

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE W. DIAZ, AKA Jose William Diaz,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 18-72916

Agency No. A094-317-244

MEMORANDUM*

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

Submitted August 21, 2023**
Pasadena, California

Before: BERZON, RAWLINSON, and BRESS, Circuit Judges.

Jose Diaz (Diaz), a native and citizen of El Salvador, petitions for review of a Board of Immigration Appeals (BIA) decision affirming an Immigration Judge's (IJ) denial of his application for asylum, withholding of removal, and protection

* 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).

under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252 and deny the petition.

We review the BIA’s legal conclusions *de novo* and its factual determinations for substantial evidence. *See Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023), *as amended*. “We review only the BIA’s opinion, except to the extent that it expressly adopted portions of the IJ’s decision. . . .” *Velasquez-Gespar v. Barr*, 976 F.3d 1062, 1064 (9th Cir. 2020) (citation omitted).

1. The IJ did not err in denying Diaz’s asylum application as untimely. Diaz entered the United States in 1996 and filed his asylum application in 2015, well after the one-year deadline for filing an asylum application. *See* 8 U.S.C. § 1158(a)(2)(B). Diaz did not establish the existence of changed circumstances that would excuse the untimely filing. *See* 8 U.S.C. § 1158(a)(2)(D). Because Diaz did not provide evidence of the country conditions that existed in 1996, there is no way to determine whether those conditions changed. *See Vahora v. Holder*, 641 F.3d 1038, 1042 (9th Cir. 2011) (explaining that § 1158(a)(2)(D) requires the applicant to demonstrate changed circumstances, which can be done by showing changed country conditions).

2. Substantial evidence supports the denial of withholding of removal. Diaz’s proposed particular social group of “Returnees From The United States” is

not cognizable under our precedent. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151-52 (9th Cir. 2010) (per curiam) (concluding that the “proposed social group, ‘returning Mexicans from the United States,’ . . . is too broad to qualify as a cognizable social group”).

The same is true for Diaz’s proposed particular social group of “Salvadorans Who Oppose [And] Refuse To Cooperate With El Salvador’s Cartels.”¹ *See Barrios v. Holder*, 581 F.3d 849, 854 (9th Cir. 2009), *as amended* (rejecting the petitioner’s proposed social group of “young males in Guatemala who are targeted for gang recruitment but refuse because they disagree with the gang’s criminal activities”), *abrogated on other grounds by Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1087-88 (9th Cir. 2013) (en banc).

Henriquez-Rivas does not compel a different result. In *Henriquez-Rivas*, we recognized as cognizable a particular social group of witnesses who openly testified against gang members. *See* 707 F.3d at 1092-93. In addition, fears of criminality in El Salvador do not establish a nexus to a protected ground. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010), *as amended*.

¹Although Diaz’s proposed social group specified “cartels,” his arguments and testimony did not distinguish between cartels and gangs.

3. Substantial evidence supports the IJ's denial of CAT relief.

"[G]eneralized evidence of violence and crime . . . is insufficient" to establish that

Diaz will "more likely than not be tortured" if he is returned to El Salvador.

Delgado-Ortiz, 600 F.3d at 1152 (citation omitted). Diaz failed to present any

evidence that he is subject to a particularized threat of torture.

PETITION DENIED.