

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 24 2024

FOR THE NINTH CIRCUIT

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

GENARO MARTINEZ GODINEZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 23-3068

Agency No.  
A074-792-690

MEMORANDUM\*

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

Submitted October 22, 2024\*\*  
San Francisco, California

Before: OWENS, SUNG, and SANCHEZ, Circuit Judges.

Genaro Martinez Godinez, a native and citizen of Mexico, appeals from the Board of Immigration Appeals' ("BIA") decision dismissing his appeal from the immigration judge's ("IJ") decision denying his application for withholding of

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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 panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal and protection under the Convention Against Torture (“CAT”). Where, as here, “the BIA summarily affirms the IJ’s decision, we review the IJ’s decision as the final agency action.” *Pagayon v. Holder*, 675 F.3d 1182, 1188 (9th Cir. 2011) (per curiam) (citation omitted). We review the agency’s factual findings for substantial evidence, which “should be upheld unless the evidence compels a contrary result.” *Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1076 (9th Cir. 2020) (citation and internal quotation marks omitted). As the parties are familiar with the facts, we do not recount them here. We deny the petition for review.

1. Martinez Godinez argues that the IJ violated his “due process right to impartiality by failing to act as a neutral fact-finder, but rather as a partisan adjudicator.” He points to the IJ’s exchange with Martinez Godinez’s counsel at the merits hearing regarding a late filing. The Government contends that Martinez Godinez failed to exhaust this issue because he did not raise it in his brief to the BIA. We decline to consider Martinez Godinez’s due process argument because he failed to exhaust this issue. *See Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023) (noting that administrative exhaustion under 8 U.S.C. § 1252(d)(1), while not jurisdictional, is a claim-processing rule that the court “must enforce” when it is “properly raise[d]” (citation omitted)); *see also Sola v. Holder*, 720 F.3d 1134, 1135-36 (9th Cir. 2013) (per curiam) (explaining that while constitutional challenges are generally excepted from exhaustion, exhaustion applies to due

process claims concerning alleged procedural errors that the BIA could have addressed).

2. The IJ denied the withholding of removal claim because he determined that Martinez Godinez’s two proposed particular social groups (“PSGs”)— (1) “landowners in [the] country of Mexico” and (2) “witnesses and victims to a serious crime that the government is unable or unwilling to protect”—were not cognizable. The BIA summarily affirmed but noted that it “decline[d] to consider [Martinez Godinez’s] newly articulated particular social group of ‘nuclear family’ . . . which w[as] not raised below.” Before this court, Martinez Godinez does not address the IJ’s dispositive determination regarding the two PSGs that he originally proposed. Instead, he focuses on a new PSG “defined as his immediate family defined by kinship ties,” but does not address the BIA’s declination to reach his family-based PSG. Therefore, Martinez Godinez has waived review of the agency’s dispositive grounds for denying withholding of removal. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in a party’s opening brief are waived).

3. To qualify for CAT protection, a petitioner must establish “that it is more likely than not that he . . . would be tortured” “by, or at the instigation of, or with the consent or acquiescence of, a public official” if returned to the country of removal. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). “In addition, the petitioner

must demonstrate that he would be subject to a ‘particularized threat of torture.’” *Dhital v. Mukasey*, 532 F.3d 1044, 1051 (9th Cir. 2008) (per curiam) (citation and emphasis omitted). Here, the record does not compel the conclusion that Martinez Godinez showed that he faced a particularized threat of torture if removed to Mexico. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (per curiam) (stating that “generalized evidence of violence and crime . . . is not particular . . . and is insufficient to meet” the CAT standard).

4. The stay of removal remains in place until the mandate issues.

**PETITION FOR REVIEW DENIED.**