

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 12 2023

FOR THE NINTH CIRCUIT

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

JOSE DOMINGO CISNEROS SUAREZ,

No. 22-555

Petitioner,

Agency No. A092-740-318

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted September 12, 2023**
San Francisco, California

Before: VANDYKE, SANCHEZ, Circuit Judges, and MURPHY,*** District
Judge.

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

** Because the court is of the unanimous opinion that the facts and legal arguments are adequately presented in the briefs and record and that oral argument would not significantly aid the decisional process, we submit the matter on the briefs and record without oral argument. Fed. R. App. P. 34(a)(2).

*** The Honorable Stephen J. Murphy III, United States District Judge for the Eastern District of Michigan, sitting by designation.

Petitioner Jose Domingo Cisneros Suarez seeks review of a Board of Immigration Appeals (BIA) decision affirming the denial by the Immigration Judge (IJ) of asylum, withholding of removal, or deferral of removal under the Convention Against Torture (CAT).

As a preliminary matter, the government contends we lack jurisdiction because the petition was filed more than thirty days after the Department of Homeland Security issued its order reinstating Petitioner's removal. The government argues that recent Supreme Court precedent—specifically, *Nasrallah v. Barr*, 140 S. Ct. 1683 (2020), and *Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021)—undermine our previous rule that a “reinstated removal order does not become final until the reasonable fear of persecution and withholding of removal proceedings are complete.” *Ortiz-Alfaro v. Holder*, 694 F.3d 955, 958 (9th Cir. 2012). Our court recently held our old rule remains valid following these recent Supreme Court decisions. *See Alonso-Juarez v. Garland*, No. 15-72821, slip op. at 3–4 (9th Cir. Sept. 8, 2023). Because Petitioner filed his petition for review within thirty days after the BIA affirmed the IJ's denial of withholding, his petition is timely and we have jurisdiction under 8 U.S.C. § 1252. *Id.*

Reaching the merits, we deny the petition. Where, as here, “the BIA issues its own decision but relies in part on the immigration judge's reasoning, we review both decisions.” *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 702 (9th Cir. 2022)

(quotation omitted). We review the agency’s legal conclusions de novo and its factual findings for substantial evidence. *Ruiz-Colmenares v. Garland*, 25 F.4th 742, 748 (9th Cir. 2022) (quotation omitted). To show that the agency lacked substantial evidence, the petitioner must show that “any reasonable adjudicator would be *compelled* to conclude to the contrary.” *Id.* (quotation omitted).

“Withholding of removal requires the petitioner to demonstrate his or her life or freedom would be threatened in that country because of the petitioner’s race, religion, nationality, membership in a particular social group, or political opinion.” *Tamang v. Holder*, 598 F.3d 1083, 1091 (9th Cir. 2010) (cleaned up). The petitioner may show that his life or freedom would be endangered by showing either past persecution, which creates a presumption of future persecution, or “through an independent showing of clear probability of future persecution.” *Id.* To show a “clear probability,” the petitioner must show it is “more likely than not” that he will suffer persecution on account of a protected ground. *Id.* (quotation omitted).

Petitioner raises no objection to the BIA’s determination that he waived his CAT claim, any claim based on his nationality or political opinion, and any objection to the IJ’s finding that he did not suffer past persecution. *W. Radio Servs. Co. v. Qwest Corp.*, 678 F.3d 970, 979 (9th Cir. 2012). This petition thus raises one straightforward issue: does the record compel the conclusion that Petitioner will

more likely than not suffer persecution on account of his family membership if returned to Ecuador? It does not.

The BIA found that Petitioner “ha[d] not established that he was or would be persecuted on account of his membership” in the “Suarez Maridueno family.” Substantial evidence supports the agency’s finding that Petitioner does not face a “clear probability” of future persecution upon his return to Ecuador. *Tamang*, 598 F.3d at 1091. Petitioner’s mother, also a Suarez, returned to Ecuador for a month in 2015 to investigate the murders of her nephew’s family, and there is no evidence she suffered any harm. *See Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1091 (9th Cir. 2005) (reasoning that “return trips” to the country where persecution was feared undermines the likelihood of future persecution). Petitioner was also able to safely relocate within Ecuador when he returned to Ecuador in 1996, living there for three years without suffering harm.

Petitioner has not shown the record compels the conclusion that he will more likely than not suffer persecution on account of his family membership. Petitioner argues that the murders of his cousin Robin and Robin’s immediate family were fulfilling a threat issued against Robin’s family to stop Gladys, Robin’s wife, from prosecuting two Colombian mafia members. But the agency reasonably found that the murders were not due to Robin or Gladys’s involvement in prosecuting Colombian mafia members and that the record did not establish that “the assailants

have a vendetta against every individual in the ‘Suarez Mariduena family.’” Given the inconsistencies in Petitioner’s and his mother’s testimony about these murders, the agency reasonably found their testimony unpersuasive. *See Garland v. Ming Dai*, 141 S. Ct. 1669, 1681 (2021) (observing that inconsistencies may render testimony unpersuasive). Petitioner does not show the agency’s finding lacks substantial evidence.

Petitioner also argues that the agency erred in not finding systematic persecution of the Suarez Mariduena families, such that a “pattern of persecution closely tied to” Petitioner would be shown to exist. *Arriaga-Barrientos v. INS*, 937 F.2d 411, 414 (9th Cir. 1991). He contends that the agency erred in discounting the murders of two other “individuals of the Mariduena family,” and in “discounting the relationship between the Suarez and Mariduena families.” Because the BIA concluded that he did not challenge the IJ’s finding that there was insufficient evidence these latter murders occurred and because Petitioner does not challenge that determination here, we do not disturb it. And even if the record compelled the conclusion that the murders occurred, two sets of unrelated murders do not compel the conclusion that someone is “systematic[ally]” persecuting members of Petitioner’s family, especially as the record does not reveal a relationship between the murders. *See Prasad v. INS*, 47 F.3d 336, 340 (9th Cir. 1995) (“[A]ttacks on

family members do not necessarily establish a well-founded fear of persecution absent a pattern of persecution tied to the petitioner[.]).

Finally, Petitioner's remaining two arguments, that the agency ignored his mother's testimony and "discount[ed] the relationship between the Suarez and Mariduenas families," are not borne out by the agency's decisions.

PETITION DENIED.