

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 25-2063

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LUCAS FRANCISCO-GONZALEZ,  
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

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On Petition for Review of a  
Decision of the Board of Immigration Appeals  
(A213-090-614)  
Immigration Judge: Mary C. Lee

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Submitted Pursuant to Third Circuit L.A.R. 34.1(a)  
April 21, 2026

Before: RESTREPO, BIBAS and FISHER, *Circuit Judges*.

(Filed: August 19, 2026)

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OPINION\*

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FISHER, *Circuit Judge*.

In 2002, the petitioner Lucas Francisco-Gonzalez, a native and citizen of

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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.

Guatemala, unlawfully entered the United States. On March 11, 2017, the Department of Homeland Security brought removal proceedings against Francisco-Gonzalez, who conceded removability but applied for statutory withholding of removal, for protection under the Convention Against Torture (CAT), and for post-conclusion voluntary departure. An immigration judge (IJ) denied each application, and the Board of Immigration Appeals (BIA) dismissed the appeal. Challenging the BIA’s denial of his application for withholding of removal and his application for post-conclusion voluntary departure, Francisco-Gonzalez petitions for review.<sup>1</sup> We will deny his petition.<sup>2</sup>

During his removal proceedings, Francisco-Gonzalez contended that he was entitled to withholding of removal because, if returned to Guatemala, gangs will persecute him on account of his Mayan race and his membership in a particular social group (PSG)—“men of the Mayan Qanjob’al group.”<sup>3</sup> In an order affirming the IJ’s decision and denying Francisco-Gonzalez’s appeal, the BIA determined that Francisco-

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<sup>1</sup> Because his opening brief does not challenge the BIA’s denial of his application for relief under the CAT, Francisco-Gonzalez has forfeited any argument for CAT relief. *Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist.*, 877 F.3d 136, 145 (3d Cir. 2017).

<sup>2</sup> The agency exercised jurisdiction under 8 U.S.C. § 1103 and 8 C.F.R. § 1003.1(b). We exercise jurisdiction under 8 U.S.C. § 1252(a). Where, as here, the BIA affirms and partially reiterates the immigration judge’s determinations, we look to both decisions. *Sandie v. Att’y Gen.*, 562 F.3d 246, 250 (3d Cir. 2009). Where the BIA relied only on a few of the immigration judge’s grounds for denying relief, we review only those grounds. *Chukwu v. Att’y Gen.*, 484 F.3d 185, 193 (3d Cir. 2007). We review for substantial evidence the agency’s factual findings, and we review the agency’s legal determinations *de novo*. *Herrera-Reyes v. Att’y Gen.*, 952 F.3d 101, 106 (3d Cir. 2020), *abrogated in part by Urias-Orellana v. Bondi*, 607 U.S. 537 (2026).

<sup>3</sup> AR 3.

Gonzalez failed to establish “a nexus between his past harm or fear of future harm” and a protected ground.<sup>4</sup>

Francisco-Gonzalez brings four arguments that the agency improperly denied his application for withholding of removal. First, Francisco-Gonzalez challenges the IJ’s finding that Francisco-Gonzalez’s testimony was incredible. Because both the IJ and the BIA assumed Francisco-Gonzalez’s credibility, we need not address this argument.

Second, Francisco-Gonzalez correctly argues that the BIA applied the wrong legal standard for evaluating nexus. The BIA stated that Francisco-Gonzalez failed to “establish that a protected ground was or will be a central reason, rather than an incidental, tangential, superficial reason, or subordinate to another reason for persecution.”<sup>5</sup> We have rejected the “subordinate” language of this test, concluding that when analyzing nexus in a mixed-motives case, the result “should not depend on a hierarchy of motivations . . . . [A] persecutor may have more than one central motivation for his or her actions; whether one of those central reasons is more or less important than another is irrelevant.”<sup>6</sup>

The BIA’s error, however, was harmless.<sup>7</sup> Although the BIA reiterated the

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<sup>4</sup> AR 3.

<sup>5</sup> AR 4 (citing *Matter of J-B-N- & S-M-*, 24 I. & N. Dec. 208, 214 (BIA 2007)).

<sup>6</sup> *Ndayshimiye v. Att’y Gen.*, 557 F.3d 124, 129 (3d Cir. 2009).

<sup>7</sup> In an immigration case, an error is harmless when “it is highly probable that the error did not affect the outcome of the case.” *Yuan v. Att’y Gen.*, 642 F.3d 420, 427 (3d Cir. 2011).

“subordinate” language, the BIA also cited in the same string citation our holding that a petitioner “must show that the protected ground was or will be at least one central reason for persecution.”<sup>8</sup> And nothing in the BIA’s analysis suggests that the BIA rejected Francisco-Gonzalez’s application because his race or status was subordinate to some other central reason. Rather, the BIA rejected Francisco-Gonzalez’s application because he failed to provide any details showing that he has suffered, or will suffer, persecution on account of a protected ground.<sup>9</sup> Accordingly, to the extent that the BIA’s citation of the improper nexus standard amounted to a legal error, the error was harmless.

For his third argument, Francisco-Gonzalez argues that the agency ignored country conditions evidence and letters of support that establish that Guatemalan gangs have persecuted, and will persecute, him on account of his status as a Mayan man. Relatedly, for his fourth argument, Francisco-Gonzalez argues that country conditions evidence and letters of support establish a pattern or practice of persecution, and that the IJ failed to consider that evidence. Neither argument is persuasive.<sup>10</sup>

To obtain withholding of removal, Francisco-Gonzalez must establish that, if returned to Guatemala, he will more likely than not suffer persecution because of his

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<sup>8</sup> AR 4 (quoting *Saban-Cach v. Att’y Gen.*, 58 F.4th 716, 724 (3d Cir. 2023) (citation modified)).

<sup>9</sup> AR 3 (“[T]he [petitioner] testified that he does not know why gang members beat him.”)

<sup>10</sup> The Government argues that Francisco-Gonzalez failed to exhaust his argument that the letters of support establish a nexus. But a review of the record reveals that Francisco-Gonzalez properly exhausted this argument before the BIA. *See* AR 22.

“race, religion, nationality, membership in a particular social group, [or] political opinion.”<sup>11</sup> As explained, a protected ground must be “one central reason” for the persecution he fears.<sup>12</sup> Proof of past persecution creates a “rebuttable presumption that the alien’s life or freedom would be threatened in the future.”<sup>13</sup> “Persecution” is an “extreme concept” that encompasses only grave harm, such as “threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom.”<sup>14</sup>

The BIA affirmed the IJ’s finding that Francisco-Gonzalez failed to establish a nexus between his race and status as a Mayan man and his fear that gangs will persecute him. Although the record shows that gang members beat Francisco-Gonzalez, when responding to the IJ’s questioning, Francisco-Gonzalez could not recall why he was attacked, could not recall any targeted statements uttered by the gang members, and could not recall when this alleged beating occurred. Only on cross-examination could Francisco-Gonzalez recall a possible reason for the beatings; he stated that the gang members might have beaten him because they wanted to recruit him—not because of his Mayan race or status. Accordingly, substantial evidence supports the IJ’s finding that

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<sup>11</sup> *Saban-Cach*, 58 F.4th at 724 (quoting 8 U.S.C. § 1231(b)(3)).

<sup>12</sup> *Gonzalez-Posadas v. Att’y Gen.*, 781 F.3d 677, 685 n.6 (3d Cir. 2015).

<sup>13</sup> *Id.* at 684 (citing 8 C.F.R. § 1208.16(b)(1)(i)).

<sup>14</sup> *Fatin v. INS*, 12 F.3d 1233, 1240, 1243 (3d Cir. 1993).

Francisco-Gonzalez did not suffer past persecution on account of a protected ground.<sup>15</sup>

Although Francisco-Gonzalez failed to prove that he suffered past persecution, he could still obtain withholding if he established that, if removed, he will more likely than not face persecution on account of a protected ground.<sup>16</sup> Francisco-Gonzalez can demonstrate a sufficient threat of future persecution by showing either: (1) that he will more likely than not be individually targeted for persecution on account of his belonging to the group of Mayan men of Q’Anjob’al; or (2) that in Guatemala there exists a pattern or practice of persecuting Mayan Q’Anjob’al men, that he is a member of that group, and that, if removed, he will more likely than not face threats to his life or freedom.<sup>17</sup> “To qualify as a pattern or practice for purposes of withholding of removal, the persecution must be systematic, pervasive, or organized.”<sup>18</sup>

The IJ determined that because Francisco-Gonzalez’s mother and sister remain in Guatemala unharmed, Francisco-Gonzalez failed to demonstrate that “he will be singled out if returned to Guatemala” and failed to demonstrate “that there is a pattern or practice in Guatemala of persecution of persons similarly situated.”<sup>19</sup> Similarly, the BIA determined that, although Francisco-Gonzalez may have been a member of his proposed

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<sup>15</sup> *Cf. Saban-Cach*, 58 F.4th at 732 (determining that expressly stated threats and insults based on the petitioner’s indigenous identity established that the gang targeted the petitioner on account of his indigenous identity).

<sup>16</sup> *Gonzalez-Posadas*, 781 F.3d at 687.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (citation modified).

<sup>19</sup> AR 52.

PSG, “there must be a showing that the claimed persecution is on account of the group’s identifying characteristics.”<sup>20</sup>

Substantial evidence supports the agency’s conclusion that Francisco-Gonzalez failed to establish that he, individually, will more likely than not face persecution on account of his race or status and that Francisco-Gonzalez failed to establish a pattern or practice of persecution. First, as discussed above, Francisco-Gonzalez did not establish that the gangs targeted him on account of his Mayan race. Second, neither the country conditions evidence nor the letters of support compel the conclusion that Francisco-Gonzalez is more likely than not to suffer persecution on account of his being Mayan. Although this evidence shows that Mayan men in Guatemala may suffer discrimination, poverty, and gang recruitment, the record does not compel the conclusion that in Guatemala there is a “systematic, pervasive, or organized”<sup>21</sup> pattern or practice of persecuting Mayan Qanjob’al men.

Finally, Francisco-Gonzalez challenges the IJ’s denial of his application for post-conclusion voluntary departure. First, Francisco-Gonzalez argues that the IJ legally erred by “cherry picking” evidence in the record to support its conclusion.<sup>22</sup> Second, Francisco-Gonzalez argues that the IJ “left the record so confused as to Mr. Francisco-Gonzalez’s

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<sup>20</sup> AR 3–4.

<sup>21</sup> *Gonzalez-Posadas*, 781 F.3d at 687.

<sup>22</sup> Petitioner’s Br. 37.

eligibility for voluntary departure, that a due process violation occurred.”<sup>23</sup>

Generally, we lack jurisdiction to review the agency’s discretionary decision to deny voluntary departure.<sup>24</sup> But we retain jurisdiction to review “constitutional claims or questions of law.”<sup>25</sup> Although Francisco-Gonzalez frames his first argument—that the IJ ignored certain evidence in favor of voluntary departure—as a legal one, a review of the record reveals that the IJ considered all relevant evidence, including Francisco-Gonzalez’s financial means, criminal history, and travel documentation. Because the substance of Francisco-Gonzalez’s first argument amounts to contesting the weight the IJ should have given certain evidence, this argument fails to invoke our jurisdiction.<sup>26</sup>

Francisco-Gonzalez’s due process argument asserts a constitutional violation, so we have jurisdiction.<sup>27</sup> But Francisco-Gonzalez’s argument nonetheless fails. A petitioner has no protected liberty interest in voluntary departure or in even being considered for voluntary departure.<sup>28</sup> Even if he did, the BIA correctly determined that Francisco-Gonzalez failed to establish *prima facie* eligibility for voluntary departure and failed to demonstrate that he is ready, willing, and capable of voluntarily departing the country

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<sup>23</sup> Petitioner’s Br. 38.

<sup>24</sup> See 8 U.S.C. § 1252(a)(2)(B)(i).

<sup>25</sup> 8 U.S.C. § 1252(a)(2)(D).

<sup>26</sup> See *Ku v. Att’y Gen.*, 912 F.3d 133, 144 (3d Cir. 2019) (“Our jurisdiction . . . is limited to colorable claims or questions of law.”) (citation modified); *Pareja v. Att’y Gen.*, 615 F.3d 180, 187 (3d Cir. 2010) (“[A] party may not dress up a claim with legal clothing to invoke this Court’s jurisdiction.”).

<sup>27</sup> See *Jarbough v. Att’y Gen.*, 483 F.3d 184, 189–90 (3d Cir. 2007).

<sup>28</sup> See, e.g., *United States v. Torres*, 383 F.3d 92, 104–05 (3d Cir. 2004).

within sixty days.<sup>29</sup>

For the reasons stated above, we will deny Francisco-Gonzalez's petition for review.

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<sup>29</sup> AR 4.