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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Roberto A Cardoza Alfaro,

Petitioner,

v.

Merrick B. Garland, U.S. Attorney General,

Respondent.

No. 21-766

Agency No. A209-292-617

MEMORANDUM*

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

Submitted February 15, 2023**
San Francisco, California

Before: S.R. THOMAS, MILLER, and SANCHEZ, Circuit Judges.

Roberto Antonio Cardoza Alfaro, a native and citizen of El Salvador,
petitions for review of the Board of Immigration Appeals' ("BIA") denial of his

* 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).

asylum, withholding of removal, and Convention Against Torture (“CAT”) claims and the denial of his motion to remand for consideration of new evidence. We have jurisdiction under 8 U.S.C. § 1252(a)(1), (b)(6). We review de novo a due process claim. *Benedicto v. Garland*, 12 F.4th 1049, 1058 (9th Cir. 2021). We review for abuse of discretion the denial of a motion to remand. *Taggar v. Holder*, 736 F.3d 886, 889 (9th Cir. 2013). We deny the petition.¹

I

The BIA did not violate Cardoza Alfaro’s due process rights. “The BIA’s decision will be reversed on due process grounds if (1) the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case, and (2) the alien demonstrates prejudice, which means that the outcome of the proceeding may have been affected by the alleged violation.” *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 620–21 (9th Cir. 2006) (internal quotation marks and citations omitted).

Cardoza Alfaro argues that the BIA violated his due process rights when it declined to hold his appeal in abeyance pending resolution of his motion to remand and determined that he waived his challenges to the IJ’s rulings by failing to

¹ We also deny the motion to stay removal (Docket No. 4). The temporary stay of removal is lifted.

submit a brief on the merits. However, Cardoza Alfaro has not demonstrated that his proceeding was fundamentally unfair.

The BIA adequately afforded Cardoza Alfaro the opportunity to submit a brief appealing the aspects of the IJ's ruling with which he disagreed, but Cardoza Alfaro did not do so. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 822 (9th Cir. 2003) (no due process violation where the failure to submit a brief was due to counsel's error and not the BIA's error). In addition, Cardoza Alfaro's notice of appeal was not sufficiently detailed to put the BIA on notice of the issues on appeal. *See Singh v. Ashcroft*, 361 F.3d 1152, 1157 (9th Cir. 2004) (summary dismissal appropriate where noncitizen failed to file a brief when he indicated he would on the appeal form and his notice of appeal failed to describe grounds for appeal with requisite specificity). And the BIA expressly told Cardoza Alfaro that the agency would address the merits of his appeal and the motion to remand at the same time. In short, the BIA did not violate Cardoza Alfaro's due process rights because Cardoza Alfaro had an adequate opportunity to submit a brief on the merits to the BIA or otherwise preserve the issues in his appeal.

II

The BIA did not abuse its discretion in denying the remand motion. A noncitizen seeking remand must prove that "the new evidence would likely change

the result in the case.” *Shin v. Mukasey*, 547 F.3d 1019, 1025 (9th Cir. 2008). The BIA properly determined that the additional evidence Cardoza Alfaro obtained from the Salvadoran criminal trial did not warrant remand. The evidence of the trial and conviction of Cardoza Alfaro’s co-defendants does not tend to exonerate Cardoza Alfaro and on balance supports the IJ’s determination that the serious nonpolitical crime bar applied here. As a result, the additional evidence would not “likely change the result in the case,” *id.*, and the BIA did not abuse its discretion in denying the motion to remand.

PETITION DENIED.