

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 8 2026

FOR THE NINTH CIRCUIT

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

ENRY ARNULFO HERNANDEZ LUNA;
XIOMARA MARGARITA HERNANDEZ
DE HERNANDEZ; M. S. H. H.,

Petitioners,

v.

TODD BLANCHE, Acting Attorney
General,

Respondent.

No. 25-4905

Agency Nos.
A220-203-629
A220-203-630
A220-203-631

MEMORANDUM*

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

Submitted September 3, 2026**
San Francisco, California

Before: S.R. THOMAS, GOULD, and BYBEE, Circuit Judges.

Petitioner Enry Arnulfo Hernandez Luna (“Hernandez Luna”), as well as his wife and minor daughter (collectively, “Petitioners”), petition for review of a

* 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).

decision by the Board of Immigration Appeals (“BIA”) summarily affirming the Immigration Judge’s (“IJ”) decision denying Petitioners’ applications for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition.

1. “Where, as here, the BIA summarily adopts the IJ’s decision without opinion . . . we review the IJ’s decision as if it were the BIA’s decision.” *Antonio v. Garland*, 58 F.4th 1067, 1072 (9th Cir. 2023) (quoting *Ren v. Holder*, 648 F.3d 1079, 1083 (9th Cir. 2011)) (internal citation and quotation marks omitted); *see also Zheng v. Ashcroft*, 397 F.3d 1139, 1143 (9th Cir. 2005) (“Given the BIA’s summary affirmance, we review the IJ’s decision as if it were the BIA’s decision.”).

We review for substantial evidence an agency’s denial of asylum, withholding of removal, and CAT relief. *Sharma v. Garland*, 9 F.4th 1052, 1060 (9th Cir. 2021); *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 703 (9th Cir. 2022) (as amended). The substantial evidence standard is highly deferential, requiring reversal only when “any reasonable adjudicator would be *compelled* to conclude to the contrary.” *Tzompantzi-Salazar*, 32 F.4th at 703 (quoting *Zehatye v. Gonzales*, 453 F.3d 1182, 1185 (9th Cir. 2006)).

2. “To be eligible for asylum, a petitioner has the burden to demonstrate a likelihood of persecution or a well-founded fear of persecution on account of race,

religion, nationality, membership in a particular social group, or political opinion.” *Sharma*, 9 F.4th at 1059 (internal citation and quotation marks omitted). In order to establish past persecution, “an applicant must show: (1) an incident, or incidents, that rise to the level of persecution; (2) that is ‘on account of’ one of the statutorily-protected grounds; and (3) is committed by the government or forces the government is either ‘unable or unwilling’ to control.” *Navas v. INS*, 217 F.3d 646, 655–56 (9th Cir. 2000) (footnotes omitted). For the second element (the “nexus” element), “an applicant must show he was individually targeted on account of a protected ground rather than simply the victim of generalized violence.” *Hussain v. Rosen*, 985 F.3d 634, 646 (9th Cir. 2021).

Substantial evidence supports the agency’s finding that Petitioners failed to establish a nexus between the harm suffered and a protected ground. The IJ concluded that Petitioners were targeted by gang members solely because they had access to money, rather than being targeted due to a protected ground. At the hearing before the IJ, Hernandez Luna testified that other businesses in the municipal market were targeted by the gang and that the gang was “extorting everybody in the market.” Hernandez Luna also testified that the gang only contacted Petitioners for money, and only threatened Petitioners with violence when Petitioners could no longer pay the gang’s requested amount. There is no evidence in the record that the gang targeted Petitioners for any reason other than financial gain. Therefore, the IJ’s

conclusion that Petitioners failed to establish a nexus between a protected ground and the harm is supported by substantial evidence and Petitioners could not establish persecution on account of a protected ground. *See Baballah v. Ashcroft*, 367 F.3d 1067, 1075 n.7 (9th Cir. 2004) (no nexus to a protected ground where persecution is “solely on account of an economic motive”).

3. To be eligible for withholding of removal, a petitioner must show that race, religion, nationality, membership in a particular social group, or political opinion would be “a reason” that the petitioner’s life or freedom would be threatened in the proposed country of removal. *See* 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 1208.16(b); *see also Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017) (holding that the “a reason” standard is less demanding than “one central reason”). Because Petitioners could not show any nexus between the harm and a protected ground, Petitioners’ claim for withholding of removal necessarily fails and substantial evidence also supports the IJ’s denial of withholding of removal. *See Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1023 (9th Cir. 2023) (recognizing that a finding of no nexus “necessarily defeat[s]” both asylum and withholding claims).

4. Finally, substantial evidence also supports the IJ’s denial of CAT relief. To establish protection under CAT, a petitioner must show that “it is more likely than not that he or she would be tortured if removed.” *Akosung v. Barr*, 970 F.3d 1095, 1104 (9th Cir. 2020) (quoting 8 C.F.R. § 1208.16(c)(2)). The torture must be

“inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” *Zheng v. Ashcroft*, 332 F.3d 1186, 1188 (9th Cir. 2003) (quoting 8 C.F.R. § 208.18(a)(1)). Torture is “an extreme form of cruel and inhuman treatment[.]” 8 C.F.R. § 1208.18(a)(2), that is “more severe than persecution and[, therefore,] the standard of proof for the CAT claim is higher than the standard of proof for an asylum claim.” *Nuru v. Gonzales*, 404 F.3d 1207, 1224 (9th Cir. 2005). In evaluating a CAT claim, relevant evidence includes:

- (i) Evidence of past torture inflicted upon the applicant;
- (ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;
- (iii) Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and
- (iv) Other relevant information regarding conditions in the country of removal.

Xochihua-Jaimes v. Barr, 962 F.3d 1175, 1183 (9th Cir. 2020) (quoting 8 C.F.R. § 1208.16(c)(3)). The IJ found that Petitioners had never been “tortured” in El Salvador and that Petitioners had the possibility of relocating within El Salvador. The IJ recognized that Petitioners were never physically harmed by the gang, that Petitioners’ family that remained in El Salvador had never been contacted by the gang, and that there was no evidence that the gang remained interested in or continued to search for Petitioners. *See Tzompantzi-Salazar*, 32 F.4th at 705 (“[I]n assessing eligibility for CAT relief, the agency must consider the *possibility* of relocation—without regard for the *reasonableness* of relocation that is considered in

other types of applications (asylum and withholding of removal under the INA).” (citing 8 C.F.R. § 1208.16(c)(3))).

The IJ also examined the country conditions data and concluded that although gang violence is pervasive in El Salvador, the government is attempting to combat gang violence throughout the country. Finally, the IJ recognized that although Petitioners had filed a police report against the gang where no action had been taken, that alone was insufficient to show that the government of El Salvador would consent or acquiesce to any future torture. *See Andrade-Garcia v. Lynch*, 828 F.3d 829, 836 (9th Cir. 2016) (“[A] general ineffectiveness on the government’s part to investigate and prevent crime will not suffice to show acquiescence.”). Nothing in the record compels a different conclusion. *See Tzompantzi-Salazar*, 32 F.4th at 703.

PETITION DENIED.¹

¹ The temporary administrative stay of removal is lifted and the motion for stay of removal is denied. *See* Dkt. 2.