

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 14 2022

FOR THE NINTH CIRCUIT

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

NELSON RODRIGUEZ-OLIVERA,

No. 17-72037

Petitioner,

Agency No. A200-149-614

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted December 9, 2022**
Seattle, Washington

Before: McKEOWN, MILLER, and MENDOZA, Circuit Judges.

Nelson Rodriguez-Olivera, a native and citizen of Honduras, petitions for review of an order of the Board of Immigration Appeals affirming an immigration judge's denial of his applications for asylum, withholding of removal, and

* 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).

protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

We review the agency's findings of fact for substantial evidence, and we review questions of law de novo. *Ruiz-Colmenares v. Garland*, 25 F.4th 742, 748 (9th Cir. 2022).

1. The agency had jurisdiction over these proceedings even though the initial notice to appear lacked time and place information for the first removal hearing. *See Karingithi v. Whitaker*, 913 F.3d 1158, 1160 (9th Cir. 2019).

2. Rodriguez-Olivera's asylum claim is time-barred because he waited six years to file the claim and did not show how a material change in circumstances or an extraordinary circumstance caused the delay in filing. *See* 8 U.S.C. § 1158(a)(2)(D); 8 C.F.R. § 1208.4(a). First, Rodriguez-Olivera's ignorance of asylum's time bar is not an extraordinary circumstance. *See Alquijay v. Garland*, 40 F.4th 1099, 1103–04 (9th Cir. 2022). Second, substantial evidence supports the Board's finding that the continuation of violence in Honduras was not a changed circumstance sufficient to excuse his late filing. Rodriguez-Olivera has not pointed to anything in his testimony or the country conditions report that strengthened his application between 2007, when he entered the United States, and 2013, when he filed for asylum after being arrested. *See Hussain v. Rosen*, 985 F.3d 634, 646 (9th

Cir. 2021) (recognizing that a fear of “generalized violence” does not give rise to eligibility for asylum).

3. For Rodriguez-Olivera’s withholding claims, the Board applied the correct legal standards, and substantial evidence supports the denial of relief. Rodriguez-Olivera argues that he faces persecution on the basis of his membership in four social groups: (1) poor Honduran victims of crime identified by the police, (2) Honduran returnees perceived as wealthy, (3) Honduran men resisting cooperation with gang activities, and (4) members of the Rodriguez-Olivera family.

The Board determined that the first three groups are not cognizable because they are not “perceived, considered, or recognized by Honduran society to be distinct social groups.” *See Conde Quevedo v. Barr*, 947 F.3d 1238, 1242 (9th Cir. 2020). As required by *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014), the Board rejected these social groups using case-specific findings, noting that there was nothing in the record to show that the groups are recognized by Honduran society as distinct.

For the fourth proposed group, substantial evidence supports the Board’s conclusion that there was no nexus between the Rodriguez-Olivera family and any feared persecution. The Board found that there was no evidence that the kidnapers of Rodriguez-Olivera’s brother “had any animus against the family.” Instead, the

Board noted that the kidnappers demanded a ransom, making the event “a simple criminal act and an attempt at extortion by gang members.” *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (“[D]esire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground.”).

4. For Rodriguez-Olivera’s CAT claim, the Board applied the correct legal standards, and substantial evidence supports the denial of relief. Substantial evidence supports the Board’s findings that Rodriguez-Olivera’s past harm was not torture because it did not take place with the acquiescence of the government and was not sufficiently severe. *See Edu v. Holder*, 624 F.3d 1137, 1145 (9th Cir. 2010) (noting that past torture is the principal factor in deciding likelihood of future torture). There was no government acquiescence because Rodriguez-Olivera’s instances of past harm were all at the hands of gangs, and frequently the police helped him or his family members. The past harm was not severe enough to constitute torture because it included only one stabbing, one confrontation at gunpoint, and one further confrontation from which he was able to flee. *Guo v. Sessions*, 897 F.3d 1208, 1217 (9th Cir. 2018) (explaining that torture is “more severe than persecution”) (quoting *Nuru v. Gonzales*, 404 F.3d 1207, 1224 (9th Cir. 2005)).

Substantial evidence also supports the Board’s finding that Rodriguez-Olivera was not more likely than not to be tortured upon return to Honduras. While country conditions evidence shows that there is torture in Honduras in the form of police violence, that is not the type of torture Rodriguez says he experienced in the past or fears in the future.

5. We need not reach the issue of administrative closure because Rodriguez-Olivera no longer has any remaining claims for relief or pending petitions that might affect his immigration proceedings. *See Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 893–94 (9th Cir. 2018).

6. Rodriguez-Olivera argues the Board failed to address various other issues. Those issues either were not properly raised or were not necessary to support the Board’s decision. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004).

The motion for a stay of removal (Dkt. No. 1) is denied. The temporary stay of removal is lifted.

PETITION DENIED.