

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 16 2026

FOR THE NINTH CIRCUIT

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

ORLANDO HERNANDEZ-GARCIA,

No. 26-30

Petitioner,

Agency No.

v.

A213-121-532

TODD BLANCHE, Attorney General,

MEMORANDUM*

Respondent.

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

Submitted September 14, 2026**
Phoenix, Arizona

Before: BADE and TUNG, Circuit Judges, and KANE, District Judge.***

Orlando Hernandez-Garcia (“Hernandez-Garcia”), a native and citizen of El Salvador, petitions for review of an order of the Board of Immigration Appeals (“BIA”) dismissing his appeal of the order of the Immigration Judge (“IJ”) denying

* 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).

*** The Honorable Yvette Kane, United States District Judge for the Middle District of Pennsylvania, sitting by designation.

his applications for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252 and we deny the petition.

Where, as here, “the BIA expresse[s] agreement with the reasoning of the IJ, this court reviews both the IJ and the BIA’s decisions.” *Kumar v. Holder*, 728 F.3d 993, 998 (9th Cir. 2013). We review the BIA’s determination that Hernandez-Garcia is not entitled to asylum, withholding of removal, and CAT protection for substantial evidence. *Sharma v. Garland*, 9 F.4th 1052, 1060, 1066 (9th Cir. 2021).

1. Hernandez-Garcia failed to exhaust review of his CAT claim, despite having disputed the IJ’s denial of that claim in his Notice of Appeal to the BIA, because he did not challenge the denial of CAT protection in his brief before the BIA, nor did he offer any argument to suggest that he met eligibility for this form of relief. 8 U.S.C. § 1252(d)(1) (“A court may review a final order of removal only if . . . the alien has exhausted all administrative remedies available to the alien as of right[.]”); *Abebe v. Mukasey*, 554 F.3d 1203, 1208 (9th Cir. 2009) (en banc) (noting that a petitioner filing both a notice of appeal and a brief before the BIA will “be deemed to have exhausted only those issues he raised and argued in his brief before the BIA”). Instead, Hernandez-Garcia argued at length that he has a well-founded fear of persecution in El Salvador on account of his membership in a

particular social group—an argument relevant to whether he met his burden of proof for asylum and withholding of removal, not CAT protection. *Barajas-Romero v. Lynch*, 846 F.3d 351, 357–61 (9th Cir. 2017) (noting that unlike claims for asylum and withholding of removal, CAT claims do not require an applicant to demonstrate that he was harmed or targeted on account of a protected characteristic). Accordingly, Hernandez-Garcia failed to exhaust review of his CAT claim. *Abebe*, 554 F.3d at 1208; *see also Suate-Orellana v. Garland*, 101 F.4th 624, 629 (9th Cir. 2024) (holding that § 1252(d)(1) is a mandatory claim-processing rule that a court must enforce if a party properly raises the issue).

Similarly, Hernandez failed to exhaust review of the IJ’s partial adverse credibility determination. Although Hernandez-Garcia argues that he “notionally [] challenged” the IJ’s partial adverse credibility determination by referencing his “consistent [and] compelling testimony” in his brief before the BIA, he did not “meaningfully challenge[]” the IJ’s partial adverse credibility determination or “apprise the BIA of the particular basis” of the IJ’s error, when he recited portions of his merits hearing testimony without addressing the IJ’s adverse credibility determination. *See Rizo v. Lynch*, 810 F.3d 688, 692–93 (9th Cir. 2016); *Zara v. Ashcroft*, 383 F.3d 927, 930–31 (9th Cir. 2004) (concluding that the petitioner failed to exhaust the IJ’s adverse credibility determination because she did not challenge that determination in her brief to the BIA).

2. Substantial evidence supports the agency’s denial of Hernandez-Garcia’s asylum and withholding of removal claims because, even assuming that his proffered particular social group (“PSG”) of Salvadoran citizen who reported a crime is cognizable, the record does not compel the conclusion that he was or will be persecuted on account of his membership in that PSG. *Macedo Templos v. Wilkinson*, 987 F.3d 877, 883 (9th Cir. 2021) (concluding that “[e]ven if [the petitioner]’s proposed [PSG] were cognizable, he would still not be entitled to relief” because substantial evidence supported the agency’s determination that the petitioner failed to establish the requisite nexus). Hernandez-Garcia’s testimony regarding the gang’s financially-based pursuit of him supports the agency’s conclusion that the gang’s motivation in targeting him was extortion. Hernandez-Garcia has not pointed to any record evidence compelling a different conclusion. *Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1019 (9th Cir. 2023) (concluding that substantial evidence supported the agency’s nexus-based denial of asylum and withholding of removal where the petitioner “did not demonstrate that the gang members who sought to extort money from [her] . . . were motivated by anything other than an economic interest”). The agency’s determination that Hernandez-Garcia failed to demonstrate the requisite nexus between any past or feared future persecution by the gang and a protected ground is dispositive of his asylum and withholding of removal claims. *See Singh v. Barr*, 935 F.3d 822, 827 (9th Cir.

2019) (recognizing that an IJ’s finding of no nexus to a protected ground means that the even lower standard of nexus for withholding of removal is not satisfied); *see also Riera-Riera v. Lynch*, 841 F.3d 1077, 1081 (9th Cir. 2016) (“The lack of a nexus to a protected ground is dispositive of [a petitioner’s] asylum and withholding of removal claims.”).

PETITION DENIED.