

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 14 2022

FOR THE NINTH CIRCUIT

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

ROBERTO CARLOS REYES MENDOZA;  
et al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 16-73390

Agency Nos. A206-711-343  
A206-764-926  
A206-764-927

MEMORANDUM\*

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

Submitted April 11, 2022\*\*

Before: McKEOWN, CHRISTEN, and BRESS, Circuit Judges.

Roberto Carlos Reyes Mendoza and two family members, natives and citizens of El Salvador, petition for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's ("IJ") decision denying their application for asylum and denying Reyes Mendoza's application for

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\* 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).

withholding of removal and relief 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. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We deny in part and dismiss in part the petition for review.

Petitioners do not challenge the agency’s determination that they failed to establish they suffered harm that rises to the level of persecution. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013) (issues not specifically raised and argued in a party’s opening brief are waived). Substantial evidence supports the agency’s determination that petitioners failed to establish an objectively reasonable fear of future persecution in El Salvador. *See Nagoulko v. INS*, 333 F.3d 1012, 1018 (9th Cir. 2003) (possibility of future persecution “too speculative”). Thus, petitioners’s asylum claim fails.

In this case, because Reyes Mendoza failed to establish eligibility for asylum, he failed to establish eligibility for withholding of removal. *See Zehatye*, 453 F.3d at 1190.

Reyes Mendoza does not contest the BIA’s determination that he waived challenge to the IJ’s denial of his CAT claim, *see Lopez-Vasquez*, 706 F.3d at 1079-80, and we lack jurisdiction to consider his contentions as to the merits of his CAT claim because he failed to raise them to the BIA, *see Barron v. Ashcroft*, 358

F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency).

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

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**