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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JAVIER ALVAREZ-DIAZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 10-71390

Agency No. A200-124-261

MEMORANDUM*

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

Submitted June 15, 2011**

Before: CANBY, O’SCANNLAIN, and FISHER, Circuit Judges.

Javier Alvarez-Diaz, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). Our

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction is governed by 8 U.S.C. § 1252. We review de novo questions of law, *Cerezo v. Mukasey*, 512 F.3d 1163, 1166 (9th Cir. 2008), except to the extent that deference is owed to the BIA's determination of the governing statutes and regulations, *Simeonov v. Ashcroft*, 371 F.3d 532, 535 (9th Cir. 2004). We review for substantial evidence factual findings. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We dismiss in part and deny in part the petition for review.

We reject Alvarez-Diaz's claim that he is eligible for asylum and withholding of removal based on past harm by gangs, his fear of gang violence, and general conditions of crime in El Salvador. *See Santos-Lemus v. Mukasey*, 542 F.3d 738, 745-46 (9th Cir. 2008) (rejecting as a particular social group "young men in El Salvador resisting gang violence"); *see also Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (a general fear of gang violence does not establish membership in a protected social group). We lack jurisdiction to consider Alvarez-Diaz's other claim that he faces persecution based on political opinion because he did not argue this to the BIA. *See Brezilien v. Holder*, 569 F.3d 403, 412 (9th Cir. 2009) (the court lacks jurisdiction to consider claims not exhausted administratively). Accordingly, because Alvarez-Diaz failed to demonstrate that

he was persecuted or fears persecution on account of a protected ground, we deny the petition as to his asylum and withholding of removal claims.

Finally, Alvarez-Diaz does not challenge the agency's denial of his CAT claim. *See Ghahremani v. Gonzales*, 498 F.3d 993, 997-98 (9th Cir. 2007) (issues not raised and argued in the opening brief are deemed waived).

PETITION FOR REVIEW DISMISSED IN PART; DENIED IN PART.