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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAIME RODRIGUEZ, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 21-71048 Agency No. A213-612-129 MEMORANDUM[*]

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

Submitted October 3, 2022[**]
Portland, Oregon

Before: OWENS and MILLER, Circuit Judges, and EZRA,[***] District Judge.

Jaime Rodriguez, a native and citizen of Mexico, petitions for review of a decision of the Board of Immigration Appeals dismissing his appeal from an

[*] 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 David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

immigration judge's denial of his application for asylum, withholding of removal, and relief 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 factual findings for substantial evidence, and where the Board "expresse[s] agreement with the reasoning of the [immigration judge]," we review both decisions. *Kumar v. Holder*, 728 F.3d 993, 998 (9th Cir. 2013).

1. Although Rodriguez did not seek asylum within one year of his arrival in the United States, his application was not time barred. *See* 8 U.S.C. § 1158(a)(2)(D). The agency assumed that he demonstrated changed circumstances justifying an exception to the one-year bar but nevertheless concluded that Rodriguez "did not apply for asylum within a reasonable period of time thereafter." *See id.*; 8 C.F.R. § 1208.4(a)(4)(ii); *see also Taslimi v. Holder*, 590 F.3d 981, 985 (9th Cir. 2010) ("[W]e . . . have jurisdiction to consider whether [the petitioner] filed her asylum application within a 'reasonable period' given the changed circumstances."). Rodriguez's son was attacked by the cartel only a few months before Rodriguez applied for asylum, but because other members of his family had been kidnapped and killed years earlier, the immigration judge reasoned that the harm from the attack was "cumulative." But "[o]ur law does not require that 'changed circumstances' constitute an entirely new conflict in an asylum applicant's country of origin, nor does it preclude an individual who has always

feared persecution from seeking asylum because the risk of that persecution increases." *Vahora v. Holder*, 641 F.3d 1038, 1044 (9th Cir. 2011). And Rodriguez filed for asylum within approximately six months of the attack on his son, which was a reasonable period of time. *See Husyev v. Mukasey*, 528 F.3d 1172, 1182 (9th Cir. 2008) ("In the absence of any special considerations, the six months period suggested in the preamble to the regulations is not an unreasonable presumptive deadline.").

2. Substantial evidence supports the agency's determination that Rodriguez failed to establish a nexus between any harm and a protected ground. *See* 8 U.S.C. § 1158(b)(1)(B)(i). The Board adopted the immigration judge's reasoning that "even if [Rodriguez's] fear were construed as [on account of] a family-based particular social group, he did not show that his family members who were harmed and two nephews who were killed in Mexico, were harmed on account of their familial ties." Instead, the Board noted that Rodriguez's "testimony indicates that they were harmed because they had become involved with the drug cartels in the area." Rodriguez attributed the attacks on his nephews to the cartel's "search for recruits," explaining, "They're trying to get people to sell drugs for, for them there. And there's people that don't cooperate with them, well, it goes badly for them."

After discussing asylum, the agency did not separately address the less

demanding nexus standard for withholding of removal. *See Barajas-Romero v. Lynch*, 846 F.3d 351, 358–60 (9th Cir. 2017) (holding that, under the withholding statute, a protected ground need only be "a reason" for harm, rather than the asylum statute's more demanding "one central reason" standard). But the immigration judge found no nexus under any standard, concluding that "it was not shown that the harm suffered by [Rodriguez's] family is tethered to a protected ground." We need not remand where, as here, "the [Board] adopted the [immigration judge]'s finding of *no* nexus between the harm to [the petitioner] and the alleged protected ground," because "neither the result nor the [Board]'s basic reasoning would change." *Singh v. Barr*, 935 F.3d 822, 827 (9th Cir. 2019).

3. The immigration judge did not deprive Rodriguez of due process by denying him a continuance to obtain additional evidence, namely, death certificates for his nephews, police reports from Mexico, identification for his family, and a hospital report from the assault on his son. Rodriguez asked for "more time to find evidence to present to the Court so that my case is more credible." But the evidence was unnecessary; as the immigration judge explained: "I credit your testimony and I find that I do not need additional corroborating evidence for you about the things that happened to your family. I believe that."

Rodriguez now says that he sought an opportunity to gather evidence proving that his nephews and son had been targeted on account of their family

membership. Rodriguez was proceeding pro se before the agency, so the immigration judge had a duty "to fully develop the record." *Jacinto v. INS*, 208 F.3d 725, 733 (9th Cir. 2000). But that duty does not extend to proactively giving a petitioner an opportunity to seek additional evidence on any issue on which he might lose—particularly when existing testimony forecloses his position.

4. Substantial evidence supports the agency's determination that Rodriguez is not entitled to CAT relief. To warrant that protection, Rodriguez must show that it is "more likely than not that he . . . would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). In response to the immigration judge's questions, Rodriguez testified that he did not "personally have any problems" with organized crime before leaving Mexico, and he has presented no evidence to suggest that he would be tortured upon his return.

PETITION DENIED.