

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BYRON DEL VALLE LOPEZ;  
ZORAIDA DE DEL VALLE; A. V.,

Petitioners,

v.

PAMELA BONDI, Attorney General,

Respondent.

No. 24-5267

Agency Nos.  
A220-988-940  
A220-988-941  
A220-988-942

MEMORANDUM\*

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

Submitted May 13, 2025\*\*  
San Francisco, California

Before: S.R. THOMAS, M. SMITH, and BRESS, Circuit Judges.

Byron Sipriano Del Valle Lopez, his wife Zoraida Yuminda Gaspar Garcia De Del Valle, and their daughter, Angelique Marisol Del Valle Gaspar, petition for review of the denial of their applications for asylum, withholding of removal, and

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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).

protection under the Convention Against Torture (“CAT”).<sup>1</sup> We have jurisdiction under 8 U.S.C. § 1252. Because the parties are familiar with the facts and history of this case, we do not recount them here. We deny the petition for review.

“Where the BIA conducts its own review of the evidence and law, rather than adopting the IJ’s decision, our review is limited to the BIA’s decision, except to the extent the IJ’s opinion is expressly adopted.” *Guerra v. Barr*, 974 F.3d 909, 911 (9th Cir. 2020) (quoting *Rodriguez v. Holder*, 683 F.3d 1164, 1169 (9th Cir. 2012)). “We review the Board’s legal conclusions de novo, and its factual findings for substantial evidence.” *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059 (9th Cir. 2017) (en banc) (citations omitted). A factual finding is not supported by substantial evidence when “‘any reasonable adjudicator would be compelled to conclude to the contrary’ based on the evidence in the record.” *Zhi v. Holder*, 751 F.3d 1088, 1091 (9th Cir. 2014) (quoting 8 U.S.C. § 1252(b)(4)(B)).

## I

Substantial evidence supports the BIA’s asylum and withholding of removal determinations, because the record does not compel the finding that the government is unable or unwilling to control Del Valle Lopez’s persecutors. Del

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<sup>1</sup> Del Valle Lopez is the lead petitioner; his wife and daughter are derivative beneficiaries who do not seek relief separate from his application.

Valle Lopez bore the burden of showing that his alleged persecution “was committed by the government, or by forces that the government was unable or unwilling to control.” *Bringas-Rodriguez*, 850 F.3d at 1062 (quoting *Baghdasaryan v. Holder*, 592 F.3d 1018, 1023 (9th Cir. 2010)). When assessing this element, one relevant factor is whether Del Valle Lopez reported the alleged persecution to the authorities. *See Hussain v. Rosen*, 985 F.3d 634, 648 (9th Cir. 2021). Del Valle Lopez was not required to report his persecution to the authorities, but because he did not, he must provide other record evidence for this element, such as evidence that reporting would have been “futile and dangerous.” *Bringas-Rodriguez*, 850 F.3d at 1073–74. A subjective belief that reporting would be futile, without more, is insufficient. *See Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005).

Del Valle Lopez’s evidence does not compel the conclusion that the Guatemalan government was unable or unwilling to prevent his alleged persecution. The only record evidence as to this element is Del Valle Lopez’s testimony about his subjective beliefs and a single, distinguishable event from “years back” about the police not responding to a fight between a man and a woman. That is insufficient to compel the conclusion that the Guatemalan government is unable or unwilling to control the religious persecution Del Valle

Lopez and his family allegedly face. *See Castro-Perez*, 409 F.3d at 1072. Del Valle Lopez’s only other evidence was not submitted to the BIA, and so is not properly before this court. *See* 8 U.S.C. § 1252(b)(4)(A).

## II

Substantial evidence also supports the BIA’s CAT determination, because the record does not compel the finding that the government would acquiesce in Del Valle Lopez’s torture. To qualify for CAT relief, Del Valle Lopez “must establish that ‘it is more likely than not that he . . . would be tortured if removed to the proposed country of removal.’” *Garcia-Milian v. Holder*, 755 F.3d 1026, 1033 (9th Cir. 2014) (quoting 8 C.F.R. § 208.16(c)(2)). That torture must be “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” *Id.* (quoting *Zheng v. Ashcroft*, 332 F.3d 1186, 1188 (9th Cir. 2003)). Del Valle Lopez alleges only government acquiescence, not government infliction, instigation, or consent.

To establish that public officials would acquiesce to torture, “there must be evidence that the [public officials] are unable or unwilling to oppose” the torture. *Id.* at 1034. Acquiescence requires that the public official be aware of “torture of the sort feared by the applicant,” but not that the public official has “actual knowledge of the specific incident of torture,” nor “that the public official approve

of the torture, even implicitly.” *Madrigal v. Holder*, 716 F.3d 499, 509 (9th Cir. 2013). “[W]hile ‘awareness and willful blindness will suffice’ to show acquiescence, ‘a general ineffectiveness on the government’s part to investigate and prevent crime will not.’” *Hernandez v. Garland*, 52 F.4th 757, 770 (9th Cir. 2022) (citation omitted) (first quoting *Aguilar-Ramos v. Holder*, 594 F.3d 701, 705–06 (9th Cir. 2010); and then quoting *Andrade-Garcia v. Lynch*, 828 F.3d 829, 836 (9th Cir. 2016)).

Del Valle Lopez’s evidence is insufficient to show government acquiescence to torture. Del Valle Lopez testified that he did not report the altercations with the rival religious group, and he has not provided any other evidence to show the authorities were aware of this sort of altercation. *See Hernandez*, 52 F.4th at 770 (upholding BIA’s finding that the government did not acquiesce to sexual assaults by private actors where the petitioner did not report the attacks, and no other evidence showed police knew of the attacks).

### III

In sum, substantial evidence supports the BIA’s affirmance of the denial of asylum, withholding of removal, and CAT protection. Because of our resolution off these issues, we need not—and do not—address any other issue raised by the parties.

**PETITION DENIED.<sup>2</sup>**

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<sup>2</sup> Del Valle Lopez's motion to stay removal, Docket No. 2, is denied. The temporary stay of removal shall remain in place until the mandate issues.