

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 3 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CARLOS ALFREDO CASTRO
PACHECO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-410

Agency No.
A205-315-602

MEMORANDUM*

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

Submitted June 26, 2023**

Before: CANBY, S.R. THOMAS, and CHRISTEN, Circuit Judges.

Carlos Alfredo Castro Pacheco, native and citizen of Guatemala, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motions to terminate and to reopen and removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to terminate, *Dominguez v. Barr*, 975 F.3d 725, 734 (9th Cir.

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

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

2020), and the denial of a motion to reopen, *Bonilla v. Lynch*, 840 F.3d 575, 581 (9th Cir. 2016). We deny in part, grant in part, and remand in part the petition for review.

The BIA did not abuse its discretion in denying Castro Pacheco's motion to terminate proceedings where his challenge to the immigration court's jurisdiction is foreclosed by *United States v. Bastide-Hernandez*, 39 F.4th 1187, 1188, 1193 (9th Cir. 2022) (en banc) (lack of hearing information in notice to appear does not deprive immigration court of subject matter jurisdiction, and 8 C.F.R. § 1003.14(a) is satisfied when later notice provides hearing information).

The BIA did not abuse its discretion in denying Castro Pacheco's motion to reopen based on ineffective assistance of counsel where he failed to demonstrate plausible grounds for relief necessary to establish prejudice. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 828 (9th Cir. 2003) (no prejudice established where motion failed to establish plausible grounds for relief); *see also Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (an applicant's "desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground"). Castro Pacheco's contentions that the BIA applied an incorrect standard or otherwise erred in its analysis fail as unsupported by the record.

We do not reach Castro Pacheco's contentions regarding whether he complied with *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), because the

BIA did not deny relief on that ground. *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.” (citation and internal quotation marks omitted)).

In light of this disposition, we do not reach Castro Pacheco’s contentions regarding the one-year filing deadline for asylum. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts and agencies are not required to decide issues unnecessary to the results they reach).

Castro Pacheco requests remand for the agency to consider his cancellation of removal claim. Although he did not exhaust this claim before the agency, the agency did not have the benefit of our decision in *Quebrado-Cantor v. Garland*, 17 F.4th 869, 873-74 (9th Cir. 2021) (notice of hearing did not cure a deficient notice to appear for purposes of the stop-time rule). Thus, we grant the petition for review in part and remand Castro Pacheco’s cancellation of removal claim for further proceedings consistent with this disposition. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam); *see also Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (exhaustion not required where resort to the agency would be futile).

The motion for a stay of removal is granted. The stay of removal remains in place until the mandate issues.

The parties shall bear their own costs on appeal.

**PETITION FOR REVIEW DENIED in part; GRANTED in part;
REMANDED.**