

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 28 2023

FOR THE NINTH CIRCUIT

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

OSCAR LEONIDES ESTRADA
RODRIGUEZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-245

Agency No.
A088-710-881

MEMORANDUM*

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

Submitted August 24, 2023**
Pasadena, California

Before: RAWLINSON and BRESS, Circuit Judges, and ZOUHARY,** District
Judge.

Oscar Leonides Estrada Rodriguez (Estrada), a native and citizen of El

* 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 Jack Zouhary, United States District Judge for the
Northern District of Ohio, sitting by designation.

Salvador, petitions for review of the Board of Immigration Appeals’ (BIA) decision dismissing his appeal of the denial of withholding of removal. He also asserts in his opening brief that he is entitled to protection under the Convention Against Torture (CAT).

We review the BIA’s factual findings for substantial evidence, and we review questions of law de novo. *See Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1016 (9th Cir. 2023). We have jurisdiction pursuant to 8 U.S.C. § 1252 and deny the petition.

1. We deny Estrada’s petition as to his asylum claim because he failed to challenge in his opening brief the agency finding that his asylum application was untimely. *See Alcaraz v. I.N.S.*, 384 F.3d 1150, 1161 (9th Cir. 2004) (“We will not ordinarily consider matters on appeal that are not specifically and distinctly argued in [the petitioner’s] opening brief. . . .”) (citation and internal quotation marks omitted).

2. Substantial evidence supports the denial of withholding of removal. “A petitioner is entitled to withholding of removal if he can establish a clear probability that his life or freedom would be threatened upon return because of a protected category. . . .” *Singh v. Garland*, 57 F.4th 643, 658 (9th Cir. 2023), *as amended* (citations and internal quotation marks omitted). Estrada contends that he will be persecuted on account of his membership in the particular social groups

of: (1) “individuals who refuse to join gangs,” and (2) “members of groups who express opposition to gangs and their violent conduct.” But, as the BIA determined, Estrada’s proposed social groups are not “socially distinct.” *See Conde Quevedo v. Barr*, 947 F.3d 1238, 1242 (9th Cir. 2020) (requiring a petitioner to show “social distinction” by demonstrating that the relevant society recognizes the proposed social group) (citation and alteration omitted).

Although Estrada reported a gang shooting to the police, there is no evidence that he ever openly testified against gang members. *See id.* at 1242–43 (concluding that “persons who report the criminal activity of gangs to the police” are not socially distinct); *see also Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092–93 (9th Cir. 2013) (en banc) (recognizing the “social visibility” of Salvadorans who publicly testified against gang members). Accordingly, substantial evidence supports the denial of withholding of removal. *See Conde Quevedo*, 947 F.3d at 1243–44 (denying a petition for review when the petitioner “failed to establish membership in a cognizable particular social group”).¹

3. We reject Estrada’s argument that he “warrants protection under CAT.” Estrada declined to apply for CAT relief. The Immigration Judge (IJ)

¹ Because Estrada’s failure to establish membership in a cognizable particular social group is dispositive of his claim for withholding of removal, we decline to address the remaining arguments asserted by the parties. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (observing that courts are not required to reach issues that are “unnecessary to the results they reach”) (citation omitted).

confirmed that Estrada was not seeking CAT protection. *See Taggar v. Holder*, 736 F.3d 886, 889–90 (9th Cir. 2013) (affirming the BIA’s conclusion that the petitioner abandoned his CAT claim by failing to file an application for relief).

PETITION DENIED.