[DO NOT PUBLISH]

In the

# United States Court of Appeals

## For the Eleventh Circuit

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No. 23-13094

Non-Argument Calendar

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NELSON DANILO MARADIAGA-ISAULA,
CRISTIAN DANILO MARADIAGA ROSALES,
NELSON GABRIEL MARADIAGA ROSALES,

Petitioners,

*versus*

U.S. ATTORNEY GENERAL,

Respondent.

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Petition for Review of a Decision of the
Board of Immigration Appeals

Agency No. A208-054-006

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Before JILL PRYOR, BRANCH, and LUCK, Circuit Judges.

PER CURIAM:

Nelson Danilo Maradiaga-Isaula and his two sons, Cristian Danilo Maradiaga Rosales and Nelson Gabriel Maradiaga Rosales,[1] petition for review of the Board of Immigration Appeals's decision affirming the immigration judge's order denying their claims for asylum and withholding of removal. After careful review, we dismiss Maradiaga-Isaula's petition and deny Cristian's and Nelson's petitions.

## FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Maradiaga-Isaula, a native and citizen of Honduras, entered the United States on an unknown date without inspection. His sons, Cristian and Nelson, also natives and citizens of Honduras, entered the United States on March 4, 2015, after inspection. On the same day, the Department of Homeland Security issued Cristian and Nelson notices to appear, charging them as removable because they were not admitted or paroled. On April 14, 2015, the department issued Maradiaga-Isaula a notice to appear, charging

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[1] We will refer to Nelson Maradiaga-Isaula by his last name. We will refer to his sons, Cristian and Nelson, by their first names.

him as removable for lack of valid entry documents and for a prior controlled substance conviction.

Maradiaga-Isaula and his sons applied for asylum and withholding of removal based on membership in a particular social group, and Cristian's and Nelson's proceedings were consolidated with Maradiaga-Isaula's. Maradiaga-Isaula's application stated that his father, uncle, and cousin were killed in Honduras and his brother was threatened in Honduras. He expressed fear that the same person who killed his father and uncle and threatened his brother would kill him too. Maradiaga-Isaula also feared that upon returning to Honduras, organized crime groups would target and kill him based on a belief that he had money from the United States. Maradiaga-Isaula attached a statement from his sister, a police report regarding the death of his uncle, his uncle's death certificate, and his father's death certificate. Maradiaga-Isaula also attached documentation showing he was convicted in 2008 for possession of cocaine and in 2014 for driving under the influence and operating a motor vehicle without a valid license.

In Cristian's and Nelson's applications, they explained that after several people in their neighborhood were violently killed, including their 16-year-old cousin, Oscar Isaula, their parents fled Honduras and they were left in their grandmother's care. They stated that "[l]ately . . . many other murders have been happening and children have become more and more of a target," and "many family members and close friends and neighbors have lost their li[ves], because of simply trying to avoid" gangs. They also

explained they fear harm if they return to Honduras because "there is no respect for life anymore, there is no one out there to take care of [them]," and there is increasing pressure from gangs to participate in drug use and violence. They attached a statement from Maradiaga-Isaula to his attorney, their birth certificates, a statement from their uncle Miguel Maradiaga, their grandfather's death certificate, their great uncle's death certificate and police report, the death certificate of another family member, a supporting news article, and a statement from their mother.

Maradiaga-Isaula and his sons conceded removability, and Maradiaga-Isaula also conceded he did not qualify for asylum because of his prior conviction. At a merits hearing before the immigration judge, Maradiaga-Isaula testified that he came to the United States in 2005 "[d]ue to [his] father's death" and "other deaths, that of [his] uncles and cousins." He testified that his father, who owned and worked farmland, was shot to death in 1996, but they didn't know for sure who killed him. Maradiaga-Isaula's uncle was killed five months after his father's death, and it was rumored the same person killed both men. After his father's death, the farmland was sold to a male cousin, but Maradiaga-Isaula wasn't sure if the cousin still owned the land or if he had sold it. Maradiaga-Isaula had two other older brothers, one who remained in Honduras—to whom "[no]thing [had] happened"—and the other had also come to the United States. Maradiaga-Isaula testified he did not want to return to Honduras "[f]or fear of losing [his] life," as his father had, because "there ha[d] been some rumors that [his father and uncle's killer wa]s still alive" and "was . . . following [his] trace." But

Maradiaga-Isaula admitted he hadn't been physically harmed. Maradiaga-Isaula's and his sons' claims for relief were based on the following particular social group: those "targeted by criminal elements because [of] family owned land and they wanted to own [their] land."

The immigration judge denied Maradiaga-Isaula's and his sons' applications and ordered them removed. First, the judge found that their testimony was credible and sufficiently corroborated, but they "failed to establish that they [were] victims of past persecution," or that they had a "well-founded fear of future persecution" in Honduras. The death of their family members "[wa]s not attributable to" Maradiaga-Isaula and his sons. Second, the immigration judge concluded that their proposed particular social group was not cognizable because "[o]wning land is not an immutable characteristic." Third, the judge found that there was no evidence Maradiaga-Isaula and his sons were targeted, or would be targeted in the future, due to Maradiaga-Isaula's "father at some point own[ing] some land." Fourth, the immigration judge found that "simply relocating to another area" would ameliorate any future risk. And fifth, the judge found that Maradiaga-Isaula and his sons "failed to establish that authorities in Honduras would be unwilling or unable to protect them." Because they had not established eligibility for asylum, Maradiaga-Isaula and his sons also "failed to meet the higher standard of proof necessary to establish eligibility for withholding of removal."

Maradiaga-Isaula and his sons appealed to the board, but the board gave two reasons for dismissing their appeal and affirming the denial of their claims. First, their proposed particular social group was not cognizable because it lacked an immutable characteristic. And second, Maradiaga-Isaula and his sons had not been persecuted in Honduras, and they could avoid any future persecution by "reasonably internally relocating within Honduras."

## STANDARD OF REVIEW

We review legal questions, including our jurisdiction, *Jeune v. U.S. Att'y Gen.*, 810 F.3d 792, 799 (11th Cir. 2016); *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1321 (11th Cir. 2021), de novo. On the other hand, we review "administrative findings of fact for substantial evidence." *Farah*, 12 F.4th at 1321 (citation omitted). That means "[w]e must affirm the board's decision . . . if it is supported by reasonable, substantial, and probative evidence on the record considered as a whole." *Delgado v. U.S. Att'y Gen.*, 487 F.3d 855, 860 (11th Cir. 2007) (quotation omitted); *accord Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1230 (11th Cir. 2005).

## DISCUSSION

A noncitizen may be granted asylum if he is a "refugee," which requires that he be "unable or unwilling to return to" his country of nationality "because of persecution or a well-founded fear of persecution on account of . . . membership in a particular social group." 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(A). A noncitizen is eligible for withholding of removal if he shows that, more likely

than not, he will be persecuted in his country because of his membership in a particular social group. *See id.* § 1231(b)(3)(A); *see also Sanchez Jimenez v. U.S. Att'y Gen.*, 492 F.3d 1223, 1238–39 (11th Cir. 2007). "Because the 'more likely than not' standard is more stringent than the 'well-founded fear' standard for asylum, an applicant unable to meet the 'well-founded fear' standard is generally precluded from qualifying for either asylum or withholding of removal." *Sanchez Jimenez*, 492 F.3d at 1239 (citing *Sepulveda*, 401 F.3d at 1232–33).

Maradiaga-Isaula and his sons challenge the board's findings that they did not suffer past persecution, and they could avoid any fear of future persecution by relocating to another part of Honduras. We address these arguments first as to Maradiaga-Isaula, and then as to his sons.

*Maradiaga-Isaula's Arguments*

Section 1252(a)(2) strips us of "jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 1182(a)(2)." 8 U.S.C. § 1252(a)(2)(C). But the jurisdiction-stripping is not absolute. Section 1252(a)(2)(D) restores jurisdiction to consider "questions of law raised upon a petition for review." *Id.* § 1252(a)(2)(D); *Patel v. U.S. Att'y Gen.*, 971 F.3d 1258, 1272 (11th Cir. 2020) (en banc), *aff'd sub nom. Patel v. Garland*, 596 U.S. 328 (2022); *see also Guadarrama v. U.S. Att'y Gen.*, 97 F.4th 750, 753 (11th Cir. 2024).

Maradiaga-Isaula conceded that he was convicted for possession of cocaine, which is an offense covered by section 1182(a)(2). *See* 8 U.S.C. § 1182(a)(2)(A)(i)(II). Thus, the jurisdiction-stripping provision applies to him, and we're limited to reviewing colorable questions of law raised in his petition. *See* 8 U.S.C. § 1252(a)(2)(D); *Kemokai v. U.S. Att'y Gen.*, 83 F.4th 886, 891 (11th Cir. 2023); *Patel*, 971 F.3d at 1272.

Applying the jurisdiction statutes here, Maradiaga-Isaula's arguments about the board's persecution findings do not raise questions of law. He contends that "[t]he record compels a finding" that he suffered past persecution and relocation was not possible to avoid future persecution. But whether substantial evidence supports a persecution finding is not a question of law. It is a fact and record question that cannot be reviewed under the jurisdiction-stripping provision in section 1252(a)(2)(C). *See Jeune*, 810 F.3d at 803 ("[B]ecause Petitioner is a criminal alien, we have no jurisdiction to review the agency's factual finding that he failed to prove that he would suffer future persecution on account of his sexual orientation."); *see also Edwards v. U.S. Att'y Gen.*, 97 F.4th 725, 742 (11th Cir. 2024) ("Based on the jurisdictional bar in [section] 1252(a)(2)(C), we lack jurisdiction to review the Board's factual finding that a criminal alien has failed to prove that she more likely than not would be persecuted in the future on account of her membership in a particular social group." (quotation omitted)).

Recognizing this, Maradiaga-Isaula tries to get around the jurisdictional bar by arguing that the board did not give reasoned

consideration to his withholding of removal claim. Maradiaga-Isaula is right that a reasoned-consideration argument is a question of law that we can review under the jurisdiction-restoring provision in section 1252(a)(2)(D). *See Jeune*, 810 F.3d at 799. But the problem for him is that he raised the reasoned-consideration argument for the first time in his reply brief, and we do not consider arguments raised for the first time in reply. *See Greenberg v. Comm'r of Internal Revenue*, 10 F.4th 1136, 1167 (11th Cir. 2021) ("[T]his Court does not address arguments advanced by an appellant first raised in his reply brief.").

Because we do not have jurisdiction to review the board's no-persecution findings, and persecution is a necessary element to make out a withholding of removal claim, that ends the matter for Maradiaga-Isaula. No persecution means no withholding of removal. And no withholding of removal means we do not have to review his alternative argument that the board erred in concluding his particular social group was not cognizable.

*Cristian's and Nelson's Arguments*

Maradiaga-Isaula's sons' arguments are a different matter. Like Maradiaga-Isaula, they contend that the record compels a finding that they suffered past persecution and they could not avoid future persecution by relocating within Honduras. But unlike Maradiaga-Isaula, the jurisdiction-stripping provision in section 1252(a)(2)(C) does not apply to his sons. So we have jurisdiction to consider their arguments.

"Persecution is an extreme concept, requiring more than a few isolated incidents of verbal harassment or intimidation," *Sanchez Jimenez*, 492 F.3d at 1232 (quoting *Sepulveda*, 401 F.3d at 1231), but "[w]e have . . . rejected a rigid requirement of physical injury, making clear . . . that attempted murder is persecution, regardless of whether the petitioner was injured," *De Santamaria v. U.S. Att'y Gen.*, 525 F.3d 999, 1008 (11th Cir. 2008) (quotation omitted). Although "threats or harm to a person other than the [petitioner] may constitute evidence that the [petitioner] suffered past persecution 'where that act concomitantly threatens the petitioner,'" *Rodriguez v. U.S. Att'y Gen.*, 735 F.3d 1302, 1308 (11th Cir. 2013) (quoting *De Santamaria*, 525 F.3d at 1009 n.7), they do not "constitute or imply persecution of the petitioner where there has been no threat or harm directed against the petitioner," *id*; *see also id.* at 1309 ("The pattern of persecution must be tied to the applicant personally." (quotation omitted)).

Substantial evidence supports the board's finding that Cristian and Nelson did not suffer past persecution in Honduras. They stated in their applications that several people—including family members—were violently killed, that "there is no respect for life anymore" in Honduras, and that kids there are exposed to, and pressured to take part in, drugs and gang violence. They submitted an article detailing the Honduran government's "fail[ure] to investigate properly a wave of killings and other abuses believed to be tied to land disputes," which reported that "[t]he Bajo Aguán region of northern Honduras has been the setting for long-running, often violent land disputes," with "the majority of the victims"

being "small-scale farmers." Cristian and Nelson attached another article from 2012 that reported "[a]pproximately 90 people, the vast majority of them peasants, ha[d] died in the last three years in the fertile area of the Aguán Valley in disputes between farmers occupying cultivated land and oil palm estates guards." They also submitted statements by Maradiaga-Isaula and his brother (their uncle), in which the men claimed they received death threats after their father died.

None of this evidence suggests that Cristian and Nelson were personally threatened or subjected to physical harm in Honduras. They were not personally threatened, harmed, or mistreated in the ten years they lived in Honduras after their grandfather's death, and they cannot rely on threats or acts committed against other family members to prove past persecution. *Rodriguez*, 735 F.3d at 1309.

"[A] petitioner who alleges fear of future persecution, but who has not proved any past persecution, bears the burden of proving that it is more likely than not that his life or freedom will be threatened upon return." *Jeune*, 810 F.3d at 804 (citing 8 C.F.R. § 1208.16(b)(2)). A petitioner fails to meet his burden if he "could avoid a future threat to his . . . life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the [petitioner] to do so." *Id.* at 805 (quotation omitted); *see also id.* ("[W]hen the board has found relocation to be a viable option, an applicant who

has failed to prove past persecution bears the burden of establishing that it would not be reasonable for him to relocate" (cleaned up)).

Substantial evidence supports the board's finding that Cristian and Nelson did not have a well-founded fear of future persecution in Honduras. Maradiaga-Isaula testified that his sons remained in Honduras, unharmed, for ten years after his father's death. During that time, there was no evidence that Cristian or Nelson were threatened or that it was unsafe for them to live there. This, alone, shows that they are not "more likely than not" to have their life or freedom threatened upon return to Honduras. In addition, the harm Cristian and Nelson fear is tied to a dispute over land that has been sold. In fact, they are not even sure if that land is still in the family, or who owns it. The record does not compel a finding that their fear of persecution upon returning to Honduras is well-founded and that it would be unviable or unreasonable for them to relocate away from that piece of land. *Id.* at 804.

Because substantial evidence supported the board's no-persecution findings, and persecution is a necessary element of their asylum and withholding claims, Cristian's and Nelson's petitions are due to be denied. For that reason, we do not need to address their alternative argument that the board erred in concluding that their particular social group was not cognizable.

**MARADIAGA-ISAULA'S PETITION DISMISSED; CRISTIAN AND NELSON MARADIAGA ROSALES'S PETITIONS DENIED**.