

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 19 2026

FOR THE NINTH CIRCUIT

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

NELSON ARMANDO TORRES,

No. 25-3191

Petitioner,

Agency No.

A076-612-218

v.

MEMORANDUM*

TODD BLANCHE, Attorney General,

Respondent.

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

Argued and Submitted May 21, 2026
Pasadena, California

Before: N.R. SMITH, BENNETT, and MENDOZA, JR., Circuit Judges.
Dissent by Judge MENDOZA.

Petitioner Nelson Armando Torres, a native and citizen of El Salvador, seeks review of a Board of Immigration Appeals (“BIA”) order upholding an immigration judge’s (“IJ”) denial of deferral of removal under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252 and deny the petition.

We review de novo whether the BIA applied the wrong legal standard.

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

Umana-Escobar v. Garland, 69 F.4th 544, 550 (9th Cir. 2023). We review for substantial evidence the BIA’s factual findings underlying its denial of CAT relief. *Velasquez-Samayoa v. Garland*, 49 F.4th 1149, 1154 (9th Cir. 2022). “Under the substantial evidence standard, the court upholds the BIA’s determination unless the evidence in the record compels a contrary conclusion.” *Id.* (quoting *Cole v. Holder*, 659 F.3d 762, 770 (9th Cir. 2011)). “Because the BIA expressly adopted the IJ’s decision under *Matter of Burbano*[, 20 I. & N. Dec. 872 (B.I.A. 1994)], but also provided its own review of the evidence and the law, we review both the IJ and the BIA’s decision.” *Joseph v. Holder*, 600 F.3d 1235, 1240 (9th Cir. 2010) (citation omitted). For simplicity, we refer to the BIA and IJ collectively as “the agency.”

1. The agency applied the proper aggregate-risk-of-torture standard in assessing Petitioner’s claim for deferral of removal under the CAT, and substantial evidence supports the agency’s determination that Petitioner failed to show he would more likely than not be tortured in El Salvador. *See Velasquez-Samayoa*, 49 F.4th at 1154–55.

The agency explicitly recognized that it had to aggregate the risk of torture from all sources. The agency then analyzed Petitioner’s alleged sources of torture: rival gangs who would torture Petitioner because of his Mexican gang tattoos, corrupt police officers who would torture Petitioner because of his gang tattoos identifying him as a criminal deportee, and generalized violence and crime in El

Salvador.

The agency determined that there was little risk of torture from rival gangs in El Salvador because Petitioner “did not specify exactly which Mexican gang he was a member of while in prison.” That determination was supported by substantial evidence because no evidence in the record showed that any Salvadoran gang would target members of *every* Mexican gang. Moreover, the agency could reasonably reject Petitioner’s vague, generalized testimony suggesting that all Salvadoran gang members would torture all individuals who are “involved with Mexican individuals.”

The agency also determined that Petitioner’s fear of torture by rival gangs and corrupt officers was speculative, relying on the hypothetical-chain-of-events principle established in *Matter of J-F-F-*, 23 I. & N. Dec. 912 (A.G. 2006).¹ That determination was supported by substantial evidence because Petitioner’s tattoos are not conspicuous (they are only visible if he is not wearing a shirt); Petitioner offered no persuasive evidence that it is more likely than not that a rival gang member or corrupt officer would see his tattoos; and Petitioner’s testimony on whether his tattoos would be easily identifiable as gang tattoos was equivocal. And as to

¹ The agency did not err by relying on *Matter of J-F-F-*. In *Velasquez-Samayoa*, we held that *Matter of J-F-F-*’s hypothetical-chain-of-events principle is “logically consistent” with our precedent so long as the agency, as it did here, also “assess[es] . . . the applicant’s *aggregate* risk of torture.” 49 F.4th at 1155.

Petitioner's generalized evidence of violence and crime, the agency reasonably discounted it because it was not particular to Petitioner. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (per curiam).

In sum, the agency applied the proper aggregate-risk-of-torture standard and reasonably concluded that Petitioner failed to show he would more likely than not be tortured if removed to El Salvador.^{2 3}

2. We also reject Petitioner's argument that the agency failed to consider certain evidence. He argues that the agency ignored his evidence showing that rival gangs and corrupt officers would target him based on his tattoos. But the agency was not required to "discuss each piece of evidence submitted." *Cole*, 659 F.3d at 771. Moreover, the agency's decision shows that it gave reasoned consideration to

² This case is distinguishable from *Velasquez-Samayoa*, 49 F.4th 1149. Here, unlike in *Velasquez-Samayoa*, we do not read the agency's decision as improperly increasing Petitioner's CAT burden. *See id.* at 1156. Rather, when read as a whole, the agency analyzed each of Petitioner's alleged sources of torture and determined that they failed to establish in the aggregate that Petitioner would more likely than not be tortured if removed to El Salvador. Respectfully, we believe the dissent reaches a contrary conclusion because it fails to read the IJ's decision as a whole.

³ Petitioner takes issue with the IJ's finding that "[i]f [he] successfully removed all traces of his tattoos with minimal or no scarring, his fear of being harmed because of his prior gang affiliation would likely dissipate." We need not decide whether this finding was supported by substantial evidence because, as discussed above, the agency's determination that Petitioner failed to show he would more likely than not be tortured was supported by substantial evidence even without a finding that he could successfully remove his tattoos.

Petitioner's evidence that rival gangs and corrupt officers would target him based on his tattoos.

PETITION DENIED.⁴

⁴ The motion and supplemental motion for a stay of removal are denied. Dkt. Nos. 3, 8. The temporary stay of removal is lifted. Dkt. No. 3.

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MENDOZA, JR., Circuit Judge, dissenting:

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This petition for review turns on whether the agency conflated Nelson Armando Torres’s two separate theories of torture into a single chain of events rather than considering their aggregate risk. The majority maintains that the agency appropriately considered aggregate risk when denying deferral of removal under the Convention Against Torture (“CAT”). That is incorrect. Because the agency impermissibly conflated Torres’s two distinct theories, I respectfully dissent.¹

The Immigration Judge (“IJ”) described Torres’s fear of torture in the singular, as “a string of impermissible suppositions.” The IJ further hypothesized on a sequence of events, where “1) A gang member or corrupt police officer becomes aware of Respondent’s arrival, 2) that individual sees his tattoos, 3) that individual interprets his tattoos as being that of a rival gang, and 4) that individual tortures Respondent . . .” *Id.* The repeated language “that individual” suggests the IJ conflated the source of torture as ‘gang member or police officer,’ rather than ‘gang member’ *or* ‘police officer’ separately; and there is no supplemental language

¹ We review the analysis of the Immigration Judge, because the Board of Immigration Appeals adopted the Immigration Judge’s findings that there was no aggregate risk of torture under *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994), stating that Torres relied on “a string of impermissible suppositions” to establish their fear determination.

suggesting otherwise. That analysis is inconsistent with our case law and regulations. *See* 8 C.F.R. §§ 1208.16(c)(2), 208.18(a)(1), (a)(5). Because the agency combined two separate theories of torture before reaching the aggregate risk analysis, I would therefore grant the petition and remand for legal error on the aggregate risk analysis.

The governing regulations require that petitioners undergo a two-part analysis: (1) petitioners must demonstrate they will be “more likely than not” tortured after removal; then (2) petitioners would experience severe physical or mental pain intentionally inflicted by or with the acquiescence of a public official. 8 C.F.R. § 1208.16(c)(2); *see* 8 C.F.R. § 1208.18(a)(1) (citation modified). Here, Torres, who has a criminal record and gang-related tattoo, asserted that he fears torture from gang members and police officers upon arrival at El Salvador, on the basis of his past gang affiliation.

Torres testified that he was involved in a Mexican gang and has gang-related tattoos. The tattoos spell out “Southeast” and “Garden,” and are placed on his neck and back. Torres attested that the tattoos are “easily identifiable as gang tattoos,” and an “MS member” could recognize him as being from the United States or in a Mexican gang. He believes he would be “either due for a good beating or even getting killed.” Separately, Torres also fears police torture, because there are police “death squads” assigned to stamp out gang activity and they target

possible gang members. He explains that deportees first undergo police checkups, where his tattoos would be revealed. The record contains further testimonial evidence that despite Torres's attempt at tattoo removal, he has been unable to attend his appointments due to work schedule conflicts, and removal would require sessions across three to four months. *See Cole v. Holder*, 659 F.3d 762, 774–75 (9th Cir. 2011) (noting tattoo removal is a long process subject to scarring, which makes individuals no less targeted by rival gangs, police, and death squads).

We have repeatedly underlined that the Board of Immigration Appeals (“BIA”) must account for “all possible sources of torture” in a more-likely-than-not determination. *See Cole*, 659 F.3d at 770; *Quijada-Aguilar v. Lynch*, 799 F.3d 1303, 1308 (9th Cir. 2015) (multiple sources of torture are not considered “separate, divisible CAT claims”). In practice, cases apply the correct standard when they first discuss separate theories of torture, under multiple hypothetical chains of events, before reaching an aggregate risk analysis. *See Castillo v. Barr*, 980 F.3d 1278 (9th Cir. 2020) (the BIA did not err when it discussed both possibilities of torture before determining insufficient aggregate risk); *see also Cole*, 659 F.3d at 775 (petitioners “need not prove that each group, treated individually, would more likely than not torture [them]”).

The majority excuses the agency's erroneous reasoning. Distinguishing this case from *Velasquez-Samoyoa v. Garland*, the majority maintains that the agency

applied the proper standard in evaluating aggregate risk. *See Velasquez-Samayoa v. Garland*, 49 F.4th 1149, 1156 (9th Cir. 2022). In *Velasquez-Samayoa*, we found legal error where the BIA combined two separate theories of torture into a single hypothetical chain of events. *Id.* at 1155 (citation modified). We clarified that petitioners need not show they will more likely than not be tortured under *both* theories, nor show that any *single* theory would individually succeed. *Id.* at 1156. Instead, the IJ must assess whether the aggregate risks of both theories add up to a “greater than 50 percent” probability of torture. *Id.*; *see Matter of J-F-F-*, 23 I. & N. Dec. 912 (A.G. 2006) (if petitioners posit a single theory of torture, petitioners need only show each event was more likely than not to happen).

Not the case here. Reading tea leaves, the majority implausibly found the agency “analyzed each. . . alleged sources of torture”; whereas the decision’s plain language suggested otherwise. The agency discussed gang members and police officers’ reaction in conjunction, where the first step in the chain is “a gang member or police officer becomes aware of Respondent’s arrival.” Continuing to describe the chain of events, the IJ refers to the potential sources of torture as a *singular* actor, “that individual” which may notice, interpret, and act upon Torres’s gang-affiliated tattoos. The decision neglects entirely that “gang members” and “police officers” are various and independent sources, and the theories to potential torture would likely differ.

Meanwhile, Torres provided respective testimonial and supplemental evidence of how police officers treat suspected gang members, and how gang members treat anyone that had contact with rival gangs. For instance, deportees undergo police checkups, where police officers “usually make [individuals] lift up [their] shirt” and check their tattoos and backgrounds. Torres further testified both police and gang members handle gang-related affairs violently, regardless of the person’s identity. “Police raids are often indiscriminate ... [people considered gang suspects are commonly] harassed by security forces,” and Salvadorean gangs murder civilians who cross rival territory. At minimum, the agency was required to explicate both theories separately, before jointly concluding on aggregate risk.

Because the agency failed to demonstrate that it individually assessed the risk of harm by police officers and gang members, as prescribed by 8 C.F.R. § 1208 and binding precedent, I would remand for the agency to conduct that analysis in the first instance. I therefore respectfully dissent.