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IMMIGRATION

SCOTUS Bars Immigrants From Even Applying To Stay If Law Is Ambiguous

The government took advantage of Pereida's conviction to argue that he was not eligible for cancellation of removal because he had committed a crime involving moral turpitude.

By LORELEI LAIRD

March 12, 2021 at 1:47 PM

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There is a concept in immigration law called a “crime involving moral turpitude.” In certain situations, this is the legal standard for whether somebody can be deported, regardless of whether they have a green card or would otherwise be eligible for relief from deportation. Given the stakes, you’d think that somebody would have come up with a clear standard for what exactly a “crime involving moral turpitude” is, but you would be wrong. The 9th Circuit [refused to void it for vagueness back in 1957](#), and ever since then, courts have applied it using a SCOTUS-blessed test called the categorical approach that requires them to look carefully at the facts.

The Supreme Court threw this fact-based approach out the window on March 4, giving courts permission to just turn people down when there’s any sort of doubt. In [Pereida v.](#)

[Wilkinson](#), it held that when it's not clear from the record whether a crime involved "moral turpitude" (the phrase would be funny if it didn't ruin lives), immigrants don't get to make their cases. ✕

Defendant Clemente Avelino Pereida entered the United States without authorization from Mexico in the late 1990s; the federal government started trying to deport him in 2009. He applied for cancellation of removal, which is available to certain people whose deportation would be a hardship for a family member who is a U.S. citizen or green card holder. While that case was pending, Pereida committed the shocking, unforgivable crime of trying to get a job using a false Social Security card. Nebraska charged him with misdemeanor criminal impersonation and he pleaded no contest. [According to SCOTUSBlog](#), he paid a \$100 fine and served no jail time.

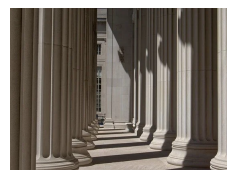
The government took advantage of Pereida's conviction to argue that he was not eligible for cancellation of removal because he had committed a crime involving moral turpitude. That's where the trouble came in. The Nebraska statute of conviction had four parts, and it wasn't clear to the Board of Immigration Appeals and the 8th Circuit which he was convicted of violating. However they decided that Pereida had the burden of proving he was eligible for relief, and that he hadn't carried it. The cert petition asked the Court whether that was correct.

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Justice Gorsuch — the cuddliest Trump appointee, but a Trump appointee all the same — wrote for the majority that it was. That was based on [the plain language of the INA](#), and I don't have any issues with reading the law to say what it says. In fact, I urge any courts that are still dealing with Trump-era immigration policies to pay close attention to the text of the INA, since the Trump administration has stretched certain sections well beyond their breaking points.

However, Gorsuch went on to also reject Pereira's secondary argument that the immigration court should have applied the "modified categorical approach" to interpret the Nebraska statute. This is a precedent that's been reiterated by SCOTUS several times, which requires courts examining statutes of conviction to decide whether an immigrant can apply for removal based on the statute the immigrant was convicted of. Nonetheless, Gorsuch says courts have to look at the facts rather than the law, which nullifies a law-based categorical approach. Without this approach, fewer people will be eligible for cancellation of removal, which means fewer people will be able to even make their cases to stay in the U.S.

By the way, Gorsuch seems to be concerned that Pereira probably *was* convicted of a fraud-related crime. But who gives a shit? He *applied for a job*, using fake papers because that's what he had to do to get a job. If this is what I, as a suburban white woman, am being protected from at the cost of destroying Pereira's family, I do not want it. I also think any such concerns (which, admittedly, Gorsuch didn't express; he's just tainted by association with Trump) are fake AF. Women are killed by their husbands and boyfriends [at alarming rates](#), but somehow, that never seems to matter when men's right to [post threatening "rap lyrics"](#) is at stake.

This is going to be my last immigration column for ATL; I got a real job. If there's one thought I want to leave you with, it's this: *keep paying attention*. As this decision shows, everything is not magically fixed because Joe Biden is president. Immigration has been messed up for well over a century, and a lot of that is because racism and xenophobia are baked into the systems. Things are not going to change without someone putting in some effort, and that is our job as Americans.

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Lorelei Laird is a freelance writer specializing in the law, and the only person you know who still has an “I Believe Anita Hill” bumper sticker. Find her at wordofthelaird.com.

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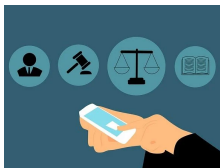


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