NOT FOR PUBLICATION

FILED

NOV 5 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NELSON ALEXANDER CAMPOS CISNERO; LEONARDO ADONAY CAMPOS RODRIGUEZ, Petitioners, v. TODD BLANCHE, Attorney General, Respondent.	No. 23-2020 Agency Nos. A215-765-223 A215-765-224 MEMORANDUM[*]

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

Submitted October 27, 2026[**]
San Francisco, California

Before: CLIFTON, BYBEE, and SUNG, Circuit Judges.

Petitioners Nelson Alexander Campos Cisnero ("Nelson") and his son Leonardo Adonay Campos Rodriguez ("Leonardo") appeal the decision of the Immigration Judge ("IJ") and Board of Immigration Appeals ("BIA") denying their

[*] 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).

applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). For the following reasons, we grant both Petitioners' applications for asylum and withholding of removal and deny both Petitioners' applications for protection under CAT.

1. "We review the BIA's factual determinations for substantial evidence, meaning we may reverse only if the evidence compels a conclusion contrary to the BIA's," and we review the BIA's legal determinations de novo. *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023). "Where, as here, the BIA adopts [and affirms] the IJ's decision, we review the IJ's decision as if it were that of the BIA." *Deloso v. Ashcroft*, 393 F.3d 858, 863 (9th Cir. 2005). "In reviewing the BIA's decisions, we consider only the grounds relied upon by that agency. 'If we conclude that the BIA's decision cannot be sustained upon its reasoning, we must remand to allow the agency to decide any issues remaining in the case.'" *Garcia v. Wilkinson*, 988 F.3d 1136, 1142 (9th Cir. 2021) (quoting *Regalado-Escobar v. Holder*, 717 F.3d 724, 729 (9th Cir. 2013)).

To qualify for asylum, an applicant bears the burden of showing that "he has suffered [past] persecution or has a well-founded fear of future persecution on account of" race, religion, nationality, political opinion, or membership in a particular social group ("PSG"). *Riera-Riera v. Lynch*, 841 F.3d 1077, 1081 (9th Cir. 2016) (citing 8 U.S.C. § 1158(b)(1)(B)(i)). To qualify for withholding of

removal, an applicant bears the burden of showing that "it is more likely than not that [his] life or freedom will be threatened" and that "[his] protected characteristics will be 'a reason' for [his] suffering harm in the future." *Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1018 (9th Cir. 2023) (citing 8 U.S.C. § 1231(b)(3)(A)). To qualify for protection under CAT, an applicant bears the burden of showing that it is "more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 208.16(c)(2).

2. The IJ rejected Nelson's petition for asylum and withholding of removal because he failed to establish past persecution. The IJ characterized Nelson's argument as "alleg[ing] persecution primarily based on a single incident"—his encounter with gang members in May 2018 when he was detained and forced to disrobe for about an hour while they decided whether to kill him. Even considered cumulatively with the harms suffered by Nelson's family and friends, the IJ concluded that Nelson could not show a "pattern of persecution closely tied to him."

However, the IJ never mentioned that Nelson previously had to abandon multiple jobs because gang members did not want people from rival territories there. In his pre-hearing statement, Nelson said that he left a construction job because "gang members would not allow us to enter into their territory if we were from a rival territory . . . and we received threats against our lives because the gangs thought

we were rivals." In another job, "the engineer who headed the job was obligated to pay an extor[t]ion so that the gang would allow us to work in their territory. Once the engineer stopped paying, they threatened [to kill] us."

Nelson repeated these assertions at the hearing. In response to questioning from his counsel, he testified that he "could not finish the work" he was doing for the engineer because of "gang threats." He also testified that at a different job, "most of the workers were MS [gang members]," and by his third week working at that site "one of their leaders showed up and . . . asked for our ID . . . [W]hen they check[ed] our ID[,] they knew that me and my friend, we were coming from a particular neighborhood, so then they told us not to work there anymore." Nelson testified that gang members would not allow people living in "a different neighborhood controlled by the different gang" to work there because they "believe[d] that we can take information about them to the opposing gang."

"Where the BIA does not consider all the evidence before it . . . [by] failing to mention highly probative or potentially dispositive evidence, its decision is legal error and cannot stand." *Flores Molina v. Garland*, 37 F.4th 626, 632 (9th Cir. 2022) (citation and internal quotation marks omitted). Because these earlier incidents could help establish a "pattern of persecution closely tied to" Nelson, the IJ's failure to consider them constitutes legal error.

3. The IJ also rejected Nelson's petition on an independent basis. One of

Nelson's proposed protected grounds was a PSG of "imputed gang affiliation of a rival gang." The IJ assumed that this PSG was cognizable but held that Nelson could not establish either his membership in the PSG or that any harm he faced was "on account of" his membership in the PSG. The IJ held that because the gang members stopped and searched Nelson to determine if he belonged to a rival gang and released him after concluding that he did not, it was "implausible" for Nelson to belong to this group.

Substantial evidence does not support the IJ's findings. Nelson was harmed when the gang detained him, made him remove his clothes at gunpoint, and threatened to kill him. This harm occurred because the gang wanted to ensure that Nelson was not a member of a rival gang—an identity that they imputed to him after they found out that he lived in another gang's territory but before they learned that he was not a member of any gang. Even before the May 2018 incident, Nelson had to abandon work projects when a gang found out that he lived in another gang's territory. The IJ therefore overlooked the fact that the alleged harm occurred while the gang *thought* that Nelson was a gang member.

The IJ's subsequent nexus analysis is also in error. The IJ concluded that "the harm, if any, [Nelson] suffered was merely an isolated, chance encounter with gang members." However, the record reflects that the gang members' belief that Nelson was or could have been a rival gang member was "one central reason" for the harm

to which he was subjected. The fact that Nelson was released and unharmed once the gang knew that he was not a gang member indicates that any harm that Nelson faced occurred *because* the gang members thought that he might belong to a rival gang.[1]

As such, the evidence in the record "compels the conclusion" that any harm Nelson suffered was "on account of" his membership in that PSG.

4. The IJ also rejected Leonardo's separate petition for asylum and withholding of removal, holding that the "single incident" in which Leonardo's gang-member classmates beat him up for refusing to join their gang did not "rise to the level of persecution." But as with Nelson, the IJ erred here by referring to Leonardo's interactions with his classmates as a "single incident" when the record shows that he was threatened to join the gang multiple times, "almost on a daily basis." If Leonardo was threatened repeatedly to join the gang, this could indicate a pattern of targeted behavior that rises to the level of persecution. By "failing to mention highly probative or potentially dispositive evidence," the IJ's decision was legal error. *Flores Molina*, 37 F.4th at 632.

5. The IJ denied both Petitioners' CAT claims, holding that any past harm that they faced did not "rise to the level of torture." Substantial evidence supports

[1] Although the government challenges the cognizability of "imputed rival gang membership" as a PSG, that argument is not before us because the IJ made no findings on cognizability.

the IJ's decision. Torture is "an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment[.]" 8 C.F.R. § 208.18(a)(2). Nelson's testimony concedes that he endured little, if any physical harm and that he did not suffer the "prolonged" mental suffering that could constitute torture. *See id.* § 208.18(a)(4). The same holds true for Leonardo. Although he was physically harmed, there is scant evidence in the record regarding the extent of his harm. Leonardo has therefore failed to meet his burden of showing that any past harm he faced caused him "severe physical pain or suffering" rising to the level of torture.

Petitioners also point to country conditions evidence that "the Salvadoran police are 'key players' in the criminal underworld," arguing that the government would acquiesce to any torture Petitioners would face from gang members upon their return. But Petitioners fail to establish that it is more likely than not that they *would* be tortured by gang members. Their only argument is that they will be investigated by the gang as "new arrival[s]" in their territory. Even assuming that is true, that alone does not make it more likely than not that *these* Petitioners would be tortured. If Petitioners' argument was accepted, it would extend CAT protection to *any* applicant facing removal to El Salvador.[2]

[2] Petitioners also argue that the IJ should have analyzed "the risk of torture to the Petitioners at the hands of law enforcement and security forces[.]" This was not

Because the evidence in the record does not "compel the conclusion" that Petitioners will more likely than not be tortured with the government's acquiescence upon their return to El Salvador, they are not entitled to protection under CAT.

PETITIONS GRANTED in part, DENIED in part, and REMANDED.[3]

raised before either the IJ or the BIA and is therefore not exhausted. *See Umana-Escobar*, 69 F.4th at 550.

[3] Petitioners' motion to stay removal, Dkt. 3, is GRANTED pending issuance of this Court's mandate.