appendix E — Complete Text of Letter From Erica's
Language Arts Teacher**

Language Arts Teacher
1395 Foothill Parkway
Corona, CA 92881

April 6, 2006

To Whom It May Concern:

It has been my pleasure to have Erica Arcos as a student during this past semester. Over the course of the marking period, I have gotten to observe Erica and gain a sense of who she is. My impression of Erica is one of high esteem. She is a very pleasant young lady. Erica is always respectful and attentive. I have been very impressed with her strong work ethic. I feel

that she strives to ensure that she produces a product that is of high quality. Simply put, Erica is dedicated to succeeding academically. In addition to her commitment to her schooling, Erica seems to be well adjusted to her surroundings. She is also greatly liked by her peers. Overall, Erica is a fine young lady with a bright future.

Sincerely,

/S/ Jessica Fuller

Jessica Fuller
Language Arts Teacher

**Appendix F — Complete Text of Letter From the
Principal of Lincoln Elementary School**

Lincoln Elementary
425 South Sullivan Street
Santa Ana, CA 92704

(714) 972-6200

June 3, 2003

To Whom it May Concern:

I like to take this opportunity to verify that Maria Del Rosario Rendon has been known to Lincoln Elementary School for six years. Within these six years, she was involved in the following areas: member of the Parent and Teacher Association (P.T.A.), School Site Council, and a Parent Safety Patrol (Santa Ana Police Department).

Mrs. Rendon's three children, Ruby, Erika, and Noe had made Lincoln their elementary school. Mrs. Rendon had an

excellent rapport with our teachers, parents, students, and administrators. She is frank and outgoing and exhibits a very pleasant and friendly personality.

If I can be of further assistance, please feel free to call me.

Sincerely,

/S/ Manuel Fuentes

Manuel Fuentes, Ed.D.
Principal

Appendix G — Complete Text of letter from Noe's Teacher

Home Gardens Elementary School
13550 Tolton Ave.
Corona, California 92876
Mrs. Linda White, Principal
Mrs. Cecilia Chester, Assistant Principal

October 27, 2003

To Whom It May Concern:

My name is Maria Castillo and I am a second teacher at Home Gardens Elementary School in Corona, California. I write to inform you of Noe Arcos who has been in my class since the beginning of the school year, which began on July 9, 2003. Noe is learning such subjects as reading, math, written language, and computer education. His favorite subject is computer education. Noe enjoys playing "tease the bull" with his friends at recess time. He is a fun and loving student who gets along well with his peers. He is currently involved in the Home Gardens Heroes Program, which is a staff and student-

mentoring program. He also attends After School Tutoring three days a week for one hour.

Thank you,

/S/ Maria P. Castillo

Maria P. Castillo

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