NOT FOR PUBLICATION

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BLANCA LUZ ESCALANTE PAZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney General,

Respondent.

No. 18-73197

Agency No. A077-278-389

MEMORANDUM[*]

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

Submitted December 5, 2022[**]
San Francisco, California

Before: WATFORD and SANCHEZ, Circuit Judges, and BENITEZ,[***] District Judge.

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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).

[***] The Honorable Roger T. Benitez, United States District Judge for the Southern District of California, sitting by designation.

Blanca Luz Escalante Paz petitions for review of a Board of Immigration Appeals ("BIA") decision finding her ineligible for asylum and withholding of removal and denying her motion to terminate removal proceedings pursuant to *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). We grant in part and deny in part the petition.

1. The precedent that the BIA relied on to reject Escalante Paz's proposed particular social group—"[Honduran] women in relationships [who] are unable to leave and receive appropriate assistance from governmental sources"—has since been vacated in its entirety by an intervening opinion. *See In re A-B-*, 28 I. & N. Dec. 307 (A.G. 2021) (overruling *In re A-B-*, 27 I. & N. Dec. 316 (A.G. 2018)). Given the change in law, remand is proper, especially since the BIA's opinion declined to "address additional issues" on the view that the invalidity of Escalante Paz's particular social group was dispositive. *See, e.g.*, *Pannu v. Holder*, 639 F.3d 1225, 1229 (9th Cir. 2011) (remanding to the BIA in light of an intervening change in the law).

We reject the government's argument that Escalante Paz failed to challenge the BIA's particular social group determination in her opening brief, thereby waiving the issue. Escalante Paz argues that a particular social group composed of "Honduran women . . . unable to leave a domestic relationship" due, in part, to the "[i]neffectiveness of restraining orders [and] the systematic failure of police to

protect women separated from abusive partners," is cognizable. That is functionally the same particular social group she asserted before the BIA.

The other two particular social groups Escalante Paz raises on appeal—"Honduran women viewed as property" and "nuclear family members with the abuser"—were not raised before the BIA and are therefore unexhausted. *See, e.g.*, *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

We grant the petition in part and remand for the BIA to review the particular social group Escalante Paz raised below ("[Honduran] women in relationships [who] are unable to leave and receive appropriate assistance from governmental sources") under the new Attorney General opinion in the first instance.

2. Escalante Paz asserts that the notice to appear ("NTA") she was issued did not confer jurisdiction on the Immigration Court because it did not contain the date, time, and place of hearing. As we recently held, however, the failure of an NTA "to include time and date information does not deprive the immigration court of subject matter jurisdiction." *United States v. Bastide-Hernandez*, 39 F.4th 1187, 1188 (9th Cir. 2022) (en banc); *see also Aguilar Fermin v. Barr*, 958 F.3d 887, 889 (9th Cir. 2020) (holding "an initial NTA need not contain time, date, and place information to vest an immigration court with jurisdiction if such information is provided before the hearing"). We deny the petition as to this claim.

PETITION GRANTED IN PART AND DENIED IN PART.