

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 27 2024

FOR THE NINTH CIRCUIT

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

HECTOR JOEL BARAHONA
SALGUERO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 23-670

Agency No.
A098-980-078

MEMORANDUM*

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

Submitted March 25, 2024**
Pasadena, California

Before: GRABER, GOULD, and FORREST, Circuit Judges.

Petitioner Hector Joel Barahona Salguero, a citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order, which dismissed his appeal of an order from an immigration judge ("IJ") that denied his applications

* 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).

for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We review questions of law, as well as mixed questions of law and fact, *de novo*. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241 (9th Cir. 2020). We review factual findings for substantial evidence and accept them as conclusive “unless any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *Conde Quevedo*, 947 F.3d at 1241–42. To the extent that the BIA adopts the IJ’s decision, as here, we review both. *Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1016 (9th Cir. 2023). We deny the petition.

1. Petitioner seeks asylum or withholding of removal based on membership in a particular social group (“PSG”), so he “must show that the proposed social group is ‘(1) composed of members who share a common immutable characteristic [that is] (2) defined with particularity[] and (3) socially distinct within the society in question.’” *Conde Quevedo*, 947 F.3d at 1242 (citation omitted). Petitioner’s proposed PSGs— “[p]eople who are fearful of gang members because of past threats” and “deported Guatemalan nationals with continuing family ties in the United States” who may be perceived as imputed wealthy Americans—lack sufficient particularity and social distinction to qualify for protected status. Those who “resist[] gang violence” or have been “victims of indiscriminate violence” do not present a cognizable PSG on these grounds alone. *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151 (9th Cir. 2010) (per curiam) (citations omitted). Nor does the status

of a wealthy American that could be imputed to deported Guatemalan nationals who have continuing family ties in the United States. *See Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1229 (9th Cir. 2016); *Delgado-Ortiz*, 600 F.3d at 1151. Neither of these grounds presents a cognizable PSG for asylum or withholding of removal.

2. Assuming without deciding that the Barahona family is a PSG, the record does not compel us to conclude that Petitioner established a nexus between his family and the harm that he suffered or fears. The record supports the agency’s finding that the gang’s motive for kidnapping Petitioner’s sister was financial, not familial, and Petitioner fears revenge because he hit his former brother-in-law, not because of family membership. *See* 8 U.S.C. § 1252(b)(4)(B); *see also Madrigal v. Holder*, 716 F.3d 499, 506 (9th Cir. 2013) (harm or threat by a gang “motivated purely by personal retribution” for petitioner’s actions does not present a causal nexus); *Conde Quevedo*, 947 F.3d at 1243 (rejecting an asylum claim based on “only individual retaliation, not persecution on account of membership in a distinct social group”).

3. For protection under the CAT, Petitioner must show that he is more likely than not to be tortured if he is removed and that such torture would be “inflicted by or at the instigation of or with the consent or acquiescence of a public official acting in an official capacity or other person acting in an official capacity.” 8 C.F.R. § 208.18(a)(1). Petitioner contends that the Guatemalan government does

not protect its citizens from gang violence and that this “is tantamount to persecution at the hands of a state actor.” However, “a general ineffectiveness on the government’s part to investigate and prevent crime will not suffice to show acquiescence.” *Andrade-Garcia v. Lynch*, 828 F.3d 829, 836 (9th Cir. 2016) (citation omitted). The record does not compel the conclusion that Petitioner has a valid CAT claim. *See Singh v. Whitaker*, 914 F.3d 654, 662–63 (9th Cir. 2019).

PETITION DENIED. The stay of removal remains in place until the mandate issues.