

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 17 2023

FOR THE NINTH CIRCUIT

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

ADOLFO JOAQUIN MACIAS-
MADRIGAL,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 20-73062

Agency No. A204-709-447

MEMORANDUM*

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

Submitted March 14, 2023**

Before: SILVERMAN, SUNG, and SANCHEZ, Circuit Judges.

Adolfo Joaquin Macias-Madrigal, a native and citizen of Mexico, petitions pro se for review of an order of the Board of Immigration Appeals dismissing his appeal from an immigration judge's decision denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture

* 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).

(“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo questions of law, and we review for substantial evidence the agency’s factual findings. *Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014). We dismiss in part and deny in part the petition for review.

Because Macias-Madrigal conceded he was removable based on a reason to believe he is a drug trafficker, an offense covered in 8 U.S.C. § 1182(a)(2)(C), we lack jurisdiction to review the agency’s denial of asylum and withholding of removal where Macias-Madrigal’s contentions do not raise a colorable legal or constitutional claim. *See* 8 U.S.C. § 1252(a)(2)(C), (D). To the extent Macias-Madrigal challenges the particularly serious crime determination, we lack jurisdiction to consider it. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency); *see also Pechenkov v. Holder*, 705 F.3d 444, 448–49 (9th Cir. 2012) (no jurisdiction to review particularly serious crime determination where there is no assertion of legal or constitutional error and petitioner sought “re-weighing of the factors involved in that discretionary determination”).

Substantial evidence supports the agency’s denial of CAT deferral of removal because Macias-Madrigal failed to show it is more likely than not he

would be tortured by or with the consent or acquiescence of the government if returned to Mexico. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.