

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 16 2023

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

KEVIN OMAR ANDRADE-MENJIVAR,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-361

Agency No.
A206-502-846

MEMORANDUM*

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

Submitted August 14, 2023**
Pasadena, California

Before: WARDLAW, CHRISTEN, and SUNG, Circuit Judges.

Kevin Andrade-Menjivar, a citizen of El Salvador, petitions for review of the Board of Immigration Appeals' (BIA) dismissal of his appeal from the Immigration Judge's (IJ) denial of his application for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

* 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 agency's denial of Andrade-Menjivar's applications for asylum and withholding of removal is supported by substantial evidence. Andrade-Menjivar seeks relief based on his membership in a proposed particular social group that he describes as "Salvadorans with opposition to gang violence." The record does not demonstrate that this proposed particular social group is cognizable. A particular social group is cognizable if it is "(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question." *Akosung v. Barr*, 970 F.3d 1095, 1103 (9th Cir. 2020) (citation omitted). Andrade-Menjivar introduced country reports that established that gang violence, intimidation, and recruitment of children is prevalent in El Salvador. However, there is no evidence in this record that "[Salvadoran] society *recognizes* those who, without more, [oppose] gang violence as a distinct group." *Conde Quevedo v. Barr*, 947 F.3d 1238, 1243 (9th Cir. 2020) (emphasis in original).

Substantial evidence also supports the agency's denial of CAT protection. "CAT protection cannot be granted unless an applicant shows a likelihood of torture that 'is inflicted by or at the instigation of or with the consent or acquiescence of a public official acting in an official capacity or other person acting in an official capacity.'" *B.R. v. Garland*, 26 F.4th 827, 844 (9th Cir. 2022) (quoting 8 C.F.R. § 208.18). The record does not compel the conclusion that a public official would acquiesce to Andrade-Menjivar's feared torture by the gangs. Andrade-Menjivar points only to evidence of generalized violence in

El Salvador and argues that the fact that “crime is rampant” evidences “the government’s inability to protect its citizens[, which] is tantamount to persecution by a government actor.” However, “[g]eneralized evidence of violence in a country is itself insufficient to establish that anyone in the government would acquiesce to a petitioner’s torture.” *Id.* at 845. Moreover, “[a] government does not acquiesce in the torture of its citizens merely because it is aware of torture but powerless to stop it.” *Id.* at 844 (quoting *Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014)).

PETITION DENIED.¹

¹ The temporary stay of removal remains in place until the mandate issues. The motion for stay of removal is otherwise denied.