NOT FOR PUBLICATION

FILED

NOV 3 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NOE ANTONIO LAINEZ HERNANDEZ, Petitioner, v. TODD BLANCHE, Attorney General, Respondent.	No. 25-6443 Agency No. A094-825-016 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.

Noe Antonio Lainez-Hernandez (a.k.a. Jose Cecilio Majano-Hernandez), a native and citizen of El Salvador, 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 cancellation of removal, withholding of removal,

[*] 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).

and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review factual findings for substantial evidence and questions of law de novo. *Zhi v. Holder*, 751 F.3d 1088, 1091 (9th Cir. 2014). We deny the petition for review.

1. Lainez-Hernandez argues that the BIA's affirmance of the IJ's decision without opinion was legally insufficient. We disagree. When the BIA affirms an IJ's decision without opinion under 8 C.F.R. § 1003.1(e)(4), we review the IJ's decision as the final agency determination. *See Ren v. Holder*, 648 F.3d 1079, 1083 (9th Cir. 2011). Any separate review of the BIA's decision to streamline "would be unnecessary and duplicative," because "[t]he decision to streamline becomes indistinguishable from the merits." *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 855 (9th Cir. 2003). Accordingly, we have held that the BIA's affirmance without opinion does not violate due process. *Id.* at 851. We therefore reject Lainez-Hernandez's challenge to the BIA's summary affirmance and proceed to review the IJ's decision.

2. Under 8 U.S.C. § 1229b(b)(1)(D), an applicant who "establishes that removal would result in exceptional and extremely unusual hardship to the [noncitizen's] spouse, parent, or child, who is a citizen of the United States or [a noncitizen] lawfully admitted for permanent residence," is eligible for cancellation of removal. In this case, substantial evidence supports the IJ's conclusion that the

hardships Lainez-Hernandez's U.S. citizen children may face do not rise to the requisite level of "exceptional and extremely unusual" to warrant relief. Lainez-Hernandez argues that the IJ improperly required "concrete evidence" of specific future harm to his sons rather than evaluating the totality of the circumstances. *See* § 1229a(c)(4)(B). Although the IJ misstated the evidentiary requirement, this error is harmless because the IJ did not fail to consider relevant evidence.

The IJ acknowledged that Lainez-Hernandez and his family may face "severe economic factors" if they return to El Salvador, but reasonably concluded that a general decline in quality of life does not rise to the level of hardship that is "substantially beyond that ordinarily to be expected from a person's departure." *See Gonzalez-Juarez v. Bondi*, 137 F.4th 996, 1006–07 (9th Cir. 2025). Lainez-Hernandez does not identify record evidence demonstrating that his sons will face hardship that goes "substantially beyond" the ordinary consequences of removal. Although he argues on appeal that his children would face heightened danger because he was a "known informant" against gang members, Lainez-Hernandez did not make this assertion in his testimony. Instead, he attributed his fears for his children primarily to generalized poverty and crime in El Salvador.

Lainez-Hernandez argues that the IJ improperly discounted his son Jacob's past hearing impairment as a hardship factor. The IJ recognized that Jacob was born with a hearing issue that could recur but "appears to have been resolved."

That finding is supported by Lainez-Hernandez's testimony that Jacob's hearing improved after treatment and that his children are healthy. Lainez-Hernandez's concern that comparable medical care is not available in El Salvador does not compel the conclusion that Jacob would suffer "exceptional and extremely unusual" hardship. The IJ thus properly denied Lainez-Hernandez's claim for cancellation of removal.

3. Substantial evidence supports the IJ's denial of withholding of removal on the grounds that Lainez-Hernandez did not establish a "clear probability" of persecution. *See Aden v. Wilkinson*, 989 F.3d 1073, 1086 (9th Cir. 2021). The IJ acknowledged Lainez-Hernandez's subjective fear of returning to El Salvador after the deaths of his coworkers, threats he received in the workplace from gang members, incidents involving his family, and general gang violence in the country. Nonetheless, the IJ reasonably found that these harms did not rise to the level of persecution because the threats went unfulfilled and have not persisted since Lainez-Hernandez left El Salvador. Overall, the evidence does not compel the conclusion that Petitioner is more likely than not to suffer persecution if removed. *See INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992).

Substantial evidence also supports the IJ's determination that any harm Lainez-Hernandez experienced in El Salvador was not on account of his membership in a cognizable particular social group. *See* 8 U.S.C. § 1231(b)(3).

Although Lainez-Hernandez advanced multiple proposed social groups to the IJ, the government has timely raised that he only exhausted "former security officers who reported gang members" before the BIA. We therefore consider only that group. *See Suate-Orellana v. Garland*, 101 F.4th 624, 629 (9th Cir. 2024). The IJ found no evidence that former security officers are perceived as socially distinct in El Salvador, nor that they constitute a sufficiently particular group. The IJ's analysis was flawed to the extent it relied on an unduly narrow reading of *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (en banc), and did not clearly undertake the evidence-based social-distinction inquiry required by *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014). Any error is harmless, however, because the IJ alternatively assumed the existence of a cognizable group, and still concluded that the record does not establish that the gang members who threatened Lainez-Hernandez would still remember or target him several decades after the incidents described in his testimony. On this alternative ground, substantial evidence supports the IJ's denial of withholding of removal.

Lainez-Hernandez further claims persecution on account of political opinion, arguing that his reporting of gang members to law enforcement expressed support for government authority and the rule of law. We have repeatedly declined to treat general opposition to gangs or criminals as a political opinion. *See, e.g.*, *Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1017–18 (9th Cir. 2023); *Barrios v.*

Holder, 581 F.3d 849, 854–55 (9th Cir. 2009), *abrogated in part on other grounds by Henriquez-Rivas*, 707 F.3d at 1093. The IJ reasonably found no evidence that Lainez-Hernandez held a political opinion or that gangs targeted him because of such an opinion, and his imputed-political-opinion theory fails for the same reason. The record supports the inference that any harm or threats Lainez-Hernandez received from gang members were motivated by retaliation for reporting crimes, not by a belief that he held a political view. *See Elias-Zacarias*, 502 U.S. at 482. Because Lainez-Hernandez has not shown a clear probability of persecution on any protected ground, we deny the petition as to withholding of removal.

4. Substantial evidence supports the IJ's finding that Lainez-Hernandez did not show eligibility for CAT relief. To qualify for relief under CAT, Lainez-Hernandez must show that it is more likely than not that he will be tortured in El Salvador, and that such torture would be inflicted by or with the consent or acquiescence of a public official. *See* 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). The record does not show that Lainez-Hernandez suffered past torture, and the threats he received from unidentified gang members while working in El Salvador are insufficient to establish that torture is likely. Although the murders of Lainez-Hernandez's coworkers are troubling, substantial evidence supports the IJ's conclusion that, given that several decades have passed and there is no evidence that the original gang members still operate or remember Lainez-Hernandez, he

has not shown that retaliatory violence is more likely than not to occur. *See Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1029–30 (9th Cir. 2019) (affirming denial of CAT relief where petitioner had been threatened by private actors, but there was no evidence that "anyone has sought him or has any continuing interest in him" to make future torture more likely than not).

Substantial evidence also supports the IJ's finding that Lainez-Hernandez failed to establish government acquiescence. Although the IJ recognized that "perhaps there was government acquiescence" regarding Lainez-Hernandez's testimony that law enforcement did not help him with the threats he received, the record does not show that he sought police protection and was refused. Nor does it show that law enforcement either participated in or condoned any harm to Lainez-Hernandez. Government inaction or general ineffectiveness in combating crime does not, by itself, amount to acquiescence. *See Andrade-Garcia v. Lynch*, 828 F.3d 829, 836 (9th Cir. 2016). Because the IJ reasonably concluded that Lainez-Hernandez failed to show a likelihood of future torture with government acquiescence, we deny the petition as to CAT relief.

PETITION FOR REVIEW DENIED.[1]

[1] Lainez-Hernandez's motion for a stay of removal (Dkt. No. 3) is **DENIED AS MOOT.**