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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JULIO RUIZ-LOPEZ, AKA Martin Balderas-Lopez, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 17-72983 Agency No. A075-647-085 MEMORANDUM[*]

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

Submitted December 8, 2022[**]
Pasadena, California

Before: R. NELSON, BADE, and FORREST, Circuit Judges.

Petitioner Julio Ruiz-Lopez a.k.a. Martin Balderas-Lopez (Balderas-Lopez)[1]

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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).

[1] Julio Ruiz-Lopez is an alias used by petitioner once in 1999 while attempting to enter the United States. Given that the parties identify petitioner as Mr. Balderas or Balderas in their briefing and petitioner identified himself similarly during his asylum hearing, we use the name Balderas-Lopez in this disposition.

seeks review of a Board of Immigration Appeals (BIA) decision denying his application for withholding of removal under the Convention Against Torture (CAT). When, as here, "the BIA conducts its own review of the evidence and law," we must limit our review "to the BIA's decision, except to the extent that the [immigration judge's] opinion is expressly adopted." *Shrestha v. Holder*, 590 F.3d 1034, 1039 (9th Cir. 2010) (quotation marks and citation omitted). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

1. ***Subject Matter Jurisdiction.*** Balderas-Lopez argues that the immigration judge lacked jurisdiction over his case because the Notice of Referral that initiated his removal proceedings specified no hearing date or time. We recently rejected this argument in *United States v. Bastide-Hernandez*, 39 F.4th 1187, 1192 (9th Cir. 2022) (en banc).

2. ***Withholding under CAT.***

The BIA concluded that Balderas-Lopez failed to establish that he was more likely than not to be singled out for torture upon return to Mexico. Balderas-Lopez did not challenge the BIA's treatment of the testimonial evidence relevant to this issue, instead arguing that the BIA erred by not considering "substantial documentation of torture in Mexico." A petitioner seeking relief under CAT "may satisfy his burden with evidence of country conditions alone," *Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 894 (9th Cir. 2018) (quotation marks and citation omitted),

if that evidence "compel[s] the conclusion that [he] is more likely than not to be tortured" upon removal, *Shrestha*, 590 F.3d at 1049. Failure by the BIA to consider all evidence of country conditions is reversible error. *See Gonzalez-Caraveo*, 882 F.3d at 894 (finding that "[t]here was no indication that the IJ or BIA did not consider all the evidence before them," because the IJ clearly considered country conditions, but was simply not persuaded by them).

Contrary to Balderas-Lopez's argument, the BIA did consider the country conditions evidence and correctly determined that it did not compel the conclusion that Balderas-Lopez is more likely than not to be tortured upon return to Mexico. The reports and other country conditions evidence establish that corrupt police and military officers engage in kidnappings and torture, but they do not establish the likelihood that any specific person will be tortured. Accordingly, they do not compel the conclusion that Balderas-Lopez is subject to any specific risk of torture beyond that which all Mexican citizens face. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (although country reports confirmed torture in the petitioner's home country, they did not compel the conclusion that the petitioner would face a specific risk of torture).[2]

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[2]Balderas-Lopez raises arguments that the BIA did not reach because they were unnecessary to its decision—namely, his inability to relocate and the futility of reporting his kidnapping and extortion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (Per Curium) ("[A]gencies are not required to make findings on issues the decision of which is unnecessary to the results they reach."). Because we conclude

Balderas-Lopez argues that the agency abused its discretion by failing to consider whether his kidnapping constituted mental torture. We disagree. Balderas-Lopez did not raise the issue of mental torture or present any evidence to support this theory to the immigration judge, and his appeal brief to the BIA made only passing references to "mental suffering." Accordingly, we find that the agency did not abuse its discretion by not considering mental torture arguments. *See Bare v. Brown*, 975 F.3d 952, 960 (9th Cir. 2020) ("Exhaustion requires a non-constitutional legal claim to the court on appeal . . . to have been sufficient to put the BIA on notice of what was being challenged."); *see also Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003) ("Before a petitioner can raise an argument on appeal, the petitioner must first raise the issue before the BIA or IJ."); *In re J-Y-C-*, 24 I&N Dec. 260, 261 n.1 (B.I.A. 2007) (finding it inappropriate for the BIA to consider issues not raised to the immigration judge).

PETITION DENIED.

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that the BIA did not err in concluding that Balderas-Lopez failed to establish that he is likely to be tortured if removed, we do not consider these arguments. *See Smith v. Berryhill*, 139 S. Ct. 1765, 1779 (2019).