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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANA M. CRUZ ARELLANO,

Petitioner,

v.

PAMELA BONDI, Attorney General,

Respondent.

No. 25-2405

Agency No.
A208-601-172

MEMORANDUM*

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

Argued and Submitted November 19, 2025
San Francisco, California

Before: S.R. THOMAS, BRESS, and MENDOZA, Circuit Judges;
Partial Concurrence and Partial Dissent by Judge BRESS.

Petitioner Ana Cruz Arellano, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' (BIA) denial of asylum and withholding of removal. Because the parties are familiar with the factual and procedural history of the case, we need not recount it here.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

We have jurisdiction pursuant to 8 U.S.C. § 1252. “Where, as here, the BIA reviewed the IJ’s factual findings for clear error, and reviewed de novo all other issues, our review is ‘limited to the BIA’s decision, except to the extent the IJ’s opinion is expressly adopted.’” *Singh v. Whitaker*, 914 F.3d 654, 658 (9th Cir. 2019) (quoting *Hosseini v. Gonzales*, 471 F.3d 953, 957 (9th Cir. 2006)). We review legal conclusions de novo and factual findings for substantial evidence. *Id.* Administrative findings of fact are supported by substantial evidence “unless any reasonable adjudicator would be compelled to conclude to the contrary.” *Dong v. Garland*, 50 F.4th 1291, 1296 (9th Cir. 2022) (quoting *Iman v. Barr*, 972 F.3d 1058, 1064 (9th Cir. 2020)). But the BIA “abuses its discretion when it fails to state its reasons and show proper consideration of all factors when weighing equities and denying relief.” *Ahmed v. Holder*, 569 F.3d 1009, 1014 (9th Cir. 2009) (quoting *Arrozal v. Immigr. & Naturalization Serv.*, 159 F.3d 429, 432 (9th Cir. 1998)). We deny the petition for review in part, and grant the petition for review in part. We remand for further proceedings.

1. Substantial evidence supports the BIA’s denial of Cruz Arellano’s application for asylum and withholding of removal. A removable noncitizen bears the burden of showing the protected ground was either a “central reason” for asylum or “a reason” for withholding of removal leading to her persecution.

Salguero Sosa v. Garland, 55 F.4th 1213, 1221 (9th Cir. 2022). The agency found that Cruz Arellano failed to meet her burden of showing that opposition to the cartel or membership in a PSG was a central reason, or even a reason, for her asserted harm. The BIA's conclusion that she was extorted and threatened for monetary gain, not for any protected ground, is not one where any reasonable adjudicator would be compelled to conclude to the contrary.

2. The BIA did not err by declining to reach a determination on several other issues identified by Cruz Arellano. "As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach." *Immigr. & Naturalization Serv. v. Bagamasbad*, 429 U.S. 24, 25 (1976). Given that the lack of nexus was dispositive to her claims for relief, the BIA's disposition did not depend on whether her past harms rose to the level of persecution, entitling her to a rebuttable presumption of well-founded fear of future persecution, or whether she qualified for an exception to the one-year filing period for asylum claims.

3. The BIA abused its discretion, however, in failing to address the statutory claim-processing component of Cruz Arellano's argument regarding her deficient notice to appear (NTA). While the failure of an NTA to include the time and date of the hearing does not deprive the immigration court of jurisdiction, an NTA that

omits this information violates the claim-processing rule of 8 U.S.C. § 1229(a)(1), which may entitle the noncitizen to a procedural remedy. *United States v. Bastide-Hernandez*, 39 F.4th 1187, 1188, 1191 (9th Cir. 2022) (en banc). A noncitizen sufficiently raises the issue of a defective NTA as a claim-processing violation when she argues in her administrative proceedings that the NTA is “statutorily deficient.” *Suate-Orellana v. Garland*, 101 F.4th 624, 629–30 (9th Cir. 2024).

Here, Cruz Arellano’s notice of appeal to the BIA raised the issue that her NTA had been “non-statutory compliant.” The BIA addressed only the jurisdictional argument. Remand is appropriate for the BIA to determine whether Cruz Arellano raised a timely objection to her claim-processing defect when she raised it for the first time with the BIA. If the BIA determines that her objection was timely, it must then consider “the merits of [her] claim that her NTA was statutorily deficient” and any remedy to which she may be entitled.

Suate-Orellana, 101 F.4th at 632.

**PETITION FOR REVIEW DENIED IN PART; GRANTED IN PART;
REMANDED.**

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BRESS, Circuit Judge, concurring in part and dissenting in part:

I agree that substantial evidence supports the BIA's denial of Cruz Arellano's applications for asylum and withholding of removal. But I disagree that the BIA abused its discretion in failing to address the alleged claim-processing component of Cruz Arellano's argument regarding her statutorily deficient notice to appear (NTA). Cruz Arellano did not make this argument to the BIA. Because she only challenged her NTA on jurisdictional grounds, the BIA did not abuse its discretion by limiting its ruling to that issue.

Cruz Arellano did not challenge her NTA before the IJ. Rather, for the first time in her counseled notice of appeal to the BIA, Cruz Arellano said the following:

The Immigration Court did not have jurisdiction over Respondent's removal proceedings based on the filing of a non-statutory compliant notice to appear. Respondent will assert that *Niz Chavez v. Garland*, 593 U.S. __ (2021) supersedes the Ninth Circuit's decision in *Fermin v. Barr*, 958 F.3d 887 (9th Cir. 2020) and BIA's decisions in *Matter of Rosales Vargas*, 27 I&N Dec. 745 (BIA 2020) and *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018).

Cruz Arellano did not elaborate on this argument in her briefing before the BIA. Despite this, the BIA still reached the issue, presumably because it concerned the BIA's jurisdiction. The BIA concluded that a statutorily deficient NTA did not deprive the immigration court of jurisdiction under *United States v. Bastide-*

Hernandez, 39 F.4th 1187 (9th Cir. 2022) (en banc). That determination was correct under law.

Before this court, Cruz Arellano has now changed directions, arguing for the first time that her statutorily deficient NTA amounted to a claims-processing violation of 8 U.S.C. § 1229(a)(1) that requires remand to the IJ to consider possible procedural remedies. This argument fails under the well-established principle that immigration petitioners cannot raise new arguments in this court without first exhausting them before the IJ and BIA. *See Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023), *as amended*. As *Umana-Escobar* specifically recognized, when a petitioner raises “defects in the NTA but ma[kes] only a jurisdictional argument based on such defects,” the BIA “ha[s] no reason to consider whether the NTA’s defects could constitute some other type of violation which might be subject to waiver, such as a claim-processing violation.” *Id.* In this case, therefore, the BIA did not abuse its discretion in failing to address a supposed claims-processing violation that the petitioner never raised.

The majority instead concludes that under *Suate-Orellana v. Garland*, 101 F.4th 624, 629–30 (9th Cir. 2024), “[a] noncitizen sufficiently raises the issue of a defective NTA as a claim-processing violation when she argues in her administrative proceedings that the NTA is ‘statutorily deficient.’” The majority’s reliance on *Suate-Orellana* is misplaced.

In *Suate-Orellana*, we characterized the petitioner as having “explicitly argued before the IJ that the NTA was statutorily deficient and that, *as a result*, the IJ lacked jurisdiction.” 101 F.4th at 629 (emphasis in original). Even assuming a facial similarity to the relevant first line of Cruz Arellano’s notice of appeal, Cruz Arellano made clear that she was only challenging the jurisdictional aspect of her statutorily deficient NTA when she went on to state: “Respondent will assert that *Niz Chavez v. Garland*, 593 U.S. __ (2021) supersedes the Ninth Circuit’s decision in *Fermin v. Barr*, 958 F.3d 887 (9th Cir. 2020) and BIA’s decisions in *Matter of Rosales Vargas*, 27 I&N Dec. 745 (BIA 2020) and *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018).” These cited decisions all concerned whether incomplete charging documents deprived the immigration court of jurisdiction. Thus, in context, Cruz Arellano was arguing only that the defective NTA deprived the immigration court of subject matter jurisdiction.

The petitioner in *Suate-Orellana* also raised the claims-processing argument in her BIA briefing and before the IJ. 101 F.4th at 629. Indeed, we described how “*Suate-Orellana* made extensive arguments about the timeliness of her motion throughout this litigation,” which “put the BIA on notice that the NTA’s defects ‘could constitute some other type of violation which might be subject to waiver,’” unlike a purely jurisdictional defect. *Id.* at 630 n.4 (quoting *Umana-Escobar*, 69

F.4th at 550). It was therefore unsurprising that the BIA in *Suate-Orellana* “recognized this distinct aspect of Suate-Orellana’s argument.” 101 F.4th at 629.

In contrast, Cruz Arellano never raised this issue to the IJ or in her BIA briefing, instead relying solely upon two sentences in her notice of appeal, which sound “exclusively in jurisdiction.” *Umana-Escobar*, 69 F.4th at 550. That explains why unlike in *Suate-Orellana*, the BIA did not recognize any claims-processing component to the argument. The reasonableness of the BIA’s interpretation of Cruz Arellano’s notice of appeal is bolstered by the fact that even in her briefing to this court, Cruz Arellano emphasizes the jurisdictional nature of her argument. For instance, Cruz Arellano characterizes her BIA notice of appeal as having challenged “the Immigration Judge’s jurisdiction based on a defective Notice to Appear.”

In short, I see no basis to fault the BIA’s handling of this issue. *Umana-Escobar*, and not *Suate-Orellana*, governed. I therefore respectfully dissent from that portion of today’s decision granting Cruz Arellano’s petition for review.