BIA
Schultz, IJ
A073 126 459

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 28th day of September, two thousand twenty-six.

PRESENT:

GUIDO CALABRESI,
EUNICE C. LEE,
MYRNA PÉREZ,
Circuit Judges.

BENIGNO GREY-RAMIREZ,
Petitioner,

v. **25-1899**
NAC

TODD BLANCHE, UNITED STATES ATTORNEY GENERAL,
Respondent.[*]

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* The Clerk of Court is respectfully directed to amend the case caption as set forth above.

FOR PETITIONER: Brenda A. Cisneros Vilchis, Esq., Erie County Bar Association Volunteer Lawyers Project, Inc., Batavia, NY.

FOR RESPONDENT: Brett A. Shumate, Assistant Attorney General; Cindy S. Ferrier, Assistant Director; Sunah Lee, Senior Trial Attorney, Office of Immigration Litigation, United States Department of Justice, Washington, DC.

UPON DUE CONSIDERATION of this petition for review of a Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is GRANTED, the BIA's decision is VACATED, and the matter is REMANDED for further proceedings consistent with this order.

Petitioner Benigno Grey-Ramirez, a native and citizen of Cuba, seeks review of a decision of the BIA affirming a decision of an Immigration Judge ("IJ") denying his application for deferral of removal under the Convention Against Torture ("CAT"). *In re Grey-Ramirez,* No. A073 126 459 (B.I.A. July 29, 2025), *aff'g* No. A073 126 459 (Immigr. Ct. Batavia Mar. 19, 2025). We assume the parties' familiarity with the underlying facts and procedural history.

Because the BIA adopted and affirmed the IJ's decision, "we review the

decision of the IJ as supplemented by the BIA." *Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). We review the agency's factual findings for substantial evidence. *See Nasrallah v. Barr*, 590 U.S. 573, 583–84 (2020). An applicant seeking CAT protection bears the burden of establishing that he is "more likely than not" to be tortured if removed. 8 C.F.R. § 1208.16(c)(2). In making that determination, the agency must consider "all evidence relevant to the possibility of future torture." *Id.* § 1208.16(c)(3). Although the agency "need not 'expressly parse or refute on the record each individual . . . piece of evidence,'" its decision must show that it considered material evidence bearing on the claim. *Manning v. Barr*, 954 F.3d 477, 486 (2d Cir. 2020) (quoting *Wang v. BIA*, 437 F.3d 270, 275 (2d Cir. 2006)).

In analyzing Grey-Ramirez's CAT claim, the agency described his theory as a chain of predicted events culminating in torture. *See* Certified Administrative Record ("CAR") at 58–60. The IJ understood the first link to require that Cuban authorities investigate Grey-Ramirez upon his return and identify him as a former military member "of high esteem." *Id.* at 58. The investigation would then reveal that he was a military defector and criminal deportee, leading to detention and torture. *See id.* at 58–59. Because Grey-Ramirez had not established the

claimed elite military status underlying the first link, the IJ concluded that the chain "fail[ed] on its very first element." *Id.* at 60. The BIA likewise upheld the IJ's prediction that Grey-Ramirez would be interrogated and investigated upon return but would not face heightened scrutiny as a defector "of military renown." *Id.* at 4.

Substantial evidence supports the agency's conclusion that Grey-Ramirez did not adequately establish that claimed elite military status. The IJ credited that Grey-Ramirez had served in the Cuban military but found insufficient corroboration for his account of having served at the level he claimed. *See id.* at 55–57. The record does not compel a contrary conclusion. *See* 8 U.S.C. § 1252(b)(4)(B).

That finding, however, left unresolved a distinct theory based on facts the agency did accept: that Grey-Ramirez served in the Cuban military, deserted, and would return involuntarily as a deportee. Grey-Ramirez expressly argued that, even if he had not established service in "a rank of 'high esteem,'" those circumstances exposed him to detention and torture. *See* CAR at 23–24. The agency did not squarely address what would likely follow from his return as a rank-and-file military deserter and deportee.

Material evidence bore on that question. Grey-Ramirez testified that, during a prior return to Cuba, State Security followed him and attempted to provoke him into unlawful conduct, and that Cuban officials called him a "worm" and "counterrevolutionary" and treated him like a "traitor" and "deserter." *See id.* at 184–86. He also introduced evidence that Cuban military deserters may face serious punishment. *See id.* at 497–98. And his expert, Dr. Vincent Bloch, testified that Grey-Ramirez's forced return "as someone who defected" and "a deportee convicted of drug charges" would expose him to detention. *Id.* at 265.

The agency's treatment of Dr. Bloch's testimony reflects the same problem. The IJ gave Dr. Bloch's opinions "minimal probative weight" after concluding that his analysis rested on Grey-Ramirez's unestablished account of a successful and decorated military career. *See id.* at 57–58. But portions of Dr. Bloch's testimony did not depend on that premise. Beyond predicting detention based on Grey-Ramirez's status as a deserter and military deportee, Dr. Bloch described intentional abuse employed during detention by Cuban State Security. *See id.* at 263–68. Those portions of his testimony bear directly on the rank-and-file deserter theory and should be assessed by the agency under the factual premise it accepted.

The IJ also separately concluded that Grey-Ramirez had not shown that, even if detained, he was more likely than not to be tortured. *See id.* at 60–61. The IJ correctly recognized that imprisonment and harsh prison conditions do not alone establish torture absent the requisite intent. *See Pierre v. Gonzales*, 502 F.3d 109, 121 (2d Cir. 2007). But the evidence here was not limited to generally harsh prison conditions. Grey-Ramirez offered evidence of intentional abuse by Cuban security officials, together with testimony that Cuban authorities previously characterized him personally as a "counterrevolutionary" and a "worm." CAR at 184–86, 388–93. The agency did not meaningfully address whether, if detained following his return as a deserter, Grey-Ramirez would be perceived in that manner and subjected to the intentional mistreatment documented in the record. *See B.G.S. v. Bondi*, 160 F.4th 300, 311 (2d Cir. 2025) (remanding because the agency did not adequately consider a distinct theory raised by the petitioner); *Manning*, 954 F.3d at 486–87 (remanding because the agency did not adequately consider material evidence produced by the petitioner).

We cannot confidently predict that the agency would reach the same result after considering the rank-and-file deserter theory and the material evidence bearing on it. *See Xiao Ji Chen v. U.S. Dep't of Just.*, 471 F.3d 315, 338–40 (2d Cir.

2006). Its rejection of Grey-Ramirez's claimed elite military status was central both to the IJ's conclusion that his predicted chain failed at the first link and to its decision to discount Dr. Bloch's predictive opinions, including portions that did not depend on elite military status.

On remand, the agency should consider Grey-Ramirez's CAT claim assuming rank-and-file military service and desertion, while addressing the material evidence bearing on his claimed risk as a returning deserter and deportee. The agency should also determine in the first instance what weight Dr. Bloch's predictive opinions warrant under the rank-and-file deserter theory. *See Ojo v. Garland*, 25 F.4th 152, 170–74 (2d Cir. 2022). We express no view as to whether Grey-Ramirez ultimately satisfies his burden under CAT.

For the foregoing reasons, the petition for review is GRANTED, the BIA's decision is VACATED, and the case is REMANDED for further proceedings consistent with this order.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk of Court