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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE MISAEL FLORES-HERNANDEZ; GERSON ALEXANDER FLORES-HERNANDEZ, Petitioners, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 20-73188 Agency Nos. A208-998-385 A208-998-386 MEMORANDUM*

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

Submitted November 23, 2022**
Phoenix, Arizona

Before: PAEZ, CLIFTON, and WATFORD, Circuit Judges.

* 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).

Jose Misael Flores-Hernandez and Gerson Alexander Flores-Hernandez petition for review of a Board of Immigration Appeals (BIA) decision affirming the denial of their applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT) and dismissing their appeal. The BIA found that the Immigration Judge (IJ) adequately explained her decision and denied petitioners' due process claim. We deny the petition.

1. The BIA correctly held that the IJ adequately explained why petitioners' applications were denied. The IJ stated that petitioners did not meet their burden to show that they suffered harm rising to the level of persecution; that they were or would be harmed on account of a protected ground; that the Honduran government was or would be unable or unwilling to protect them; and that they could not reasonably relocate to avoid future harm. With respect to petitioners' CAT claim, the IJ determined that petitioners did not establish that it is more likely than not that they would be tortured by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity.

Petitioners contend that the IJ failed to make any credibility determinations, but the IJ specifically found both petitioners credible. Petitioners also contend that the IJ failed to determine whether their proposed particular social group was cognizable, but the IJ's decision assumed the validity of petitioners' proposed social group and rested instead on the lack of required nexus between the harm

petitioners experienced and their membership in their family. On this record, the BIA correctly ruled that the IJ decision was adequately explained.

2. Petitioners argue that the IJ exhibited bias against them by mocking petitioner Gerson Flores-Hernandez and limiting the testimony of both petitioners to one hour and fifteen minutes. To prevail on this due process challenge, petitioners must show both "error and substantial prejudice." *Grigoryan v. Barr*, 959 F.3d 1233, 1240 (9th Cir. 2020) (quoting *Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000)). "Substantial prejudice is established when the outcome of the proceeding may have been affected by the alleged violation." *Id.* (quoting *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000)).

With respect to the allegation of mocking, the IJ's questioning was at times aggressive and impatient, even antagonistic. But "a mere showing that the IJ was unfriendly, confrontational, or acted in an adversarial manner is not enough" to establish that the underlying proceeding was fundamentally unfair, such that petitioners were prevented from reasonably presenting their case. *Rizo v. Lynch*, 810 F.3d 688, 693 (9th Cir. 2016). Here, there is no evidence that petitioners or their counsel were prevented from presenting their case because of the IJ's questioning. *Cf. Colmenar*, 210 F.3d at 971 (granting petition where the IJ refused to let petitioner testify about certain matters, thereby preventing petitioner from "elaborating" on his fear). The IJ's decision considered all of the issues raised by

petitioners and does not reflect any bias towards them.

Moreover, "even if a removal hearing was conducted in a fundamentally unfair manner, a petitioner must show prejudice." *Rizo*, 810 F.3d at 693 (internal quotation marks omitted). When, as here, the factual record adequately supports the denial of relief, "we cannot find that the alleged bias held by the IJ was the basis for the denial." *Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 926 (9th Cir. 2007).

With respect to the time limit the IJ imposed, petitioners have not identified any testimony or evidence that they would have presented but for the limit and which might have affected the outcome of their case. Although petitioners were not required to "explain exactly what evidence" they would have presented with additional time, *Colmenar*, 210 F.3d at 972, they failed to present any "plausible scenarios in which the outcome of the proceedings would have been different," *Tamayo-Tamayo v. Holder*, 725 F.3d 950, 954 (9th Cir. 2013) (quoting *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (en banc)). Because petitioners have not established any prejudice from the alleged error, their due process claim fails.

PETITION FOR REVIEW DENIED.