

APR 23 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BERNARDO CADENA MERCADO,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 12-72965

Agency No. A078-019-680

MEMORANDUM\*

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

Submitted April 16, 2013\*\*

Before: CANBY, IKUTA, and WATFORD, Circuit Judges.

Bernardo Cadena Mercado, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s (“IJ”) decision denying his application for deferral of removal under the Convention Against Torture (“CAT”). Our jurisdiction is

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

governed by 8 U.S.C. § 1252. We review for substantial evidence factual findings. *Kumar v. Gonzales*, 444 F.3d 1043, 1049 (9th Cir. 2006). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the agency's findings that Cadena Mercado failed to establish that it is more likely than not he will be tortured because he has not suffered past harm rising to the level of torture, nor has he demonstrated he would be unable to relocate. *See Kumar*, 444 F.3d at 1055 (being beaten by police officers with wooden sticks and leather belts was abuse but did not amount to past torture); *Hasan v. Ashcroft*, 380 F.3d 1114, 1123 (9th Cir. 2004) (petitioner has the burden to show internal relocation to avoid torture is not possible). Accordingly, Cadena Mercado's claim for deferral of removal under CAT fails.

We lack jurisdiction to review Cadena Mercado's unexhausted due process claims that the IJ failed to advise him that the proceedings were governed by the Real ID Act and failed to develop the record adequately. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

The court considered all the arguments Cadena Mercado raised in his brief filed on March 26, 2013. Thus, we deny as moot Cadena Mercado's motion to accept his March 26, 2013, brief as the opening brief.

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