NOT FOR PUBLICATION

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SEP 11 2024

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ADRIAN CABRERA ESPINOZA, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 23-2583 Agency No. A079-369-148 MEMORANDUM*

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

Submitted September 9, 2024**
Pasadena, California

Before: R. NELSON, MILLER, and DESAI, Circuit Judges.

Adrian Cabrera Espinoza, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") decision dismissing his appeal of the Immigration Judge's ("IJ") denial of his application for deferral of removal under

* 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 Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252, and we review for substantial evidence. *Nasrallah v. Barr*, 590 U.S. 573, 583–84 (2020); *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1078 (9th Cir. 2015). "Because the BIA cited *Matter of Burbano* and also provided its own analysis in this case, we review both the BIA and IJ's decisions." *Posos-Sanchez v. Garland*, 3 F.4th 1176, 1182 (9th Cir. 2021); *Matter of Burbano*, 20 I. & N. Dec. 872, 874 (B.I.A. 1994).[1] We deny the petition.

Substantial evidence supports the agency's finding that Mr. Cabrera Espinoza failed to establish eligibility for CAT relief. To obtain deferral of removal under CAT, an applicant must show that he will "more likely than not" be tortured in his country of removal with the consent or acquiescence of a public official. 8 C.F.R. §§ 1208.16(c)(2), 1208.17(a), 1208.18(a)(1).[2] When considering the likelihood of torture, the agency must consider all relevant evidence, including (1) evidence of past torture, (2) evidence that the applicant could relocate to avoid torture, (3) evidence of flagrant or mass human rights violations, and (4) other evidence of country conditions. 8 C.F.R. § 1208.16(c)(3).

First, substantial evidence supports the agency's finding that Mr. Cabrera

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[1] We refer to the BIA and IJ collectively as the "agency."

[2] The applicant also must show that he has been ordered removed and is ineligible for withholding of removal based on certain criminal convictions. 8 C.F.R. § 1208.17(a). Those requirements are undisputed here.

Espinoza did not suffer past torture. Mr. Cabrera Espinoza's involvement in a spontaneous fight in 2002 does not amount to an "extreme form of cruel and inhuman treatment" that causes "severe pain or suffering." 8 C.F.R. § 1208.18(a)(1), (2); *see also Vitug v. Holder*, 723 F.3d 1056, 1066 (9th Cir. 2013) (holding that multiple severe beatings were persecution, but did not "rise to the level of torture"); *Hernandez v. Garland*, 52 F.4th 757, 769 (9th Cir. 2022) (holding that multiple incidents of physical abuse did not constitute torture).

Second, substantial evidence supports the agency's conclusion that it was "possible" Mr. Cabrera Espinoza could safely relocate to another part of Mexico outside his small hometown. *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 705 (9th Cir. 2022) (citing 8 C.F.R. § 1208.16(c)(3)(ii)). The individuals Mr. Cabrera Espinoza fears, members of the Gonzalez family, still live in his hometown. Mr. Cabrera Espinoza testified that the Gonzalez family worked for the Los Zetas cartel in 2002, but he does not "know about now." Mr. Cabrera Espinoza has a brother and a sister who still live in his hometown, and no one from the Gonzalez family or the Los Zetas cartel has ever approached them. Mr. Cabrera Espinoza also traveled to a different city in Mexico in 2007 and had no issues during his visit. In short, Mr. Cabrera Espinoza raises only a "speculative fear" that the Los Zetas cartel will find and torture him if he relocates in Mexico. *Garcia v. Wilkinson*, 988 F.3d 1136, 1148 (9th Cir. 2021) (holding that petitioner's testimony "that she believed she would not

be safe living with her parents elsewhere in Mexico, and that she was not sure if she could live peacefully in Mexico City," was "insufficient to satisfy the 'more likely than not' standard").

Finally, the agency did not ignore Mr. Cabrera Espinoza's country conditions evidence. The BIA adopted and affirmed the IJ's decision under *Matter of Burbano*, and the IJ expressly considered Mr. Cabrera Espinoza's country conditions evidence in its analysis. Nor does the evidence support Mr. Cabrera Espinoza's claim. The reports include only "generalized evidence" of corruption in Mexico that "is not particular to" Mr. Cabrera Espinoza and does not suggest that the authorities will turn Mr. Cabrera Espinoza over to the Los Zetas cartel to be tortured. *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (per curiam). And even if Mr. Cabrera Espinoza may be investigated or arrested if he returns to Mexico, that does not mean he will be tortured. Torture does not include pain or suffering from "lawful sanctions," such as "judicially imposed sanctions and other enforcement actions authorized by law." 8 C.F.R. § 1208.18(a)(3).

In sum, substantial evidence supports the agency's conclusion that Mr. Cabrera Espinoza failed to show that he will more likely than not be tortured if he returns to Mexico.

The petition for review is **DENIED**. The temporary stay of removal will remain in place until the issuance of the mandate, and the motion to stay removal,

Dkt. 2, is otherwise **DENIED**.