NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2959

MILTON RIVERA-BONILLA,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of an Order of the
Board of Immigration Appeals
(Agency No. A209-980-497)
Immigration Judge: Leile Mullican

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
September 16, 2026
Before: HARDIMAN, BIBAS, and RENDELL, *Circuit Judges*.

(Filed: November 18, 2026)

OPINION[1]

RENDELL, *Circuit Judge*.

Milton Rivera-Bonilla petitions for review of a Board of Immigration Appeals order. The BIA reversed the immigration judge's grant of Rivera's Convention Against

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

Torture application and denied Rivera's appeal of the IJ's denial of his application for asylum and withholding of removal under the Immigration and Nationality Act. We will deny the petition.

I.

Rivera is a twenty-five-year-old native and citizen of El Salvador. In 2017, he left El Salvador and entered the United States. In 2024, DHS served Rivera with a Notice to Appear based on charges of removability under 8 U.S.C. § 1182(a)(6)(A)(i). Rivera applied for asylum, withholding of removal, and CAT protection, and the IJ found him removable. *See* INA § 208(b)(1)(A), 8 U.S.C. § 1158(b)(1)(A); INA § 241(b)(3), 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 1208.16-18.

At a hearing, Rivera testified that his father abused him as a child, and that he was coerced into joining MS-13 from the ages of twelve to fifteen. Although he was coerced,[2] Rivera admitted that he transported drugs and weapons, which he knew were used by the gang for murder. Out of purported fear of his father and the gang, Rivera left to join his mother who was then living in the United States.

[2] MS-13 first approached Rivera when he was in the fifth grade. When he refused to join, gang members beat him, "telling [Rivera] that [he] needed to obey the orders of the MS-13 leaders." A.R. 216. Rivera felt "unprotected by [his] father" and did not feel as though he could report MS-13's actions to the authorities "because [he] was afraid [MS-13 members] were going to torture [him] or that they were going to cut [his] tongue since that's what they do to people that cooperate with the police." A.R. 216-17. According to Rivera, when tasked with transporting drugs and weapons, the gang warned him "if [he] did not cooperate with them that they were going to take [his] life or torture him." A.R. 220.

To support his application, Rivera explained his concern that, if he were removed, he would likely be detained by the Salvadoran government and tortured by, or with the acquiescence of, prison guards, police officers, and gang members.[3] He also adduced other evidence, including an expert report about the ill treatment of detainees in Salvadoran prisons.

The IJ denied Rivera's application for asylum concluding that he was statutorily barred because he did not file his application within one year of his arrival, of turning 18, or of when El Salvador's state of exception began. *See* 8 U.S.C. § 1158(a)(2)(B). Additionally, given Rivera's admitted history of drug and weapons trafficking, the IJ concluded he was also ineligible for asylum and withholding of removal under the serious nonpolitical crime ("SNPC") bar. *See* 8 U.S.C. § 1158(b)(2)(A)(iii); 8 U.S.C. § 1231(b)(3)(B)(iii). Finally, the IJ granted Rivera's application for CAT deferral of removal, concluding that it was more likely than not that (1) Rivera would be detained if removed, and (2) he would be tortured by or with the acquiescence of public officials. *See* 8 C.F.R. § 1208.16(c)(2). Both parties appealed.

On appeal, the BIA dismissed Rivera's challenge to the denial of his application for asylum and withholding of removal and sustained DHS's appeal. The BIA vacated the IJ's grant of CAT deferral concluding that the IJ clearly erred in finding that it was

[3] In response to gang violence, the Salvadoran government declared a State of Exception in 2022. According to the State Department, "[t]he State of Exception grants authorities power to arrest anyone suspected of gang activity and suspends several constitutional rights." A.R. 663.

more likely than not that Rivera would be subject to torture. Rivera petitioned for review.

II.[4]

Rivera, in essence, urges that the BIA erred in three respects. First, he argues that that the BIA erred in affirming the IJ's denial of his application for asylum and withholding of removal based on Rivera's commission of a serious nonpolitical crime. Second, he argues that the BIA failed to apply, or incorrectly applied, the clear error standard in assessing the IJ's findings. Third, he argues the BIA failed to address the IJ's conclusion that Rivera would likely be tortured by gang members with the acquiescence of the government. We disagree.

A.

An alien who is eligible for asylum and withholding of removal may be barred from relief if "there are serious reasons for believing that the alien has committed a serious nonpolitical crime . . . prior to the arrival . . . in the United States." 8 U.S.C. § 1158(b)(2)(A)(iii); 8 U.S.C. § 1231(b)(3)(B)(iii). DHS bears the initial burden to show that "grounds for mandatory denial of the application for relief may apply." 8 C.F.R. § 1240.8(d). To satisfy this burden, DHS must adduce evidence to show "serious reasons

[4] The BIA had appellate jurisdiction in its review of the IJ's decision under 8 C.F.R. § 1003.1(b)(3), and we have jurisdiction under 8 U.S.C. § 1252(a)(1). We review the agency's factual findings under the "highly deferential substantial evidence standard." *Alexander-Mendoza v. Att'y Gen.*, 55 F.4th 197, 205 (3d Cir. 2022). And "we review the BIA's legal determinations de novo, including whether the BIA properly applied clear error review to the IJ's findings of fact." *Alimbaev v. Att'y Gen.*, 872 F.3d 188, 194 (3d Cir. 2017).

for believing, which the BIA and other circuits have held essentially requires a showing of probable cause. *Matter of E-A-*, 26 I. & N. Dec. 1, 3 (B.I.A. 2012).

Here, Rivera himself admitted, under oath, that he illegally trafficked drugs and weapons on multiple occasions. This established probable cause and, therefore, established the SNPC bar. *Matter of D-G-B-L*, 29 I. & N. Dec. 392, 396 (B.I.A. 2026) (explaining that all that the agency must decide for purposes of the bar is "whether the record evidence establishes serious reasons for believing that [the alien] committed a crime rendering [him] ineligible for [relief]."); *see also Go v. Holder*, 640 F.3d 1047, 1053 (9th Cir. 2011) (holding petitioner's admissions under oath "sufficient to establish probable cause for believing that [he] engaged in a drug-trafficking scheme before entering the United States"). That the determination requires nothing more under the statute to bar relief in this case also dispenses with his other arguments. That is, the BIA did not err by failing to require the Government to prove that he had been *convicted* of these offenses, rather than merely having *committed* them, nor was it error to conclude that his relief was barred even if he committed the offenses under duress. The statutory text contains no duress exception, and even if it did, we perceive no error in the IJ and BIA's determinations that Rivera would not qualify for it. Nor does the statutory text require the BIA apply a different rule when the crime was committed as a juvenile.

B.[5]

Next, Rivera argues that the BIA either applied the wrong standard of review in assessing the IJ's findings or otherwise incorrectly applied the clear error standard. To be entitled to CAT relief, an applicant must show that he is "more likely than not to be tortured in the country of removal." 8 C.F.R. § 1208.16(c)(4), 17(a). In determining whether the applicant has met his burden, "the IJ must address two questions: '(1) what is likely to happen to the petitioner if removed; and (2) does what is likely to happen amount to the legal definition of torture?'" *Myrie v. Att'y Gen.*, 855 F.3d 509, 516 (quoting *Kaplun v. Att'y Gen.*, 602 F.3d 260, 271 (3d Cir. 2010)). On appeal, the BIA reviews these findings for clear error and reviews the legal conclusion as to what "qualifies as torture under the governing regulations" de novo. *Id.*

While Rivera posits that despite citing the correct standard of review in its opinion, the BIA effectively applied a de novo standard, the record belies his position. The BIA's conclusion that the IJ clearly erred is supported by a dearth of evidence in the record to show a likelihood that Rivera *himself* would be subject to torture by authorities, and that the Salvadoran government intended to inflict severe pain or suffering on him. Although the record contains evidence of harsh conditions and torture generally, it does not contain sufficient evidence specific to Rivera. And generalized evidence of inhumane

[5] "Because the BIA did not adopt or defer to the IJ's opinion regarding . . . CAT [deferral of removal], we review only the BIA's decision." *Kang v. Att'y Gen.*, 611 F.3d 157, 163 (3d Cir. 2010). "[W]e will uphold the BIA's reversal of the IJ's grant of CAT relief if there is substantial evidence supporting the BIA's conclusion that the IJ clearly erred in finding a likelihood of torture . . . ." *Id.* at 164.

conditions and isolated reports of abuse by officials do not, standing alone, suffice to show a particularized likelihood of torture. *See In re J-E-*, 23 I. & N. Dec. 291, 300-04 (B.I.A. 2002); *Auguste v. Ridge*, 395 F.3d 123, 152-54 (3d Cir. 2005); *Francois v. Gonzales*, 448 F.3d 645, 650-52 (3d Cir. 2006); *Matter of A-A-R-*, 29 I. & N. Dec. 38, 42-43 (B.I.A. 2025).

Similarly, Rivera's admission of certain reports of violence does not support that he would likely suffer the same treatment upon removal. Isolated reports of harm to detainees do not rise to the level of pervasiveness necessary to establish a likelihood of individual torture, *see Auguste*, 395 F.3d at 154; *A-A-R-*, 29 I. & N. Dec. at 41-42, and fail to show "why [Rivera], [a now twenty-four-old] deportee whose gang activity occurred [while a juvenile under purported coercion], would be similarly situated to those who have been the victim of severe physical violence by prison officials." *Matter of A-A-R-*, 29 I. & N. Dec. at 42. Ultimately, other than his juvenile gang affiliation, the IJ failed to highlight any characteristics unique to Rivera making it more likely that authorities would single him out.

Additionally, the IJ's reliance on country conditions evidence failed to demonstrate specific intent on the part of the government to inflict pain or suffering on him through substandard prison conditions. *See Auguste*, 395 F.3d at 153-54; 8 C.F.R. § 1208.18(a)(5). Specific intent requires the "deliberate and conscious purpose of accomplishing a specific and prohibited result . . . . Knowledge that pain and suffering will be the certain outcome of conduct may be sufficient for a finding of general intent but it is not enough for a finding of specific intent." *Pierre v. Att'y Gen.*, 528 F.3d 180, 189 (3d Cir. 2008). The BIA has

recently opined that "the state of exception policy 'in itself appears to be a lawful enforcement sanction designed . . . to protect the popul[ace] from criminal acts' committed by gang members." *Matter of A-A-R-*, 29 I. & N. Dec. at 40 (alteration in original) (quoting *Matter of J-E-*, 23 I. & N. at 300). Accordingly, we conclude the BIA properly applied clear error review to the IJ's predictive factual findings, and substantial evidence supports the BIA's determination that the IJ clearly erred in finding a likelihood of torture by or with the acquiescence of Salvadoran officials.

C.

Finally, Rivera claims that the BIA erred by "fail[ing] to address the IJ's independent holding that [he] is more likely than not to be tortured in Salvadoran jails by gang members with the acquiescence of government officials based on [his] particular circumstances." Petitioner Br. at 32. But Rivera mischaracterizes the IJ's decision, which made no explicit findings as to whether authorities would acquiesce to torture by gang members in detention. For CAT relief predicated on torture committed by third parties, proof of acquiescence by government officials is required. *See Myrie*, 855 F.3d at 516 ("To establish acquiescence, an applicant must demonstrate that, prior to the activity constituting torture, a public official was aware of it and thereafter breached the legal responsibility to intervene and prevent it."). Because the IJ pointed to no evidence in the record demonstrating that the government would acquiesce to third-party torture in detention, the BIA properly concluded that the IJ clearly erred in finding "it is more likely than not that [Rivera] will be tortured in detention by, at the instigation of, or *with the consent or acquiescence of a public official*." A.R. 5 (emphasis added).

III.

For these reasons, we will deny the petition.