

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 25 2026

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

EDUARDO CORTES RODRIGUEZ,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 25-4049

Agency No.
A094-373-394

MEMORANDUM*

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

Argued and Submitted August 11, 2026
San Francisco, California

Before: LEE, MENDOZA, JR., and DE ALBA, Circuit Judges;
Dissent by Judge LEE.

Eduardo Cortes Rodriguez petitions for review of a Board of Immigration Appeals (“BIA”) order adopting an immigration judge’s (“IJ”) decision to deny asylum, withholding of removal, and deferral of removal under the United Nations Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252(a)(1). We deny the petition for review in part and grant it in part.

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

1. Cortes Rodriguez argues that the agency erred by finding that his second-degree burglary conviction was a particularly serious crime precluding withholding of removal. “[D]etermining whether a crime is particularly serious is an inherently discretionary decision,” and we review “such decisions for abuse of discretion.” *Arbid v. Holder*, 700 F.3d 379, 383 (9th Cir. 2012). Under this standard of review, “we must uphold the agency’s decision unless it is arbitrary, irrational, or contrary to law.” *Hernandez-Ortiz v. Garland*, 32 F.4th 794, 800 (9th Cir. 2022) (citation modified).

The agency did not abuse its discretion. The IJ did not make any statements contrary to law. Though the IJ cited general propositions from *Taylor v. United States*, 495 U.S. 575 (1990), such as burglary having “an inherit potential for harm to others,” she also explicitly recognized that “no one in this case was injured.” Nor was the agency’s conclusion that Cortes Rodriguez committed a particularly serious crime based on factual misstatements of his crime. Cortes Rodriguez’s arguments seem to focus more on the inferences drawn by the agency than factual error. For example, he argues that the agency falsely stated that he “stole” a gun without support from the record, but Cortes Rodriguez himself acknowledges that he did carry the gun out of the house. These arguments do not merit relief under the abuse of discretion standard.

2. A noncitizen who is barred from seeking withholding of removal is still

entitled to deferral of removal under CAT if he is more likely than not to be tortured if removed to his home country. *See* 8 C.F.R. § 1208.17(a). “In evaluating a CAT claim, the IJ must consider all relevant evidence; no one factor is determinative. Where there is any indication that the Agency did not consider all of the evidence before it . . . the decision cannot stand.” *Aleman-Belloso v. Bondi*, 128 F.4th 1031, 1045 (9th Cir. 2024) (citation modified).

a. Here, the agency discounted considerable evidence that Cortes Rodriguez had been tortured in the past. “Past torture is ordinarily *the principal factor* on which we rely when an applicant who has been previously tortured seeks relief under the Convention because, absent changed circumstances, if an individual has been tortured and has escaped to another country, it is likely that he will be tortured again if returned to the site of his prior suffering.” *Avendano-Hernandez v. Lynch*, 800 F.3d 1072 (9th Cir. 2015) (citation modified) (quoting *Nuru v. Gonzales*, 404 F.3d 1207, 1217–18 (9th Cir. 2005)).

Cortes Rodriguez credibly testified that he was tortured by both cartel members and by the police. Cartel members held him hostage for a week, beat him, and waterboarded him while boasting that they enjoyed the local government’s support and driving “clone cars” resembling government vehicles. After Cortes Rodriguez was taken into police custody, officers beat him, suffocated him with a plastic bag until he urinated, threatened to kill him, and shocked him

with electricity after he lost consciousness. The violence rose to the point where one of the officers told another, “He’s going to pass on you,” to which the other officer simply responded, “Let him die, and we’ll take him to the ravine.” On this record, the evidence compels the conclusion that Cortes Rodriguez experienced past torture both before and during police custody. *Vinh Tan Nguyen v. Holder*, 763 F.3d 1022, 1030 (9th Cir. 2014) (holding that “beatings and electric shock [] constitutes torture”); *Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1183 (9th Cir. 2020) (“The threat of imminent death, whether directed at the applicant or someone the applicant knows, may constitute torture.”).

b. Past torture may lose its predictive force if “circumstances or conditions have changed significantly, not just in general, but with respect to the particular individual.” *Nuru*, 404 F.3d at 1218. The IJ found such a change here because the circumstances leading to Cortes Rodriguez’s torture included his association with the cartel and his selling of drugs for it. Because Cortes Rodriguez expressed the desire to leave that life behind, the IJ presumed that he would do so if he returned to Mexico and concluded that his changed personal circumstances diminished the likelihood that his past torture would recur.

But the IJ failed to account for the critical fact that Cortes Rodriguez credibly testified that cartel members forced him to sell drugs by threatening to kill him if he refused. Nor does the record suggest that Cortes Rodriguez can now

escape the cartel's reach. He credibly testified that it has operatives throughout Mexico and could identify him wherever he went. *See Xochihua-Jaimes*, 962 F.3d at 1188 (holding that petitioner's credible testimony that conditions in Mexico remained unchanged and that her persecutors remained there compelled the conclusion that petitioner was more likely than not to be tortured if removed). And Cortes Rodriguez's experience after relocating did little to reassure him otherwise; unfamiliar vehicles began to surveil and stalk him and his wife, and the two fled the country out of fear that the cartel members had found him. *See also Dawson v. Garland*, 998 F.3d 876, 884 (9th Cir. 2021) ("[R]elocation is just one factor the BIA must consider in assessing the likelihood of future torture and is not determinative on its own.").

Because the record compels the conclusion that Cortes Rodriguez suffered past torture while in the custody of Mexican police, and the circumstances material to Cortes Rodriguez's past torture have not changed, Cortes Rodriguez's petition is granted as to his CAT claim. We remand his petition to the BIA for reconsideration consistent with this opinion.

PETITION GRANTED in part, DENIED in part.¹

¹ Petitioner's motion to stay removal (Dkt. No. 3) is GRANTED.

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U.S. COURT OF APPEALS*Cortes Rodriguez v. Blanche*, No. 25-4049

LEE, Circuit Judge, dissenting:

I agree with the majority that Eduardo Cortes Rodriguez's conviction for second-degree burglary constitutes a particularly serious crime and thus bars his asylum and withholding of removal claims. I also agree that the grave physical and psychological harm Cortes Rodriguez endured in police custody likely meets the definition of torture under 8 C.F.R. § 1208.18(a)(1).

But the Agency had an alternative—and legally valid—reason for rejecting Cortes Rodriguez's Convention Against Torture (CAT) claim. Even assuming *arguendo* that he showed past torture, the Agency reasoned that he would not likely face future torture for two key reasons. First, the Agency found that his decision to cease engaging in criminal activities lessens the likelihood of future police encounters. Second, it noted that Cortes Rodriguez had safely relocated within Mexico after his removal in 2015—and lived there for seven years without incident before he decided to unlawfully re-enter the United States.

Given our deferential standard of review, I do not think the Agency erred when it concluded that these factors reduce the likelihood that Cortes Rodriguez will face future torture upon removal to Mexico. *See Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 705 (9th Cir. 2022) (possibility of safe relocation within a petitioner's home country decreases likelihood of future torture). I would thus deny Cortes Rodriguez's petition in entirety. I respectfully dissent.