

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 10 2022

FOR THE NINTH CIRCUIT

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

MELVIN ALEXANDER JIMENEZ-  
MELARA

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 21-70403

Agency No. A213-612-052

MEMORANDUM\*

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

Submitted November 7, 2022\*\*  
Pasadena, California

Before: PARKER\*\*\*, KOH and SUNG, Circuit Judges.

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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).

\*\*\* The Honorable Barrington D. Parker, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Second Circuit, sitting by designation.

Petitioner Melvin Alexander Jimenez-Melara (“Jimenez-Melara”), a native and citizen of El Salvador, seeks review of a February 3, 2021 Board of Immigration Appeals (“BIA”) order dismissing an appeal of an Immigration Judge’s (“IJ”) decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction pursuant to 8 U.S.C. § 1252(a)(1), and we deny the petition.

Where, as here, the BIA expressly adopts the IJ’s decision and adds reasoning of its own, we review the IJ’s and BIA’s decisions together. *Husyev v. Mukasey*, 528 F.3d 1172, 1177 (9th Cir. 2008). We review the denial of asylum, denial of withholding of removal, and denial of CAT relief under the deferential substantial evidence standard. *Wang v. Sessions*, 861 F.3d 1003, 1007 (9th Cir. 2017). We review the determination that a petitioner committed a “particularly serious crime” for abuse of discretion. *Konou v. Holder*, 750 F.3d 1120, 1127 (9th Cir. 2014). Finally, we review due process challenges to the BIA’s decision de novo. *Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014).

An applicant cannot be granted withholding of removal if he has been convicted of “a particularly serious crime.” 8 U.S.C. § 1231(b)(3)(B)(ii). Jimenez-Melara argues the BIA’s decision upholding the denial of withholding of removal was not supported by substantial evidence because the crime he was convicted of

was not “particularly serious.” Jimenez-Melara was convicted of a DUI causing bodily injury to another person. *See* Ca. Vehicle Code § 23153(a). Jimenez-Melara was sentenced to a year in prison and five years of probation. This Court has repeatedly held that convictions under § 23153 may be considered “particularly serious crimes.” *See, e.g., Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1078 (9th Cir. 2015); *Anaya-Ortiz v. Holder*, 594 F.3d 673, 680 (9th Cir. 2010). We find that the BIA did not abuse its discretion in applying the *Frentescu* factors and determining that Jimenez-Melara’s DUI conviction made him ineligible for withholding of removal.<sup>1</sup> *See Matter of Frentescu*, 18 I. & N. Dec. 244, 244 (BIA 1982).

Next, Jimenez-Melara argues that the BIA erred by finding that he had not established a nexus to a protected ground to justify withholding of removal. An applicant seeking withholding of removal bears the burden to show “that he has suffered persecution or has a well-founded fear of future persecution on account of one of five protected statutory grounds: race, religion, nationality, political opinion, or membership in a particular social group.” *Riera-Riera v. Lynch*, 841 F.3d 1077, 1081 (9th Cir. 2016). We find, however, that substantial evidence

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<sup>1</sup> Even if we found that the DUI conviction was not a particularly serious crime and that Jimenez-Melara was thus eligible for withholding of removal, he would still not qualify for withholding of removal for the reasons stated *infra*.

supports the BIA’s finding that Jimenez-Melara did not satisfy the nexus requirement.

Jimenez-Melara testified that in 2004, when he was twelve years old, he was recruited to join a gang in El Salvador. The gang pressured Jimenez-Melara into “going with” them to be “initiated,” threatened to kill him and his parents, and told him that if he did not join them that they would turn his sister into a “sexual object for them.” Shortly thereafter, he and his family left El Salvador for the United States. Assuming that the harm that Jimenez-Melara experienced as a child constitutes persecution, Jimenez-Melara does not identify on appeal—nor did he identify below—which protected ground he claimed as nexus. The record before this court does not compel the conclusion that any protected ground was “a reason” for the persecution. *Barajas-Romero v. Lynch*, 846 F.3d 351, 359-60 (9th Cir. 2017). *See Santos-Lemus v. Mukasey*, 542 F.3d 738, 744 (9th Cir. 2008) (holding that “young men in El Salvador resisting gang violence” is not a cognizable social group). His claim of fear of future persecution at the hands of this same gang likewise fails for lack of nexus.

Substantial evidence also supports the BIA’s denial of Jimenez-Melara’s application for protection under CAT. The BIA correctly concluded that he failed to show that he would more likely than not be tortured if removed to El Salvador.

Jimenez-Melara did not show that he faces a particularized threat of torture with the consent and acquiescence of the Salvadorean government. He instead based his claim on documents showing pervasive crime, violence, and political unrest in El Salvador—none of which are sufficient to prove eligibility for CAT relief. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (holding that generalized evidence of violence and crime is insufficient to meet the CAT standard where it was not particular to petitioners). In addition, he speculates that his drug convictions in the United States put him at a high risk of torture because the government may believe him to be a gang member. Such speculation, however, is not sufficient to establish the requisite likelihood of future torture. *See Medina-Rodriguez v. Barr*, 979 F.3d 738, 750-51 (9th Cir. 2020).

Finally, the IJ did not violate Jimenez-Melara’s due process rights when it denied him a continuance to obtain translated copies of his documentary evidence. To succeed on such a claim, a petitioner “must show error and substantial prejudice.” *Grigoryan v. Barr*, 959 F.3d 1233, 1240 (9th Cir. 2020). This requires the petitioner to demonstrate that the challenged proceeding “was so fundamentally unfair” that he was “prevented from reasonably presenting his case.” *Cruz Rendon v. Holder*, 603 F.3d 1104, 1109 (9th Cir. 2010). Jimenez-Melara claims that his due process rights were violated when the IJ denied his request for a continuance

to obtain additional police reports filed by his parents regarding the gang recruitment and a translation of a police report related to the gang's treatment of his aunt after Jimenez-Melara and his immediate family moved to the United States. The IJ, however, allowed Jimenez-Melara to testify to the content of the untranslated police report and found his testimony regarding the gang recruitment credible. Jimenez-Melara argues that, because he was appearing *pro se*, the IJ had a duty to develop the record. He does not, however, identify any prejudice that resulted from the IJ's denial of a continuance. Because Jimenez-Melara has shown no prejudice, we find that the IJ did not violate his due process rights.

**PETITION FOR REVIEW DENIED.**