NOT FOR PUBLICATION

FILED

JUL 15 2025

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO SALVADOR MIRA AZMITIA, Petitioner, v. PAMELA BONDI, Attorney General, Respondent.	No. 23-3088 Agency No. A205-318-262 MEMORANDUM*

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

Submitted July 11, 2025**
Pasadena, California

Before: WARDLAW, CALLAHAN, and HURWITZ, Circuit Judges.
Partial Concurrence and Partial Dissent by Judge CALLAHAN

Francisco Salvador Mira Azmitia ("Mira"), a native and citizen of El Salvador, petitions for review of a Board of Immigration Appeals ("BIA") decision

* 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).

dismissing his appeal from an order by an Immigration Judge ("IJ") denying withholding of removal and protection under the Convention Against Torture ("CAT"). Exercising jurisdiction under 8 U.S.C. § 1252, we deny Mira's petition as to withholding of removal but grant it as to CAT protection.

Where, as here, the BIA adopts and affirms the IJ's decision citing *Matter of Burbano*, we review both decisions. *Alam v. Garland*, 11 F.4th 1133, 1135 (9th Cir. 2021). We review legal conclusions de novo and factual findings for substantial evidence. *Garcia v. Wilkinson*, 988 F.3d 1136, 1142 (9th Cir. 2021). A finding of fact must be upheld "unless the evidence compels a contrary conclusion." *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019).

1. To obtain withholding of removal, an applicant must establish a nexus between feared future persecution and a protected ground, which includes "membership in a particular social group ["PSG"]." 8 U.S.C. § 1231(b)(3). The protected ground must be at least "a reason" for the feared persecution. *Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017). "The reasons needed to prove a nexus refer to the persecutor's motivations for persecuting the petitioner." *Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1018 (9th Cir. 2023).

Mira left El Salvador after being stabbed while resisting an extortion attempt by MS-13 gang members in 2005. About ten days after the stabbing, gang members "slid a paper under the door" of Mira's house stating that they were going to kill

him. A few days later, gang members painted "MS-13" and the words "death to those that don't comply with the gang" on the outside of his home. Sometime after Mira fled the country, gang members killed a man at the entrance to Mira's brother's auto repair shop, later telling Mira's brother that Mira was the intended target. They also told Mira's brother "to keep his mouth shut" once the police arrived or he would be killed.

The gang also extorted Mira's sister after he left the country. She left for the U.S. but temporarily returned to El Salvador. While in El Salvador, she was raped by members of the gang. Mira fears returning to El Salvador because he believes gang members will kill him for failing to pay the extortion money, or out of the belief that he would attempt to avenge the treatment of his sister and threats to his brother. He believes police will not protect him because of their connections with the gangs, which he has been told about by "family members of the police."

The IJ found Mira's family-based proposed PSG cognizable, *see, e.g.*, *Rios v. Lynch*, 807 F.3d 1123, 1128 (9th Cir. 2015), but found he failed to establish the required nexus between the PSG and feared persecution. The record does not compel a contrary conclusion. Gang members stabbed Mira after he refused to pay the money they demanded, and the only motive they offered in their subsequent death threats was his non-compliance. Mira does not claim that his family membership was a motive for the extortion attempt and stabbing, and the evidence

does not compel the conclusion that the gang would harm him to prevent him from engaging in revenge on behalf of his brother and sister. *See Garcia-Milian v. Holder*, 755 F.3d 1026, 1031 (9th Cir. 2014).

2. "[R]elief under the Convention Against Torture requires a two part analysis—first, is it more likely than not that the alien will be tortured upon return to his homeland; and second, is there sufficient state action involved in that torture." *Garcia-Milian*, 755 F.3d at 1033 (cleaned up); 8 C.F.R. § 1208.16(c)(2); 8 C.F.R. § 1208.18(a). The agency must consider "all evidence relevant to the possibility of future torture." 8 C.F.R. § 1208.16(c)(3); *Akosung v. Barr*, 970 F.3d 1095, 1104 (9th Cir. 2020). "No one factor is determinative." *De Leon v. Garland*, 51 F.4th 992, 1000 (9th Cir. 2022) (cleaned up); *see also Maldonado v. Lynch*, 786 F.3d 1155, 1164 (9th Cir. 2015) (en banc). "[W]here there is some indication that the BIA overlooked relevant evidence, including by misstating the record or failing to mention highly probative or potentially dispositive evidence," we may "question whether it properly considered the record," *Park v. Garland*, 72 F.4th 965, 979-80 (9th Cir. 2023) (cleaned up), despite the agency's statement that it did, *see Cole v. Holder*, 659 F.3d 762, 772 (9th Cir. 2011).

The IJ found Mira was previously tortured, but that he "had not presented sufficient evidence to indicate that the gang members continue to look for him today or would seek him out in order to torture him upon his return." Although conceding

that country conditions evidence demonstrated that "torture, corruption, and violence remain serious problems in El Salvador," the IJ held it did not show that Mira is "particularly at risk of being tortured" if returned. *See, e.g., Dhital v. Mukasey*, 532 F.3d 1044, 1051 (9th Cir. 2008).

The IJ, however, failed to "acknowledge, let alone analyze," *see Eneh v. Holder*, 601 F.3d 943, 948 (9th Cir. 2010), probative evidence suggesting that Mira was, in fact, "subject to a particularized threat of torture," *see Dhital*, 532 F.3d at 1051. The IJ did not discuss Mira's credible testimony that, after stabbing him, gang members threatened him with death at his house twice, in one instance publicly, and killed someone they mistook for him. Nor did the IJ mention the extortion of Mira's sister, or her rape, both of which were apparently prompted by Mira's refusal to pay the gang members.

The IJ did find that Mira had "not presented evidence that it would not be reasonable for him to relocate within El Salvador," and stated that his sister's temporary relocation within El Salvador "supports a finding that the respondent may be able to safely relocate." However, the mere possibility of internal relocation is not fatal to eligibility for CAT relief, nor does the petitioner bear the burden of proof to show it is impossible. *Barajas-Romero*, 846 F.3d at 364. The BIA is not required to explicitly address every piece of evidence a petitioner presents. *See Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010). But here, the agency's denial of Mira's

CAT claim was not supported by "reasoned consideration" of probative evidence. *See Cole*, 659 F.3d at 772. We therefore grant the petition for review as to CAT protection and remand for further consideration.[1]

PETITION DENIED IN PART AND GRANTED IN PART; REMANDED. The parties shall bear their own costs.

[1] The agency did not address whether any potential future torture would take place with government consent or acquiescence, *see* 8 C.F.R. § 1208.18(a), nor do we.

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CALLAHAN, Circuit Judge, concurring in part and dissenting in part:

I concur in the denial of Mira's petition for the withholding of removal claim. As the majority explains, substantial evidence supports the IJ and BIA (collectively, "agency") determination that there is no relationship between Mira's family and his fear of persecution upon returning to El Salvador.

I dissent because the majority errs in granting Mira's petition for the CAT claim. In the majority's view, the agency "failed to acknowledge, let alone analyze probative evidence" supporting this claim. Mem. Dispo. at 5:6–9 (quotations and citations omitted). The record and agency's decision belie this conclusion.

* * *

The threshold question here is whether the agency considered all evidence that is relevant to the possibility of future torture. 8 C.F.R. § 1208.16(c)(3); *Castillo v. Barr*, 980 F.3d 1278, 1283 (9th Cir. 2020). "We start with the presumption that the [agency] reviewed the record and considered all relevant evidence." *Park v. Garland*, 72 F.4th 965, 979 (9th Cir. 2023). "Only where there is some indication that the [agency] overlooked relevant evidence, including by misstating the record or failing to mention highly probative or potentially dispositive evidence, do we question whether it properly considered the record." *Id.* (quotations omitted).

The majority says that the presumption is rebutted here because the agency's decision was not supported by "reasoned consideration" of probative evidence. Mem. Dispo. at 6:1–2. In particular, the majority says the agency did not consider that (1) gang members twice threatened Mira with death; (2) Mira's sister was extorted and raped; and (3) gang members killed someone they mistook for Mira. Mem. Dispo at 5:9–13. This is wrong.

For starters, the IJ explicitly acknowledged that Mira suffered past torture, which included being "stabbed and threatened by MS-13 gang members in 2005." The threats directed at Mira "in 2005" are the two instances where Mira was threatened with death. The IJ thus considered, and indeed "discuss[ed]," *cf.* Mem. Dispo at 5:9–10, how gang members twice threatened Mira with death.

Next, the IJ acknowledged that Mira's "family in El Salvador was targeted," which necessarily includes the "treatment of his sister." Mem. Dispo. at 3:11. The IJ even mentioned how Mira "testified that his sister, Claudia Mira, did not face any harm or threats for three years after relocating in El Salvador before her arrival in the United States." This means that the IJ considered how Mira's sister did face "harm" (i.e., rape) and "threats" (i.e., extortion) before relocating.

Finally, while the IJ did not specifically mention that gang members killed someone who they mistook for Mira, the IJ noted that Mira "testified that gangs do not forget those who resist their extortion fees," and this testimony took place

when Mira discussed how the gang "killed one person thinking that I had gone back to the country." Thus, the IJ did in fact consider this evidence but "simply reached a different overall conclusion" than the one Mira wants. *Herandez v. Garland*, 52 F.4th 757, 771 (9th Cir. 2022).

Moreover, not even Mira thought evidence of gang members mistakenly killing someone was "relevant to the possibility of future torture." 8 C.F.R. § 1208.16(c)(3). Both in his brief to the BIA and on appeal to the Ninth Circuit, Mira argued that he is entitled to CAT relief because the "MS-13 gang has already made an attempt on [his] life and has also raped and threated his sister and threatened his brother." Notably absent is the argument that he is entitled to CAT relief because the gang mistakenly killed someone else. Mira's decision to omit this evidence from his argument suggests that he did not think it was "highly probative or potentially dispositive" to his CAT claim. *Castillo*, 980 F.3d at 1283 (quotations omitted).[1] "And if the evidence is neither highly probative nor

[1] Because Mira decided to omit this evidence from his argument for CAT relief, the majority's reliance on it runs up against the "principle of party presentation." *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020). As the Supreme Court put it, "our system is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." *Id.* at 375–76 (cleaned up). Mira was represented by counsel both before the BIA and now on appeal, and chose to not rely on the gang mistakenly killing someone as evidence supporting his CAT claim. The majority therefore errs in relying on this fact. *See also Miskey v. Kijakazi*, 33 F.4th 565, 573 n.8 (9th Cir. 2022) ("We will not

potentially dispositive, the [agency] need not expressly discuss it." *Hernandez*, 52 F.4th at 771 (cleaned up).

* * *

Today's decision comes down to a question of how detailed the agency's decision must be to survive review in our court. The majority says the agency's denial of Mira's CAT claim was not supported by "'reasoned consideration' of probative evidence," Mem. Dispo. at 6:1–3 (quoting *Cole*, 659 F.3d at 772),[2] but we have consistently said that "[t]he agency need not provide a detailed explanation of every argument or piece of evidence in its decision," *Rodriguez-Jimenez v. Garland*, 20 F.4th 434, 435 (9th Cir. 2021); *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010) (holding that the agency "does not have to write an exegesis on every contention"). And while the agency must provide "more than mere conclusory statements, all that is necessary is a decision that sets out terms sufficient to enable us as a reviewing court to see that the [agency] has heard, considered, and decided." *Rodriguez-Matamoros v. INS*, 86 F.3d 158, 160 (9th Cir.

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manufacture arguments for an appellant") (quoting *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994)).

[2] I question the force of our precedent requiring "reasoned" consideration of the relevant evidence, because the regulation merely requires that the agency "consider" the relevant evidence. 8 C.F.R. § 1208.16(c)(3). It seems to me that the majority might acknowledge the agency here *considered* the evidence relevant to Mira's CAT claim, but somehow its consideration of that evidence was somehow not "reasoned" enough.

1996) (quoting *Villanueva-Franco v. INS*, 802 F.2d 327, 330 (9th Cir. 1986)). That happened here. The majority brushes this precedent aside along with the agency's statements showing that it considered "all evidence relevant" to Mira's CAT claim. 8 C.F.R. § 1208.16(c)(3). Accordingly, I respectfully dissent from the partial grant of Mira's petition.