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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOVANY ZAVALA-NUNEZ, Petitioner, v. TODD BLANCHE, Attorney General, Respondent.	No. 25-6736 Agency No. A206-084-566 MEMORANDUM[*]

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

Submitted October 26, 2026[**]
Pasadena, California

Before: PAEZ, OWENS, and SANCHEZ, Circuit Judges.

Jovany Zavala-Nunez, a native and citizen of Mexico, petitions for review of a Board of Immigration Appeals' ("BIA") decision dismissing his appeal of an Immigration Judge's ("IJ") order denying his applications for adjustment of status, asylum, withholding of removal, and protection under the Convention Against

[*] 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).

Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review *de novo* questions of law. *Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1016 (9th Cir. 2023). We review for substantial evidence the agency's factual findings. *Id*. As the parties are familiar with the facts, we do not recount them here. We deny the petition for review.

1. Our jurisdiction to review the agency's decision on a denial of discretionary adjustment of status is limited to "constitutional claims or questions of law." 8 U.S.C. § 1252(a)(2)(B)(i), (D); *Patel v. Garland*, 596 U.S. 328, 347 (2022) (explaining that judicial review of fact determinations is precluded in the discretionary-relief context). A noncitizen may be eligible to adjust his immigration status in removal proceedings if he shows that he "is clearly and beyond a doubt . . . not inadmissible[,]" among other requirements. 8 U.S.C. § 1229a(c)(2)(A). The agency held that Zavala-Nunez was inadmissible because it found "reason to believe" he had knowingly participated in illicit drug trafficking. *See id.* § 1182(a)(2)(C)(i).

Reasonable, substantial, and probative record evidence supports the agency's finding. *See Chavez-Reyes v. Holder*, 741 F.3d 1, 3 (9th Cir. 2014) (reviewing the BIA's "reason to believe" finding for substantial evidence); *Gomez-Granillo v. Holder*, 654 F.3d 826, 831 (9th Cir. 2011) (noting the standard is whether "reasonable, substantial, and probative evidence" supports the IJ's "reason

to believe" finding). Zavala-Nunez admitted in both his declaration and testimony before the IJ that he knew he carried backpacks containing drugs into the United States for a cartel on at least three occasions, though he never verified their contents. Additionally, the U.S. Department of Homeland Security ("DHS") submitted evidence that immigration authorities apprehended Zavala-Nunez three times with marijuana. The IJ admitted DHS's evidence into the record without objection from Zavala-Nunez's counsel and properly considered it in deciding Zavala-Nunez's application for adjustment of status. *See Gomez-Granillo*, 654 F.3d at 836 (holding that the IJ may consider information not known to immigration officers at the border when determining if there is reason to believe a noncitizen participated in illicit drug trafficking).

Zavala-Nunez states that he was a minor who acted under duress when he carried drugs across the border, because cartel members had kidnapped and threatened to kill him if he did not comply with their orders. However, he does not show that duress or juvenile status excuses inadmissibility under § 1182(a)(2)(C)(i). We, therefore, deem these issues forfeited and do not address them. *See Martinez-Serrano v. I.N.S.*, 94 F.3d 1256, 1259 (9th Cir. 1996) ("Issues raised in a brief that are not supported by argument are deemed abandoned.").

2. To establish eligibility for both asylum and withholding of removal, an applicant must prove a causal nexus between a statutorily-protected characteristic

and either his past persecution or his feared future persecution. *See* 8 U.S.C. §§ 1158(b)(1)(B)(i), 1231(b)(3)(A); *Rodriguez-Zuniga*, 69 F.4th at 1016. Zavala-Nunez's only asserted protected characteristic is the proposed particular social group of "Mexican citizens who are opposed to gangs and refuse to cooperate with them."

The agency properly found Zavala-Nunez's proposed particular social group not cognizable. *See Santos-Ponce v. Wilkinson*, 987 F.3d 886, 890 (9th Cir. 2021) (concluding "minor Christian males who oppose gang membership" was not socially distinct); *Ramos-Lopez v. Holder*, 563 F.3d 855, 861-62 (9th Cir. 2009) (concluding that "young Honduran men who have been recruited by the MS–13, but who refuse to join" was not socially distinct), *abrogated on other grounds by Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1093 (9th Cir. 2013) (en banc). The record does not compel the conclusion that Zavala-Nunez's proposed particular social group is socially distinct. *See Macedo Templos v. Wilkinson*, 987 F.3d 877, 882 (9th Cir. 2021) (reviewing social distinction for substantial evidence). The country conditions evidence does not show that Mexican society views those recruited by gangs as a separate group and Zavala-Nunez offered no evidence to support such a finding. The lack of social distinction is sufficient to hold the proposed group not cognizable. *See id.* (listing requirements for cognizability and

holding a group not cognizable when the petitioner failed to show social distinction, among other requirements).

To the extent Zavala-Nunez may have attempted to articulate some other protected ground as the basis for his claim for relief from removal, substantial evidence supports the agency's factual finding that Zavala-Nunez was a victim of generalized crime and violence. However, "that a particular country is currently plagued by generalized crime and violence cannot be a basis for granting asylum to any citizen of that country." *Hussain v. Rosen*, 985 F.3d 634, 649 (9th Cir. 2021). Because the record does not compel finding that Zavala-Nunez has shown any nexus between a protected characteristic and persecution, his asylum and withholding claims fail. *See Rodriguez-Zuniga*, 69 F.4th at 1018.

3. The BIA properly determined that Zavala-Nunez waived his CAT claim. The government now asserts that Zavala-Nunez's CAT claim is unexhausted. *See Abebe v. Mukasey*, 554 F.3d 1203, 1208 (9th Cir. 2009) (en banc) ("Petitioner will therefore be deemed to have exhausted only those issues he raised and argued in his brief before the BIA."). We agree Zavala-Nunez failed to exhaust his CAT claim and, thus, deny this portion of the petition for review. *See* 8 U.S.C. § 1252(d)(1); *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023) (holding exhaustion is a mandatory claim processing rule that a court must enforce if properly raised).

PETITION FOR REVIEW DENIED.[1]

[1] Zavala-Nunez's motion for a stay of removal (Dkt. No. 2) is **DENIED AS MOOT.**