NOT FOR PUBLICATION

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WALBERTO VILLAFUERTE-HERNANDEZ, Petitioner, v. TODD BLANCHE, Acting Attorney General, Respondent.	Nos. 17-70408; 23-2919 Agency No. A205-150-359 MEMORANDUM[*]

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

Submitted October 27, 2026[**]
Phoenix, Arizona

Before: GRABER, HURWITZ, and BADE, Circuit Judges.

In these consolidated cases, Walberto Villafuerte-Hernandez, a native and citizen of Mexico, petitions for review of two decisions of the Board of Immigration Appeals ("BIA"). The first decision was the BIA's dismissal of Villafuerte-

[*] 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).

Hernandez's appeal from an order of an Immigration Judge ("IJ") denying asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). The second decision was the BIA's denial of a motion to reopen. We have jurisdiction under 8 U.S.C. § 1252(a). We deny the petitions.

1. An application for asylum must be filed within one year of the applicant's entry into the United States. 8 U.S.C. § 1158(a)(2)(B). Untimely filing can be excused if the applicant demonstrates "extraordinary circumstances related to the delay." *Id.* § 1158(a)(2)(D). Substantial evidence supports the BIA's conclusion that Villafuerte-Hernandez failed to meet his burden of demonstrating that his mental health problems were "directly related" to his failure to file a timely application and that "the delay was reasonable under the circumstances." *Ruiz v. Bondi*, 163 F.4th 586, 599 (9th Cir. 2025) (quoting 8 C.F.R. § 1208.4(a)(5)). The BIA permissibly concluded that Villafuerte-Hernandez's testimony suggested that other reasons—such as his stated desire not to seek legal status and his unfamiliarity with asylum procedure—explained the delay of more than ten years between his entry and the filing of an application. And the BIA permissibly concluded that such a delay was not reasonable under the circumstances. The record does not compel a contrary conclusion, and we see no legal error in the BIA's analysis.

2. To qualify for withholding of removal, an applicant must belong to a cognizable social group that is defined with particularity, socially distinct within the

society in question, and composed of those sharing an immutable characteristic. *See Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1077 (9th Cir. 2020). Substantial evidence supports the agency's conclusion that Villafuerte-Hernandez's proposed social group of "immediate family members who have been abused by their father" is not socially distinct within Mexico. *See Gutierrez-Alm v. Garland*, 62 F.4th 1186, 1199 (9th Cir. 2023) (holding that we review for substantial evidence the agency's determination of social distinction). Villafuerte-Hernandez's proposed group extends to persons who are presently of all ages. Evidence that children in Mexico are viewed as their parents' property and that Mexico has passed laws aimed at protecting children from abuse does not compel the conclusion that people of all ages who were once abused by immediate family members "would be recognized, in the society in question, as a discrete class of persons." *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1090 (9th Cir. 2013) (en banc) (cleaned up).

3. CAT protection is available to an applicant who is "more likely than not" to face torture upon removal. *Guo v. Sessions*, 897 F.3d 1208, 1217 (9th Cir. 2018) (cleaned up). Villafuerte-Hernandez argues that his father and uncle will likely abuse him upon return to Mexico. But, Villafuerte-Hernandez had not been abused by his father for eighteen years before the removal proceedings and no longer knows where his father lives or even if he is alive. And nothing in the record suggests that Villafuerte-Hernandez's uncle would seek him out. The record does

not compel the conclusion that Villafuerte-Hernandez likely faces torture if returned to Mexico.

4. An applicant seeking cancellation of removal must establish "a reasonable likelihood" that removal would result in "exceptional and extremely unusual hardship" to a qualifying U.S. citizen relative. *Fonseca-Fonseca v. Garland*, 76 F.4th 1176, 1179-80 (9th Cir. 2023); 8 U.S.C. § 1229b(b)(1)(D). Villafuerte-Hernandez argues that his citizen children will suffer hardship from changing schools, reduced family earning capacity, and exposure to the abuse he suffered as a child. But, the record does not compel the conclusion that it is reasonably likely that, upon removal, Villafuerte-Hernandez will reconnect with any abusive family member. And the remaining hardship here, from changed community or reduced income, is not "substantially different from or beyond that which would ordinarily be expected to result from [Villafuerte-Hernandez's] removal." *Wilkinson v. Garland*, 601 U.S. 209, 215 (2024) (cleaned up).

PETITIONS DENIED.[1]

[1] The temporary stay of removal entered pursuant to General Order 6.4(c) will dissolve upon issuance of the mandate. Judge Bade would deny the motion for a stay of removal and dissolve the temporary administrative stay, effective immediately.