

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 16 2026

FOR THE NINTH CIRCUIT

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

GILBERTO ROSAS-NESTA,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 25-6246

Agency No.
A088-767-458

MEMORANDUM*

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

Submitted September 14, 2026**
Phoenix, Arizona

Before: BADE and TUNG, Circuit Judges, and KANE, District Judge.***

Gilberto Rosas-Nesta, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' (BIA) decision denying his motion to terminate removal proceedings and affirming an immigration judge's (IJ) denial of his

* 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).

*** The Honorable Yvette Kane, United States District Judge for the Middle District of Pennsylvania, sitting by designation.

application for cancellation of removal and voluntary departure. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

1. We review the denial of a motion to terminate for abuse of discretion. *See Dominguez v. Barr*, 975 F.3d 725, 734 (9th Cir. 2020). Unless the BIA articulates specific reasons to the contrary, termination is mandatory if “[t]he parties jointly filed a motion to terminate, or one party filed a motion to terminate and the other party affirmatively indicated its non-opposition.” 8 C.F.R. § 1003.1(m)(1)(i)(G). The BIA also has discretion to terminate removal proceedings in other circumstances, but it must “consider the reason termination is sought.” 8 C.F.R. § 1003.1(m)(1)(ii). Rosas-Nesta’s motion was not a joint motion, and the government did not take any action affirmatively indicating its non-opposition to the request. Nor did Rosas-Nesta articulate any basis for seeking termination. Accordingly, the BIA did not abuse its discretion in denying the motion to terminate.¹

2. Rosas-Nesta argues that he was deprived of a fair hearing in violation of due process because his hearing transcripts contain “indiscernible” and

¹ Rosas-Nesta argues in his reply brief that the regulations active in 2021 assumed non-opposition from failure to expressly respond to a motion. He did not so argue in his opening brief; instead, he argued that his motion satisfied the since-promulgated rules. “Because we do not consider issues raised for the first time in reply briefs, we deem this late-raised argument forfeited. *Vasquez v. Rackauckas*, 734 F.3d 1025, 1054 (9th Cir. 2013).

“untranslated” entries. We review due process claims de novo. *Olea-Serefina v. Garland*, 34 F.4th 856, 866 (9th Cir. 2022). To prevail on a due process claim, the petitioner must demonstrate (1) that “the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting [his] case,” and (2) “prejudice, which means that the outcome of the proceeding may have been affected by the alleged violation.” *Id.* (quoting *Lacsina Pangilinan v. Holder*, 568 F.3d 708, 709 (9th Cir. 2009)). Rosas-Nesta has not identified any missing facts or arguments that he was unable to raise to the BIA due to the deficiencies in the transcript, nor has he shown that any deficiency in the hearing transcripts may have affected the outcome of his proceeding. *See Zia v. Garland*, 112 F.4th 1194, 1203 (9th Cir. 2024) (Without a showing of fundamental unfairness or prejudice, “a mere failure of transcription . . . does not rise to the level of a due process violation.” (citation omitted)). Accordingly, Rosas-Nesta has not established a due process violation.

3. Substantial evidence supports the agency’s determination that Rosas-Nesta’s removal would not result in “exceptional and extremely unusual hardship” to his U.S.-citizen son.² *See Gonzalez-Juarez v. Bondi*, 137 F.4th 996,

² Rosas-Nesta argues for the first time that his other U.S.-citizen children are qualifying relatives and should have been considered in the agency’s hardship determination. This argument was not exhausted before the BIA, and we cannot now consider it. *See* 8 U.S.C. § 1252(d)(1); *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023).

1002–03 (9th Cir. 2025). There is no evidence in the record suggesting that his son has serious health issues or compelling special needs in school. *See Fernandez v. Mukasey*, 520 F.3d 965, 966 (9th Cir. 2008) (per curiam). The agency appropriately considered financial hardship when it determined that even if there was evidence that Rosas-Nesta financially supported his family in Utah, there was no evidence he financially supported his sole qualifying relative, who lives in a different state and who he had not seen in several years. Finally, Rosas-Nesta’s country conditions evidence does not compel the conclusion that his son would suffer exceptional and extremely unusual emotional hardship, considering it is undisputed that his son would remain in the United States. Because the record does not compel a contrary conclusion, we uphold the agency’s hardship determination. *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019).

4. Finally, Rosas-Nesta argues that the agency erred in denying his request for voluntary departure. We lack jurisdiction to reweigh the agency’s exercise of discretion, and therefore, our review is limited to “constitutional claims or questions of law,” which includes “whether the BIA and IJ failed to consider the appropriate factors.” *Zamorano v. Garland*, 2 F.4th 1213, 1221 (9th Cir. 2021) (citations omitted); *see* 8 U.S.C. § 1252(a)(2)(B)(i). The factors Rosas-Nesta identifies in his petition for review are the same factors the BIA considered when it declined to disturb the IJ’s discretionary denial of voluntary departure.

Accordingly, the agency did not legally err in denying Rosas-Nesta voluntary departure.

PETITION DENIED.