

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEB 18 2026

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

SHAMIR STEVEN ANDRADE
ESPINOSA; LUZ ADRIANA MUNOZ
SERRATO; M. J. A. M.,

Petitioners,

v.

PAMELA BONDI, Attorney General,

Respondent.

No. 25-977

Agency Nos.
A240-611-420
A240-084-615
A240-084-614

MEMORANDUM*

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

Submitted February 13, 2026**
Pasadena, California

Before: WARDLAW, BADE, and H.A. THOMAS, Circuit Judges.

Shamir Steven Andrade Espinosa, Luz Adriana Munoz Serrato, and their minor child M.J.A.M., natives and citizens of Colombia, petition for review of a decision of the Board of Immigration Appeals (“BIA”) denying Petitioners’ motion

* 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).

to reopen or reissue its decision based on ineffective assistance of counsel.

We review the BIA's denial of a motion to reopen or reissue for abuse of discretion. *Hernandez-Velasquez v. Holder*, 611 F.3d 1073, 1077 (9th Cir. 2010). "An error of law is an abuse of discretion." *Id.* Factual findings underlying the adjudication of a motion to reopen are reviewed for substantial evidence, while "the [BIA's] determination of purely legal questions [are reviewed] de novo." *Bhasin v. Gonzales*, 423 F.3d 977, 983 (9th Cir. 2005).

1. Petitioners argue that their attorney rendered ineffective assistance of counsel by failing to advise Petitioners that their appeal to the BIA had been dismissed, causing Petitioners to miss the deadline to file a petition for review with our court. Because the Government's answering brief assumes that Petitioners established deficient performance, the Government waived any argument that Petitioners failed to establish that prong of their claim for ineffective assistance of counsel. *See United States v. McEnry*, 659 F.3d 893, 902 (9th Cir. 2011) (holding that the Government waived an argument that "was available at the time it filed its answering brief").

2. Assuming without deciding that Petitioners were prejudiced by their attorney's deficient performance, the petition fails on the merits regardless. Substantial evidence supports the BIA's conclusion that Petitioners did not

experience past persecution.¹ *See Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019). Petitioners were never physically harmed and, though Petitioner Luz was threatened, these experiences do not rise to the “extreme” level of persecution. *Id.* (quoting *Nagoulko v. INS*, 333 F.3d 1012, 1016 (9th Cir. 2003)). Substantial evidence also supports the BIA’s determination that Petitioners failed to establish a “well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” *Wakkary v. Holder*, 558 F.3d 1049, 1052 (9th Cir. 2009) (citation modified) (quoting *Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001)). Nor does the record compel the conclusion that any person would harm Petitioners in the future. Finally, substantial evidence supports the BIA’s conclusion that Petitioner has not established that she is more likely than not to be tortured by a public official or with the consent or acquiescence of a public official. *See* 8 C.F.R. § 1208.16(c)(2); *see also id.* § 1208.18(a)(1). Because Petitioner failed to show that she is likely to suffer harm rising to the level of persecution, she necessarily fails to show a likelihood of future torture based on the same alleged harms. *See Sharma v. Garland*, 9 F.4th 1052, 1067 (9th Cir. 2021). Accordingly, the BIA did not abuse its discretion in denying Petitioners’ motion to reopen or their motion to reissue.

¹ Luz Adriana Munoz Serrato’s husband and minor child are derivative beneficiaries of her asylum application. Her husband and minor child did not file separate applications for withholding of removal and CAT protection.

PETITION DENIED.²

² Petitioners' Motion to Stay Removal is denied as moot. *See* Dkt. Nos. 3, 4. The temporary stay will dissolve when the mandate issues. *Id.*