

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 18 2019

FOR THE NINTH CIRCUIT

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

ABEL REYES-LECHUGA,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 17-70489

Agency No. A077-068-938

MEMORANDUM\*

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

Submitted March 12, 2019\*\*

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

Abel Reyes-Lechuga, a native and citizen of Mexico and a legal permanent resident, petitions for review of the Board of Immigration Appeals' ("BIA") decisions dismissing his appeal from an immigration judge's decision denying asylum, withholding of removal, and protection under the Convention Against

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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).

Torture (“CAT”), and denying his motion to remand. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law and constitutional claims. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We review for abuse of discretion the denial of a motion to remand. *Romero-Ruiz v. Mukasey*, 538 F.3d 1057, 1062 (9th Cir. 2008). We deny the petition for review.

Because Reyes-Lechuga was found removable due to his offense related to a controlled substance, our jurisdiction to review the agency’s denial of withholding of removal is limited to colorable constitutional claims and questions of law. *See* 8 U.S.C. § 1252(a)(2)(C)-(D); *Pechenkov v. Holder*, 705 F.3d 444, 448-49 (9th Cir. 2012). To the extent Reyes-Lechuga contends the agency erred by applying an incorrect legal standard in its particularly serious crime determination, we reject this contention because the BIA applied the correct standard. *See* 8 U.S.C. § 1231(b)(3)(B)(ii); 8 C.F.R. § 1208.16(d)(2); *Miguel-Miguel v. Gonzales*, 500 F.3d 941, 949 (9th Cir. 2007) (recognizing the “strong presumption” that drug trafficking offenses are particularly serious). We lack further jurisdiction over Reyes-Lechuga’s withholding of removal claim. *See Pechenkov*, 705 F.3d at 448-49.

The BIA did not abuse its discretion in denying Reyes-Lechuga’s motion to remand where he failed to demonstrate prejudice from his counsel’s alleged ineffectiveness. *See Iturribarria v. INS*, 321 F.3d 889, 899 (9th Cir. 2003)

(prejudice required for an ineffective assistance claim).

We do not reach Reyes-Lechuga's contentions regarding credibility. *See Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010) (review is limited to the actual grounds relied upon by the BIA).

**PETITION FOR REVIEW DENIED.**