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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DESAILI DENILSON MONZON-MIRANDA, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 17-72675 Agency No. A208-167-549 MEMORANDUM*

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

Submitted December 7, 2022**
San Francisco, California

Before: NGUYEN and SANCHEZ, Circuit Judges, and BOUGH,*** District Judge.

Desaili Denilson Monzon-Miranda ("Monzon-Miranda"), a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals'

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* 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 Stephen R. Bough, United States District Judge for the Western District of Missouri, sitting by designation.

("BIA") decision, affirming the Immigration Judge's ("IJ") denial of asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

We review the agency's legal conclusions de novo and its factual findings for substantial evidence. *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059 (9th Cir. 2017) (en banc). "Whether a group constitutes a particular social group is a question of law we review de novo. In contrast, whether an applicant has shown that his persecutor was or would be motivated by a protected ground—*i.e.,* whether the 'nexus' requirement has been satisfied—is reviewed under the substantial evidence standard." *Santos-Ponce v. Wilkinson*, 987 F.3d 886, 890 (9th Cir. 2021) (cleaned up).

I.

Monzon-Miranda's asylum and withholding of removal claims were based solely on membership in the particular social group of "Guatemalan youth taking concrete steps to avoid forced gang recruitment, fleeing gang violence and extortion for refusing to pay 'rent money' which the government of Guatemala can not and/or is not willing to control." We have previously rejected proposed particular social groups based on resistance to gang recruitment for lack of social distinction and/or particularity. *See Santos-Ponce*, 987 F.3d at 890 (rejecting the proposed group of "minor Christian males who oppose gang membership" in

Honduras as "not sufficiently particular or socially distinct"); *Ramos-Lopez v. Holder*, 563 F.3d 855, 861–62 (9th Cir. 2014) (rejecting the proposed group of "young Honduran men who have been recruited by the MS-13, but who refuse to join"). So too here. We conclude that Monzon-Miranda has failed to show that his proposed social group is socially distinct and defined with particularity.[1] To the extent Monzon-Miranda proposes new particular social groups on appeal, we lack jurisdiction to consider them. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

II.

The BIA also determined that Monzon-Miranda's asylum claim failed for lack of nexus to a protected ground. Substantial evidence supports the BIA's determination that "any claimed persecution was or would be the result of general gang recruitment efforts and extortion rather than on account of the respondent's membership in a particular social group." Monzon-Miranda testified that gang members beat him when he refused to join the gang or pay them money. A petitioner's "desire to be free from harassment by criminals motivated by theft or

[1] *Pirir-Boc v. Holder*, 750 F.3d 1077 (9th Cir. 2014), does not alter our conclusion. We held that the BIA erred in failing to consider record evidence of how Guatemalan society viewed his proposed social group and remanded for the BIA to consider that evidence. *Id.* at 1084. Here, the BIA considered the only society-specific evidence submitted by Monzon-Miranda: the 2015 State Department Human Rights Report for Guatemala ("2015 Report").

random violence by gang members bears no nexus to a protected ground." *Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (citation omitted).

III.

Finally, substantial evidence supports the BIA's determination that Monzon-Miranda did not face a likelihood of torture "'inflicted by or at the instigation of or with the consent or acquiescence of a public official acting in an official capacity or other person acting in an official capacity.'" *B.R. v. Garland*, 26 F.4th 827, 844 (9th Cir. 2022) (quoting 8 C.F.R. § 208.18). The record does not compel the conclusion that the gang members' attacks amount to torture. While Monzon-Miranda may have faced "cruel" acts, not all such acts "amount to torture." *Vitug v. Holder*, 723 F.3d 1056, 1066 (9th Cir. 2013) (quoting 8 C.F.R. § 208.18(a)(2)). Further, though the 2015 Report reflects police corruption and gang violence in Guatemala generally, it fails to establish that Monzon-Miranda faces a particularized, ongoing risk of future torture. *See Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1230 (9th Cir. 2016).

PETITION DENIED.