

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 11 2024

FOR THE NINTH CIRCUIT

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

FRANCISCO AGUILAR TORRES,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-1639

Agency No.
A092-526-201

MEMORANDUM*

FRANCISCO AGUILAR TORRES,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 23-735

Agency No.
A092-526-201

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

Argued and Submitted March 26, 2024
Pasadena, California

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

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Francisco Aguilar Torres (Aguilar Torres), a native and citizen of Mexico, petitions for review of the decisions of the Board of Immigration Appeals (BIA) denying his applications for asylum, relief under the Convention Against Torture (CAT), and cancellation of removal. We deny the petitions for review in part and dismiss the petitions for review in part.

1. The BIA properly ruled that Aguilar Torres was not entitled to asylum because his five proposed particular social groups comprised of “Mexican males who exhibit symptoms associated with suffering” from “paranoid delusions,” “unspecified delirium,” “cognitive impairments that affect executive functioning,” “unspecified anxiety,” and “major depressive disorder” lacked particularity. Reviewing this legal issue *de novo*, see *Antonio v. Garland*, 58 F.4th 1067, 1072 (9th Cir. 2023), we agree that the proposed groups are not “discrete” and lack “definable boundaries” under the particularity requirement for cognizable particular social groups. *Andrade v. Garland*, 94 F.4th 904, 911 (9th Cir. 2024) (citation and internal quotation marks omitted). As the BIA observed, “the terms ‘symptoms associated with suffering’ from the listed conditions [were] general in nature,” and could “encompass all possible symptoms of those conditions.” *See id.* at 911-12 (holding that proposed social group comprised of “Mexicans with mental health disorders characterized by psychotic features who exhibit erratic behavior” lacked particularity because “the phrase may cover a range of conduct that varies

in frequency, duration, and character”) (citation omitted). Aguilar Torres is not entitled to asylum because each of his proposed social groups, whether premised on the Diagnostic and Statistical Manual of Mental Disorders or Aguilar Torres’ psychological evaluation, are too “amorphous, overbroad, diffuse, [and] subjective” to meet the particularity requirement. *Id.* at 911 (citation omitted).

In the alternative, Aguilar Torres is not entitled to asylum, as he failed to establish an objectively reasonable fear of future persecution in Mexico. *See Sarkar v. Garland*, 39 F.4th 611, 622 (9th Cir. 2022). Contrary to Aguilar Torres’ assertions, we discern no legal or constitutional error in the BIA’s review of Aguilar Torres’ future persecution claim. *See Marcu v. I.N.S.*, 147 F.3d 1078, 1083 (9th Cir. 1998) (explaining that “[t]he BIA’s opinion demonstrates that it heard the claim, considered the evidence, and decided against [Aguilar Torres]. No more was required.”); *see also Torres-Aguilar v. I.N.S.*, 246 F.3d 1267, 1271 (9th Cir. 2001) (recognizing that “a petitioner may not create the jurisdiction that Congress chose to remove simply by cloaking an abuse of discretion argument in constitutional garb”).

2. Because the Immigration Judge (IJ) found Aguilar Torres removable due to his commission of two crimes involving moral turpitude, *see* 8 U.S.C. § 1227(a)(2)(A)(ii), we must dismiss for lack of jurisdiction Aguilar Torres’ challenge to the factual findings underlying the determination that he failed to

establish a well-founded fear of future persecution. *See Coria v. Garland*, No. 22-970, -- F.4th --, 2024 WL 1164863, at *14 (9th Cir. Mar. 19, 2024); *see also* 8 U.S.C. § 1252(a)(2)(C).

3. Substantial evidence supports the agency’s denial of CAT relief because Aguilar Torres does not face an individualized or aggregate risk of torture in Mexico. *See Rodriguez-Hernandez v. Garland*, 89 F.4th 742, 746 (9th Cir. 2023) (explaining that “[w]e review the BIA’s denial of CAT relief for substantial evidence”). The agency sufficiently considered “the *total* probability that” Aguilar Torres “will be tortured” in Mexico based on “all potential sources of and reasons for” the purported torture in Mexico’s penal, rehabilitation, and mental health institutions, as well as lack of medical care. *Velasquez-Samayoa v. Garland*, 49 F.4th 1149, 1154 (9th Cir. 2022), *as amended* (citation omitted) (emphasis in the original). Moreover, substantial evidence supports the agency’s determination that Aguilar Torres’ CAT claim was premised on an overly speculative and hypothetical chain of events that would result in his torture in Mexico. *See Blandino-Medina v. Holder*, 712 F.3d 1338, 1348 (9th Cir. 2013) (concluding that the petitioner was not entitled to CAT relief based on “a series of worst-case scenarios”); *see also Andrade*, 94 F.4th at 915 (explaining that “[b]ecause the allegations of torture rest on a hypothetical chain of events, CAT relief cannot be granted unless each link in the chain is more likely than not to happen”) (citation

and internal quotation marks omitted). Thus, even “[c]onsidering the risks of torture in the aggregate, [Aguilar Torres] has not shown that the record compels a finding that he is likely to be tortured if returned to Mexico.” *Andrade*, 94 F.4th at 916.

4. Aguilar Torres does not demonstrate that his hearing “was so fundamentally unfair that [he] was prevented from reasonably presenting his case,” *Rizo v. Lynch*, 810 F.3d 688, 693 (9th Cir. 2016) (citation and internal quotation marks omitted), or any other colorable legal or constitutional error in the agency’s denial of cancellation of removal. As a result, we lack jurisdiction over the agency’s discretionary denial of cancellation of removal. *See Figueroa Ochoa v. Garland*, 91 F.4th 1289, 1293 (9th Cir. 2024), *as amended*.

PETITIONS FOR REVIEW DENIED in part and DISMISSED in part.¹

¹ Aguilar Torres’ motion to stay removal, Dkt. # 2 (No. 22-1639), is denied. The temporary stay of removal shall remain in place until the mandate issues.