

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 1 2025

FOR THE NINTH CIRCUIT

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

EDIBERTO PEDRO TOMAS,

Petitioner,

v.

PAMELA BONDI, Attorney General,

Respondent.

No. 25-269

Agency No.
A202-055-241

MEMORANDUM*

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

Submitted November 19, 2025**
Pasadena, California

Before: CLIFTON, BYBEE, and DE ALBA, Circuit Judges.

Petitioner Ediberto Pedro Tomas, a native and citizen of Guatemala, seeks review of a Board of Immigration Appeals (BIA) decision affirming the immigration judge's (IJ) order denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have

* 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).

jurisdiction under 8 U.S.C. § 1252(a)(1) and deny the petition.

“Where, as here, the BIA agrees with the IJ decision and also adds its own reasoning,” this court “review[s] the decision of the BIA and those parts of the IJ’s decision upon which it relies.” *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1027–28 (9th Cir. 2019) (citing *Ali v. Holder*, 637 F.3d 1025, 1028 (9th Cir. 2011)). The court “review[s] the BIA’s factual determinations for substantial evidence,” meaning it reverses “only if the evidence compels a conclusion contrary to the BIA’s.” *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023). The court reviews the BIA’s legal conclusions *de novo*. *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059 (9th Cir. 2017).

1. Petitioner failed to exhaust his asylum and withholding of removal claims and forfeited any challenge of the BIA’s conclusion on these claims. “A court may review a final order of removal only if,” in relevant part, the petitioner “has exhausted all administrative remedies available” to the petitioner as of right. 8 U.S.C. § 1252(d). This statutory exhaustion requirement is a “non-jurisdictional claim-processing rule” and “subject to waiver and forfeiture.” *Suate-Orellana v. Garland*, 101 F.4th 624, 629 (9th Cir. 2024) (internal quotation marks and citations omitted). A claim-processing rule is “mandatory” in the sense that a court “must enforce the rule if a party properly raises it.” *Id.* (internal quotation marks, citation, and brackets omitted). To exhaust a claim, the petitioner must put the

BIA on notice of the challenge, and the BIA must have “an opportunity to pass on the issue.” *Id.*

Here, the government properly raised argument that Petitioner failed to exhaust his asylum and withholding of removal claims. The BIA determined that Petitioner did not make any specific challenge to the immigration judge’s findings that Petitioner did not show (1) his proposed social group was cognizable and (2) that, even if his proposed social group was cognizable, there was a nexus between his membership in the group and the harm he fears he would experience in Guatemala. Accordingly, the BIA deemed these issues waived on appeal. Since the immigration judge’s findings on these waived issues are dispositive of Petitioner’s asylum and withholding of removal claims, the BIA did not reach the merits of Petitioner’s remaining claims.

Notably, here, Petitioner does not argue that he did, in fact, make a specific challenge to the immigration judge’s findings. Petitioner has therefore forfeited any challenge to the BIA’s waiver determination, *see Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005), and failed to exhaust his asylum and withholding of removal claims as the BIA did not have the opportunity to pass on these claims. *See Suate-Orellana*, 101 F.4th at 629.

2. Substantial evidence supports the finding that Petitioner failed to prove entitlement to protection under CAT. To qualify for protection under CAT,

a petitioner must show “a chance greater than fifty percent that [the petitioner] will be tortured if removed.” *Velasquez-Samayoa v. Garland*, 49 F.4th 1149, 1154 (9th Cir. 2022) (quoting *Cole v. Holder*, 659 F.3d 762, 770 (9th Cir. 2011)). A petitioner “must also establish that [the petitioner] would experience torture with the ‘acquiescence’” of government officials. *Castillo v. Barr*, 980 F.3d 1278, 1283 (9th Cir. 2020) (citation omitted).

“Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.” *Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1184 (9th Cir. 2020) (quoting 8 C.F.R. § 1208.18(a)(7)). “[A] general ineffectiveness on the government’s part to investigate and prevent crime will not suffice to show acquiescence.” *Id.* (quoting *Andrade-Garcia v. Lynch*, 828 F.3d 829, 836 (9th Cir. 2016)).

Here, substantial evidence supports the finding that Petitioner failed to prove that he is more likely than not to suffer torture if he returned to Guatemala. Evidence relevant to whether an applicant has established a likelihood of future torture includes “past torture inflicted upon the applicant,” “[e]vidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured,” and “gross, flagrant or mass violations of human rights within the country of removal.” *Xochihua-Jaimes*, 962 F.3d at 1183 (quoting 8

C.F.R. § 1208.16(c)(3)).

Petitioner argues that gangs will target him upon return to Guatemala and that the country's "corrupt police" will not protect him. Yet, aside from two death threats Petitioner received from gang members in Guatemala, Petitioner did not suffer physical or other harm. In fact, Petitioner remained in Guatemala for eight months after he received the death threats and was not harmed and did not receive further threats during that time.

Nor did Petitioner show that Guatemalan government officials were unable or unwilling to protect him or that such officials would acquiesce to his torture. Petitioner alleges that he reported the gang members' threats to local police but never heard from the police again and did not see the police make any report; however, the death threats did not involve harm that rose to the level of torture and Petitioner did not know the identities of the gang members who threatened him. For these reasons, the absence of an arrest, for example, does not—in and of itself—amount to government unwillingness or inability to combat crimes. *See, e.g., Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014) ("Evidence that the police were aware of a particular crime, but failed to bring the perpetrators to justice, is not in itself sufficient to establish acquiescence in the crime."). In other words, Petitioner has not shown that the government was "aware of" and

“acquiesced in” any gang plot to torture Petitioner. *See B.R. v. Garland*, 26 F.4th 827, 845 (9th Cir. 2022).

Even assuming the death threats rose to the level of torture, the evidence did not compel a finding that Petitioner would face “a *particularized* and *non-speculative* risk of torture” if he returned to Guatemala, as necessary to prevail on his CAT claim. *See Park v. Garland*, 72 F.4th 965, 980 (9th Cir. 2023) (emphasis in original). In sum, substantial evidence supports the agency’s finding on Petitioner’s CAT claim.

PETITION DENIED.¹

¹ The Motion to Stay Removal (Dkt. No. 2) is DENIED effective upon issuance of the mandate from this court.