

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

No. 14-1165

ERIC FLORES,

Petitioner

v.

UNITED STATES DEPARTMENT OF JUSTICE,

Respondent

ON PETITION FOR REVIEW FROM THE CIVIL RIGHTS DIVISION,
UNITED STATES DEPARTMENT OF JUSTICE

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

The United States Department of Justice (Department) respectfully responds in opposition to petitioner Eric Flores's 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 August 25, 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 Civil Rights Division (Division) to take no action on his

complaint alleging that corrupt state law enforcement officers violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* The petition claimed, *inter alia*, that these officers used “deadly technology to cause [Flores] and his immediate relatives severe mental or physical pain.” Pet. for Rev. 21-22, 27, 31, 37. Flores subsequently filed in this Court a motion for a preliminary injunction (Mot. Prelim. Inj.) that shifted the allegations of “deadly technology” use from state law enforcement officers to unnamed Division employees. This motion requested this Court preliminarily enjoin “corrupt” Division employees from “using deadly technology to torture to death [Flores] or his immediate relatives” and/or sending a “corrupt law enforcement [officer] * * * to shot [sic] and kill [Flores] or his immediate relatives” in retaliation for Flores’s invocation of his constitutional rights. Mot. Prelim. Inj. 3. The Court ordered the Department to respond to this motion by October 6, 2014.

2. This Court has also ordered the Department to file any dispositive motions by October 14, 2014. The Department intends to file a motion to dismiss Flores’s petition for review and motion to defer filing of the certified index by that date. The Department’s motion to dismiss will make clear that this Court lacks jurisdiction to consider Flores’s petition for review because neither the Administrative Procedure Act nor any other statute confers authority on this Court to review the Division’s decision not to take action on Flores’s complaint.

Because this Court lacks jurisdiction over Flores's petition for review, it similarly lacks jurisdiction over his motion for a preliminary injunction.

3. Alternatively, Flores's motion for a preliminary injunction during the pendency of his petition for review fails 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 motion that unnamed "corrupt" Division employees have used "deadly technology" to torture to death four of his immediate relatives in retaliation for his invocation of his constitutional rights, and that his aunt's recent death at the hand of these employees demonstrates a substantial likelihood that they will "continue[] to engage in negligent torturous [sic] conduct." Mot. Prelim. Inj. 1-2. Flores made nearly identical allegations against University of Texas El-Paso faculty members in a recent motion for a preliminary injunction he filed in this Court in another case. See Renewed Mot. Prelim. Inj., *Flores v. United States Dep't of Educ.*, No. 14-1128 (D.C. Cir.) (filed July 23, 2014). 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, 6 (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 Attorney Gen.*, 434 F. App'x 387 (5th Cir. 2011).

For the foregoing reasons, the Department respectfully requests that this Court deny Flores's motion for a preliminary injunction.

Respectfully submitted,

MOLLY J. MORAN
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 October 6, 2014, I electronically filed the foregoing
THE UNITED STATES DEPARTMENT OF JUSTICE'S RESPONSE IN
OPPOSITION TO PETITIONER'S MOTION FOR A PRELIMINARY
INJUNCTION with the Clerk of the Court using the appellate CM/ECF system.

I further certify that, within two business days of October 6, 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