

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEC 9 2022

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

JOSUE ANTONIO PLEITEZ-MARTINEZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 15-72256

Agency No. A095-772-191

MEMORANDUM*

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

Submitted December 6, 2022**
Pasadena, California

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

Josue Antonio Pleitez-Martinez, a native and citizen of El Salvador, petitions for review of the order of the Board of Immigration Appeals (BIA) dismissing his appeal from a decision of the Immigration Judge (IJ) denying his application for withholding of removal and protection under the Convention

* 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).

Against Torture (CAT).¹ We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings, including determinations regarding social distinction. *See Conde Quevedo v. Barr*, 947 F.3d 1238, 1241–42 (9th Cir. 2020). We review de novo the legal question of whether a particular social group is cognizable, except to the extent that deference is owed to the BIA’s interpretation of the governing statutes and regulations. *Id.* We deny the petition for review.

1. The absence of time, date, and location information in Pleitez-Martinez’s notice to appear did not divest the immigration court of jurisdiction. We recently held that “the failure of a [notice to appear] to include time and date information does not deprive the immigration court of subject matter jurisdiction,” and that “the filing of an undated [notice to appear] that is subsequently supplemented with a notice of hearing fully complies with the requirements” of 8 C.F.R. § 1003.14(a). *United States v. Bastide-Hernandez*, 39 F.4th 1187, 1188, 1193 (9th Cir. 2022) (en banc). Because Pleitez-Martinez received subsequent notices of hearing, the immigration court had jurisdiction over his case. The motion to remand is denied.

2. Substantial evidence supports the denial of Pleitez-Martinez’s

¹ The IJ also denied Pleitez-Martinez’s application for asylum, and Pleitez-Martinez did not challenge that ruling on appeal to the BIA or to this court.

application for withholding of removal. To establish entitlement to withholding of removal, the applicant must show past persecution or “an independent showing of clear probability of future persecution” on account of his race, religion, nationality, membership in a particular social group, or political opinion. *See Tamang v. Holder*, 598 F.3d 1083, 1091 (9th Cir. 2010) (citation omitted).

Pleitez-Martinez cites *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014), in which we remanded to the BIA to consider whether the proposed group “persons taking concrete steps to oppose gang membership and gang authority” was a particular social group. Unlike the petitioner there, however, Pleitez-Martinez offered no evidence that he took any “concrete steps” to oppose gang membership or gang authority.

Rather, the BIA properly affirmed the IJ’s finding that Pleitez-Martinez was the unfortunate victim of criminal acts and was not attacked based on a protected ground. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (“An alien’s desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground.”). Although Pleitez-Martinez suggested that he was attacked because he drove minibuses and his assailants opposed minibus drivers, the record does not compel the finding that Pleitez-Martinez’s assailants knew that he drove minibuses or attacked him on that ground. *See Singh v. Holder*, 764 F.3d 1153, 1159 (9th Cir. 2014) (for a

petitioner to demonstrate a nexus between his mistreatment and an “imputed political opinion,” the petitioner must show that his persecutors believed that he held a political opinion and that he was harmed because of that opinion); *Hussain v. Rosen*, 985 F.3d 634, 646 (9th Cir. 2021) (quoting *Ochave v. I.N.S.*, 254 F.3d 859, 865 (9th Cir. 2001)) (petitioner must show he was “singled out on account of a protected ground” to establish persecution).

Additionally, the BIA properly determined that Pleitez-Martinez’s proposed social group, “people who want to avoid gang violence and live a law-abiding life,” is not cognizable. Pleitez-Martinez offered no evidence to show that Salvadoran society recognizes this group as distinct, and this group could include “large numbers of people with different conditions and in different circumstances.” *Mendoza-Alvarez v. Holder*, 714 F.3d 1161, 1164 (9th Cir. 2013).

3. Substantial evidence also supports the denial of CAT relief. An applicant for CAT relief must demonstrate that he “will more likely than not be tortured with the consent or acquiescence of a public official if removed” to his native country. *Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1183 (9th Cir. 2020).

Pleitez-Martinez did not put forward evidence compelling the conclusion that the Salvadoran government would consent or acquiesce to his torture. Although Pleitez-Martinez testified that the police did not create reports documenting his attacks or find his attackers, “[e]vidence that the police were

aware of a particular crime, but failed to bring the perpetrators to justice, is not in itself sufficient to establish acquiescence in the crime.” *Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014). “Instead, there must be evidence that the police are unable or unwilling to oppose the crime.” *Id.* Pleitez-Martinez did not provide any such evidence, and “a general ineffectiveness on the government’s part to investigate and prevent crime will not suffice to show acquiescence.” *Andrade-Garcia v. Lynch*, 828 F.3d 829, 836 (9th Cir. 2016). Additionally, Pleitez-Martinez’s failure to report the attacks or to identify the assailants involved in the first attack further undermines his ability to demonstrate acquiescence. *See Garcia-Milian*, 755 F.3d at 1034 (record did not compel finding of acquiescence when petitioner reported to police that she had been attacked by masked men, but police declined to investigate because they lacked sufficient information).

PETITION DENIED.