FILED
United States Court of Appeals
Tenth Circuit

August 25, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

GERMAN MARTINEZ-VIGUERIAS,

Petitioner,

v.

TODD BLANCHE*, United States Attorney General,

Respondent.

CENTER FOR GENDER & REFUGEE STUDIES; ROCKY MOUNTAIN IMMIGRANT ADVOCACY NETWORK; NEW MEXICO IMMIGRANT LAW CENTER;COLORADO ASYLUM CENTER; PROFESSOR ELIZABETH JORDAN; PROFESSOR JOHN HATHAWAY,

Amici Curiae.

No. 25-9556
(Petition for Review)

ORDER AND JUDGMENT**

Before **HARTZ**, **MATHESON**, and **ROSSMAN**, Circuit Judges.

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* On August 8, 2026, Todd Blanche was confirmed as Attorney General of the United States. Consequently, he has been substituted for Pamela J. Bondi as Respondent, under Fed. R. App. P. 43(c)(2).

** This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

The issue before us is whether the Board of Immigration Appeals (BIA) correctly applied clear-error review to reverse the factual findings of an immigration judge (IJ). It did not. Exercising our jurisdiction under 8 U.S.C. § 1252(a), we reverse the BIA and remand this case so that it may apply clear-error review correctly.

I. BACKGROUND

Petitioner German Martinez-Viguerias was born in Mexico and fled to the United States with his family at age seven in 1984. Once in this country, he spent time in foster care, group homes, and juvenile detention. He suffered significant abuse as a child, including sexual abuse. He also dropped out of school after seventh grade, in part because of a learning disability. Petitioner became involved with the Florencia 13 gang. Over time he rose through their ranks to become an "O.G." or "veterano." He has many tattoos, some of which are religious and others of which—including a spiderweb on his hand, a number "13" on his knuckles, "vida loca" on his wrist, and a teardrop near his eye—are gang-related.

In 2017 Petitioner was sentenced to 15 years in prison on an assault charge. While in prison he left the Florencia 13 gang. Other gang members beat him because of his decision to leave the gang, and he suffers ongoing physical issues. Petitioner has also suffered from mental-health disorders, including posttraumatic stress disorder, major depressive disorder, and borderline personality disorder. He has a history of persistent auditory and visual hallucinations and takes antipsychotic medications to manage his symptoms. He exhibits severe cognitive impairment, scoring a 7/30 on the Montreal Cognitive Assessment, where 26 or higher is normal.

In February 2023 the Department of Homeland Security (DHS) served Petitioner (who is a lawful permanent resident) with a notice to appear for removal proceedings, charging him with being removable because of his 2017 assault conviction. He appeared pro se before IJ Steven Caley and admitted the charges in the notice. Based on Petitioner's admissions, IJ Caley found him removable.

Petitioner retained counsel, who moved the immigration court to reopen the proceedings or reconsider its decision. The matter was reopened, and IJ Caley conducted a judicial competency inquiry. He determined that Petitioner was not competent to represent himself. Following that hearing, Petitioner filed a Form I-589 seeking asylum, statutory withholding of removal, and relief under the Convention Against Torture (CAT). The CAT prevents the government from removing an alien to a country where it is more likely than not that the alien will be subject to torture "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. § 1208.18(a)(1).

IJ Caley held a hearing on Petitioner's CAT application and granted him deferral of removal. He concluded that, "aggregating the risk from the gangs, cartels, and security forces, . . . [Petitioner's] cumulative probability of harm rising to the level of torture exceeds fifty percent." A.R., Vol. II at 592 (IJ Caley's Sept. 1, 2023 order).

DHS appealed to the BIA. It complained that IJ Caley erred in admitting a report by Petitioner's expert, a professor of human geography named Dr. Jeremy Slack, because Dr. Slack was unavailable for cross-examination. DHS also argued that IJ Caley had improperly aggregated the likelihood of several different potential theories of torture and that Petitioner had not carried his burden under the CAT to show that any such torture would be performed by or with the acquiescence of the Mexican government.

The BIA remanded the case so that DHS could cross-examine Dr. Slack and the IJ could "redetermine the appropriate weight to afford Dr. Slack's expert testimony." A.R., Vol. I at 504 (BIA's Jan. 8, 2024 decision). The BIA also directed the IJ to consider the likelihood of each possible event in any chain of events that could lead to Petitioner's being tortured.

Following the remand, another IJ, Judy Archuleta, held a hearing where DHS cross-examined Dr. Slack. In an oral decision IJ Archuleta determined that Petitioner "has not shown that he personally individually would be singled out for torture by the government or an official acting on behalf of the government." *Id.* at 213–14. She denied deferral of removal under the CAT.

Petitioner appealed to the BIA. He argued that IJ Archuleta's oral decision contained numerous legal and factual errors, including clearly erroneous factual findings and mischaracterizations or omissions of evidence. The BIA agreed, concluding that "remand [wa]s necessary because the [IJ's] decision does not contain sufficient factual findings and analysis with respect to [Petitioner's] likelihood of future torture, such that it allows for meaningful appellate review." *Id.* at 126 (BIA's Oct. 29, 2024 decision). As for proceedings on remand, the BIA instructed the IJ to "make clear and complete predictive factual findings as to what is likely to happen to [Petitioner] upon his return, and then assess whether [he] has met his burden" for CAT protection. *Id.* at 128.

On remand a third IJ, Elizabeth McGrail, held a hearing in which the parties agreed that no additional testimony was necessary. IJ McGrail gave the parties the opportunity to submit updated evidence. Petitioner supplemented the record with a declaration from Dr. Slack stating that he had reviewed photos of Petitioner's tattoos and offering his opinion on why those tattoos would increase the likelihood that Petitioner would be tortured by criminal organizations or corrupt authorities upon his return to Mexico. IJ McGrail reviewed the record and granted Petitioner deferral of removal under the CAT. She adopted the previous IJs' findings on credibility. And she concluded that it was "very likely" that Petitioner would quickly come to the attention of police or cartels, *id.* at 82 (IJ McGrail's Jan. 6, 2025 order), because it would be difficult for him to obtain an official Mexican identification card; he is a former member of a gang that has ties to gangs in Mexico; he has numerous tattoos, including gang and religious tattoos; and he manifests symptoms of mental illness. She also found that the country-conditions evidence showed that Mexican public officials and law enforcement are complicit in or unable to combat acts of torture by organized crime and even perpetrate torture to extract confessions. IJ McGrail concluded that it was "more likely than not that [Petitioner] would face torture by government officials or at the acquiescence of the Mexican government." *Id.* at 85.

DHS again appealed to the BIA. It contended that IJ McGrail improperly aggregated the risk of torture from several sources. It also complained that Petitioner failed to show that he would be tortured with the acquiescence of Mexican officials or that he could not safely relocate within Mexico.

The BIA determined that many of IJ McGrail's factual findings were clearly erroneous. Those findings, said the BIA, were "not adequately support[ed]" because the evidence the IJ relied on was too generalized. *Id.* at 4 (BIA's July 16, 2025 decision). Accordingly, it vacated the IJ's decision granting Petitioner deferral of removal under the CAT and ordered that he be removed to Mexico.

II. DISCUSSION

"We review the BIA's legal determinations de novo, and its findings of fact under a substantial-evidence standard." *Kabba v. Mukasey*, 530 F.3d 1239, 1244 (10th Cir. 2008) (internal quotation marks omitted). But "[u]nder 8 C.F.R. § 1003.1(d)(3)(i), the BIA is required to review an immigration judge's factual findings . . . for clear error, and only clear error." *Id.* Whether the BIA applied clear-error review correctly or whether its "factual findings are premised on improper legal standards or on proper ones improperly applied" is "subject to *de novo* review." *Id.* at 1245 (internal quotation marks omitted).

A. The BIA's Application of Clear-Error Review

Petitioner argues that "[t]his case boils down to the standard of review." Pet'r Br. at 13. Petitioner contends that "the BIA exceeded the bounds of clear-error review" because IJ McGrail's findings were "amply supported by the evidence" and the BIA "selectively reweigh[ed] and ignor[ed] evidence." *Id.* at 13. DHS responds that the BIA applied the clear-error standard correctly. In DHS's view the BIA properly "disagreed" with the IJ's factual findings because the evidence was not particularized enough to show "the frequency with which people like Petitioner face harm rising to the level of torture." Resp't Br. at 17. We are not persuaded by the government's argument.

Clear error is a "high bar":

> [A] finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. This standard plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently.

Ramos v. Bondi, 155 F.4th 1154, 1165 (10th Cir. 2025) (citations and internal quotation marks omitted). The Second Circuit has recognized that "[e]xamples of clear error include when there might be no evidence at all to support a finding of fact. Or the finding might be controverted by indisputable evidence . . . . [Or] an IJ has obviously misunderstood the testimony of a witness and based a finding of fact on that misunderstanding." *Villalta Martinez v. Bondi*, 157 F.4th 108, 113 (2d Cir. 2025) (brackets and internal quotation marks omitted).

Here, the BIA correctly stated that it was to review the IJ's findings of fact "under the 'clearly erroneous' standard." A.R., Vol. I at 3. But "we must consider de novo whether the BIA, in making its own factual findings, actually reviewed the IJ's decision only for clear error." *Kabba*, 530 F.3d at 1245. "The BIA must supply cogent reasons" for its determination that an IJ committed clear error. *Villalta Martinez*, 157 F.4th at 113 (internal quotation marks omitted). And we question whether the BIA's reasons are cogent when its decision "does not address the IJ's key factual findings, gives more weight to certain facts in the record than others, or fails to explain how the IJ's alleged errors showed a lack of logic, plausibility or support in the record." *Ramos*, 155 F.4th at 1166 (brackets and internal quotation marks omitted).

Given the record before us, we conclude that the BIA misapplied the standard of review when it reversed three of the IJ's factual findings: the "predictive factual finding that [Petitioner] is more likely than not to be tortured," A.R., Vol. I at 4; the finding that Petitioner "would not be able to safely relocate within Mexico to avoid criminals or Mexican security forces because of widespread crime and government corruption within the country," *id.* at 5; and the "predictive factual finding that a public official would have awareness of torturous activities by private individuals and breach his or her legal responsibility to prevent [Petitioner's] death or torture," *id.* at 5. We proceed to explain.

1. *Likelihood of torture*

IJ McGrail found that Petitioner "established there is over a fifty percent chance he will be tortured in the future in Mexico." A.R., Vol. I at 80. That was because Petitioner "has several risk factors that make him a likely target for extreme harm by criminal actors (specifically, gangs and cartels) and Mexican law enforcement." *Id.* First, without an official birth certificate, proof of address, and either a Mexican ID or two witnesses to his identity, Petitioner will not be able to obtain an official national identification card. Mexican police commonly stop people and demand to see their identification card, forcing those without the card to pay a bribe if they do not want to be arrested. Second, Petitioner is a former gang member, which "makes him a target for gangs and cartels, and any authorities working at their behest." *Id.* These groups "will see him either as an ally for recruitment or a rival to be punished." *Id.* at 81. Third, Petitioner is a man with tattoos, including religious and gang tattoos. There was statistical evidence that men with religious tattoos are more likely to have experienced police or army victimization in Mexico. And the gang tattoos signal his gang involvement to gangs and cartels, who "wait for [former gang members] to set foot on Mexican territory to recruit them." *Id.* (internal quotation marks omitted). Given his detention, Petitioner will not be able to remove these tattoos before being returned to Mexico. Fourth and finally, Petitioner "has serious and noticeable mental health concerns," including dissociation and increases in "distress, fearfulness, anxiety, depression, flashbacks, intrusive memories, paranoia, difficulty concentrating, memory difficulties, and difficulty managing his emotions." *Id.* (internal quotation marks omitted). These "outward manifestations of his mental illness will cause others to notice him." *Id.* at 83. These specific considerations, concluded IJ McGrail, make it "very likely that [Petitioner] will come to the attention of police or cartels either at a port of entry or shortly after his arrival in Mexico." *Id.* at 82.

IJ McGrail further found that once Petitioner has come to the attention of criminals or the police, he is more likely than not to be subjected to "severe pain or suffering." *Id.* "Cartels punish rivals and those who refuse to join them with severe acts of violence including beheadings, disappearances, and torture." *Id.* at 82. And "organized criminal elements act in collusion with authorities who either perpetrate harm on behalf of organized crime or turn people over to criminal actors." *Id.* Even if the law-enforcement officers who arrest Petitioner do not work with organized crime, he is still at risk of torture to extract a confession: "64% of the [Mexican] prison population reported having suffered some type of physical violence when arrested. 19% of these people indicated having received electric shocks; 36% have been strangled, submerged in water or suffocated; and 59% have been punched or kicked. 74% reported having suffered psychological torture." *Id.* at 83 (internal quotation marks omitted).

The BIA disagreed, stating that "[t]he cited evidence does not adequately support a finding that [Petitioner] is more likely than not to be tortured." *Id.* at 4. In the BIA's view, "[e]vidence regarding pervasive cartel violence and gang crime does not adequately address the frequency with which people who are similarly situated to

[Petitioner] face harm rising to the level of torture," and "evidence of some detainees experiencing severe harm or being killed in detention in Mexico, while concerning, is insufficient to show that it is more likely than not that Mexican officials would torture [Petitioner], in particular." *Id.* at 4–5.

The BIA's analysis does not "supply cogent reasons" for rejecting the IJ's findings. *Villalta Martinez*, 157 F.4th at 113 (internal quotation marks omitted). The BIA's expressed concerns about reliance on pervasive cartel violence, etc., fail to recognize the specific characteristics of Petitioner relied on by the IJ and make no effort to explain why the IJ could not rely on those specifics. *See Ramos*, 155 F.4th at 1166 (that the BIA "does not address the IJ's key factual findings" suggests improper application of clear-error review (brackets and internal quotation marks omitted)); *Uc Encarnacion v. Bondi*, 156 F.4th 927, 943 (9th Cir. 2025) (BIA's statement that "[e]vidence of the general possibility of torture does not meet the applicant's burden of establishing that it is more likely than not that *he* will be targeted for such treatment" was "true as a general principle" but had "little relationship to the evidence actually submitted" because that evidence was tied to petitioner's characteristics).

2. *Ability to relocate*

The BIA similarly fell short in addressing IJ McGrail's finding that even if Petitioner managed to avoid immediate detection by cartels and law enforcement upon his arrival, "the evidence supports that eventually he would become a target no matter where he goes in Mexico." A.R., Vol. I at 83. She explained that "[c]artels have spies and lookouts throughout the country," and Petitioner's visible gang tattoos will mean that they will view him "as coming from enemy territory." *Id.* (internal quotation marks omitted). The BIA responded only that "assertions with regard to generalized crime and corruption within Mexico . . . do not establish [Petitioner's] particularized risk of torture countrywide." *Id.* at 5. Again, the BIA did not address the key evidence identified by the IJ, which was particularized to Petitioner and his circumstances. *See Ramos*, 155 F.4th at 1166; *Uc Encarnacion*, 156 F.4th at 943.

3. *Acquiescence of public officials to Petitioner's torture*

IJ McGrail found that Petitioner "met his burden to show that the torture he would face in Mexico would occur by government actors acting under the color of law or with the acquiescence of the Mexican government." A.R., Vol. I at 84. "Acquiescence of a public official requires that the public official, prior to the activity constituting the torture, have awareness of such activity and thereafter breach his or her legal responsibility to prevent such activity. This standard does not require actual knowledge[] or willful acceptance by the government. Rather, willful blindness suffices to prove acquiescence." *Karki v. Holder*, 715 F.3d 792, 806 (10th Cir. 2013) (citations and internal quotation marks omitted).

The IJ found that nearly every piece of evidence in the record discussing efforts by the Mexican government to combat corruption and organized crime "includes the caveat that these tactics have been largely ineffective, officials are complicit with the cartels and gangs, and corrupt practices persist with accompanying acquiescence by Mexican public officials." A.R., Vol. I at 84. A Council on Foreign

Relations report noted that Mexican cartels pay off judges, law enforcement, and politicians or coerce them into cooperating. State actors also perpetrate torture to extract confessions, independent of any cartel involvement. And, as explained above, the IJ found that these same groups (the cartels, gangs, and state actors) would target Petitioner for torture based on his individual characteristics.

The BIA held that though the evidence relied upon by the IJ "describes instances of torture perpetrated by police and low prosecution rates for human rights violations in general," it "does not indicate that a Mexican official would likely acquiesce in or remain willfully blind to [Petitioner's] torture by gang members." *Id.* at 5. But, again, the BIA misapplied the clear-error standard. Perhaps the BIA did not totally ignore the key evidentiary findings of the IJ; but it must rely on more than an *ipse dixit* before rejecting those findings as clearly erroneous. It is serious business to reject an IJ finding. A "cogent" explanation for rejection needs to meaningfully engage with the specific evidence relied on by the IJ and explain why it is inadequate. *Villalta Martinez*, 157 F.4th at 113 (internal quotation marks omitted). In addition, to the extent that the BIA's decision suggests that the IJ was required to show that the Mexican government would acquiesce specifically to *Petitioner's* future torture, *see* A.R., Vol. I at 5, that is not the law. *See Karki*, 715 F.3d at 807 (petitioner did not need to present evidence that the government knew of the specific threat against him; rather, he carried his burden of showing government acquiescence by offering "evidence that the government regularly fails to take action to prevent or punish . . . acts of torture"); *see also Uc Encarnacion*, 156 F.4th at 945 ("Evidence that the government intentionally targets or acquiesces in the targeting of a specific group to which an applicant belongs is sufficiently particularized”).

B. Remand

Petitioner contends that the proper relief from this court is vacatur of the BIA’s decision and remand for entry of a grant of deferral of removal under the CAT. We took this approach in *Ramos*, where we held that “when the correct standard of review is applied, the record compels only one conclusion—that the IJ’s findings . . . were permissible and not clearly erroneous. That means remanding for any further substantive proceedings would be futile.” 155 F.4th at 1175 (internal quotation marks omitted). But we also recognized in *Ramos* that our approach there ran counter to the general rule that “a court of appeals should remand a case to an agency for decision of a matter that statutes place primarily in agency hands.” *Id.* at 1172 (internal quotation marks omitted).

In *Ramos* case-specific factors drove our decision to remand with instructions to reinstate the IJ’s order, including, for example, that the petitioner had waited over a decade for finality in her proceedings, and “no immigrant should have to live over ten years with the uncertainty as to whether she can stay in this country or not.” *Id.* at 1176 (brackets and internal quotation marks omitted). Here, the fact that Petitioner has been detained for over three and half years while his proceedings moved between the IJ and BIA makes this a difficult call, but it does not warrant deviation from the general rule. We will remand for the BIA to, consistent with this decision, “either accept the IJ's findings or, if it can, provide a supportable basis for rejecting them." *Villalta Martinez*, 157 F.4th at 114 (internal quotation marks omitted).

III. CONCLUSION

We **GRANT** the petition for review, **GRANT** Petitioner's motion to proceed *in forma pauperis*, **VACATE** the decision of the BIA, and **REMAND** to the agency for further proceedings consistent with this opinion.

Entered for the Court

Harris L Hartz
Circuit Judge