

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2023

FOR THE NINTH CIRCUIT

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

FRANCISCO JAVIER MARTINEZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-1466

Agency No.
A209-131-959

MEMORANDUM*

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

Submitted November 14, 2023**

Before: SILVERMAN, WARDLAW, and TALLMAN, Circuit Judges.

Francisco Javier Martinez, a native and citizen of the Dominican Republic, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his applications 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”), and denying his motion for administrative closure. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the agency’s particularly serious crime determination. *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1077 (9th Cir. 2015). We review for substantial evidence the agency’s factual findings, and review de novo questions of law. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241 (9th Cir. 2020). We review denials of administrative closure for abuse of discretion. *See Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 891-93 (9th Cir. 2018). We deny the petition for review.

The agency did not abuse its discretion in determining that Martinez’s 2021 conviction was a particularly serious crime that barred him from withholding of removal, where the agency considered the correct factors. *See Avendano-Hernandez*, 800 F.3d at 1077 (review limited to ensuring agency relied on the appropriate factors and proper evidence); *Anaya-Ortiz v. Holder*, 594 F.3d 673, 678 (9th Cir. 2010) (“[A]ll reliable information may be considered in making a particularly serious crime determination” (citation and internal quotation marks omitted)).

We do not address Martinez’s contentions as to the merits of his withholding of removal claim because the BIA did not deny relief on these grounds. *See Santiago-Rodriguez v. Holder*, 657 F.3d 820, 829 (9th Cir. 2011) (“In reviewing the decision of the BIA, we consider only the grounds relied upon by that agency.”

(citation and internal quotation marks omitted)). Thus, Martinez's withholding of removal claim fails.

Substantial evidence supports the agency's denial of deferral of removal under CAT because Martinez failed to show it is more likely than not he will be tortured by or with the consent or acquiescence of the government if returned to the Dominican Republic. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009).

Because the BIA relied on relevant factors, it did not abuse its discretion in denying the motion for administrative closure where Martinez's likelihood of success on an alternative form of relief was speculative. *See Gonzalez-Caraveo*, 882 F.3d at 891-93 (non-exhaustive list of factors in *Matter of Avetisyan*, 25 I. & N. Dec. 688 (BIA 2012), provides standard for reviewing administrative closure decisions).

Martinez's claim the agency violated due process by relying on misrepresentations made by the government and preventing his witness from testifying fail for lack of prejudice. *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) ("prejudice . . . means that the outcome of the proceeding may have been affected by the alleged violation.").

PETITION FOR REVIEW DENIED.