

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 18 2021

FOR THE NINTH CIRCUIT

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

FELICITO PABLO-GOMEZ,

No. 20-72441

Petitioner,

Agency No. A205-925-528

v.

MEMORANDUM\*

MERRICK B. GARLAND, Attorney  
General,

Respondent.

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

Submitted November 8, 2021\*\*

Before: CANBY, TASHIMA, and MILLER, Circuit Judges.

Felicito Pablo-Gomez, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT").

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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).

Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings, applying the standards governing adverse credibility determinations under the REAL ID Act. *Shrestha v. Holder*, 590 F.3d 1034, 1039-40 (9th Cir. 2010). We review de novo questions of law. *Bhattarai v. Lynch*, 835 F.3d 1037, 1042 (9th Cir. 2016). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the agency’s adverse credibility determination based on Pablo-Gomez’s omission from his credible fear interview, asylum application, and written declaration of at least 10 beatings by gang members prior to his initial 2005 entry to the United States. *See Shrestha*, 590 F.3d. at 1048 (adverse credibility determination reasonable under “the totality of circumstances”); *see also Silva-Pereira v. Lynch*, 827 F.3d 1176, 1185 (9th Cir. 2016) (“[A]n adverse credibility determination may be supported by omissions that are not ‘details,’ but new allegations that tell a ‘much different—and more compelling—story of persecution than [the] initial application’.” (internal citation omitted)). Pablo-Gomez’s explanations do not compel a contrary conclusion. *See Lata v. INS*, 204 F.3d 1241, 1245 (9th Cir. 2000). Substantial evidence also supports the agency’s finding that Pablo-Gomez did not present corroborative evidence that would otherwise establish his eligibility for relief. *See Garcia v. Holder*, 749 F.3d 785, 791 (9th Cir. 2014) (petitioner’s documentary evidence was

insufficient to independently support claim).

We lack jurisdiction to consider Pablo-Gomez's contention that the IJ was required to give him an opportunity to explain why he did not provide or could not reasonably obtain corroborating evidence. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency). To the extent Pablo-Gomez contends his claim is only based on the two most recent incidents of harm by gang members, we also lack jurisdiction to consider the contention. *See id.*

Thus, in the absence of credible testimony, in this case, Pablo-Gomez's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Substantial evidence also supports the agency's denial of Pablo-Gomez's CAT claim because it was based on the same evidence found not credible, and he does not point to any other record evidence that compels 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 Guatemala. *See Shrestha*, 590 F.3d at 1048-49. Pablo-Gomez's contentions that the agency erred in its CAT analysis and failed to consider evidence supporting his claim fail. *See Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010) (the BIA need not write an exegesis on every contention); *Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006) (petitioner did not

overcome the presumption that the BIA reviewed the record).

The temporary stay of removal remains in place until issuance of the mandate.

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**