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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARLOS IVAN PLANCARTE-
TOFOLLA, AKA Carlos Ivan Plancarte,
AKA Carlos Ivan Plancartetafoll,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 20-70808

Agency No. A205-322-175

MEMORANDUM*

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

Argued and Submitted November 18, 2021
San Francisco, California

Before: THOMAS and McKEOWN, Circuit Judges, and MOLLOY,** District
Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The Honorable Donald W. Molloy, Senior District Judge for the
District of Montana, sitting by designation.

Carlos Ivan Plancarte-Tofolla petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") denial of his application for withholding of removal and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We deny Plancarte-Tofolla's petition.

I

Substantial evidence supports the BIA's conclusion that Plancarte-Tofolla is not eligible for withholding of removal under 8 U.S.C. § 1231(b)(3). Plancarte-Tofolla's grandparents' speculation that family members were killed by the cartel on a mistaken belief of a family relationship to a deceased drug lord does not establish the requisite nexus between the murders and the espoused social group of imputed family members of Enrique Plancarte or an imputed political opinion. *See Nagoulko v. I.N.S.*, 333 F.3d 1012, 1018 (9th Cir. 2003).

Substantial evidence also supports the BIA's conclusion that Plancarte-Tofolla has not shown a clear probability that he will be harmed upon return to Mexico. The BIA did not err in recognizing that the continued unharmed presence of Plancarte-Tofolla's relatives and Enrique's daughter Melissa Plancarte undermines his claim of harm upon return when those individuals continue to bear the family surname and thus remain part of his particular social group. *See Kumar*

v. Gonzales, 444 F.3d 1043, 1055 (9th Cir. 2006) (unharmful parents of noncitizen remaining in India did not undercut noncitizen's claim of reasonable fear of persecution because they were not members of the noncitizen's protected group).

Substantial evidence also supports the BIA's denial of Plancarte-Tofolla's CAT claim. Plancarte-Tofolla does not meet the standard for relief by claiming "unspecified" violence to a family member and "generalized violence" in the country. *Santos-Ponce v. Wilkinson*, 987 F.3d 886, 891 (9th Cir. 2021).

II

Any error the BIA may have made in failing to consider all of the factors under *Cui v. Mukasey*, 538 F.3d 1289, 1292 (9th Cir. 2008), in denying to continue Plancarte-Tofolla's removal hearing was harmless because the request was not based on the merits of his petition, but rather to pursue a separate application for cancellation of removal. As of the oral argument date, well over three years after the continuance request was denied, Plancarte-Tofolla had still not filed an application for cancellation of removal. Therefore, Plancarte-Tofolla did not suffer any prejudice in the denial of the continuance request.

III

We deny Plancarte-Tofolla's motion to dismiss (Dkt. 28) challenging the IJ's subject matter jurisdiction over his case due to the deficiencies in his Notice to

Appear. Plancarte-Tofolla's challenge itself is foreclosed by Circuit precedent. *See United States v. Bastide-Hernandez*, 3 F.4th 1193, 1196 (9th Cir. 2021); *Aguilar Fermin v. Barr*, 958 F.3d 887, 894 (9th Cir. 2020). And we lack appellate jurisdiction over Plancarte-Tofolla's new statutory construction argument raised for the first time on appeal because that argument was not exhausted before the agency. *Alvarado v. Holder*, 759 F.3d 1121, 1127–28 (9th Cir. 2014).

PETITION DENIED.