

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 13 2023

FOR THE NINTH CIRCUIT

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

WALTER RODIMIR MEZA-BONILLA,

No. 21-1163

Petitioner,

Agency No. A028-584-756

v.

MERRICK B. GARLAND, U.S. Attorney
General,

MEMORANDUM*

Respondent.

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

Submitted March 6, 2023**
Pasadena, California

Before: CALLAHAN, FORREST, and H.A. THOMAS, Circuit Judges.

Walter Rodimir Meza-Bonilla, a native and citizen of Honduras, petitions for review of the Board of Immigration Appeals' (BIA) denial of his applications for asylum, withholding of removal, and relief under the Convention Against

* 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).

Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252, and we dismiss in part and deny in part the petition for review.

Where the BIA cites *Matter of Burbano*, 20 I. & N. Dec. 872 (BIA 1994), adopts and affirms the IJ’s decision in full, and provides its own review of the evidence and the law, “we review both the IJ and the BIA’s decision.” *Ruiz-Colmenares v. Garland*, 25 F.4th 742, 748 (9th Cir. 2022) (quotation marks and citation omitted). We review the agency’s factual findings for substantial evidence. *Plancarte Saucedo v. Garland*, 23 F.4th 824, 831 (9th Cir. 2022); *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019) (“Under [the substantial evidence] standard, we must uphold the agency determination unless the evidence compels a contrary conclusion.”).

1. We dismiss Meza-Bonilla’s ineffective assistance of counsel claim for lack of jurisdiction because he failed to exhaust his administrative remedies for this claim by not filing a motion to reopen with the BIA. *See Iraheta-Martinez v. Garland*, 12 F.4th 942, 948 (9th Cir. 2021); *Puga v. Chertoff*, 488 F.3d 812, 815–16 (9th Cir. 2007). Petitioner contends that ineffective assistance of counsel is an “independent issue” that we retain jurisdiction over, citing *Fernandez v. Gonzalez*, 439 F.3d 592 (9th Cir. 2006). There, we stated, “in motion to reopen cases in which an independent claim such as ineffective assistance of counsel is at issue, we have jurisdiction to determine whether a petitioner was prejudiced” *Id.* at

602. *Fernandez* is thus inapposite because it specifically applies to cases in which noncitizens file motions to reopen and the BIA denies those motions. *Id.* Here, because Meza-Bonilla did not file a motion to reopen, we lack jurisdiction to review his claim of ineffective assistance of counsel and, accordingly, dismiss that claim.

2. We dismiss Meza-Bonilla’s claims relying upon his newly proposed social group comprised of “former low-income youth males who were targeted for gang recruitment in Honduras and who are still subject to future harm upon return.” We require petitioners to “delineate [their] proposed social group[s] before the IJ” and prohibit petitioners from reframing their social groups on appeal. *Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1085 (9th Cir. 2020). Meza-Bonilla did not advance this social group to either the IJ or the BIA and thus has failed to exhaust these claims. Accordingly, we lack jurisdiction to reach the merits of these claims, and they are dismissed. *See* 8 U.S.C. § 1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

3. We deny Meza-Bonilla’s petition for review of the BIA’s determination that he did not establish a nexus between his membership in a cognizable social group and any past or feared future persecution for two independent reasons. First, we deny the petition because Meza-Bonilla did not challenge the bases of the BIA’s nexus determination in his opening brief, resulting

in waiver. *See Corro-Barragan v. Holder*, 718 F.3d 1174, 1177 n.5 (9th Cir. 2013) (explaining that a petitioner’s failure to contest an issue in the opening brief results in waiver of that issue); *see also Cui v. Holder*, 712 F.3d 1332, 1338 n.3 (9th Cir. 2013) (finding that petitioner waived any objection to withholding of removal by failing to address the issue in the brief).

Second, even assuming Meza-Bonilla’s challenge to the BIA’s finding of a lack of nexus is not waived, he has not made a compelling showing. *See Duran-Rodriguez*, 918 F.3d at 1028. Accepting that Meza-Bonilla was credible, his encounters with the Mara Salvatrucha (MS-13) gang in 1988 and his brother’s murder in 2010 (when Meza-Bonilla was in the United States) do not compel a finding that he would be persecuted based on membership in a cognizable group if returned to Honduras. *See id.*; *see also Donchev v. Mukasey*, 553 F.3d 1206, 1213 (9th Cir. 2009).

4. We deny the petition for review as to Meza-Bonilla’s CAT claim because the record does not compel a conclusion contrary to the BIA’s decision. *See Duran-Rodriguez*, 918 F.3d at 1028. Petitioner has not shown that it is more likely than not that he would be tortured if removed to Honduras, and that the torture would be inflicted with the consent or acquiescence of state actors. *See* 8 C.F.R. §§ 1208.16(c)(2); 1208.18(a)(1)–(7); *see also Ruiz-Colmenares*, 25 F.4th at 748. Petitioner claims that his 1988 abduction at the hands of the MS-13 gang is

proof of both torture and police acquiescence because the police “did not adequately address the harm caused to Petitioner” However, because Meza-Bonilla testified that he never reported this incident to police, the unreported abduction does not support the assertions that police acquiesced to his torture then or that they would acquiesce to his torture now, 35 years later. Petitioner also claims that his brother Julio’s unsolved murder—which he believes MS-13 members committed—is additional proof of police acquiescence. But as the IJ noted, police investigated Julio’s death, and the fact that this investigation did not lead to an arrest does not mean that the police acquiesced to Julio’s death or would acquiesce to Petitioner’s torture at the hands of MS-13 upon return to Honduras.

The temporary stay of removal remains in place until the mandate issues. The motion for a stay of removal is otherwise denied.

THE PETITION IS DISMISSED IN PART AND DENIED IN PART.