NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MERLIN CANDELARIA RODRIGUEZ ESCOBAR; FABIAN ISAIAS MARTINEZ RODRIGUEZ; JESUS FRANCISCO MARTINEZ GALLARDO, Petitioners, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 19-72540 Agency Nos. A098-005-961 A208-195-635 A208-195-636 MEMORANDUM*

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

Submitted November 17, 2022**
Phoenix, Arizona

Before: BYBEE, OWENS, and COLLINS, Circuit Judges.

Petitioners Jesus Francisco Martinez Gallardo ("Martinez Gallardo"), his wife Merlin Candelaria Rodriguez Escobar ("Rodriguez Escobar"), and their son

* 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).

Fabian Isaias Martinez Rodriguez ("Fabian") petition for review of the Board of Immigration Appeals' ("BIA") decision (1) dismissing their appeal of an immigration judge's ("IJ") decision denying Martinez Gallardo's application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"); and (2) denying their motion to terminate proceedings. Rodriguez Escobar and Fabian are derivative beneficiaries of Martinez Gallardo's asylum application. Martinez Gallardo and Fabian are natives and citizens of Mexico, and Rodriguez Escobar is a native and citizen of Guatemala. We review factual findings for substantial evidence, and these findings are "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." *Flores Molina v. Garland*, 37 F.4th 626, 632 (9th Cir. 2022) (citation omitted). As the parties are familiar with the facts, we do not recount them here. We deny the petition for review.

1. An asylum or withholding of removal applicant's burden includes showing persecution "on account of race, religion, nationality, membership in a particular social group, or political opinion." *Silva v. Garland*, 993 F.3d 705, 719 (9th Cir. 2021) (citation omitted). Before the agency, Martinez Gallardo claimed persecution on account of two grounds: (1) the particular social group of "nuclear family: the husband of female respondent who attempted to protect his wife against

sexual assault and as a result of his action he was harmed"; and (2) political opinion based on his refusal to sell drugs and desire to be free from harm.

Petitioners do not raise the first ground in their opening brief, and therefore they have waived it. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013) (holding that issues not specifically raised and argued in a party's opening brief are waived).

Regarding the second ground, substantial evidence supports the agency's determination that Martinez Gallardo failed to establish that his refusal to sell drugs and desire to be free from harm constituted a "political opinion" under the Immigration and Nationality Act. *See, e.g.*, *Ramos-Lopez v. Holder*, 563 F.3d 855, 862 (9th Cir. 2009) (holding that substantial evidence supported the agency's determination that the petitioner's refusal to join a gang did not constitute a political opinion), *abrogated on other grounds by Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (en banc); *cf. 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."). Contrary to Petitioners' contention, the IJ adequately explained its decision that Martinez Gallardo did not establish a political opinion. And the BIA properly rejected Petitioners' argument that the IJ erred by failing to consider Martinez Gallardo as a "whistleblower" because Martinez Gallardo did

not present a "whistleblowing" component to his political-opinion claim before the IJ.

2. For the CAT claim, the agency found that Martinez Gallardo had been tortured on at least one occasion with the acquiescence of the local police, but that, under the totality of the circumstances, Martinez Gallardo was not likely to face future torture, due to his ability to relocate within Mexico and thereby avoid his past abusers. *See* 8 C.F.R. § 1208.16(c)(3)(ii) (stating that the CAT analysis includes considering "[e]vidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured"). The record does not compel a different conclusion. *See Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 704-05 (9th Cir. 2022) (holding that substantial evidence supported the denial of CAT relief based on the possibility that the petitioner could safely relocate in Mexico).

3. Finally, Petitioners' argument that the immigration court lacked jurisdiction because the Notices to Appear failed to specify the date, time, and location of their initial removal hearings, even though later notices provided that information, is foreclosed by this court's recent en banc decision in *United States v. Bastide-Hernandez*, 39 F.4th 1187, 1192-93, 1193 n.9 (9th Cir. 2022) (en banc) (holding that a defective Notice to Appear does not deprive the immigration court of subject matter jurisdiction).

PETTION FOR REVIEW DENIED.