NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2016

CINDY LISBETH PINEDA-CALIX,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of an
Order of the Board of Immigration Appeals
(Agency No. A220-934-265)
Immigration Judge: Nicole Lane

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
February 19, 2025

Before: CHAGARES, Chief Judge, BIBAS and RENDELL, Circuit Judges

(Filed: February 20, 2025)

OPINION*

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* This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

CHAGARES, Chief Judge.

Cindy Lisbeth Pineda-Calix[1] petitions for review of a decision by the Board of Immigration Appeals ("BIA") denying administrative closure and upholding the Immigration Judge's ("IJ") denial of protection under the Convention Against Torture ("CAT"). For the reasons that follow, we will deny the petition for review.

I.[2]

Pineda-Calix is a native and citizen of Honduras. She entered the United States in August 2021 and shortly thereafter was served with a Notice to Appear charging her as removable for having entered the United States without being admitted or paroled. The IJ sustained the charge of removability, and she applied for asylum, withholding of removal, and CAT protection. The IJ denied relief.

Pineda-Calix timely appealed to the BIA, claiming that the IJ erred in denying CAT protection.[3] She also requested the BIA to administratively close her case. The BIA issued its decision in May 2024. It agreed that the IJ properly denied CAT protection, as the past harm to which Pineda-Calix testified did not meet the definition of torture and she did not establish a clear probability of future torture with the consent or acquiescence of the Honduran government. The BIA also denied the request for

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[1] Pineda-Calix's minor child is a rider on her petition and does not assert any independent claims. We therefore will refer only to Pineda-Calix in our discussion.
[2] We write for the parties and therefore recite only those facts pertinent to our decision.
[3] Pineda-Calix did not challenge the IJ's denial of asylum or withholding of removal before the BIA. She also has not presented any claims concerning asylum or withholding of removal in this Court. Because the denial of asylum and withholding of removal are not before us, we will not discuss them in this opinion.

administrative closure because she "ha[d] not identified any form of relief that she [wa]s seeking separate and apart from these removal proceedings; nor ha[d] she identified an event that may affect the outcome of her case." Appendix ("App.") 6 (citing Arcos Sanchez v. Att'y Gen., 997 F.3d 113, 117 (3d Cir. 2021)). This timely petition for review followed.

II.[4]

Pineda-Calix challenges the BIA's denial of administrative closure and its dismissal of her appeal of the IJ's CAT denial. We address her claims in turn.

A.

Administrative closure is a form of discretionary relief permitting the BIA or IJ to "temporarily pause removal proceedings and place the case on hold because of a pending alternative resolution or because events outside the control of either party may affect the case."[5] Arcos Sanchez, 997 F.3d at 117 (internal quotation marks omitted); see also Inestroza-Tosta v. Att'y Gen., 105 F.4th 499, 515–16 (3d Cir. 2024). We review the denial of administrative closure for abuse of discretion. Arcos Sanchez, 997 F.3d at 123. The BIA has explained appropriate considerations for administrative closure as follows:

> [W]hen evaluating a request for administrative closure, it is appropriate for an Immigration Judge or the Board to weigh all relevant factors presented in the case, including but not limited to: (1) the reason administrative

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[4] We have jurisdiction to review the BIA's final order of removal. See 8 U.S.C. § 1252(a)(1).

[5] We generally lack jurisdiction to review discretionary determinations by the BIA. See Sang Goo Park v. Att'y Gen., 846 F.3d 645, 651 (3d Cir. 2017). We have authority to review the discretionary denial of administrative closure, however, because the BIA has constrained its discretion by setting forth factors to consider in evaluating an administrative closure request. Inestroza-Tosta, 105 F.4th at 515–16.

> closure is sought; (2) the basis for any opposition to administrative closure; (3) the likelihood the respondent will succeed on any petition, application, or other action he or she is pursuing outside of removal proceedings; (4) the anticipated duration of the closure; (5) the responsibility of either party, if any, in contributing to any current or anticipated delay; and (6) the ultimate outcome of removal proceedings (for example, termination of the proceedings or entry of a removal order) when the case is recalendared before the Immigration Judge or the appeal is reinstated before the Board.

Matter of Avetisyan, 25 I. & N. Dec. 688, 696 (B.I.A. 2012). The BIA has discretion to weigh only relevant factors and it need not evaluate each one. See Inestra-Tosta, 105 F.4th at 517.

Pineda-Calix contends that the BIA's denial of administrative closure is erroneous because the BIA did not solicit the Government's view, make findings of fact, or provide a reasoned explanation for denying relief.[6] She also claims that she was denied "the opportunity to seek the benefit" of administrative closure. Pineda-Calix Br. 17. Her arguments are unpersuasive.

Pineda-Calix had an adequate opportunity to pursue administrative closure before the BIA. The BIA acknowledged its authority to direct administrative closure, cited relevant case law, and provided an analysis of the claim. Its discussion of her claim, albeit brief, was sufficiently reasoned to permit our review.

Pineda-Calix based her request for administrative closure on "the CAT facts

[6] Pineda-Calix also claims that the IJ erred by failing to consider administrative closure. Yet the Government correctly observes that she did not request administrative closure before the IJ. To the extent she implies that only an IJ may consider an administrative closure claim, we disagree. The BIA is empowered to consider administrative closure. See Arcos Sanchez, 997 F.3d at 116–17. Indeed, in July 2024 (after this case was decided), the BIA's authority to grant administrative closure was formally codified. See 8 C.F.R. § 1003.1(d)(1)(ii), (*l*)(1).

testified to." Pineda-Calix Br. 9. In other words, she did not claim to be pursuing relief outside of her immigration proceeding to satisfy the third Avetsiyan factor, and instead argued that her allegations of mistreatment by the gangs in Honduras provided a basis to administratively close her case. No response from the Government or factfinding was necessary for the BIA to reach its determination that Pineda-Calix was not pursuing relief outside of her removal proceeding, as she conceded that fact. The BIA thus relied on a relevant and undisputed Avetisyan factor in denying relief. Pineda-Calix has not established that the BIA abused its discretion by rejecting her administrative closure claim on that basis.

B.

To prevail on her CAT claim, Pineda-Calix was required to show, among other things, that she "more likely than not" will be tortured if she returns to Honduras. Gomez-Zuluaga v. Att'y Gen., 527 F.3d 330, 349 (3d Cir. 2008). "Torture" refers to an intentionally inflicted harm that causes severe physical or mental pain or suffering, done for an illicit purpose with the consent or acquiescence of a public official, not arising from lawful sanctions. See Auguste v. Ridge, 395 F.3d 123, 151 (3d Cir. 2005). Considerations include whether she experienced torture in the past and whether the gangs specifically intend to single her out for torture in the future. See Hernandez Garmendia v. Att'y Gen., 28 F.4th 476, 484 (3d Cir. 2022); Kang v. Att'y Gen., 611 F.3d 157, 166 (3d Cir. 2010); Sevoian v. Ashcroft, 290 F.3d 166, 175 (3d Cir. 2002). We review the denial of the CAT claim for substantial evidence. Gomez-Zuluaga, 527 F.3d at 350. We therefore will uphold the decision unless the evidence compels an opposite result. Kang,

611 F.3d at 164.

In support of her application for CAT relief, Pineda-Calix testified that, on about five occasions from June 2017 through December 2020, armed gang members frisked her, robbed her, and ran away. She did not testify about any physical injuries resulting from these crimes, although she did receive medical treatment for her nerves. She also described the fear and harm inflicted by the gangs on her entire community, testifying that they "go around assaulting everybody that passes by them." AR 125. She stated that she does not want to return to Honduras because she continues to fear gang assault.

Pineda-Calix claims the BIA erred in determining that these experiences did not amount to torture because "[d]iscounting menacing threats where financial gain is involved is error." Pineda-Calix Br. 28. Her claim is unpersuasive. While the robberies she experienced were surely frightening, she does not cite evidence of record compelling a conclusion that those crimes rose to the level of torture or that the gangs targeted her personally such that she more likely than not will experience torture in the future. We therefore will deny her claim.[7]

III.

For the foregoing reasons, we will deny the petition for review.

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[7] Pineda-Calix also claims she established that the Honduran government is "unable or unwilling to provide law and order." Pineda-Calix Br. 31. The BIA found, in contrast, that she failed to show a clear probability of torture "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity in Honduras." App. 6. We need not reach this issue because a failure to establish a likelihood of future torture is dispositive of the CAT claim.