**NOT FOR PUBLICATION**

FILED

JUN 30 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| LETY DIEGO DIEGO; C. D. D. D.; I. A. D. D.,<br><br>Petitioners,<br><br>v.<br><br>TODD BLANCHE, Acting Attorney General,<br><br>Respondent. | No. 25-5768<br><br>Agency Nos.<br>A220-239-381<br>A220-239-382<br>A220-239-383<br><br>MEMORANDUM[*] |

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

Submitted May 22, 2026[**]
San Francisco, California

Before: COLLINS, JOHNSTONE, and DE ALBA, Circuit Judges.

Petitioner Lety Diego Diego ("Diego Diego"), an indigenous Mayan and citizen of Guatemala, seeks review of a Board of Immigration Appeals ("BIA") decision, on remand, dismissing her appeal from an immigration judge's ("IJ")

[*] 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).

order denying her application for asylum and withholding of removal.[1] We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

"[T]he BIA reviews the IJ's underlying factual findings . . . for clear error. . . ." *Umana-Escobar v. Garland*, 69 F.4th 544, 552 (9th Cir. 2023). Where, as here, the BIA agrees with the IJ's reasoning and supplements that reasoning with its own analysis, we review both decisions to the extent the BIA relied on the grounds the IJ considered. *Bhattarai v. Lynch*, 835 F.3d 1037, 1042 (9th Cir. 2016); *Santiago-Rodriguez v. Holder*, 657 F.3d 820, 829 (9th Cir. 2011). We review the BIA's factual findings for substantial evidence, while we review de novo both legal questions and mixed questions of law and fact. *Mendoza-Pablo v. Holder*, 667 F.3d 1308, 1312 (9th Cir. 2012).

1. An applicant for asylum and withholding of removal alleging past persecution must show, among other things, that "the persecution was committed by the government, or by forces that the government was unable or unwilling to control." *Baghdasaryan v. Holder*, 592 F.3d 1018, 1023 (9th Cir. 2010); *Reyes-Reyes v. Ashcroft*, 384 F.3d 782, 788 (9th Cir. 2004). However, "an applicant who seeks to establish . . . past persecution at the hands of private parties the

[1] Diego Diego's minor sons, C.D.D.D. and I.A.D.D., were included as derivative beneficiaries on her asylum application. Diego Diego's sons do not seek relief separate from her and cannot assert derivative claims for withholding of removal. *See Ali v. Ashcroft*, 394 F.3d 780, 782 n.1 (9th Cir. 2005).

government is unwilling or unable to control need not have reported that persecution to the authorities if [s]he can convincingly establish that doing so would have been futile or have subjected h[er] to further abuse." *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1058 (9th Cir. 2006).

As a preliminary matter, the IJ effectively made a futility-of-reporting finding that the BIA could assess under the clear error standard. In the proceedings before the IJ, Diego Diego provided only futility-based reasons why she did not report her ex-partner Francisco Diego Mateo ("Francisco") to Guatemalan authorities. The IJ concluded, without expressly using the word "futile," that these reasons coupled with the country condition evidence were not compelling, and the BIA reasonably determined that this conclusion was not clearly erroneous. Specifically, the BIA emphasized that Diego Diego "did not support her subjective belief that it would have been futile to report" Francisco to Guatemalan authorities with objective or corroborating evidence.

2. Substantial evidence supports the IJ's determination that Diego Diego failed to establish past persecution by a private actor whom Guatemalan authorities were unwilling or unable to control. First, Diego Diego testified that she did not report Francisco's abuse to Guatemalan authorities because she (1) thought they would not protect her since she was not married to Francisco and (2) heard stories of women being killed by partners who were initially arrested but released shortly

thereafter. This testimony is speculative and relies on anecdotal evidence that lacks firsthand knowledge, which "does not compel a finding" that reporting Francisco's abuse would have been futile. *See Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005) (concluding that petitioner's failure to report abuse due to the belief that police would do nothing did not compel a finding that the government was unwilling or unable to control the abuser); *see also Gu v. Gonzales*, 454 F.3d 1014, 1021 (9th Cir. 2006) (holding that "where an asylum applicant's testimony consists of hearsay evidence, the statements by the out-of-court declarant may be accorded less weight by the trier of fact when weighed against non-hearsay evidence"). Moreover, although the BIA recognized that Diego Diego testified that "her former partner threatened to kill her if she told someone about the abuse," it reasonably noted that Diego Diego never "claimed that she declined to report her former partner to the police due to this threat."

Second, although the country condition evidence contained somewhat contradictory information, the IJ, as affirmed by the BIA, properly relied on this evidence to reasonably conclude that Guatemala "is making great strides in combating femicide and violence against women." *See Singh v. Holder*, 753 F.3d 826, 831 (9th Cir. 2014) ("We have repeatedly recognized that the IJ and the BIA are entitled to rely on country reports that contain mixed messages, ambiguities, or inconsistencies."). Notably, the IJ highlighted the specialized courts Guatemala

maintains for issues involving violence against women and that the country has "a 24-hour victim service center where women can receive medical, psychosocial, and legal support, including restraining orders," and even established "a national alert system for missing women." *See Hussain v. Rosen*, 985 F.3d 634, 648 (9th Cir. 2021) ("[A] country's government is not 'unable or unwilling' to control violent nonstate actors when it demonstrates efforts to subdue said groups"); *Velasquez-Gaspar v. Barr*, 976 F.3d 1062, 1065 (9th Cir. 2020) ("[A]lthough the State Department reports make clear that Guatemala still has a long way to go in addressing domestic violence, the country's efforts, coupled with the pleas of [the petitioner's] acquaintances, suggest that [the petitioner] could have obtained help").

**PETITION DENIED.**