

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 12 2022

FOR THE NINTH CIRCUIT

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

JUAN PASCUAL ANTONIO-ANTONIO  
and MARIA DE LOS ANGELES  
SALVADOR-PEDRO,

Petitioners,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

Nos. 19-71699  
20-71903

Agency Nos. A206-459-997  
A206-459-995

MEMORANDUM\*

On Petitions for Review of Orders of the  
Board of Immigration Appeals

Submitted December 8, 2022\*\*  
San Francisco, California

Before: NGUYEN and SANCHEZ, Circuit Judges, and BOUGH,\*\*\* District Judge.

In these consolidated petitions for review, Juan Pascual Antonio-Antonio

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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 Stephen R. Bough, United States District Judge for the Western District of Missouri, sitting by designation.

and Maria de los Angeles Salvador-Pedro (collectively, “Petitioners”), spouses who are natives and citizens of Guatemala, petition for review of the Board of Immigration Appeals’ (“Board”) order denying their applications for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”) (petition No. 19-71699) and of the Board’s order denying their motion to reopen (petition No. 20-71903). We have jurisdiction under 8 U.S.C. § 1252. We review de novo the legal question whether a particular social group is cognizable, except to the extent deference is owed to the Board’s interpretation of the phrase “particular social group.” *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241–42 (9th Cir. 2020). We review factual findings for substantial evidence. *Gu v. Gonzales*, 454 F.3d 1014, 1018 (9th Cir. 2006). “We review the Board’s denial of a motion to reopen for abuse of discretion, but review purely legal questions de novo.” *Bonilla v. Lynch*, 840 F.3d 575, 581 (9th Cir. 2016). We deny the petitions for review.

1. As to petition No. 19-71699, the Board did not err in concluding that Petitioners’ proposed social group, “young Guatemalan males who suffer torture due to rejection of gang recruitment, and who could be potential witnesses after reports were named by the police against the gangs,” is not cognizable. *See Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (a particular social group is “(1) composed of members who share a common immutable characteristic, (2) defined

with particularity, and (3) socially distinct within the society in question” (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014)). Petitioners failed to demonstrate that the proposed group is sufficiently particular and socially visible within Guatemala to constitute a particular social group. *See Aguilar-Osorio v. Garland*, 991 F.3d 997, 999–1000 (9th Cir. 2021) (holding that the petitioner failed to show the proposed group of “witnesses who ... could testify against gang members” was socially recognizable and distinct); *Barrios v. Holder*, 581 F.3d 849, 854–55 (9th Cir. 2009) (young Guatemalan men who resist gang recruitment do not constitute a particular social group).

2. Although Petitioners did not expressly propose a particular social group based on their family membership, the Board addressed this potential claim and determined that any harm Petitioners experienced was not on account of their familial relationships. Petitioners have waived any challenge to this determination. *See Alcaraz v. I.N.S.*, 384 F.3d 1150, 1161 (9th Cir. 2004). Because the Board properly determined that Petitioners’ proposed social group is not cognizable and that any harm they experienced was not based on a protected ground, Petitioners are ineligible for asylum.<sup>1</sup>

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<sup>1</sup> Petitioners failed to challenge the denial of their withholding claim on appeal to the Board or in briefing before this court. Such claim is therefore waived. *See Martinez-Serrano v. I.N.S.*, 94 F.3d 1256, 1259–60 (9th Cir. 1996).

3. Substantial evidence supports the Board’s denial of CAT relief.

Petitioners failed to show they will more likely than not be tortured by government actors or with government consent or acquiescence upon return to Guatemala. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009).

4. We reject Petitioners’ contention that the Board erred by assigning their appeal to a single Board member rather than a three-member panel. *See* 8 C.F.R. § 1003.1(e)(6) (listing circumstances where review by a three-member panel is permitted).

5. As to petition No. 20-71903, the Board did not abuse its discretion in denying Petitioners’ untimely motion to reopen. *See* 8 C.F.R. § 1003.2(c)(2) (a motion to reopen “must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened”). Petitioners contend that the Immigration Court lacked jurisdiction over their proceedings because their Notices to Appear did not specify the times and dates of their hearings, but this argument is foreclosed by our precedent. *See United States v. Bastide-Hernandez*, 39 F.4th 1187, 1188 (9th Cir. 2022) (en banc).

**PETITIONS DENIED.**