NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JULIO EDUARDO FLORES-VARGAS, Petitioner, v. PAMELA BONDI, Attorney General, Respondent.	No. 24-3477 Agency No. A205-387-385 MEMORANDUM[*]

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

Argued and Submitted June 11, 2025
San Francisco, California

Before: M. SMITH and N.R. SMITH, Circuit Judges, and RAYES, District Judge.[**]

Petitioner Julio Eduardo Flores-Vargas, a Salvadoran native and citizen, petitions for review of the Board of Immigration Appeal's ("BIA") dismissal of Flores-Vargas's appeal of the Immigration Judge's ("IJ") denial of his application

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

[**] The Honorable Douglas L. Rayes, United States District Judge for the District of Arizona, sitting by designation.

for deferral of removal under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252(a)(1). We deny the petition for review.[1]

Where, as here, the BIA adopts the IJ's decision and reasoning in its entirety, "we review the IJ's decision as if it were that of the BIA." *Abebe v. Gonzales*, 432 F.3d 1037, 1039 (9th Cir. 2005) (en banc) (quoting *Hoque v. Ashcroft*, 367 F.3d 1190, 1194 (9th Cir. 2005)). Because "the law entrusts the agency to make the basic . . . eligibility decision[s]," *INS v. Orlando Ventura*, 537 U.S. 12, 16 (2002) (per curiam), we may grant a petition only if the petitioner shows that the evidence "*compels* the conclusion" that the agency's decision was incorrect, *Ming Xin He v. Holder*, 749 F.3d 792, 795 (9th Cir. 2014) (citing *Gu v. Gonzales*, 454 F.3d 1014, 1018 (9th Cir. 2006)).

Flores-Vargas offered two theories to show a likelihood of torture: (1) that MS-13 and 18 Street gang members would see Flores-Vargas's tattoos and torture him because of his rival gang affiliation; and (2) that he would be detained on arrival to El Salvador, sent to prison, and tortured there. Flores-Vargas argues that the IJ: improperly analyzed his risk of torture at the hands of rival gangs as one link in a hypothetical chain of events together with the second source of harm;[2]

[1] The temporary stay of removal remains in place until the mandate issues. Flores-Vargas's motion to stay removal (Dkt. 2) is otherwise denied.

[2] We disagree with the Government that Flores-Vargas failed to exhaust this argument. Because "[w]e do not employ the exhaustion doctrine in a formalistic manner," *Diaz-Jimenez v. Sessions*, 902 F.3d 955, 959 (9th Cir. 2018) (citation

failed to support his analysis with substantial evidence; and failed to properly aggregate the risk of torture from both sources. We conclude that the IJ properly considered Flores-Vargas's likelihood of torture, and substantial evidence supports the agency's decision that Flores-Vargas is ineligible for CAT protection.

The IJ "consider[ed] the risk of torture posed by conspicuous tattoos that display affiliation with a gang," *Andrade v. Lynch*, 798 F.3d 1242, 1245 (9th Cir. 2015), but concluded that the evidence was too generalized to show a particular risk of torture to Flores-Vargas, *see Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (per curiam) (holding that "generalized evidence of violence and crime in [the country of removal] is not particular to [the p]etitioner and is insufficient to meet th[e CAT] standard"). Substantial evidence supports his conclusion.

Flores-Vargas presented evidence that he is a former member of the Cypress Park gang—a rival of the MS-13 and 18 Street gangs in the United States—and that he has many tattoos indicating his affiliation with Cypress Park. But Cypress Park is a gang local to northeast Los Angeles, and Flores-Vargas did not present

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omitted), "the petitioner may raise a general argument in the administrative proceeding and then raise a more specific legal issue on appeal," *Bare v. Barr*, 975 F.3d 952, 960 (9th Cir. 2020). Flores-Vargas made a general objection to the IJ's likelihood-of-torture analysis on appeal to the BIA, so he preserved his opportunity to argue that the IJ improperly considered his risk of torture by gangs as part of a single hypothetical chain of events. We nevertheless conclude the IJ properly considered the two separate risks of harm and aggregated them to determine Flores-Vargas's likelihood of torture.

evidence indicating that a Salvadoran gang would be able to identify Flores-Vargas's tattoos as gang related. Flores-Vargas further failed to show that anyone in El Salvador was looking for him. Flores-Vargas testified that MS-13 members with whom he was imprisoned in the United States told him that, if he returned to El Salvador, he would be branded a traitor and would pay with his life but offered no sufficient explanation as to how these individuals, who remain imprisoned in the United States, would be able to cause him harm in El Salvador.

As to Flores-Vargas's second theory of harm, the IJ determined that the likelihood of torture by detainment was based on a hypothetical chain of future events. "[I]f an applicant would be tortured only if a single 'hypothetical chain of events' comes to fruition, CAT relief cannot be granted unless each link in the chain is 'more likely than not to happen.'" *Velasquez-Samayoa v. Garland*, 49 F.4th 1149, 1154 (9th Cir. 2022) (quoting *Matter of J-F-F-*, 23 I. & N. Dec. 912, 917–18 (A.G. 2006)). Reasoning that an arrest in El Salvador would be the "result of lawful actions by the Salvadoran government," the IJ concluded that Flores-Vargas failed to establish that every link in his hypothetical chain of events was more likely than not to occur. Substantial evidence supports his conclusion.

Flores-Vargas failed to demonstrate that he was likely to be arrested if returned to El Salvador. Flores-Vargas testified that during the repatriation process he would be strip searched and detained because of his gang-related tattoos and

U.S. criminal history, but other evidence of the repatriation process did not indicate that the Salvadoran government would search a deportee for tattoos or ask about his criminal history. And, as discussed previously, there was insufficient evidence to support Flores-Vargas's assertion that anyone (including law enforcement) would recognize his tattoos as gang-related. Even if he were detained and imprisoned, substantial evidence supports the IJ's conclusion that Salvadoran prison conditions are squalid but not torturous.

Though the IJ determined that the second theory of harm depended on a hypothetical chain of events, he nonetheless considered the likelihood of harm from either source in the aggregate.[3] *Velasquez-Samayoa*, 49 F.4th at 1154 ("[T]he relevant inquiry is whether the *total* probability that the applicant will be tortured—considering all potential sources of and reasons for torture—exceeds 50 percent."). The IJ reasonably determined that Flores-Vargas did not establish a probability of future torture even with the two potential sources of harm aggregated and supported his analysis with substantial evidence. The IJ thus did not need to reach the issue of government acquiescence.

PETITION DENIED.

[3] Flores-Vargas's argument to the contrary is primarily based on the IJ's statement that "[w]hereas here the *entire* claim for relief is based on a future and hypothetical chain of events . . ." Though, read alone, this sentence suggests that the IJ considered both sources of harm in a single chain, a comprehensive reading of the entire decision shows otherwise.