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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| ARMANDO ORTIZ HERNANDEZ,<br>Petitioner,<br>v.<br>MERRICK B. GARLAND, Attorney General,<br>Respondent. | No. 18-71573<br>Agency No. A077-518-174<br>MEMORANDUM* |

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

Submitted December 6, 2022**
San Francisco, California

Before: GRABER, WATFORD, and WALLACH,*** Circuit Judges.

Petitioner Armando Ortiz Hernandez, a native and citizen of Mexico, entered the United States in 2013 without immigration documents. He conceded

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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 Evan J. Wallach, United States Circuit Judge for the U.S. Court of Appeals for the Federal Circuit, sitting by designation.

removability but sought asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). The Board of Immigration Appeals dismissed his appeal from an immigration judge's ("IJ") denial of all forms of relief. Petitioner timely seeks our review. We deny the petition.

1. We review for substantial evidence the agency's factual findings, including adverse credibility determinations. Mukulumbutu v. Barr, 977 F.3d 924, 925 (9th Cir. 2020). "[W]e must uphold the agency['s] determination unless the evidence compels a contrary conclusion." Duran-Rodriguez v. Barr, 918 F.3d 1025, 1028 (9th Cir. 2019) (emphasis added). Here, the IJ considered the totality of the circumstances and all relevant factors under 8 U.S.C. § 1158(b)(1)(B)(iii), and provided specific, cogent reasons for the adverse credibility finding. See Shrestha v. Holder, 590 F.3d 1034, 1042–43 (9th Cir. 2010) (describing requirement).

Substantial evidence supports the agency's adverse credibility determination. Petitioner stated in his asylum application that, after a friend reported cartel members to the police, the friend was discovered hanging, with a note on his body warning others not to disobey the cartel. But the agency noted that Petitioner's testimony was inconsistent with respect to the location of the body (on a bridge outside town, in an alley, or in the middle of the street), the condition of the body (shot, cut, or neither), and the existence of a note. Those

inconsistencies are not trivial, as they related to Petitioner's fear of persecution. See Shrestha, 590 F.3d at 1046–47 ("Although inconsistencies no longer need to go to the heart of the petitioner's claim, when an inconsistency is at the heart of the claim it doubtless is of great weight."). In addition, our review of the record and the IJ's credibility analysis reveals neither an improper reliance on, nor a failure to account for, Petitioner's speech impediment. Rather, the agency observed that Petitioner's testimony was often unresponsive, and counsel had to remind him of the contents of his application. Because Petitioner was permissibly found not credible, we deny his claims for asylum and withholding.

2. Petitioner's CAT claim rested on the same testimony that was found not credible, and the record does not otherwise compel the conclusion that it is more likely than not he would be tortured by or with the consent or acquiescence of the government if returned to Mexico. Therefore, substantial evidence also supports the denial of CAT relief. See Farah v. Ashcroft, 348 F.3d 1153, 1157 (9th Cir. 2003) (holding that an adverse credibility finding suffices to defeat a CAT claim when the record contains no other evidence with respect to the likelihood of future torture). We deny Petitioner's claim for CAT relief.

3. We review de novo claims of due process violations in removal proceedings. Ibarra-Flores v. Gonzales, 439 F.3d 614, 620 (9th Cir. 2006). Petitioner's due process claim is, in essence, a quarrel with the result of the hearing

on the merits and a complaint as to the use of leading questions. As to the former, judicial rulings alone rarely establish bias. Liteky v. United States, 510 U.S. 540, 555–56 (1994). As to the latter, questioning in aid of fully developing the factual record, which occurred here, does not amount to bias. Antonio–Cruz v. INS, 147 F.3d 1129, 1131 (9th Cir. 1998). Even aggressive or harsh questioning does not necessarily rise to the level of a due process violation. Melkonian v. Ashcroft, 320 F.3d 1061, 1072 (9th Cir. 2003).

In addition, Petitioner argues that the IJ's failure to consider his severe speech impediment deprived him of a full and fair hearing. But Petitioner fails to explain how he was prejudiced by the IJ's conduct. See Vargas-Hernandez v. Gonzales, 497 F.3d 919, 926 (9th Cir. 2007) ("In order to prevail on a due process claim that he was denied a full and fair hearing, an alien must also show prejudice—that his rights were violated in a manner so as potentially to affect the outcome of the proceedings." (citation and internal quotation marks omitted)). Because he does not articulate what testimony or evidence would have been presented but for the IJ's conduct, we deny Petitioner's due process claim.

**PETITION DENIED.**