

**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.

1 **At a stated term of the United States Court of Appeals for the Second**
2 **Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley**
3 **Square, in the City of New York, on the 30th day of September, two thousand**
4 **twenty-five.**

5

6 **PRESENT:**

7 **JOSÉ A. CABRANES,**
8 **SARAH A. L. MERRIAM,**
9 **MARIA ARAÚJO KAHN,**
10 ***Circuit Judges.***

11

12 **IGNACIO JOSE MASAQUIZA-**
13 **MASAQUIZA, MARIA TRANSITO**
14 **MASAQUIZA-JEREZ, A.L.M-M, Z.E.M-**
15 **M.,***

16

17 ***Petitioners,***

18

19 **v.**

20

23-7743
NAC

*We have used only initials to refer to the minor petitioners in this publicly accessible order, in accordance with Federal Rule of Civil Procedure 5.2(a)(3) and Federal Rule of Appellate Procedure 25(a)(5).

1 PAMELA BONDI, UNITED STATES
2 ATTORNEY GENERAL,
3 *Respondent.*

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6 **FOR PETITIONERS:** Michael Borja, Borja Law Firm, P.C., Jackson
7 Heights, NY.

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9 **FOR RESPONDENT:** Brian Boynton, Principal Deputy Assistant
10 Attorney General; Shelley R. Goad, Assistant
11 Director; Russell J.E. Verby, Senior Litigation
12 Counsel, Office of Immigration Litigation,
13 United States Department of Justice,
14 Washington, DC.

15 UPON DUE CONSIDERATION of this petition for review of a Board of
16 Immigration Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND
17 DECREED that the petition for review is DENIED.

18 Petitioners Ignacio Jose Masaquiza-Masaquiza, his wife Maria Transito
19 Masaquiza-Jerez, and their minor children, all natives and citizens of Ecuador,
20 seek review of an October 16, 2023, decision of the BIA affirming a June 1, 2022,
21 decision of an Immigration Judge (“IJ”) denying their applications for asylum,
22 withholding of removal, and relief under the Convention Against Torture
23 (“CAT”).² *In re Masaquiza-Masaquiza, et al.*, Nos. A 220 226 610/611/612/613 (B.I.A.

² We principally refer to Masaquiza-Masaquiza because the other petitioners’ applications relied on his allegations of harm.

1 Oct. 16, 2023), *aff'g* Nos. A 220 226 610/611/612/613 (Immigr. Ct. N.Y. City June 1,
2 2022). We assume the parties' familiarity with the underlying facts and
3 procedural history.

4 We have reviewed the IJ's decision as modified and supplemented by the
5 BIA. See *Xue Hong Yang v. U.S. Dep't of Just.*, 426 F.3d 520, 522 (2d Cir. 2005); *Yan*
6 *Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). We review fact-finding "under
7 the substantial evidence standard" and questions of law and the application of law
8 to fact de novo. *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018). "[T]he
9 administrative findings of fact are conclusive unless any reasonable adjudicator
10 would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B).

11 To establish eligibility for asylum and withholding of removal, Masaquiza-
12 Masaquiza had to show that he suffered past persecution or had a fear of future
13 persecution and that a protected ground "was or will be at least one central
14 reason" for the persecution. 8 U.S.C. § 1158(b)(1)(B)(i); see also *id.* § 1231(b)(3)(A);
15 8 C.F.R. §§ 1208.13(b), 1208.16(b); *Quituizaca v. Garland*, 52 F.4th 103, 109–14 (2d
16 Cir. 2022) (holding that the "one central reason" standard also applies to
17 withholding of removal).³ To constitute persecution, abuse must be inflicted by

³ The agency accepted or assumed that Masaquiza-Masaquiza established abuse

1 government officials or by actors the government is “unable or unwilling to
2 control.” *Scarlett v. Barr*, 957 F.3d 316, 328 (2d Cir. 2020) (quoting *Pan v. Holder*,
3 777 F.3d 540, 543 (2d Cir. 2015)). “Under the unwilling-or-unable standard, a
4 finding of persecution ordinarily requires a determination that government
5 authorities, if they did not actually perpetrate or incite the persecution, condoned
6 it or at least demonstrated a complete helplessness to protect the victims.” *Jagdeep*
7 *Singh v. Garland*, 11 F.4th 106, 114–15 (2d Cir. 2021) (quotation marks omitted).

8 Before the agency, Masaquiza-Masaquiza alleged harm by his former
9 coworkers, who were private actors, and he testified that he never reported that
10 abuse to the police. An applicant’s “failure to report harm is not necessarily fatal
11 to a claim of persecution if the applicant can demonstrate that reporting private
12 abuse to government authorities would have been futile or dangerous.” *Matter of*
13 *C–G–T–*, 28 I. & N. Dec. 740, 743 (B.I.A. 2023) (quotation marks omitted); *cf. Pan*,
14 777 F.3d at 544–45 (declining to “decide whether [an applicant’s] unwillingness to
15 confront the police is fatal to his asylum claim because” the agency “ignored
16 ample record evidence tending to show that the . . . police were unwilling to

sufficiently severe to amount to persecution, and that there was a sufficient nexus
to his race. Masaquiza-Masaquiza’s arguments on those points, are thus
misplaced.

1 investigate the abuse suffered"). Here, Masaquiza-Masaquiza advances a
2 cursory argument that "the police are either too corrupt or too scared to help."
3 Petitioner's Br. at 7. But he does not identify evidence to support that conclusion.
4 And as the agency noted, the country conditions evidence supports the opposite
5 conclusion: the U.S. State Department report describes employment
6 discrimination against indigenous Ecuadorians, but also reports that indigenous
7 people have equal civil and political rights, and it does not reflect that the police
8 refuse to respond to racially motivated violence.

9 For similar reasons, there was no error in the denial of CAT protection. A
10 CAT applicant must show that torture is "more likely than not" and the CAT
11 defines torture as severe abuse "by, or at the instigation of, or with the consent or
12 acquiescence of, a public official acting in an official capacity." 8 C.F.R.
13 §§ 1208.16(c)(2), 1208.18(a)(1). "Acquiescence of a public official requires that the
14 public official, prior to the activity constituting torture, have awareness of such
15 activity and thereafter breach his or her legal responsibility to intervene and
16 prevent such activity." *Id.* § 1208.18(a)(7); see *Khouzam v. Ashcroft*, 361 F.3d 161,
17 171 (2d Cir. 2004) (acquiescence requires "that government officials know of or

1 remain willfully blind to an act and thereafter breach their legal responsibility to
2 prevent it”).

3 Masaquiza-Masaquiza asserts here that “the provided evidence . . . shows
4 the government did nothing but exacerbate the issue.” Petitioner’s Br. at 11. But
5 he does not identify relevant evidence, and as discussed above, he did not testify
6 that the government was involved in—or aware of—the past abuse. “While a
7 failure to ask for police help is not enough, by itself, to preclude a finding of
8 acquiescence,” *Quintanilla-Mejia v. Garland*, 3 F.4th 569, 593 (2d Cir. 2021),
9 Masaquiza-Masaquiza cites no other evidence to establish acquiescence. Instead,
10 he argues that the agency erred in requiring him to establish acquiescence.
11 However, as set forth above, the CAT regulations expressly require torture
12 “inflicted by, or at the instigation of, or with the consent or acquiescence of, a
13 public official acting in an official capacity,” 8 C.F.R. § 1208.18(a)(1), and
14 Masaquiza-Masaquiza’s argument that the agency should instead have applied an
15 unable-or-unwilling-to-protect standard is not supported by relevant authority.
16 *See Scarlett*, 957 F.3d at 336 (leaving it to BIA to determine “how the ‘unable’ prong
17 of the unwilling-or-unable standard, as applicable to withholding claims, might
18 translate to identifying government acquiescence in torture”).

