

FOR PUBLICATION

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MARIO RAJIB FLORES MOLINA,  
*Petitioner,*

v.

MERRICK B. GARLAND, Attorney  
General,  
*Respondent.*

Nos. 19-73028  
20-71774

Agency No.  
A215-879-596

OPINION

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted April 14, 2021  
Pasadena, California

Filed June 13, 2022

Before: Richard A. Paez and Lawrence VanDyke, Circuit  
Judges, and Edward R. Korman,\* District Judge.

Opinion by Judge Paez;  
Concurrence by Judge Korman;  
Dissent by Judge VanDyke

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\* The Honorable Edward R. Korman, United States District Judge  
for the Eastern District of New York, sitting by designation.

**SUMMARY\*\***

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**Immigration**

The panel (1) granted Mario Rajib Flores Molina’s petition for review of the Board of Immigration Appeals’ decision affirming an immigration judge’s denial of asylum and related relief, and remanded, holding that the record compelled a finding that Flores Molina’s past experiences constituted persecution and that the Board erred in its analysis of other issues; and (2) dismissed as moot Flores Molina’s petition for review of the Board’s denial of his motion to reopen.

Flores Molina was publicly marked as a terrorist and threatened with torture over social media by Nicaraguan government operatives, repeatedly verbally threatened with death by supporters of the Ortega regime, received a death threat painted on his home by masked men likely affiliated with the government, and received a second death threat—this time during a direct confrontation—after he was seriously beaten by six members of the Sandinista Youth. Flores Molina also had a near confrontation with an armed paramilitary group that located him at a hideaway. The panel explained that the threats were credible given the history and context of the Ortega regime’s killing and torture of its political opponents.

The panel observed that this court has stated in various opinions that both the *de novo* and the substantial evidence standard of review apply to the question of whether

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\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

particular acts constitute persecution. The panel wrote that it need not address the nuances of the two standards, or which standard should apply, because the harm Flores Molina suffered rose to the level of persecution under the more deferential substantial evidence standard of review.

The panel held that the record compelled the conclusion that Flores Molina's experiences in Nicaragua constituted persecution. First, the panel wrote that this court has consistently recognized that being forced to flee from one's home in the face of an immediate threat of severe physical violence or death is squarely encompassed within the rubric of persecution. Here, Flores Molina was forced to flee three separate times after being personally targeted with violence and threatened with death for his political views.

Second, the panel wrote that this court has repeatedly held that threats may be compelling evidence of past persecution, particularly when they are specific and menacing and are accompanied by evidence of violent confrontations, near-confrontations and vandalism, as was the case here. Moreover, this court has consistently held that death threats alone can constitute persecution. The panel concluded that any reasonable adjudicator would be compelled to hold that the repeated and specific threats that Flores Molina experienced, amid violence and menacing confrontations, amount to persecution.

Third, the panel wrote that that an applicant may suffer persecution based on the cumulative effect of several incidents, even if no single incident rises to the level of persecution. The panel explained that this is a fact-bound endeavor that is not reducible to a set formula, but rather requires that the relevant facts be evaluated in combination with each other to form a sufficiently negative portrait of the

petitioner's experience in his or her own country that not only allows a finding of past persecution but requires it. Here, Flores Molina was repeatedly threatened and subjected to violence, in an escalating fashion, all within the well-documented backdrop of the Ortega regime's violent crackdown on members of the political opposition.

Turning to the issue of Flores Molina's claim that he has a well-founded fear of future persecution, the panel held that the Board erred by failing to address highly probative evidence. The panel explained that the Board cited the record selectively, relying on two news reports of the Ortega regime's release of 100 prisoners and its intention to release more, to support its assertion that Flores Molina's fear of future persecution was speculative, while ignoring other evidence that documented the conditions released prisoners faced, delays in releasing political prisoners, the detention and disappearance of additional activists and protesters in the interim, and gross human rights violations in Nicaragua. Moreover, the Board failed to discuss whether the repeated death threats and threats of violence Flores Molina faced were sufficient to inspire a well-founded fear of future persecution. Likewise, the Board failed to address highly probative evidence concerning the likelihood of torture.

The panel remanded for the Board to consider the remaining elements of past persecution, Flores Molina's claim for humanitarian asylum, and all of the probative evidence concerning whether Flores Molina established a well-founded fear of future persecution or clear probability of torture.

Because it granted Flores Molina's petition as to the denial of asylum and related relief, the panel dismissed as

moot Flores Molina’s petition as to the denial of his motion to reopen.

Concurring, District Judge Korman wrote separately to address the standard of review applicable to the Board’s past persecution determination. Judge Korman wrote that although this court owes deference under the substantial evidence standard to the administrative findings of fact, whether particular facts constitute persecution for asylum purposes is a legal question reviewed de novo. Judge Korman explained that the substantial evidence standard is not a good fit for questions, like the one presented in this case, regarding the application of a legal standard to settled facts. Judge Korman agreed with the majority that the decision in this case would be the same regardless of which standard applied, but noted that he would also have concurred in a majority opinion concluding that the Board legally erred in concluding that Flores Molina’s hardships did not amount to persecution.

Dissenting, Judge VanDyke would deny the petition because the record does not compel the conclusion that (1) the past harassment Molina suffered rose to the level of past persecution, or that (2) such harassment—together with the most recent country conditions evidence that was before the agency—demonstrated a well-founded fear of future persecution. Judge VanDyke would also hold that the record does not compel a contrary conclusion with respect to Flores Molina’s remaining applications for withholding of removal, humanitarian asylum, or protection under CAT, and that the Board did not abuse its discretion in denying Flores Molina’s motion to reopen.

Judge VanDyke addressed the three interconnected layers of deference this court owes to immigration agency

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