

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 15 2022

FOR THE NINTH CIRCUIT

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

EDUARDO AVILA RUBIO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 20-72359

Agency No. A073-980-777

MEMORANDUM\*

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

Submitted November 16, 2022\*\*  
Pasadena, California

Before: NGUYEN and FORREST, Circuit Judges, and FITZWATER,\*\* District  
Judge.

Eduardo Avila Rubio petitions for review of a decision by the Board of  
Immigration Appeals (“BIA”) affirming the immigration judge’s (“IJ”) order

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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 Sidney A. Fitzwater, United States District Judge for  
the Northern District of Texas, sitting by designation.

denying asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252.

Reviewing the agency’s factual findings for substantial evidence, *see Flores Molina v. Garland*, 37 F.4th 626, 632 (9th Cir. 2022), we deny the petition for review in part and dismiss it in part.

1. The BIA did not err in denying Avila Rubio’s application for withholding of removal.<sup>1</sup> Avila Rubio does not address the agency’s finding that he failed to show the Mexican government is unwilling or unable to control the persons who kidnapped and killed his brother—an independent basis to uphold the denial of withholding of removal. *See Riera-Riera v. Lynch*, 841 F.3d 1077, 1080 (9th Cir. 2016). Regardless, substantial evidence supports the agency’s finding. Avila Rubio testified that the Mexican authorities “tried to investigate” his brother’s murder. *See Nahrvani v. Gonzales*, 399 F.3d 1148, 1154 (9th Cir. 2005) (holding that when police investigated complaints of mistreatment, they were not “unable or unwilling to control those [responsible]” merely because they “were ultimately unable to solve the crimes”).

2. The BIA did not err in denying Avila Rubio’s application for CAT protection. Substantial evidence supports the agency’s finding that Avila Rubio

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<sup>1</sup> The agency denied Avila Rubio’s asylum claim as untimely. He does not challenge this finding.

did not show it was more likely than not that he would be tortured. His claim that the unknown persons who killed his brother more than 20 years earlier would discover he had returned to Mexico and assume he was there to seek vengeance is entirely speculative. *See Gomez Fernandez v. Barr*, 969 F.3d 1077, 1091 (9th Cir. 2020) (rejecting CAT relief applicant’s “speculation that the same individuals who targeted his family members in 1996 would target him [decades later] if he returned [to Mexico]” as “insufficient” to establish a likelihood of torture). Avila Rubio testified that he was “not too sure” when his family last received a threat from the unknown persons and that “about a year or two” earlier, his mother said only “that they could still be out there.”

3. We dismiss Avila Rubio’s challenge to the agency’s denial of voluntary departure, in which he merely highlights facts that support granting such relief. We lack jurisdiction to review an “assertion that the agency did not properly weigh the equities in denying voluntary departure.” *Olea-Serefina v. Garland*, 34 F.4th 856, 867 (9th Cir. 2022); *see* 8 U.S.C. § 1229c(f).

**PETITION DENIED in part and DISMISSED in part.**