

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 14 2022

FOR THE NINTH CIRCUIT

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

MARGARITA ESTHER GARCIA-
GAITAN; et al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 17-72553

Agency Nos. A209-297-816
A209-297-815

MEMORANDUM*

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

Submitted December 8, 2022**
San Francisco, California

Before: WALLACE, TALLMAN, and BYBEE, Circuit Judges.

Margarita Esther Garcia-Gaitan and her minor son, natives and citizens of El Salvador, petition pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's ("IJ") decision denying

* 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).

their application for asylum. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo the legal question of whether a particular social group is cognizable, except to the extent that deference is owed to the BIA’s interpretation of the governing statutes and regulations. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241-42 (9th Cir. 2020). We review factual findings for substantial evidence. *Id.* at 1241. We deny in part and dismiss in part the petition for review.

The BIA did not err in determining that Garcia-Gaitan’s proposed particular social group of “victims of gang violence” is not cognizable because it cannot “exist independently of the fact of persecution.” *See Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1081 (9th Cir. 2020) (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 236 n.11 (BIA 2014)).

We do not consider Garcia-Gaitan’s newly-raised particular social groups comprised of family members and Salvadorans who report crimes because the BIA did not decide the issues, *see Santiago-Rodriguez v. Holder*, 657 F.3d 820, 829 (9th Cir. 2011) (review limited to the grounds relied on by the BIA), and Garcia-Gaitan does not contend the BIA erred in finding that her proposed particular social groups were 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).

Thus, petitioners’ asylum claim fails.

We lack jurisdiction to consider Garcia-Gaitan's contention that the IJ violated her right to due process because she failed to raise the issue before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not present in administrative proceedings below).

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

PETITION FOR REVIEW DENIED in part; DISMISSED in part.