

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 28 2025

FOR THE NINTH CIRCUIT

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

RAUL MATA-YANEZ,

Petitioner,

v.

PAMELA BONDI, Attorney General,

Respondent.

No. 23-1329

Agency No.
A205-714-104

MEMORANDUM*

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

Argued and Submitted October 8, 2025
Pasadena, California

Before: WARDLAW, GOULD, and KOH, Circuit Judges.

Petitioner Raul Mata Yanez petitions for review of the Board of Immigration Appeals’ (“BIA”) order affirming the immigration judge’s (“IJ”) order denying his applications for cancellation of removal, asylum, withholding of removal, protection under the Convention Against Torture (“CAT”), and post conclusion voluntary departure. “Where the BIA writes its own decision, as it did here, we

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

review the BIA’s decision, except to the extent it expressly adopts the IJ’s decision.” *Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1075-76 (9th Cir. 2020). We “review legal and constitutional questions, including alleged due process violations de novo.” *Vilchez v. Holder*, 682 F.3d 1195, 1198 (9th Cir. 2012). Factual findings underlying denial of asylum, denial of withholding of removal, and denial of CAT protection are reviewed for substantial evidence. *Fon v. Garland*, 34 F.4th 810, 813, 816 (9th Cir. 2022). Whether the BIA erred in applying the “exceptional and extremely unusual hardship” standard to a given set of facts is also reviewed for substantial evidence. *Gonzalez-Juarez v. Bondi*, 137 F.4th 996, 1003 (9th Cir. 2025). As the parties are familiar with the facts, we do not recount them here. We grant in part and deny in part the petition for review.

1. The BIA erred by relying on improper evidence in denying Petitioner’s application for post conclusion voluntary departure as a matter of discretion. Although the Agency has “great latitude in exercising [its] discretion to grant or deny requests for voluntary departure, such discretion does not ‘strip the inquiry of all guideposts.’” *Campos-Granillo v. I.N.S.*, 12 F.3d 849, 852 (9th Cir. 1993), *as amended* (Feb. 16, 1994) (quoting *Mabugat v. INS*, 937 F.2d 426, 432 (9th Cir. 1991)). “One such guidepost is the requirement that the agency ‘must weigh both favorable and unfavorable factors.’” *Id.* (quoting *De la Luz v. INS*, 713 F.2d 545, 545 (9th Cir. 1983)). We “lack jurisdiction to reweigh the agency’s exercise of

discretion in denying voluntary departure,” but we “have jurisdiction to review whether the BIA and IJ failed to consider the appropriate factors or relied on improper evidence.” *Zamorano v. Garland*, 2 F.4th 1213, 1221 (9th Cir. 2021) (internal quotation marks and citation omitted). In its post conclusion voluntary departure analysis, the BIA improperly relied on a mere arrest as evidence that Petitioner committed the underlying “domestic violence offense,” despite a lack of corroborating evidence. Accordingly, we grant the petition with respect to Petitioner’s application for post conclusion voluntary departure and remand to the BIA to reweigh the favorable and unfavorable factors excluding the improper evidence. *See Paredes-Urrestarazu v. INS*, 36 F.3d 801, 814-16 (9th Cir. 1994) (“[W]e would be troubled if . . . the Board found the *mere fact* of arrest probative of whether Petitioner had engaged in underlying conduct.”).

2. Petitioner’s due process rights were not violated. To establish a due process violation, Petitioner must show (1) “the proceeding was so fundamentally unfair that [he] was prevented from reasonably presenting his case,” and (2) “prejudice, which means that the outcome of the proceeding may have been affected by the alleged violation.” *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 620-21 (9th Cir. 2006) (internal quotation marks and citation omitted). Petitioner can meet this burden by showing “a deep-seated favoritism or antagonism that would make fair judgment impossible,” *Rivera v. Mukasey*, 508 F.3d 1271, 1276 (9th Cir.

2007) (internal quotation marks and citation omitted), but “a mere showing that the IJ was unfriendly, confrontational, or acted in an adversarial manner is not enough,” *Rizo v. Lynch*, 810 F.3d 688, 693 (9th Cir. 2016). Together, the IJ’s approaches to addressing Petitioner’s DUI and the inconsistencies in Petitioner’s testimony do not demonstrate “a deep-seated favoritism or antagonism.” Even if they did, Petitioner has not shown that the alleged bias affected the outcome of the proceedings. Petitioner was given many opportunities to provide further briefing and testimony to explain the identified inconsistencies in his claims, and, in denying Petitioner’s applications, the BIA did not rely on the challenged adverse credibility finding. The factual record supports the Agency’s determinations, and Petitioner had a full and fair hearing comporting with due process.

3. The BIA properly denied cancellation of removal. To be eligible for cancellation of removal, Petitioner must show that removal would result in “exceptional and extremely unusual hardship” to his qualifying relatives. 8 U.S.C. § 1229b(b)(1)(D). The BIA properly considered the hardship that Petitioner’s two children would face upon his removal, particularly concerning his wife’s thyroid condition, but concluded that because of the family’s support systems in the United States and Mexico, as well as Petitioner’s wife’s ongoing employment, Petitioner did not demonstrate exceptional and extremely unusual hardship. Substantial evidence supports this determination.

4. The BIA properly denied asylum and withholding of removal. To establish eligibility for asylum and withholding of removal, an applicant must show that he will face a likelihood of persecution on account of a statutorily protected ground. *See Sharma v. Garland*, 9 F.4th 1052, 1059 (9th Cir. 2021). Here, based on Petitioner’s fear of being targeted in Mexico because of the perception that he acquired wealth while residing in the United States, the IJ and BIA considered whether membership in this purported particular social group (“PSG”) constitutes a statutorily protected ground. The BIA did not err in concluding that Petitioner’s PSG lacks cognizability.

A cognizable PSG must be “(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.” *Villegas Sanchez v. Garland*, 990 F.3d 1173, 1180 (9th Cir. 2021) (internal quotation marks and citation omitted). The applicant bears the burden of demonstrating the existence of a cognizable PSG. *Reyes v. Lynch*, 842 F.3d 1125, 1132 n.3 (9th Cir. 2016). Whether a PSG is cognizable is a legal question reviewed *de novo*. *Macedo Templos v. Wilkinson*, 987 F.3d 877, 879 (9th Cir. 2021). Petitioner’s PSG is not cognizable because, as we have previously held, the PSG, individuals “returning to Mexico [from] the United States [who] are believed to be wealthy,” is “too broad to qualify as a cognizable social group.” *Barbosa v. Barr*, 926 F.3d 1053, 1059-60 (9th Cir. 2019)

(alterations in original); *see also Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1229 (9th Cir. 2016). We do not consider Petitioner’s newly raised PSG, “members of [his] nuclear family,” because this argument was not raised before the IJ or BIA as required by 8 U.S.C. § 1252(d)(1). *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023).

5. The BIA properly denied CAT protection. To be eligible for CAT protection, Petitioner “must establish that it is more likely than not that [he] would be tortured if returned to Mexico.” *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010). Petitioner did not meaningfully challenge the IJ’s finding that he did not establish that he faced a particularized risk of torture based on evidence of widespread violence in Mexico, waiving that issue before the BIA. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012). The BIA did not err when it denied Petitioner’s CAT claim based on this dispositive finding.¹

**PETITION GRANTED IN PART AND DENIED IN PART;
REMANDED WITH INSTRUCTIONS.**

¹ Costs are awarded to Petitioner Mata-Yanez.