FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANTONIO DE LA ROSA-RODRIGUEZ, AKA Antonio Delarosa Rodriguez, *Petitioner*, v. MERRICK B. GARLAND, Attorney General, *Respondent.*	No. 20-71923 Agency No. A208-084-297 OPINION

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 11, 2022[*]
Pasadena, California

Filed September 27, 2022

Before: Kim McLane Wardlaw and Andrew D. Hurwitz, Circuit Judges, and Karin J. Immergut,[**] District Judge.

Opinion by Judge Hurwitz

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[*] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[**] The Honorable Karin J. Immergut, United States District Judge for the District of Oregon, sitting by designation.

SUMMARY[***]

Immigration

Denying Antonio De La Rosa's petition for review of a decision of the Board of Immigration Appeals, the panel held that: 1) 8 U.S.C. § 1252(a)(2)(D) grants the court jurisdiction to review a question of law or a mixed question of law and fact presented in a challenge to an agency denial of cancellation of removal for failure to establish the required hardship; and 2) assuming arguendo that De La Rosa's petition presented such questions, his hardship claim failed on the merits.

The agency denied De La Rosa's application for cancellation of removal on the ground that he had not established that his United States citizen children would suffer "exceptional and extremely unusual hardship" if he were removed. 8 U.S.C. § 1229b(b)(1). The panel explained that the jurisdiction-stripping provision in 8 U.S.C. § 1252(a)(2)(B)(i) prevents judicial review of "any judgment regarding the granting of relief" under certain statutes, including 8 U.S.C. § 1229b, which governs cancellation of removal. However, under 8 U.S.C. § 1252(a)(2)(D) (the "Limited Review Provision"), courts have jurisdiction over "constitutional claims or questions of law" presented in cases subject to the jurisdiction-stripping provision. In the context of cancellation, this court has long held that § 1252(a)(2)(B)(i) bars judicial review of the

[***] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

agency's hardship determination because that determination is ultimately discretionary.

The panel explained that the most recent interpretations of the jurisdiction-stripping provision of § 1252(a)(2)(B)(i) and the Limited Review Provision by this court and the Supreme Court make at least several things clear. First, because *Patel v. Garland*, 142 S. Ct. 1614 (2022), held that the jurisdiction-stripping provision applies to all judgments "relating to" relief under § 1229b, this court need no longer concern itself with whether the relief sought is discretionary. Second, as this court has recognized and the Supreme Court confirmed in *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062 (2020), the Limited Review Provision restores jurisdiction to consider "questions of law," including whether the agency applied the correct legal standard in denying discretionary relief. Third, the phrase "questions of law" in the Limited Review Provision includes mixed questions of law and fact. The panel observed that the remaining issue was how these principles affect the court's jurisdiction over De La Rosa's petition for review. To address that issue, the panel concluded that it must determine whether the petition presented a question of law or a mixed question of law and fact.

De La Rosa first contended that the BIA failed to apply its precedent in denying cancellation. The panel explained that the Limited Review Provision grants the court jurisdiction to determine whether this claim is "colorable." The panel concluded it was not colorable, explaining that the agency accurately summarized the applicable law and otherwise applied the correct standards.

De La Rosa's second claim was that even if the BIA stated the correct standard, its application of that standard to the undisputed facts of his case was incorrect. The panel

started from the proposition that whether the historical facts found satisfy the legal test chosen is generally a mixed question of law and fact. However, the panel explained that no Supreme Court case has squarely addressed whether the hardship determination is a mixed question. The panel observed that the Fourth and Sixth Circuits have concluded that it is, and that there is a circuit split on the issue.

Despite finding facial merit in the Fourth and Sixth Circuit decisions, the panel concluded that it need not take a definitive side in the circuit split. The panel explained that it is settled that this court can assume statutory jurisdiction arguendo when the jurisdictional issue is complex, but the claim clearly lacks merit. The panel explained that it had no qualms with that approach here.

The panel concluded that the BIA's decision that exceptional and extremely unusual hardship was not established was clearly supported by the record. The panel explained that De La Rosa largely focused on financial hardship, but the BIA has concluded that economic detriment alone is insufficient to support even a finding of extreme hardship. As to De La Rosa's concern about his partner's immigration status, the panel explained that the BIA does not consider the fact that an applicant's extended family is in this country illegally as a favorable factor. Further, the panel concluded that even cumulatively, De La Rosa had not shown that the hardship that the agency found would amount to suffering substantially beyond the hardship usually associated with a parent's removal. Therefore, the panel concluded that his hardship claims failed on the merits, and left the jurisdictional question for another day.

In a concurrently filed memorandum disposition, the panel denied De La Rosa's petition as to the denial of withholding of removal and CAT protection.

COUNSEL

Mackenzie W. Mackins, Mackins & Mackins LLP, Sherman Oaks, California, for Petitioner.

Brian Boynton, Acting Assistant Attorney General; Anthony P. Nicastro, Assistant Director; Jonathan A. Robbins, Senior Litigation Counsel; Andrew B. Insenga, Trial Attorney; Office of Immigration Litigation, Civil Division, United States Department of Justice, Washington, D.C.; for Respondent.

OPINION

HURWITZ, Circuit Judge:

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 stripped federal courts of jurisdiction to review "any judgment regarding the granting of relief under . . . [8 U.S.C. §] 1229b," which governs, among other forms of relief, cancellation of an order of removal. Pub. L. No. 104-208, 110 Stat. 3009, 3009-607 (codified at 8 U.S.C. § 1252(a)(2)(B)(i)). But, the Real ID Act of 2005 restored our jurisdiction over "constitutional claims or questions of law" presented in cases subject to the jurisdiction-stripping provision. Pub. L. No. 109-13, 119 Stat. 231, 310 (codified at 8 U.S.C. § 1252(a)(2)(D)) (the "Limited Review Provision").

The central issue before us today is whether the Limited Review Provision allows review of a Board of Immigration Appeals ("BIA") decision denying cancellation of removal to petitioner Antonio De La Rosa-Rodriguez, who claimed his removal would result in "exceptional and extremely

unusual hardship" to his two children, both U.S. citizens. *See* 8 U.S.C. § 1229b(b)(1). We hold that although the BIA's ultimate decision to grant cancellation of removal is discretionary, § 1252(a)(2)(D) grants us jurisdiction to review a question of law or a mixed question of law and fact presented in a petition for review of an agency decision denying cancellation based on the absence of exceptional and extremely unusual hardship to family members. But, even assuming arguendo that De La Rosa's petition presents such questions, we deny it.

I.

De La Rosa, a native and citizen of Mexico, entered the United States without inspection in 2005 and was served with a Notice to Appear twelve years later. De La Rosa conceded removability but sought various forms of relief, including cancellation of removal, claiming that his removal would result in exceptional and extremely unusual hardship to his two U.S.-citizen minor children. De La Rosa testified that he held a steady job and that his partner was unable to work. Although his sister-in-law assisted with childcare, De La Rosa helped his children with homework and took them to and from school because his partner did not drive. De La Rosa claimed that if he had to return to Mexico, his family would remain in the United States, and he would not be able to support them.

An Immigration Judge ("IJ") denied all relief sought by De La Rosa and ordered removal. In denying cancellation of removal, the IJ found that De La Rosa had not established that his children would suffer exceptional and extremely unusual hardship if he were removed; in the alternative, the IJ also denied cancellation in the exercise of his discretion. The BIA dismissed an appeal, holding that the IJ applied the appropriate legal standard and considered all factors relevant

to the hardship determination. The BIA also conducted its own review of the record, finding that De La Rosa had not shown that his children would suffer any hardship "different from that normally experienced in the removal context." The BIA did not address the IJ's alternative decision to deny cancellation in the exercise of his discretion. This timely petition for review followed.[1]

II.

Under 8 U.S.C. § 1229b(b)(1), the Attorney General may cancel an alien's order of removal if "(1) he has been present in the United States for at least 10 years; (2) he has been a person of good moral character; (3) he has not been convicted of certain criminal offenses; and (4) his removal would impose an 'exceptional and extremely unusual' hardship on a close relative who is either a citizen or permanent resident of this country." *Pereida v. Wilkinson*, 141 S. Ct. 754, 759 (2021). Although we have jurisdiction to review final orders of removal under 8 U.S.C. § 1252(a)(1), the jurisdiction-stripping provision in § 1252(a)(2)(B)(i) prevents judicial review of any agency "judgment regarding the granting of relief under section . . . 1229b." The Limited Review Provision, however, provides that:

> Nothing in subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions

[1] We address and deny De La Rosa's petition for review challenging the denial of withholding of removal and CAT protection in a concurrently filed memorandum disposition.

> of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.

8 U.S.C. § 1252(a)(2)(D).

De La Rosa contends that the BIA failed to apply its settled precedent in denying his application for cancellation of removal and that the Limited Review Provision grants us jurisdiction over his petition for review because it presents a question of law or a mixed question of law and fact. The Attorney General contends that because the decision to grant cancellation of removal based on hardship is left to his discretion, the Limited Review Provision does not apply. Resolution of this jurisdictional issue requires us to review our decisions concerning both the jurisdiction-stripping provision and the Limited Review Provision, as well as subsequent Supreme Court decisions about these statutes.

A.

Some twenty years ago, we held that the jurisdiction-stripping provision in § 1252(a)(2)(B)(i) bars judicial review of only those "decisions by the BIA that involve the exercise of discretion." *Montero-Martinez v. Ashcroft*, 277 F.3d 1137, 1144 (9th Cir. 2002). The following year, we held that the denial of cancellation of removal was such a decision. *Romero-Torres v. Ashcroft*, 327 F.3d 887, 888–91 (9th Cir. 2003). In *Romero-Torres*, the petitioner accepted the factual determinations made by an IJ in denying cancellation of removal. *Id.* at 891. However, Romero-Torres challenged the BIA's conclusion that those facts did not establish exceptional and extremely unusual hardship, claiming that this presented an issue of law not covered by the jurisdiction-stripping provision. *Id.* We held that § 1252(a)(2)(B)(i) divested us of jurisdiction because the ultimate decision

about whether the requisite hardship had been established was discretionary. *Id.* Our subsequent decisions concerning the jurisdiction-stripping provision in various contexts similarly focused on whether the challenged agency decision was discretionary. *See, e.g.*, *Torres-Valdivias v. Lynch*, 786 F.3d 1147, 1155 (9th Cir. 2015); *Bazua-Cota v. Gonzales*, 466 F.3d 747, 748 (9th Cir. 2006) (per curiam); *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005); *Medina-Morales v. Ashcroft*, 371 F.3d 520, 525–29 (9th Cir. 2004); *Castillo Castillo v. Garland*, 855 F. App'x. 360, 361 (9th Cir. 2021).[2]

However, the Supreme Court recently rejected our historic approach to § 1252(a)(2)(B)(i), stressing instead that the statute bars not only review of "discretionary" decisions, but also of "any judgment *relating to* the granting of relief" under the statutes mentioned in the jurisdiction-stripping provision. *Patel v. Garland*, 142 S. Ct. 1614, 1622–26 (2022). Although *Patel* rejected our discretionary/nondiscretionary analysis under § 1252(a)(2)(B)(i), it did not address the application of § 1252(a)(2)(D) to hardship determinations, simply noting that the Limited Review Provision was clearly intended to apply to questions of law presented in *all* cases covered by the jurisdiction-stripping provision. *Id.* at 1623.

[2] The Attorney General claims that *Martinez v. Clark*, 36 F.4th 1219 (9th Cir. 2022), also holds we lack jurisdiction under § 1252(a)(2)(B)(i) over all "discretionary" determinations. *Martinez*, however, concerns the jurisdictional bar in 8 U.S.C. § 1226(e). That section expressly states that the "Attorney General's discretionary judgment regarding the application of this section shall not be subject to review," and there is no applicable corollary to the Limited Review Provision.

B.

Patel makes clear that the jurisdiction-stripping provision in 8 U.S.C. § 1252(a)(2)(B)(i) applies to the BIA's decision to deny cancellation of removal to De La Rosa, whether or not characterized as discretionary. The next question is whether the Limited Review Provision restores our jurisdiction. Answering that question again requires a review of our precedents and a recent Supreme Court decision concerning that statute.

We stated shortly after the adoption of the Real ID Act that § 1252(a)(2)(D) "restored judicial review of constitutional claims and questions of law presented in petitions for review of final removal orders." *Martinez-Rosas*, 424 F.3d at 930 (quoting *Fernandez-Ruiz v. Gonzales*, 410 F.3d 585, 587 (9th Cir. 2005)). But in the same case, we stated that the provision "did not alter" our prior holdings that we are barred from reviewing discretionary hardship determinations relating to the denial of cancellation of removal. *Id.* at 929–30.

Then came *Mendez-Castro v. Mukasey*, 552 F.3d 975 (9th Cir. 2009), in which the petitioners sought review of a hardship determination. The petitioners argued that the agency failed to apply its settled precedent about whether a child's special educational needs could establish exceptional and extremely unusual hardship, and failed to engage in a cumulative analysis of the hardship that removal would cause to the petitioners' children. *Id.* at 978. The panel first considered whether it had jurisdiction under the Limited Review Provision to address those claims. *Id.* at 977–78.

The panel stated that "whether an IJ failed to apply a controlling standard governing a discretionary determination is a question over which we have jurisdiction under

§ 1252(a)(2)(D)." *Id.* at 979 (cleaned up); *see also Afridi v. Gonzales*, 442 F.3d 1212, 1218 (9th Cir. 2006) ("The plain language of the REAL ID Act grants jurisdiction . . . to review questions of law presented in petitions for review of final orders of removal, even those pertaining to otherwise discretionary determinations."). It therefore held that it had jurisdiction to determine whether the IJ applied the wrong legal standard in evaluating the petitioners' hardship claims. *Mendez-Castro*, 552 F.3d at 979. But, concluding that the IJ had plainly applied the correct legal standard, the panel rejected that claim as not even "colorable." *Id.* at 979–80.

The panel then concluded it lacked jurisdiction to determine whether the IJ's decision was "factually inconsistent with prior agency hardship determinations." *Id.* at 980. Although it determined jurisdiction was improper, the panel recognized that such a review would involve "an IJ's application of [a] standard to the facts of a case." *Id.* at 981. This, of course, is the classic definition of a "mixed question of law and fact." *See, e.g.*, *U.S. Bank Nat'l Ass'n v. Vill. at Lakeridge, LLC.*, 138 S. Ct. 960, 966 (2018) ("[W]hether the historical facts found satisfy the legal test chosen" is a "so-called 'mixed question' of law and fact" (citing *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n. 19 (1982))). Subsequent decisions also distinguished "pure" questions of law pertaining to the hardship determination from the determination of whether a petitioner had established exceptional and extremely unusual hardship under the controlling legal standards, finding the former reviewable under the Limited Review Provision, but the latter not. *See, e.g.*, *Arteaga-De Alvarez v. Holder*, 704 F.3d 730, 737–39 (9th Cir. 2012); *Jimenez v. Holder*, 378 F. App'x 676, 677–78 (9th Cir. 2010); *Estrada Silva v. Holder*, 362 F. App'x 665, 666 (9th Cir. 2010); *Duarte v. Holder*, 356 F. App'x 72, 74 (9th Cir. 2009).

But the Supreme Court recently held that the phrase "questions of law" in the Limited Review Provision includes not only "pure" questions of law, but also "the application of a legal standard to undisputed or established facts," or "mixed questions of law and fact." *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1067, 1069 (2020). Although the petitioners in *Guerrero-Lasprilla* sought "discretionary" relief from removal, *id.* at 1067, the Court nonetheless concluded that whether the "Board incorrectly applied the equitable tolling due diligence standard to the 'undisputed' (or established) facts is a 'question of law,' which the Limited Review Provision authorizes." *Id.* at 1068.

C.

The most recent interpretations of the jurisdiction-stripping provision in § 1252(a)(2)(B)(i) and the Limited Review Provision in § 1252(a)(2)(D) by our Court and the Supreme Court make at least several things clear. First, because *Patel* holds that the jurisdiction-stripping provision applies to *all* judgments "relating to" relief under § 1229b, we need no longer concern ourselves with whether the relief sought is discretionary. Second, as we recognized in *Mendez-Castro* and the Supreme Court confirmed in *Guerrero-Lasprilla*, the Limited Review Provision restores our jurisdiction to consider "questions of law," including whether the agency applied the correct legal standard in assessing a § 1229b claim for discretionary relief. Third, the phrase "questions of law" in the Limited Review Provision includes the application of a legal standard to undisputed or established facts, or a mixed question of law and fact. The remaining issue is how these principles affect our jurisdiction over De La Rosa's petition for review of the BIA's decision denying cancellation of removal.

To date, our Court has addressed *Guerrero-Lasprilla*'s effect on the reviewability of the hardship determination only in nonprecedential memorandum dispositions. *See, e.g.*, *Nepamuceno Olivo v. Garland*, 856 F. App'x. 642 (9th Cir. 2021); *Hernandez-Velazco v. Garland*, 846 F. App'x 503 (9th Cir. 2021); *Valadez Martinez v. Garland*, 856 F. App'x 644 (9th Cir. 2021); *Leon-Leon v. Garland*, 856 F. App'x 738 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 2738 (2022). These memorandum dispositions have concluded that *Guerrero-Lasprilla* "does nothing to alter this court's jurisprudence under § 1252." *Hernandez-Velazco*, 846 F. App'x at 505 n.1. One reasoned that:

> Long before the Court concluded in *Guerrero-Lasprilla* that the phrase "questions of law" in § 1252(a)(2)(D) includes "the application of a legal standard to undisputed or established facts," we concluded the same. *See Ramadan v. Gonzales*, 479 F.3d 646, 650 (9th Cir. 2007). Accordingly, the principle announced by the Supreme Court in *Guerrero-Lasprilla* has long coexisted with our jurisprudence under § 1252, including our holding that the hardship determination is a subjective, discretionary determination that we lack jurisdiction to review.

Nepamuceno, 856 F. App'x at 643 (cleaned up).[3]

[3] Other memorandum dispositions have also held that the Court lacked jurisdiction to review the hardship determination, but it is unclear whether the petitions presented questions of law or mixed questions of law and fact. *See, e.g.*, *Roques-Juarez v. Barr*, 820 F. App'x 651 (9th

But, even accepting that the ultimate hardship determination is subjective and discretionary, *Mendez-Castro* makes plain that a petition for review of denial of cancellation for lack of exceptional and extremely unusual hardship can present a question of law under the Limited Review Provision. 552 F.3d at 979. And, *Guerrero-Lasprilla* makes clear that the disposition of an application for "discretionary" relief can also present a mixed question of law and fact. 140 S. Ct. at 1067.[4]

Thus, the Supreme Court's most recent jurisprudence at least establishes that the jurisdictional issue in this case is not resolved simply by characterizing the exceptional and extremely unusual hardship determination as discretionary. Instead, we must determine whether the petition for review before us presents a question of law or a mixed question of law and fact.[5]

Cir. 2020); *Villalba-Franco v. Garland*, No. 20-72712, 2021 WL 4876193 (9th Cir. Oct. 19, 2021); *Pimentel-Hernandez v. Garland*, No. 19-72247, 2021 WL 6067013 (9th Cir. Dec. 20, 2021); *Gordillo v. Garland*, No. 20-73734, 2022 WL 1137045 (9th Cir. Apr. 18, 2022); *Borjas-Tranquilino v. Garland*, No. 19-70628, 2022 WL 1537368 (9th Cir. May 16, 2022).

[4] Indeed, after concluding that it "lack[s] jurisdiction to review a challenge to the Agency's discretionary determinations in cancellation of removal proceedings," *Hernandez-Velazco* proceeded to consider the petitioner's legal and constitutional challenges to the hardship determination. 846 F. App'x at 505–06; *see also Aguilar-Osorio v. Garland*, 991 F.3d 997, 999 (9th Cir. 2021).

[5] Although the IJ alternatively denied cancellation in the exercise of his discretion, the BIA did not rely on this ground, so we do not consider it. *See Santiago-Rodriguez v. Holder*, 657 F.3d 820, 829 (9th Cir. 2011) ("In reviewing the decision of the BIA, we consider only the grounds relied upon by that agency." (cleaned up)).

1.

De La Rosa first contends that in denying cancellation of removal, the BIA failed to apply its own settled precedents. "[W]hether an IJ failed to apply a controlling standard governing a discretionary determination is a question over which we have jurisdiction under § 1252(a)(2)(D)." *Mendez-Castro*, 552 F.3d at 979. We therefore have little difficulty concluding that the Limited Review Provision grants us jurisdiction to determine whether this claim is "colorable." *Id.* at 978.

We also have little difficulty in finding in this case that it is not. Both the IJ and the BIA accurately summarized the law applicable to applications for cancellation of removal. The IJ carefully reviewed relevant BIA precedents in explaining the high threshold for hardship, the factors to be considered in determining the level of hardship, and the need to consider those factors in the aggregate. On appeal, the BIA correctly noted that De La Rosa "must demonstrate that his removal will result in hardship to his qualifying relatives 'substantially beyond' the hardship ordinarily associated with a person's ordered departure from the United States." The agency also emphasized that "the Immigration Judge applied the appropriate standard of proof for this relief and that he considered all relevant factors in the aggregate, including the respondent's concerns about securing employment in Mexico to support his family, the respondent's belief that his partner would be unable to work and contribute [to] the family's finances, and the impact of family separation."

The failure of the BIA to expressly cite all the precedents De La Rosa now relies upon does not mean that it did not apply the correct legal standard. Indeed, the IJ's decision accurately recites the legal factors established in both BIA

opinions cited by De La Rosa, *In re Monreal-Aguinaga*, 23 I. & N. Dec. 56 (BIA 2001) and *In re Gonzalez Recinas*, 23 I. & N. Dec. 467 (BIA 2002).

2.

De La Rosa's second claim is that even if the BIA stated the correct legal standard, its application of that standard to the undisputed facts of his case was incorrect. We start from the proposition that "whether the historical facts found satisfy the legal test chosen" is generally a "so-called 'mixed question' of law and fact." *U.S. Bank*, 138 S. Ct. at 966. And, it is now clear that mixed questions of law and fact are subject to our review under the Limited Review Provision. *Guerrero-Lasprilla*, 140 S. Ct. at 1068.

But no Supreme Court case squarely addresses whether the BIA's determination that established facts do not constitute exceptional or extremely or unusual hardship justifying cancellation of removal is such a mixed question. After *Guerrero-Lasprilla*, at least two of our sister Circuits have concluded it is. *See Singh v. Rosen*, 984 F.3d 1142, 1150 (6th Cir. 2021) ("The Board's conclusion resolves a mixed question about whether the facts found by the immigration judge rise to the level of hardship required by the legal test. It does not resolve a discretionary question."); *Gonzalez Galvan v. Garland*, 6 F.4th 552, 555 (4th Cir. 2021) ("[T]his statutory standard of 'exceptional and extremely unusual hardship' presents a mixed question of law and fact, which we retain jurisdiction to review under . . . *Guerrero-Lasprilla v. Barr*."). But, the Fifth Circuit has concluded that the hardship determination remains unreviewable. *See Castillo-Gutierrez v. Garland*, 43 F.4th 477, 481 (5th Cir. 2022) (holding that despite the Limited Review Provision, "the BIA's determination that a citizen would face exceptional and extremely unusual hardship is an

authoritative decision which falls within the scope of § 1252(a)(2)(B)(i) and is beyond our review"), *abrogating Trejo v. Garland*, 3 F.4th 760, 772–73 (5th Cir. 2021). And, in a case in which the Limited Review Provision plainly did not apply to the factual dispute before it, the Third Circuit stated in dictum that, "[i]n any case, a disagreement about weighing hardship factors is a discretionary judgment call, not a legal question." *Hernandez-Morales v. Att'y Gen. of the U.S.*, 977 F.3d 247, 249 (3d Cir. 2020) (cleaned up). The Tenth Circuit has taken a slightly different approach, holding that although the BIA's application of its own standards to a hardship determination is generally a nonreviewable discretionary decision, whether the agency has unreasonably interpreted the hardship condition or whether it has significantly departed from its own standards are reviewable legal questions. *Galeano-Romero v. Barr*, 968 F.3d 1176, 1181–84 (10th Cir. 2020).[6]

Although we find facial merit in the Fourth and Sixth Circuit decisions, *see Nepamuceno*, 856 F. App'x at 643–44 ("As a matter of text, structure, and history, the 'exceptional and extremely unusual hardship' determination under 8 U.S.C. § 1229b(b)(1)(D) appears to be a mixed question of law and fact.") (Bumatay, J., concurring), we need not today take a definitive side in this circuit split. Although we cannot assume Article III jurisdiction arguendo, *see Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93–94 (1998), it is settled that we can assume *statutory* jurisdiction arguendo

[6] The Seventh Circuit has declined to "wrestle these difficult questions to the ground," *Martinez-Baez v. Wilkinson*, 986 F.3d 966, 972 (7th Cir. 2021), but has concluded that the agency's failure to recognize the existence of evidence relevant to the hardship determination presents a question of law subject to the Limited Review Provision, *id.* at 976–78.

when the jurisdictional issue is complex, but the claim asserted clearly lacks merit. *See Bakalian v. Cent. Bank of Republic of Turk.*, 932 F.3d 1229, 1236 (9th Cir. 2019); *see also Butcher v. Wendt*, 975 F.3d 236, 244 (2d Cir. 2020) (collecting cases). We have no qualms with that approach here. *See Tacuri-Tacuri v. Garland*, 998 F.3d 466, 472 (1st Cir. 2021) (adopting the same approach).

De La Rosa argues that he is entitled to relief because "it is clear that Petitioner's two minor United States citizen children will experience financial, emotional, and academic hardship that is far beyond what is to be expected when a family member is removed from the country." But, the BIA's decision that such hardship was not established under the guiding legal standards was also clearly supported by the record. To establish "exceptional and extremely unusual hardship," an applicant must demonstrate that "qualifying relatives would suffer hardship that is substantially different from, or beyond, that which would normally be expected from the deportation of an alien with close family members here." *In re Monreal-Aguinaga*, 23 I. & N. Dec. at 65. This standard is "a higher one than that under the suspension of deportation statute," which requires only a demonstration of "extreme hardship" to a qualifying relative. *Id.* at 59. The agency has identified factors to consider "in the aggregate when assessing exceptional and extremely unusual hardship," including "the ages, health, and circumstances of qualifying . . . relatives." *Id.* at 63–64. And, the BIA has noted that factors should be assessed "in their totality, often termed a 'cumulative' analysis." *In re Gonzalez Recinas*, 23 I. & N. Dec. at 472.

De La Rosa largely focuses on the *financial* hardship to his children that would result from his removal, emphasizing his role as the "sole financial provider for his household."

However, "economic detriment alone is insufficient to support even a finding of extreme hardship." *In re Andazola-Rivas*, 23 I. & N. Dec. 319, 323 (BIA 2002). De La Rosa also expresses concern about his partner's immigration status. But when assessing hardship, the BIA does "not consider the fact that the respondent's extended family is here illegally, rather than in Mexico, as a factor that weighs in [his] favor." *Id.* Even cumulatively, De La Rosa has not shown that the hardship that the agency found his U.S.-citizen children would face if he were removed would amount to suffering substantially beyond the hardship usually associated with a parent's removal. Therefore, his hardship claim fails on the merits, and we leave for another day whether the agency's hardship determination can present a mixed question of law and fact subject to our jurisdiction under the Limited Review Provision.

PETITION DENIED.