NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICARDO DIAZ VILLAFUERTE, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 19-72092 Agency No. A205-465-826 MEMORANDUM[*]

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

Submitted December 8, 2022[**]
San Francisco, California

Before: NGUYEN and SANCHEZ, Circuit Judges, and BOUGH,[***] District Judge.

[*] 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 Stephen R. Bough, United States District Judge for the Western District of Missouri, sitting by designation.

Ricardo Diaz Villafuerte, a native and citizen of Peru, petitions for review of a decision by the Board of Immigration Appeals ("BIA") affirming the immigration judge's ("IJ") order denying cancellation of removal, withholding of removal, and protection under the Convention Against Torture ("CAT"), and granting voluntary departure.[1] We have jurisdiction under 8 U.S.C. § 1252. Reviewing the agency's factual findings for substantial evidence and its legal conclusions de novo, *see Flores Molina v. Garland*, 37 F.4th 626, 632 (9th Cir. 2022), we deny the petition for review.

1. We agree that Diaz Villafuerte's proposed particular social group—"Peruvian citizens returning to Peru with U.S. citizen children"—is not cognizable. The Ninth Circuit has previously rejected similar proposed social groups based on return to a home country. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151–52 (9th Cir. 2010) (finding proposed social group of "returning Mexicans from the United States" too broad to qualify as cognizable); *Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1229 (9th Cir. 2016) (rejecting proposed social group of "those returning home who *appear* to be American"). And substantial evidence supports the agency's conclusion that individuals in this proposed category are perceived as a discrete and distinct group in Peru. *See Reyes v. Lynch*, 842 F.3d 1125, 1131–32,

[1] On appeal, Diaz Villafuerte contests only the agency's denial of withholding of removal and relief under the Convention Against Torture.

1135 (9th Cir. 2016).

There is furthermore no evidence of a nexus between Diaz Villafuerte's proposed particular social group and any harm. Diaz Villafuerte was never personally threatened with physical harm. Nor does Diaz Villafuerte expect to face particularized threats when he returns. Rather, Diaz Villafuerte points to fears that arise from general country conditions in Peru or from potential harm to his children based on their ability to speak English. Diaz Villafuerte adduces no evidence that it is more likely than not that he will suffer future persecution due to his status as a Peruvian citizen returning with his U.S. citizen children.

2. Substantial evidence also supports the agency's determination that Diaz Villafuerte abandoned his claim based on political opinion. Prior to examining Diaz Villafuerte, petitioner's counsel told the IJ that he "d[id]n't know if political opinion is appropriate" because Diaz Villafuerte "was never involved in politics in Peru." During the examination, when asked if he had any problems in Peru, Diaz Villafuerte answered, "[p]olitically or by religion, I believe no." Diaz Villafuerte also testified that he had not previously been, nor was he presently, a member of a political party in Peru. Finally, Diaz Villafuerte's counsel did not raise the issue at closing argument when arguing his withholding claim.

3. Finally, substantial evidence supports the agency's determination that Diaz Villafuerte is not entitled to CAT relief because he has not shown he is more

likely than not to suffer torture in Peru. Diaz Villafuerte was not subject to torture in the past. He adduces no record evidence supporting his claim that the government, or any entity with the acquiescence of the government, would torture him upon return to Peru. Generalized evidence of violence and crime in Peru does not satisfy his burden. *See Delgado-Ortiz*, 600 F.3d at 1152 (holding that "generalized evidence of violence and crime in Mexico is not particular to [p]etitioners and is insufficient to meet [the CAT relief] standard").

PETITION DENIED.