

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 18 2021

FOR THE NINTH CIRCUIT

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

DOMINGO SIMON-LUCAS; et al.,

No. 20-72474

Petitioners,

Agency Nos. A209-899-430

v.

A209-899-429

MERRICK B. GARLAND, Attorney
General,

MEMORANDUM*

Respondent.

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

Submitted November 8, 2021**

Before: CANBY, TASHIMA, and MILLER, Circuit Judges.

Domingo Simon-Lucas and his son, natives and citizens of Guatemala, petition for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's decision denying their motion to terminate and their applications for asylum, withholding of removal, and relief

* 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).

under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to terminate. *Dominguez v. Barr*, 975 F.3d 725, 734 (9th Cir. 2020). We review de novo questions of law. *Garcia-Martinez v. Sessions*, 886 F.3d 1291, 1293 (9th Cir. 2018). We review for substantial evidence the agency’s factual findings. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We deny the petition for review.

The agency did not abuse its discretion in denying the motion to terminate, where petitioners’ contentions regarding their notice to appear are foreclosed by *Aguilar Fermin v. Barr*, 958 F.3d 887, 895 (9th Cir. 2020) (“the lack of time, date, and place in the NTA sent to [petitioner] did not deprive the immigration court of jurisdiction over her case”).

Petitioners do not make any argument challenging the agency’s dispositive determination that they failed to establish nexus to a protected ground. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in a party’s opening brief are waived). Thus, petitioners’ asylum and withholding of removal claims fail.

Substantial evidence supports the agency’s denial of CAT relief because petitioners failed to show it is more likely than not they will be tortured by or with

the consent or acquiescence of the government if returned to Guatemala. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009).

We reject as unsupported by the record petitioners' contentions that the BIA engaged in improper fact-finding and that the agency ignored evidence or otherwise erred in its analysis of their claims.

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

PETITION FOR REVIEW DENIED.