

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 24, 2026

Christopher M. Wolpert
Clerk of Court

ALONSO MARTINEZ-PEREZ,

Petitioner,

v.

TODD BLANCHE*, United States
Attorney General,

Respondent.

No. 24-9513
(Petition for Review)

ORDER AND JUDGMENT**

Before **TYMKOVICH, MATHESON, and PHILLIPS**, Circuit Judges.

Cancellation of a noncitizen’s removal may be granted if deportation of that person would “result in exceptional and extremely unusual hardship” on a parent, spouse, or child who is a United States citizen or a lawful permanent resident.

* Todd Blanche has been substituted as Respondent. *See* Fed. R. App. P. 43(c)(2).

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

8 U.S.C. § 1229b(b)(1)(D). A child must be under 21 years old. *See* 8 U.S.C. § 1101(b)(1).

More than 15 years ago, Alonso Martinez-Perez applied for cancellation of removal. He claimed his deportation would impose a hardship on his daughter, a United States citizen who then was 16 years old. But by the time an immigration judge granted his application, his daughter was 26. The government appealed, arguing that the daughter's age made Mr. Martinez ineligible for cancellation of removal. The Board of Immigration Appeals agreed and ordered Mr. Martinez's removal to Mexico. Mr. Martinez petitions for review of the Board's decision.

After he filed his opening brief, we held that a cancellation applicant seeking to avoid hardship to a child is eligible for relief only if the child is under 21 when the immigration judge rules on the application. *See Rangel-Fuentes v. Bondi*, 155 F.4th 1138, 1145 (10th Cir. 2025). Under *Rangel-Fuentes*, the Board correctly decided Mr. Martinez was not eligible for cancellation of removal.

Yet Mr. Martinez argues he should still prevail based on “long-standing judicial precedent regarding the application of equitable principles to missed deadlines.” Pet'r Reply Br. at 7.¹

¹ Mr. Martinez raises this issue for the first time in his reply brief. We typically deem waived new arguments appearing in a reply brief. *See Wheeler v. Comm'r*, 521 F.3d 1289, 1291 (10th Cir. 2008). But we decline to do so here because, after he had filed his opening brief, we decided *Rangel-Fuentes*, which affected his cancellation application. In his opening brief, he argued that the Board's interpretation of the cancellation statute should not apply retroactively. He abandoned that argument in his reply brief in favor of the equitable-tolling argument.

But he failed to exhaust this argument before the agency. He contends that he came close enough when he urged the Board to “adopt an alternate age-calculation method” to compensate for the delay in processing his cancellation application. Pet’r Reply Br. at 8. We disagree. To exhaust the argument, he needed to “present the *same specific legal theory*” to the Board that he presses now. *Miguel-Peña v. Garland*, 94 F.4th 1145, 1154 (10th Cir. 2024) (internal quotation marks omitted). Although he sought relief for the delay in processing his application, he did not do so on an equitable-tolling theory. Nor did the Board address equitable tolling.

We exercise our discretion to raise exhaustion for two reasons. *See id.* at 1157. First, because Mr. Martinez presented the equitable-tolling argument in his reply brief, the government has not had an opportunity to raise exhaustion. Second, we “decline to deprive the agency of the opportunity to address” the equitable-tolling issue in the first instance. *Id.* at 1158.

Mr. Martinez’s remaining arguments depend on the availability of equitable tolling, so we need not consider them.

* * *

We deny the petition for review.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge