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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ERNESTO ESTRADA-CERON, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 22-1692 Agency No. A208-560-516 MEMORANDUM*

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

Submitted March 27, 2024**
Pasadena, California

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

Ernesto Estrada-Ceron (Estrada-Ceron), a native and citizen of Mexico, petitions for review of a final order by the Board of Immigration Appeals (BIA) dismissing his appeal of an Immigration Judge's (IJ) decision denying asylum,

* 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).

withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252. We dismiss in part and deny in part the petition for review.

"We review questions of law *de novo* and the agency's factual findings for substantial evidence." *Rudnitskyy v. Garland*, 82 F.4th 742, 746 (9th Cir. 2023) (citation and internal quotation marks omitted). Competency determinations are reviewed for an abuse of discretion. *See Calderon-Rodriguez v. Sessions*, 878 F.3d 1179, 1184 (9th Cir. 2018).

1. The BIA did not abuse its discretion in concluding that Estrada-Ceron was competent. The IJ confirmed that Estrada-Ceron was oriented as to time, place, and the purpose of the hearing. *See id.* at 1182 (stating that the test for determining competency "to participate in immigration proceedings is whether [the petitioner] has a rational and factual understanding of the nature and object of the proceedings, can consult with the attorney . . . , and has a reasonable opportunity to examine and present evidence and cross-examine witnesses") (citation omitted); *see also Salgado v. Sessions*, 889 F.3d 982, 988 (9th Cir. 2018) ("[An] IJ [is] not required to obtain a mental health evaluation to determine . . . competen[cy].") (citation omitted).

2. Estrada-Ceron filed his asylum application nine years after turning 18 in the United States, which far exceeds the one-year deadline. *See* 8 U.S.C.

§ 1158(a)(2)(B) & (E). Estrada-Ceron does not challenge the untimeliness determination. We therefore lack jurisdiction to review any challenge to the denial of asylum. *See Budiono v. Lynch*, 837 F.3d 1042, 1047 n.4 (9th Cir. 2016).

3. The denial of withholding of removal is supported by substantial evidence. Estrada-Ceron's proposed particular social group of "persons who have previously been sexually abused by parents and were not protected by the Mexican government" is not cognizable. Estrada-Ceron failed to present evidence that Mexican society perceives his proposed particular social group as socially distinct. *See Gutierrez-Alm v. Garland*, 62 F.4th 1186, 1199 (9th Cir. 2023).

4. Substantial evidence supports the BIA's finding that Estrada-Ceron would not be tortured with the acquiescence of the Mexican government. Estrada-Ceron does not point to evidence that the Mexican government would acquiesce in his torture, relying only on his testimony that his father was able to sexually assault him and escape jail. *See Hernandez v. Garland*, 52 F.4th 757, 770 (9th Cir. 2022) (commenting that "a general ineffectiveness on the government's part to investigate and prevent crime will not" suffice to establish government acquiescence to support CAT relief) (citations omitted).

PETITION DISMISSED IN PART; DENIED IN PART.[1]

[1] Petitioner's motion to stay removal, Dkt. 2, is denied. The temporary stay of removal shall remain in place until the mandate issues.