

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 22 2026

FOR THE NINTH CIRCUIT

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

SILVESTRE ZAPIEN DIAZ, AKA
Sylvester Diaz, AKA Sylvestre Zapien Diaz,
AKA Sylvestre Zapien, AKA Sylvestre
Zapien-Diaz,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 17-72534

Agency No. A098-034-448

MEMORANDUM*

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

Submitted October 20, 2026**
Pasadena, California

Before: BUMATAY, VANDYKE, and MENDOZA, JR., Circuit Judges.

Petitioner Sylvestre Zapien Diaz, a native and citizen of Mexico, petitions for review of a Board of Immigration Appeals' ("BIA") decision dismissing an appeal from a decision by an Immigration Judge ("IJ") denying Zapien's application for

* 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).

withholding of removal and protection under the Convention Against Torture (“CAT”). He also seeks review of a BIA decision denying his motion to remand. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

We review the agency’s factual findings in a final order of removal for substantial evidence. *Ruiz-Colmenares v. Garland*, 25 F.4th 742, 748 (9th Cir. 2022). Under that standard, the agency’s findings of fact are considered “conclusive unless any reasonable adjudicator would be *compelled* to conclude to the contrary.” *Id.* (citation omitted). We apply this standard to the agency’s determinations on persecution, including whether an applicant established a nexus between the feared harm and a protected ground, *Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1016 (9th Cir. 2023), as well as its determination on whether an applicant is more likely than not to be tortured if removed to the proposed country of removal. *Shrestha v. Holder*, 590 F.3d 1034, 1048 (9th Cir. 2010).

1. Substantial evidence supports the BIA’s determination that Zapien’s proposed particular social group (“PSG”) of “Mexican nationals returning to Mexico” is not cognizable, because it was indistinguishable from the “returning Mexicans from the United States” PSG we rejected as too broad in *Delgado-Ortiz v. Holder*, 600 F.3d 1148 (9th Cir. 2010). We have continued to treat *Delgado-Ortiz* as good law, and Diaz’s proffered cases do not undermine that holding. *See, e.g., Ramirez-Munoz v. Lynch*, 816 F.3d 1226 (9th Cir. 2016).

2. Substantial evidence also supports the BIA’s determination that Zapien failed to establish a nexus between his fear and either his alternative PSG of “individuals who refuse to support or join gangs and cartels” or his anti-gang political opinion. The record only demonstrated a generalized fear of criminal violence—not a particularized one based on either his anti-gang PSG or political opinion—which is insufficient to establish nexus. *See Bajaras-Romero v. Lynch*, 846 F.3d 351, 358–59 (9th Cir. 2017) (providing that an applicant for withholding of removal must demonstrate that a protected ground was “a reason” he suffered, or will suffer, persecution). And because Zapien failed to establish a nexus, the BIA did not err in declining to independently consider whether his alternative PSG was cognizable.

3. Substantial evidence supports the BIA’s denial of CAT relief. The record does not compel the conclusion that Zapien is “more likely than not” to be tortured by or with the acquiescence of an official if removed to Mexico. 8 C.F.R. § 1208.16(c)(2). The record suggests that Mexican authorities undertook significant efforts between 2011 and 2016 to investigate, prosecute, and imprison cartel members. This evidence supports the BIA’s conclusion that the Mexican government actively opposes cartel violence rather than acquiesces in it. And Zapien failed to demonstrate that he would be subject to a “*particularized threat of torture*.” *Dhital v. Mukasey*, 532 F.3d 1044, 1051 (9th Cir 2008). He presented no

evidence that any gang member identified him as a target or has any specific interest in harming him. His testimony reflects only a general fear that he might be targeted because he would be perceived as having money after returning.

4. Lastly, the BIA did not abuse its discretion in denying Zapien's motion to remand premised upon ineffective assistance of counsel. The BIA "may deny a motion to reopen if ... the petitioner failed to establish a prima facie case for the relief sought." *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 703 (9th Cir. 2022). To prevail on a motion to remand on the basis of ineffective assistance of counsel, a petitioner usually must satisfy the requirements of *Lozada*. *Rodriguez-Lariz v. INS.*, 282 F.3d 1218, 1226–27 (9th Cir. 2002); see *Matter of Lozada*, 19 I. & N. Dec. 637, 639 (B.I.A. 1988).

Zapien does not dispute that he failed to satisfy *Lozada*. He argues instead that the BIA should have "review[ed] the record" itself to see if the ineffective assistance was "clear and obvious." But he provides no authority showing that the untimely filing of evidence presents the sort of "clear and obvious" ineffective assistance we have previously recognized. *Castillo-Perez v. INS*, 212 F.3d 518, 526 (9th Cir. 2000). Thus, the BIA did not abuse its discretion in requiring Zapien to comply with *Lozada*.

And in any event, Zapien did not demonstrate that the excluded evidence may have changed the result in his case. *Hernandez-Ortiz v. Garland*, 32 F.4th 794, 801

(9th Cir. 2022) (citing *Grigoryan v. Barr*, 959 F.3d 1233, 1240 (9th Cir. 2020)). His proposed evidence, comprised of a few speculative articles, fail to establish a nexus to a political opinion or his proposed PSG of “individuals who refuse to support or join gangs and cartels,” and moreover fail to distinguish that proposed PSG from the broad group we rejected in *Delgado-Ortiz*. Nor would the excluded evidence compel a different result on the CAT protection claim, as extensive record evidence already demonstrated that Mexican authorities opposed cartel violence. Thus, the BIA thus did not abuse its discretion in denying the motion to remand.

PETITION DENIED.¹

¹ The stay of removal (Dkt. No. 1) is denied.