

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 30 2023

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

CARMEN ANTONIO GOMEZ-
HERNANDEZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-347

Agency No.
A094-795-150

MEMORANDUM*

On Petition for Review of an Order of the
Immigration Judge

Submitted May 16, 2023**

Before: BENNETT, MILLER, and VANDYKE, Circuit Judges.

Carmen Antonio Gomez-Hernandez, a native and citizen of El Salvador, petitions pro se for review of an immigration judge's ("IJ") determination under 8 C.F.R. § 1208.31(a) that he did not have a reasonable fear of persecution or torture in El Salvador and is not entitled to relief from his reinstated removal order. We have jurisdiction under 8 U.S.C. § 1252. We review de novo the

* 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).

legal question of whether a particular social group is cognizable, except to the extent that deference is owed to the Board of Immigration Appeals’ interpretation of the governing statutes and regulations. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241-42 (9th Cir. 2020). We review for substantial evidence the agency’s factual findings. *Id.* at 1241. We deny the petition for review.

The IJ did not err in concluding that Gomez-Hernandez did not establish membership in a cognizable particular social group. *See Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (to demonstrate membership in a particular social group, “[t]he applicant must ‘establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question’” (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014))); *see also Santos-Lemus v. Mukasey*, 542 F.3d 738, 745-46 (9th Cir. 2008) (proposed group of “young men in El Salvador resisting gang violence” lacked particularity), *abrogated on other grounds by Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (en banc). In light of this disposition, we need not reach Gomez-Hernandez’s remaining contentions regarding the IJ’s failure to address social distinction and immutability. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts and agencies are not required to decide issues unnecessary to the results they reach).

As to protection under the Convention Against Torture, substantial evidence supports the IJ's determination that Gomez-Hernandez failed to show a reasonable possibility of torture by or with the consent or acquiescence of the government if returned to El Salvador. *See Andrade-Garcia v. Lynch*, 828 F.3d 829, 836-37 (9th Cir. 2016) (petitioner failed to demonstrate government acquiescence sufficient to establish a reasonable possibility of future torture).

PETITION FOR REVIEW DENIED.