

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-3102

JOSE LORENZO LEMUS PALMA,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of the Board of Immigration Appeals
Immigration Judge Richard Bailey, A240-066-578

Before: RESTREPO, MONTGOMERY-REEVES, and MCKEE, *Circuit Judges*
Submitted Sep. 9, 2026; Filed Sep. 21, 2026

NONPRECEDENTIAL OPINION*

MONTGOMERY-REEVES, *Circuit Judge*.

Jose Lorenzo Lemus Palma seeks review of the Board of Immigration Appeals’ (“BIA”) order dismissing the appeal of his Convention Against Torture (“CAT”) application.¹ For the reasons explained below, we will grant Lemus Palma’s petition, vacate the BIA’s decision, and remand for proceedings consistent with this opinion.

* This is not an opinion of the full Court and, pursuant to 3d Cir. IOP 5.7, is not binding precedent.

¹ Lemus Palma also sought withholding of removal and asylum, but neither issue is on appeal.

I. BACKGROUND

Lemus Palma is native to and a citizen of El Salvador. He entered the United States without permission in 2012. Removal proceedings were initiated against him in 2024, and he sought protection from removal under CAT. To obtain CAT relief, Lemus Palma had to establish that he was “more likely than not to be tortured if removed” to El Salvador. *Amos v. Att’y Gen.*, 157 F.4th 313, 329 (3d Cir. 2025). And for an act to constitute “torture,” he had to show that it was “(1) an act causing severe physical or mental pain or suffering; (2) intentionally inflicted; (3) for an illicit or proscribed purpose; (4) by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control” of the petitioner; and “(5) not arising from lawful sanctions.” *Id.* (quoting *Auguste v. Ridge*, 395 F.3d 123,151 (3d Cir. 2005)).

After reviewing the evidence, the Immigration Judge (“IJ”) made detailed factual findings, concluded that Lemus Palma was likely to be tortured, and granted him relief under CAT. But the BIA vacated that grant, finding that the IJ committed clear error in determining that Lemus Palma was likely to be tortured if removed to El Salvador. Lemus Palma appealed.

II. ANALYSIS²

In this appeal, Lemus Palma argues that the BIA committed reversible error when it ignored the IJ’s factual findings and relied on its own review of the evidence to vacate the IJ’s grant of relief under CAT. We agree.

Section 1003.1(d)(3)(i) of the Immigration and Nationality Act’s implementing regulations prohibits the BIA from “engag[ing] in de novo review of findings of fact determined by an [IJ].” *Alimbaev*, 872 F.3d at 196 (first alteration in original) (quoting 8 C.F.R. § 1003.1(d)(3)(i)). Instead, “[f]acts determined by the [IJ], including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the [IJ] are clearly erroneous.” 8 C.F.R. § 1003.1(d)(3)(i). Stated differently, in reviewing an IJ’s factual findings, “the [BIA] must start from the premise that it will accept the findings of fact made by the [IJ], and it may only reject them if it identifies specific reasons for forming a definite and firm conviction that a mistake has been made.” *Alimbaev*, 872 F.3d at 196 (citation modified). “Merely pointing to another permissible view of the evidence is insufficient.” *Id.* For our part, when examining the BIA’s determination that an IJ’s factual findings were erroneous, we must “carefully consider whether the BIA has

² The BIA had jurisdiction under 8 C.F.R. § 1003.1(b)(3), and we have jurisdiction under 8 U.S.C. § 1252(a)(1). Where, as here, “the BIA d[oes] not adopt or defer to the IJ’s opinion regarding [a] CAT claim, we review only the BIA’s decision.” *Kang v. Att’y Gen.*, 611 F.3d 157, 163 (3d Cir. 2010); *see also Cadapan v. Att’y Gen.*, 749 F.3d 157, 159 (3d Cir. 2014). “[W]e review the BIA’s legal determinations de novo,” *Alimbaev v. Att’y Gen.*, 872 F.3d 188, 194 (3d Cir. 2017), including whether the BIA applied the correct legal standard, *Tipan Lopez v. Att’y Gen.*, 142 F.4th 162, 170 (3d Cir. 2025).

adhered to its obligation to apply the clear error standard and whether it has applied that standard consistently.” *Id.*

Here, the BIA improperly applied the clear-error standard on three occasions. On each occasion, the BIA ignored or misstated the IJ’s factual findings and then relied on its own view of the evidence to reach a contrary factual conclusion.

First, the BIA concluded that the IJ “erroneously conflate[d]” Lemus Palma’s “risk of arrest with his risk of torture.” Certified Administrative Record (hereinafter “CAR __”) 4. This is wrong. The IJ did not conflate arrest and torture; the IJ instead found that torture would likely occur after Lemus Palma’s arrest. CAR 66 (finding Lemus Palma established “that the Government of El Salvador will more likely than not detain him upon his arrival to the airport in El Salvador and transfer him to a prison” in which he “will more likely than not be subjected to inhuman conditions”). The IJ thus found that imprisonment was a natural consequence of an arrest, not that arrest was akin to torture. And the BIA failed to identify any specific reasons for forming a definite and firm conviction that the IJ made a mistake. So the BIA committed reversible error.

Second, the BIA found that the IJ committed clear error by finding that Lemus Palma sufficiently showed that “substandard conditions” in El Salvador’s prisons “due to overcrowding and a lack of resources” constituted torture. CAR 4. Again, the BIA mischaracterized the IJ’s factual findings to reach its conclusion. The IJ found that inhumane prison conditions resulted from “beatings by prison guards and other gang members, deprivation of food, deprivation of medications and other medical treatment[,] and electric shocks sent through currents into the prison cells by prison officials.” CAR

66–67. The IJ never mentioned overcrowding. And even if the deprivations of food and medicine might have resulted from a lack of resources, the BIA nowhere identifies a specific reason that the IJ’s factual determinations—as opposed to its own determination of prison conditions—were clearly erroneous. Critically as well, the BIA never grapples with the IJ’s findings on beatings and electric shocks. Because the BIA failed to accept the IJ’s factual findings about prison conditions or to identify any definite mistake related to what caused those conditions, the BIA erred.

Third and finally, the BIA found that the IJ clearly erred in finding that Salvadoran officials acted with “specific intent to . . . torture” when creating or acquiescing to inhumane prison conditions. CAR 4. To this end, the BIA noted that the IJ wrongly (1) concluded “that Salvadoran officials are intentionally and deliberately creating and maintaining [harsh] prison conditions for the specific purpose of inflicting severe pain or suffering,” and (2) assumed “that elected officials have a specific intent to torture based solely on disparaging comments about gang members.” CAR 4 (citation modified). For a third time the BIA ignored what the IJ actually found. The IJ found that El Salvador deliberately created and acquiesced to harsh prison conditions as evidenced by (1) its advertisement of such harsh conditions, (2) its public declaration that it engages in a policy of denying prisoners food, and (3) its public intention to incarcerate gang members “indefinitely” or “until they are dead.” CAR 67. The IJ did not simply find that the Salvadoran government made “disparaging comments about gang members,” CAR 4 (citation modified); nor did it omit an intentionality finding as to the creation of harsh prison conditions. Again, the BIA seems to have reviewed the record and independently

found facts that differed from those the IJ articulated without identifying specific reasons for forming a definite and firm conviction that the IJ made a mistake.

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Because the BIA improperly applied the clear error standard, we will GRANT Lemus Palma’s petition, VACATE the BIA’s decision, and REMAND for proceedings consistent with this opinion.³

³ Lemus Palma asks us to “grant the petition and remand the case with an order that the agency grant [his] CAT protection application.” Opening Br. 15. He provides no authority to suggest this would be the appropriate procedure. We thus decline his invitation, finding it prudent to allow the BIA an opportunity to consider the appeal under the appropriate standard.