NOT FOR PUBLICATION

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PORFIRIO CHAVEZ-GONZALEZ, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 22-1679 Agency No. A059-998-983 MEMORANDUM*

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

Submitted June 13, 2023**
Portland, Oregon

Before: RAWLINSON and SUNG, Circuit Judges, and RAKOFF, District Judge.***

Porfirio Chavez-Gonzalez, a citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") affirmance of the Immigration Judge's ("IJ") denial of his withholding of removal, as well as the BIA's denial of his

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* 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).

*** The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

application for protection under the Convention Against Torture ("CAT"). Where, as here, the BIA found no clear error in the IJ's findings and did not conduct its own independent analysis but relied on the IJ's reasoning, we review both the IJ's and the BIA's decisions. *Alanniz v. Barr*, 924 F.3d 1061, 1065 (9th Cir. 2019). We treat the agency's findings as conclusive "unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

1. Substantial evidence supports the BIA's denial of Petitioner's application for withholding of removal. "To secure withholding of removal, a petitioner must demonstrate that his 'life . . . would be threatened in [the] country [of removal] because of [his] race, religion, nationality, membership in a particular social group, or political opinion.'" *Barbosa v. Barr*, 926 F.3d 1053, 1059 (9th Cir. 2019) (as amended) (quoting 8 U.S.C. § 1231(b)(3)(A)) (ellipsis and third correction in original). Petitioner claims membership in a particular social group defined as "prior cartel associate to smuggling activities" who is "identifiable by his tattoos."[1] Petitioner's claimed particular social group is not

[1] The government argues that we lack jurisdiction to review Petitioner's withholding of removal claim because Petitioner purportedly failed to identify this claimed particularized social group before the Immigration Judge. We disagree. The IJ recognized that Petitioner was "afraid of returning to Mexico because he has tattoos, and he fears being identified by cartels or authorities and being harmed and threatened" and addressed that proposed social group in the decision.

cognizable under our precedent because it does not involve an immutable characteristic. *See Arteaga v. Mukasey*, 511 F.3d 940, 945–46 (9th Cir. 2007) (holding particular social group of former gang member identifiable by tattoos is not cognizable). Although we understand that Petitioner fears personal retribution from criminal organizations, such retribution is not persecution because of a protected ground under asylum law. *Ayala v. Holder*, 640 F.3d 1095, 1098 (9th Cir. 2011) ("Rather than demonstrating that [the petitioner] was persecuted on account of his membership in a particular social group, the evidence demonstrates that [he] was only . . . threatened because . . . he had arrested a particular drug dealer. Though disturbing, this type of persecution is not cognizable under the INA.").

2. Substantial evidence supports the BIA's denial of Petitioner's CAT claim. "To establish entitlement to protection under CAT, an applicant must show 'it is more likely than not that he or she would be tortured if removed to the proposed country of removal.'" *Plancarte Sauceda v. Garland*, 23 F.4th 824, 834 (9th Cir. 2022) (quoting 8 C.F.R. § 1208.16(c)(2)). To meet the standard, the applicant must "demonstrate 'a chance greater than fifty percent that he will be tortured' if removed to" Mexico. *Castillo v. Barr*, 980 F.3d 1278, 1283 (9th Cir. 2020). Additionally, the torture must be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." *Zheng v. Ashcroft*, 332 F.3d 1186, 1188 (9th Cir. 2003) (quoting 8 C.F.R. § 208.18(a)(1) (2002)) (emphasis and internal

quotation marks omitted). The record here does not compel the conclusion that Chavez-Gonzalez will more likely than not be tortured with the government's acquiescence if returned to Mexico. Chavez-Gonzalez experienced no past torture and presented no evidence that government officials would acquiesce to his future torture. Although Petitioner testified that he received a threat, he and his family have not been harmed. Unlike the petitioner in *Velasquez-Samayoa v. Garland*, 49 F.4th 1149, 1152 (9th Cir. 2022), most of Petitioner's tattoos are not gang tattoos, he has not previously experienced gang violence, and there is no expert evidence establishing Petitioner's level of risk. Petitioner generally argues that there is evidence of widespread corruption in Mexico, but evidence of nationwide gang violence that is not particular to Petitioner's case cannot establish the state action necessary for CAT relief. *Lopez v. Sessions*, 901 F.3d 1071, 1078 (9th Cir. 2018).

3. The BIA did not violate Chavez-Gonzalez's due process right by not discussing its reasons for denying his CAT claim in its opinion. When the BIA cites *Matter of Burbano*, 20 I&N Dec. 872 (BIA 1994), in its decision and does not express disagreement with any part of the IJ's decision, the BIA adopts the IJ's decision in its entirety, and "we review the IJ's order as if it were the BIA's." *Kwong v. Holder*, 671 F.3d 872, 876 (9th Cir. 2011) (citations omitted). Here, the BIA cited *Burbano* and adopted the IJ's decision and reasoning. Accordingly, the BIA did not violate Petitioner's due process rights.

The petition is **DENIED**.[2]

[2] The temporary stay of removal remains in place until the mandate issues. The motion for stay of removal is otherwise denied.