NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE MANUEL HERNANDEZ-MENA, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 22-360 Agency No. A205-022-677 MEMORANDUM[*]

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

Submitted March 09, 2023[**]
San Francisco, California

Before: FRIEDLAND and NELSON, Circuit Judges, and KATZMANN,[***] International Trade Judge.

Jose Manuel Hernandez-Mena, a native and citizen of Mexico, petitions for review of a decision of the Board of Immigration Appeals ("BIA") upholding the Immigration Judge's ("IJ") denial of his claims for withholding

[*] 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 Gary S. Katzmann, Judge for the United States Court of International Trade, sitting by designation.

of removal, relief under the Convention Against Torture ("CAT"), and cancellation of removal.[1] We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

We review the agency's factual findings for substantial evidence. *See Iman v. Barr*, 972 F.3d 1058, 1064 (9th Cir. 2020). Under that standard, the agency's findings of fact are conclusive unless "any reasonable adjudicator would be compelled to conclude to the contrary." *Nasrallah v. Barr*, 140 S. Ct. 1683, 1692 (2020) (quoting 8 U.S.C. § 1252(b)(4)(B)).

1. Substantial evidence supports the agency's determination that Hernandez-Mena failed to show the requisite nexus between any past or feared future harm and a protected ground. *See* 8 U.S.C. § 1231(b)(3)(A). As the IJ recognized, Hernandez-Mena testified that he had never been harmed or threatened in Mexico and that he did not fear that he would be, let alone that he would be harmed based on a protected ground. Hernandez-Mena argued to the BIA and now argues to our court that he fears violence from gangs, but he points to no evidence that any violence he might face would be based on a protected ground. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) ("[D]esire to be free from . . . random violence by gang members bears no nexus to a protected ground."); *cf. Alvarado-Herrera v. Garland*, 993 F.3d 1187, 1196 (9th Cir. 2021) (holding that substantial evidence supported the IJ's

[1] Hernandez-Mena concedes that his asylum claim was time-barred.

no-nexus finding where petitioner "specifically denied fearing harm based" on his asserted protected ground). We thus deny the petition as to Hernandez-Mena's application for withholding of removal.

2. We also deny the petition as to Hernandez-Mena's application for relief under the CAT. To qualify for relief under the CAT, Hernandez-Mena must establish that it is more likely than not that he would be tortured if returned to Mexico. *Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1183 (9th Cir. 2020). Hernandez-Mena's generalized evidence of violence and crime in Mexico is not sufficient to meet this standard. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010).

3. Hernandez-Mena also argues that his due process rights were violated because the IJ denied him a full and fair hearing by declining to consider his evidence that his removal would impose financial hardship on his children sufficient to satisfy the "exceptional and extremely unusual hardship" standard for cancellation of removal. 8 U.S.C. § 1229b(b)(1)(D). But the IJ stated that he would deny Hernandez-Mena's request for "discretionary reasons" relating to his criminal record, even if Hernandez-Mena had met the standard for relief. Because this discretionary determination itself foreclosed relief, Hernandez-Mena's due process challenge fails for lack of prejudice—any procedural error could not have harmed him because he would have been denied cancellation of removal regardless. *See Gomez-Velazco v. Sessions*, 879 F.3d 989, 993 (9th

Cir. 2018).[2]

PETITION DENIED.

[2] To the extent that Hernandez-Mena challenges this discretionary component of the IJ's decision, we do not have jurisdiction to review it. *See* § 1252(a)(2)(B)(ii); *Singh v. Rosen*, 984 F.3d 1142, 1149 (6th Cir. 2021) ("[Section] 1252(a)(2)(B)(ii) . . . precludes . . . a challenge to the Board's final decision that an immigrant is not entitled to cancellation of removal as a discretionary matter even if the immigrant meets all four eligibility factors."). Jurisdiction is not restored under the Real ID Act because Hernandez-Mena does not raise a constitutional or legal challenge to this aspect of the agency's determination. *See De La Rosa-Rodriguez v. Garland*, 49 F.4th 1282, 1287 (9th Cir. 2022).