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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXIS RODRIGUEZ-SORTO, Petitioner, v. TODD BLANCHE, Attorney General, Respondent.	No. 23-4339 Agency No. A215-572-599 MEMORANDUM[*]

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

Submitted October 29, 2026[**]
San Francisco, California

Before: BYBEE and SUNG, Circuit Judges, and LIN, District Judge.[***]

Petitioner Alexis Rodriguez-Sorto petitions for review of the Board of Immigration Appeals' ("BIA") decision dismissing his appeal of an immigration judge's ("IJ") order denying his application for asylum and withholding of removal and his request for protection under the Convention Against Torture ("CAT"). We

[*] 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 Rita F. Lin, United States District Judge for the Northern District of California, sitting by designation.

have jurisdiction under 8 U.S.C. § 1252. For the reasons stated below, we grant the petition as to the CAT claim and deny the petition as to the withholding claim.

Where, as here, "the BIA affirms the IJ and also adds its own reasoning, we review the decision of the BIA and those parts of the IJ's decision upon which it relies." *Salguero Sosa v. Garland*, 55 F.4th 1213, 1217 (9th Cir. 2022) (citation modified). "We review the agency's factual findings for substantial evidence and its legal determinations de novo." *Ruiz v. Bondi*, 163 F.4th 586, 592 (9th Cir. 2025). "Where the Board does not consider all the evidence before it, either by 'misstating the record or failing to mention highly probative or potentially dispositive evidence,' its decision cannot stand." *Castillo v. Barr*, 980 F.3d 1278, 1283 (9th Cir. 2020) (citation modified) (quoting *Cole v. Holder*, 659 F.3d 762, 772 (9th Cir. 2011)); *see also* 8 C.F.R. § 208.16(c)(3).

1. With respect to his withholding of removal claim, Rodriguez-Sorto "must prove not only that his life or freedom will be threatened in his home country, but also that the threat is 'because of' of one of five" protected statutory grounds: race, religion, nationality, membership in a particular social group, or political opinion. *Barajas-Romero v. Lynch*, 846 F.3d 351, 357 (9th Cir. 2017) (first citing 8 U.S.C. § 1231(b)(3)(A); and then citing 8 C.F.R. § 208.16(b)). Substantial evidence supports the BIA's conclusion that Rodriguez-Sorto was persecuted for resisting the gang's recruitment and failing to pay them money, and

not because of any anti-gang political opinion that he held. On its own, opposition to gang-recruitment efforts does not constitute a protected political opinion. *See Santos-Lemus v. Mukasey*, 542 F.3d 738, 746–47 (9th Cir. 2008), *overruled in part on other grounds by Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (en banc). The statements exchanged between Rodriguez-Sorto and the gang members after Rodriguez-Sorto was kidnapped were made in the context of the gang's efforts to recruit Rodriguez-Sorto and extort his family members, and do not compel the conclusion that the gang members believed Rodriguez-Sorto held a political opinion regarding gangs or that they persecuted him in part because of such an opinion.

Rodriguez-Sorto also seeks review of the IJ's finding that "Salvadoran males who challenge the gang's exercise of control" is not a cognizable particular social group ("PSG"). This claim is unexhausted. *See* 8 U.S.C. § 1252(d)(1). "Exhaustion requires a non-constitutional legal claim to the court on appeal to have first been raised in the administrative proceedings below and to have been sufficient to put the BIA on notice *of what was being challenged*." *Bare v. Barr*, 975 F.3d 952, 960 (9th Cir. 2020) (emphasis added) (citations omitted). Nonetheless, "[i]t is well-established that we may review any issue addressed *on the merits* by the BIA, regardless of whether the petitioner raised it before the agency." *Parada v. Sessions*, 902 F.3d 901, 914 (9th Cir. 2018) (emphasis added).

Rodriguez-Sorto did not challenge the IJ's cognizability finding with respect to this PSG before the BIA, nor did the BIA address this issue on the merits. Consequently, Rodriguez-Sorto's arguments pertaining thereto are not properly before us. *See Barron v. Ashcroft*, 358 F.3d 674, 676–78 (9th Cir. 2004), *abrogated on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411, 416–23 (2023) (rejecting claim as unexhausted where it was "nowhere mention[ed]" in the petitioner's appeal to the BIA).

2. The BIA's denial of CAT relief, however, must be remanded because the BIA failed "to mention highly probative or potentially dispositive evidence" of government acquiescence. *Castillo*, 980 F.3d at 1283. Rodriguez-Sorto is eligible for CAT relief if he establishes that "it is more likely than not that he [] would be tortured if removed to" El Salvador. 8 C.F.R. § 208.16(c)(2). Torture is "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person . . . by or at the instigation of or with the consent or acquiescence of a public official . . . or other person acting in an official capacity." *Id.* § 208.18(a)(1). "Public officials acquiesce in torture if they: (1) have awareness of the activity (or consciously close their eyes to the fact it is going on); and (2) breach their legal responsibility to intervene to prevent the activity because they are unable or unwilling to oppose it." *Barajas-Romero*, 846 F.3d at 363 (citation modified). The public official "need not have actual knowledge of the

specific incident of torture"; instead, it is sufficient that the public official is "aware that torture of the sort feared by the applicant occurs and remain[s] willfully blind to it." *Madrigal v. Holder*, 716 F.3d 499, 509 (9th Cir. 2013); *see also Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1059–60 (9th Cir. 2006). "[I]f 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, unless circumstances or conditions have changed significantly, not just in general, but with respect to the particular individual." *Nuru v. Gonzales*, 404 F.3d 1207, 1217–18 (9th Cir. 2005).

Relying on the IJ's factual findings, the BIA appears to have implicitly concluded that Rodriguez-Sorto suffered a sufficiently severe level of harm to constitute torture but found that he had only asserted "generalized fears about police corruption" and had therefore failed to show that the police were or would be willfully blind as to his torture. However, Rodriguez-Sorto testified that before he was kidnapped, he saw police in his town meeting with gang members and that the "police would pass [gang members] notes about who reported on them." Rodriguez-Sorto explained that during local soccer tournaments, gang members and the police would "do their dealings . . . in front of everyone," and then the gangs would "beat[] up the people who reported to the police," including harming them to the point of death, and did not "hide what they [did]." Because of what he

had seen, Rodriguez-Sorto avoided reporting his encounters with gang members to the police, even when the police sought him out in the hospital after he was shot. The BIA assumed the credibility of Rodriguez-Sorto's testimony in its analysis.

Such eyewitness testimony of local police cooperation with the gang at issue demonstrates much more than "generalized fears about police corruption" and is highly probative of acquiescence. However, neither the BIA nor the IJ mentioned this testimony in concluding that Rodriguez-Sorto had not shown acquiescence. Even if this evidence was considered, it was erroneously discounted because the IJ and BIA appear to have concluded that Rodriguez-Sorto was required to show that the police were aware of or involved in *his own* kidnapping. But such a showing is not required. *Madrigal*, 716 F.3d at 509.

Remand is required in these circumstances.[1] *See Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1089–90 (9th Cir. 2020) (remanding a denial of CAT relief where the BIA failed to mention petitioner's testimony that she had informed local officials that she was being abused and witnessed one of the local officials being bribed);

[1] Changed country conditions, like those discussed by the IJ and BIA here, do not provide an independent and alternative basis for denying CAT relief because country conditions only constitute one factor that the BIA should consider when assessing the likelihood of future torture. *See* 8 C.F.R. § 1208.16(c)(3) (listing "[e]vidence of past torture" and "information regarding conditions in the country of removal" as relevant evidence); *see also Nuru*, 404 F.3d at 1218 (noting that "past torture is ordinarily the principal factor on which we rely when an applicant who has previously been tortured seeks relief under the Convention").

Parada, 902 F.3d at 916 ("Because the agency erred by failing to consider all relevant evidence and by improperly construing the government acquiescence standard, we reverse the BIA's determination that [petitioner] is not eligible for CAT relief and remand to the agency for further consideration of his claim."). Therefore, we grant the petition for review as to CAT protection and remand the claim to the BIA for further proceedings consistent with this disposition.

PETITION FOR REVIEW GRANTED in part; DENIED in part; REMANDED.[2] Each party shall bear its own costs.

[2] Rodriguez-Sorto's motion to stay removal, Dkt. No. 2, is **DENIED AS MOOT**.