

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 14 2026

FOR THE NINTH CIRCUIT

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

JOSE ALBERTO BACA-HERNANDEZ,

No. 17-70944

Petitioner,

Agency No. A204-510-614

v.

MEMORANDUM*

TODD BLANCHE, Attorney General,

Respondent.

JOSE ALBERTO BACA-HERNANDEZ,
AKA Indio Moniker,

No. 19-72950

Petitioner,

Agency No. A204-510-614

v.

TODD BLANCHE, Attorney General,

Respondent.

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

Argued and Submitted July 30, 2026
San Francisco, California

Before: WARDLAW, OWENS, and DE ALBA, Circuit Judges.

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

In these consolidated cases, Jose Alberto Baca-Hernandez (“Baca-Hernandez”), a native and citizen of Mexico, seeks review of two Board of Immigration Appeals’ (“BIA”) orders. In the first order, the BIA affirmed the immigration judge’s (“IJ”) denial of Baca-Hernandez’s application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). In the second order, the BIA denied Baca-Hernandez’s second motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We grant the petitions for review and we remand.

Where, as here, the BIA agrees with the IJ’s reasoning and supplements that reasoning with its own analysis, we review both decisions. *See Bhattarai v. Lynch*, 835 F.3d 1037, 1042 (9th Cir. 2016). We review the denial of asylum, withholding of removal, and CAT protection for substantial evidence. *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019). We review for abuse of discretion denials of motions to reopen. *Lemus-Escobar v. Bondi*, 158 F.4th 944, 952 (9th Cir. 2025).

The BIA abused its discretion in determining that Baca-Hernandez failed to show a reasonable likelihood that he was incompetent during his removal proceedings. *See Fonseca-Fonseca v. Garland*, 76 F.4th 1176, 1179 (9th Cir. 2023) (noting the legal standard for a motion to reopen). “Competency for immigration purposes means having ‘a rational and factual understanding of the

nature and object of the proceedings,’ an ability to consult with one’s lawyer or representative, and ‘a reasonable opportunity to examine and present evidence and to cross-examine witnesses.’” *Lemus-Escobar*, 158 F.4th at 954–55 (quoting *Matter of M-A-M-*, 25 I&N Dec. 474, 479 (BIA 2011)). “[W]hen there are indicia of incompetency, an [IJ] must take measures to determine whether a [petitioner] is competent to participate in proceedings.” *Id.* at 955 (quoting *Matter of M-A-M-*, 25 I&N Dec. at 480).

Here, the record contains indicia of incompetency during Baca-Hernandez’s removal proceedings. In 2015, Baca-Hernandez was shot in the face which resulted in wounds to his chest, neck, and face. As a result of these injuries, Baca-Hernandez became permanently blind. In 2016, the removal proceedings commenced. During the proceedings, Baca-Hernandez—appearing pro se—showed indicia of incompetency. For example, during the proceedings, Baca-Hernandez showed difficulty remembering basic familial facts. Indeed, Baca-Hernandez expressly informed the IJ he was blind, that he “was missing a lot” of information, and that he was having trouble during the proceedings. Yet, the IJ failed to ask any follow up questions and dismissed Baca-Hernandez’s complaints. “[T]aken in the aggregate, the evidence in the record clearly contains, at a minimum, *indicia* of incompetence warranting further inquiry by the IJ pursuant to *Matter of M-A-M-*.” *Id.* at 956.

Accordingly, we grant Baca-Hernandez’s petitions for review and remand so that the IJ “take measures to determine” whether Baca-Hernandez was “competent to participate in proceedings.” *Id.* at 955 (quoting *Matter of M-A-M-*, 25 I&N Dec. at 480).

PETITIONS FOR REVIEW ARE GRANTED AND REMANDED.