NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ABIGAIL MARGARITA HERRERA PADRON, Petitioner, v. PAMELA BONDI, Attorney General, Respondent.	No. 24-2991 Agency No. A095-794-081 MEMORANDUM*

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

Submitted April 3, 2025**
Pasadena, California

Before: GILMAN***, M. SMITH, and VANDYKE, Circuit Judges.

Abigail Margarita Herrera Padron, a native and citizen of Mexico, petitions for review of a decision by the Board of Immigration Appeals (BIA) dismissing an

* 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 Honorable Ronald Lee Gilman, United States Circuit Judge for the Court of Appeals, 6th Circuit, sitting by designation.

appeal of a ruling by an Immigration Judge (IJ) that denied her application for asylum, withholding of removal, and relief under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252(a)(1), and we deny the petition for review.

1. Substantial evidence supports the BIA's decision to deny Herrera Padron's claims for asylum and withholding of removal, which is the appropriate standard of review for factual determinations. *See Rodriguez Tornes v. Garland*, 993 F.3d 743, 750 (9th Cir. 2021). The BIA did not err in denying those claims based on its determination that Herrera Padron failed to establish that she belongs to a cognizable social group. To establish a cognizable social group, "an applicant must show that the proposed social group is '(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.'" *Conde Quevedo v. Barr*, 947 F.3d 1238, 1242 (9th Cir. 2020) (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014)).

The proposed social groups of "witnesses to a crime" and "individuals who report criminal gang activity" lack particularity and do not meet the requirement that a proposed social group be socially distinct within the society in question. As we have previously held, the proposed group of "'witnesses who … could testify against gang members based upon what they witnessed,' encompasses 'anyone in [a

country] who is a potential witness to anything that can be characterized as crime committed by a gang member,'" and that is not sufficiently particular. *See Aguilar-Osorio v. Garland*, 991 F.3d 997, 999 (9th Cir. 2021), *abrogated on other grounds by Wilkinson v. Garland*, 601 U.S. 209 (2024). The addition of individuals who report the crime does not make this proposed social group any more "discrete" or give the group any "definable boundaries." *See Matter of M-E-V-G-*, 26 I. & N. Dec. at 239.

Herrera Padron has also failed to demonstrate that her proposed social groups are socially distinct. She argues that *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013), provides precedent that cooperation with law enforcement satisfies the requirements for a particular social group, and that her conduct was public because the gangs knew about it. But we have previously held that a proposed social group of individuals who report gang violence is not socially distinct where the community in general would not be aware of the group's actions in reporting the violence, even if gang members might have found out. *See Conde Quevedo*, 947 F.3d at 1243.

2. Substantial evidence also supports the BIA's denial of CAT relief because Herrera Padron failed to demonstrate that she would more likely than not be subjected to torture if returned to Mexico. *See* 8 C.F.R. § 1208.16(c)(2) ("The burden of proof is on the applicant for withholding of removal under this paragraph

to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal."). Her assertions that she was threatened by gang members are similarly insufficient to demonstrate past torture, and substantial evidence in the record supports the BIA's finding that relocation is possible within Mexico to avoid the individuals whom she fears. *See Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1029 (9th Cir. 2019) (holding that past threats of violence by private actors alone were insufficient to establish past torture); *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 705 (9th Cir. 2022) ("While petitioners seeking CAT relief are not required to prove that safe relocation would be factually impossible, they do 'carr[y] the overall burden of proof.'" (quoting *Maldonado v. Lynch*, 786 F.3d 1155, 1164 (9th Cir. 2015))); 8 C.F.R. § 1208.16(c)(3) (providing a nonexclusive list of considerations for granting CAT relief, including the possibility of relocation to an area where the petitioner is not likely to be tortured).

Further, as the BIA noted, Herrera Padron did not meet her burden to establish that she would more likely than not be subjected to torture inflicted by or at the instigation of a public official or other person acting in an official capacity, even after providing a country conditions report regarding corruption and lack of transparency in the government. *See Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014) ("Nor does evidence that a government has been generally ineffective in preventing or investigating criminal activities raise an inference that public

officials are likely to acquiesce in torture, absent evidence of corruption or other inability or unwillingness to oppose criminal organizations.").

PETITION DENIED.