

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 21 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RICHARD VENTURA-ALVAREZ, AKA
Richard Alvarez, AKA Edwin Eduardo
Avila-Tellez, AKA Richard G. Ventura,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 14-71465

Agency No. A099-476-840

MEMORANDUM*

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

Submitted February 19, 2019**

Before: FERNANDEZ, SILVERMAN, and WATFORD, Circuit Judges.

Richard Ventura-Alvarez, a native and citizen of Colombia, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for withholding of removal and relief under the Convention Against Torture ("CAT"). Our

* 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).

jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings. *Shrestha v. Holder*, 590 F.3d 1034, 1039 (9th Cir. 2010). We dismiss in part and grant in part the petition for review, and we remand.

We lack jurisdiction to consider Ventura-Alvarez's contentions regarding his CAT claim because he failed to challenge the denial of CAT relief before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004) (holding that petitioner's failure to exhaust administrative remedies precludes review).

As to withholding of removal, the BIA did not have the benefit of this court's decision in *Barajas-Romero v. Lynch*, 846 F.3d 351, 356-60 (9th Cir. 2017), when it issued its order. Thus, we grant the petition for review as to withholding of removal, and remand this claim to the BIA to determine the impact of this decision. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

We do not reach the agency's adverse credibility finding.

Each party shall bear its own costs in this petition for review.

**PETITION FOR REVIEW DISMISSED in part; GRANTED in part;
REMANDED.**