NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EVELYN YAMILETH AGUILAR-NINO; EDWIN EDGARDO CHINCHILLA-CHINCHILLA; MAYBELIN CHINCHILLA-AGUILAR, Petitioners, v. PAMELA BONDI, Attorney General, Respondent.	No. 23-3716 Agency Nos. A220-994-832 A220-994-833 A220-994-834 MEMORANDUM*

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

Submitted February 11, 2025**
Pasadena, California

Before: PAEZ, IKUTA, and R. NELSON, Circuit Judges.

Evelyn Yamileth Aguilar-Nino, Edwin Edgardo Chinchilla-Chinchilla, and their minor child M.C.-A., natives and citizens of El Salvador, petition for review of

* 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).

a Board of Immigration Appeals (BIA) decision dismissing their appeal of an immigration judge's (IJ) order denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We review de novo whether a group constitutes a "particular social group" under the Immigration and Nationality Act. *Barbosa v. Barr*, 926 F.3d 1053, 1059 (9th Cir. 2019). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

1. An applicant for asylum and withholding of removal seeking relief based on membership in a particular social group must establish that the group is cognizable. *See Conde Quevedo v. Barr*, 947 F.3d 1238, 1242 (9th Cir. 2020). A cognizable social group must be "defined with particularity." *Id.* (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014)). "The ultimate question when assessing particularity is whether the proposed social group is defined by 'characteristics that provide a clear benchmark for determining who falls within the group.'" *Andrade v. Garland*, 94 F.4th 904, 911 (9th Cir. 2024) (quoting *Nguyen v. Barr*, 983 F.3d 1099, 1103 (9th Cir. 2020)) (internal quotation marks omitted).

The BIA did not err in concluding that Petitioners' proposed group of "[i]ndividuals afraid of gang members" lacks particularity. Petitioners' proposed group could logically include anyone; for example, as the BIA noted, those who cooperate with gang members and even gang members themselves may be afraid of gang members. *See Nguyen*, 983 F.3d at 1103 (a particularized social group "must

not be amorphous, overbroad, diffuse, or subjective" (citation omitted)). Petitioners try to narrow the group in their petition for review by arguing that it is limited to "citizens in their community that live in fear of the gang members." But Petitioners do not explain how limiting the group to "citizens in their community" creates any "definable" boundaries or a "clear benchmark for determining who falls within the group." *Id.* (citation omitted). Thus, the BIA fairly concluded that the proposed group is insufficiently particular. Petitioners' corresponding failure to establish a cognizable social group resolves their claims for asylum and withholding of removal. *See Villegas Sanchez v. Garland*, 990 F.3d 1173, 1183 (9th Cir. 2021).

2. Petitioners failed to exhaust their challenge to the IJ's denial of CAT protection. *See* 8 U.S.C. § 1252(d)(1). A petitioner is "deemed to have exhausted only those issues he raised and argued in his brief before the BIA." *Abebe v. Mukasey*, 554 F.3d 1203, 1208 (9th Cir. 2009) (en banc) (per curiam). The BIA did not err in concluding that Petitioners' brief failed to sufficiently address the IJ's denial of CAT relief; the brief made no argument for why Petitioners satisfied the CAT requirements or why the IJ's contrary finding was wrong. *See Bare v. Barr*, 975 F.3d 952, 960 (9th Cir. 2020) ("What matters is that the BIA was sufficiently on notice so that it 'had an opportunity to pass on this issue.'" (citation omitted)). Thus, Petitioners' CAT claim is unexhausted, and because the government properly raised the exhaustion requirement, we are barred from considering its merits. *See*

Shen v. Garland, 109 F.4th 1144, 1157 (9th Cir. 2024).

PETITION DENIED.