

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 18 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JENNY MARISOL VASQUEZ-FLORES;
HERSSON WALMIR CORTEZ-GOMEZ; et
al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 17-70585

Agency Nos. A208-541-052
A208-541-053
A208-541-054
A208-542-012
A208-542-013

MEMORANDUM*

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

Submitted November 15, 2022**

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Jenny Marisol Vasquez-Flores, Hersson Walmir Cortez-Gomez, and their three minor children, natives and citizens of El Salvador, petition pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

an immigration judge’s (“IJ”) decision denying their applications for asylum, and denying Vasquez-Flores’s and Cortez-Gomez’s applications for withholding of removal and protection under the Convention Against Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241 (9th Cir. 2020). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the agency’s determination that petitioners failed to establish they were or would be persecuted on account of a protected ground. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (an applicant’s “desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground”); *see also Barrios v. Holder*, 581 F.3d 849, 854 (9th Cir. 2009) (“resistance to gang membership is not a protected ground”).

We do not consider petitioners’ proposed particular social group of “Salvadorans who have reported criminal activity of the MS-13 to the police” because the BIA did not decide the issue, *see Santiago-Rodriguez v. Holder*, 657 F.3d 820, 829 (9th Cir. 2011) (review limited to the grounds relied on by the BIA), and petitioners do not contend the BIA erred in finding that their particular social group claim was not properly before it, *see Corro-Barragan v. Holder*, 718 F.3d 1174, 1177 n.5 (9th Cir. 2013) (failure to contest issue in opening brief resulted in

waiver).

We do not address petitioners' contentions as to whether they established past persecution or a well-founded fear of future persecution because the BIA did not deny relief on these grounds. *See Santiago-Rodriguez*, 657 F.3d at 829.

Therefore, petitioners' asylum claims, and Vasquez-Flores's and Cortez-Gomez's withholding of removal claims fail.

We lack jurisdiction to consider Vasquez-Flores's and Cortez-Gomez's contentions as to CAT protection where the BIA found petitioners waived any challenge as to CAT. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (petitioner must exhaust issues or claims in administrative proceedings below).

To the extent petitioners claim that the IJ violated their due process rights or otherwise erred in its analysis, we lack jurisdiction to consider the contention because they failed to raise it before the BIA. *See id.*

We do not consider the materials petitioners reference in their opening brief that are not part of the administrative record. *See Fisher v. INS*, 79 F.3d 955, 963-64 (9th Cir. 1996) (en banc).

The temporary stay of removal remains in place until the mandate issues.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.