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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ABUBAKAR JAMAL JEBUR AL  
RIKABI,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 23-1148

Agency No. A209-867-920

MEMORANDUM\*

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

Argued & Submitted June 6, 2024  
San Francisco, California

Before: S.R. THOMAS and MILLER, Circuit Judges, and BENNETT,\*\* District  
Judge.

Petitioner Abubakar Jamal Jebur Al-Rikabi, a native and citizen of Iraq,  
petitions for review of a decision by the Board of Immigration Appeals (“the

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

\*\* The Honorable Richard D. Bennett, United States District Judge for  
the District of Maryland, sitting by designation.

Board”) affirming the Immigration Judge’s denial of asylum, withholding, and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252(a). Where the Board agrees with the reasoning of the Immigration Judge, we “review the [Immigration Judge’s] decision to the extent incorporated.” *Medina-Lara v. Holder*, 771 F.3d 1106, 1111 (9th Cir. 2014). We review the factual findings underlying denials of asylum, withholding, and CAT protection for substantial evidence, and questions of law de novo. *Plancarte Saucedo v. Garland*, 23 F.4th 824, 831 (9th Cir. 2022). A persecutor’s actual motive is reviewed for substantial evidence, but the agency’s nexus determination is reviewed de novo. *Umana-Escobar v. Garland*, 69 F.4th 544, 552 (9th Cir. 2023); *Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 893 (9th Cir. 2021). Al-Rikabi withdrew his petition as to the withholding and CAT protection claims, so we review only the petition as to his asylum claim. Because the parties are familiar with the facts and the procedural history, we need not recount them here.

## I

We grant the petition as to Al-Rikabi’s asylum claim insofar as it challenges the agency’s treatment of his claim of past persecution as a Shia Muslim. Al-Rikabi argues that, in assessing whether he experienced past persecution as a Shia

Muslim, the agency erred in not crediting the circumstantial evidence of his persecutor's actual motive. We agree.

Al-Rikabi can demonstrate past persecution either through direct or circumstantial evidence. *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). Here, the agency relied on the lack of direct evidence tying ISIS and an anti-Shia motive to the threats and car bombing, while ignoring Al-Rikabi's plausible circumstantial evidence. *Madrigal v. Holder*, 716 F.3d 499, 505 (9th Cir. 2013) (explanations that are "plausible and supported by circumstantial evidence . . . must be credited in the absence of an explanation that is at least as plausible"). The agency's actual motive finding is not supported by substantial evidence.

Al-Rikabi's family began receiving death threats from the Islamic State of Iraq and Syria (ISIS)<sup>1</sup> two months before he and his father were bombed, one of which stated Al-Rikabi's family was targeted for their Shia Muslim religion. Despite the Board's assertion that "no one knew who made the threats against" Al-Rikabi, Al-Rikabi consistently testified that the callers and texters identified themselves as members of ISIS to himself, his mother, and his father. While Al-Rikabi admits to not knowing the precise persons who made the threats, our

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<sup>1</sup> Because record evidence shows that ISIS targeted Shia Muslims in Iraq, its involvement in the car bombing is relevant to Al-Rikabi's claims he was persecuted on the basis of his Shia Muslim religion.

caselaw has held that anonymous threats that identify the persecuting group can form the basis of a past persecution claim. *Velarde v. I.N.S.*, 140 F.3d 1305, 1308–09, 1311–12 (9th Cir. 1998). The Board also adopted the Immigration Judge’s analysis which incorrectly suggests that a year passed between the threats to Al-Rikabi’s mother and the car bombing, but the record evidence shows that only two months passed between that threat and the car bombing. And while the agency relies on a lack of evidence showing ISIS took responsibility for the attack, absent more evidence discussing ISIS’s modus operandi, it is unclear why this fact is dispositive. *Gafoor v. I.N.S.*, 231 F.3d 645, 650 (9th Cir. 2000) (“Persecutors do not always take the time to tell their victims all the reasons they are being beaten or kidnaped or killed. Sometimes, they may not want their motives known for fear of public condemnation; other times, the motives may be so clear to both parties that no explanation is needed.”).

Al-Rikabi has presented a plausible explanation that his persecutor was ISIS, and that ISIS was motivated to attack him based on an anti-Shia Muslim motive. Al-Rikabi testified that his family received persistent death threats from ISIS, threats that occurred close in time to a bomb planted in his home, and a targeted attack on the car he and his father shared. The Board has not presented an

alternative plausible explanation for the persecutor's actual motive, so we must credit Al-Rikabi's explanation. *See Madrigal*, 716 F.3d at 505.

We remand this case to the Board for reconsideration of its actual motive analysis and to address the remaining elements of Al-Rikabi's past persecution claim on the basis of his Shia religion. If the agency finds that Al-Rikabi suffered past persecution, he is entitled to a rebuttable presumption of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). Because the agency did not apply the presumption of future persecution to Al-Rikabi's asylum claim, we remand it to the agency. *Aden v. Wilkinson*, 989 F.3d 1073, 1086 (9th Cir. 2021). We express no opinion as to the merits of the remaining elements of his claim.

## II

We deny Al-Rikabi's petition for review of the agency's rejection of asylum as to his Sunni first name claim. Al-Rikabi has not shown a well-founded fear of future persecution on the basis of his Sunni first name. Despite Al-Rikabi's assertions otherwise, the Immigration Judge and the Board both addressed his first name claim. Al-Rikabi did not experience violence on the basis of his Sunni first name in Iraq, and does not point to "credible, direct, and specific evidence in the record of facts that would support a reasonable fear of persecution." *Sharma v.*

*Garland*, 9 F.4th 1052, 1065 (9th Cir. 2021) (quoting *Mansour v. Ashcroft*, 390 F.3d 667, 673 (9th Cir. 2004)).

### III

In sum, we grant Al-Rikabi's petition for review as to his asylum claim based on past persecution as a Shia Muslim. We deny the petition for review as to his asylum claim based on his Sunni first name. Al-Rikabi withdrew the petition for review as to his withholding and CAT protection claims, so we need not reach those issues.

**PETITION GRANTED IN PART, DENIED IN PART, REMANDED.**

Each party shall bear their own costs.