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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILVER ALEXANDER DE LA ROSA MARTINEZ, Petitioner, v. TODD BLANCHE, Acting Attorney General, Respondent.	No. 25-2578 Agency No. A241-747-343 MEMORANDUM[*]

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

Submitted April 14, 2026[**]
Phoenix, Arizona

Before: GRABER, HURWITZ, and DESAI, Circuit Judges.

Wilver Alexander De La Rosa Martinez petitions for review of a Board of Immigration Appeals ("BIA") decision dismissing his appeal of an immigration judge's ("IJ") denial of his applications for asylum, withholding of removal, and

[*] 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"). We have jurisdiction under 8 U.S.C. § 1252. We deny the petition.

We review de novo whether the agency violated due process. *Chavez-Reyes v. Holder*, 741 F.3d 1, 3 (9th Cir. 2014). We review the agency's denial of asylum, withholding of removal, and CAT claims for substantial evidence. *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019). "To obtain judicial reversal of the agency's persecution determination, an asylum applicant must show that the evidence he presented was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution." *Urias-Orellana v. Bondi*, 146 S. Ct. 845, 851 (2026) (citing *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 483–84 (1992)) (citation modified).

1. The erroneous admission of evidence warrants a new hearing only when the petitioner demonstrates "that the outcome of the proceeding may have been affected by the alleged violation." *Hernandez v. Garland*, 52 F.4th 757, 766 (9th Cir. 2022) (citation modified). Here, the IJ did not accept as true the Department of Homeland Security's ("DHS") notes from an interview with De La Rosa Martinez asserting that he was a gang member but instead accepted De La Rosa Martinez's contrary version of events. Thus, even assuming the IJ erroneously admitted the interview notes, De La Rosa Martinez fails to establish that he was prejudiced by the admission. *See Smith v. Garland*, 103 F.4th 663, 671 (9th Cir. 2024).

2. The IJ, "like any reasonable factfinder, is free to credit part of a witness' testimony without necessarily accepting it all." *Garland v. Ming Dai*, 593 U.S. 357, 366 (2021) (citation modified). "The question of what probative value or weight to give to expert evidence is a determination for the [IJ] to make as the fact finder." *Matter of M-A-M-Z-*, 28 I. & N. Dec. 173, 177 (BIA 2020). Dr. Boerman's testimony that the witness protection laws in El Salvador are ineffective and terminate at the end of legal proceedings contradicts De La Rosa Martinez's testimony that Salvadoran detectives offered his brother protection in exchange for information and have effectively protected him since 2017. Further, although Dr. Boerman explained that, in certain circumstances, the United States provides information about criminal convictions and gang affiliation to the Salvadoran government, he did not explain whether the interview notes were part of this information-sharing protocol. Thus, the IJ reasonably discounted those portions of Dr. Boerman's testimony. *See Ming Dai*, 593 U.S. at 366 (whether the agency accepts "all, none, or some" of a witness's testimony, "its reasonable findings may not be disturbed").

3. De La Rosa Martinez advances two theories for his asylum and withholding of removal claims. He fears that (1) the MS-13 gang will harm him because of his relationship to his brother, a police informant, and (2) the Salvadoran government will harm him because of his perceived affiliations with the MS-13 gang. Both theories fail.

First, we are not compelled to find that De La Rosa Martinez established that the Salvadoran government is "unable or unwilling" to control the MS-13 gang. *See Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1062 (9th Cir. 2017) (en banc). Indeed, the police protected De La Rosa Martinez from the gang on multiple occasions. Second, we are not compelled to find that De La Rosa Martinez established that he has a well-founded fear of future persecution by the Salvadoran government. *See Duran-Rodriguez*, 918 F.3d at 1029. Although Dr. Boerman testified that the government may detain family members of gang members, De La Rosa Martinez has never been detained despite his brother's former gang affiliation. And De La Rosa Martinez did not establish that the interview notes, which allege that De La Rosa Martinez is gang-affiliated, are likely to be shared with the Salvadoran government. Because the document is labeled "for official use only" and states that "any sharing outside of DHS requires the written approval of the author," the IJ permissibly presumed that the notes will not be shared with Salvadoran authorities.[1]

4. De La Rosa Martinez's CAT claim fails for similar reasons. First, because the police protected De La Rosa Martinez from the MS-13 gang on multiple

[1] Because the failure to establish past persecution or a well-founded fear of future persecution is dispositive of De La Rosa Martinez's asylum and withholding claims, *see Mansour v. Ashcroft*, 390 F.3d 667, 672–73 (9th Cir. 2004), we need not and do not reach the issue of whether De La Rosa Martinez was a member of a cognizable particular social group.

occasions, the record does not compel the conclusion that the gang will torture De La Rosa Martinez "at the instigation of or with the consent or acquiescence of" the Salvadoran government. *See* 8 C.F.R. § 208.18(a)(1). Second, De La Rosa Martinez's theory that the Salvadoran government will detain and torture him for his alleged gang affiliations "rest[s] on a hypothetical chain of events," and he does not point to any evidence in the record compelling the conclusion that "each link in the chain is more likely than not to happen." *Andrade v. Garland*, 94 F.4th 904, 915 (9th Cir. 2024) (citation modified). It is unlikely that the Salvadoran government will target De La Rosa Martinez for his brother's former gang affiliation, as his brother is now a police informant. And Salvadoran police have never detained De La Rosa Martinez for his relationship to his brother, despite having the opportunity to do so. Further, the record does not compel the conclusion that it is "more likely than not" that the interview notes will be turned over to the Salvadoran government. *Id.*

Petition **DENIED**.[2]

[2] De La Rosa Martinez's motion for a stay of removal, Dkt. No. 3, is denied. The temporary stay of removal shall remain in place until the mandate issues.