

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 16 2026

FOR THE NINTH CIRCUIT

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

ROXANA ESPARZA LECHUGA; I. R. E.,

Petitioners,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 25-5630

Agency Nos.

A245-448-741

A245-448-745

MEMORANDUM*

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

Submitted September 14, 2026**
Pasadena, California

Before: R. NELSON and DESAI, Circuit Judges, and SCHREIER, District
Judge.***

Petitioner Roxana Esparza Lechuga and her minor child, natives and citizens
of Mexico, seek review of the Board of Immigration Appeals' (BIA) decision

* 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).

*** The Honorable Karen E. Schreier, United States District Judge for the
District of South Dakota, sitting by designation.

affirming the Immigration Judge’s (IJ) denial of their applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252 and deny the petition.

Where the BIA adopts the IJ’s decision while adding its own reasoning, we review both decisions. *Siong v. INS*, 376 F.3d 1030, 1036 (9th Cir. 2004). We review questions of law de novo, including whether a proposed group is cognizable as a particular social group (PSG). *Santos-Ponce v. Wilkinson*, 987 F.3d 886, 890 (9th Cir. 2021) (citation modified). But we review the BIA’s nexus findings and denial of CAT relief for substantial evidence. *Id.* Under the substantial evidence standard, we must uphold the BIA’s determinations “unless any reasonable adjudicator would be compelled to conclude to the contrary.” *Garcia-Milian v. Holder*, 755 F.3d 1026, 1031 (9th Cir. 2014) (citation modified).

1. Substantial evidence supports the BIA’s denial of Petitioner’s applications for asylum and withholding of removal. To satisfy her burden of proof for asylum, Petitioner must establish a nexus between alleged persecution and a protected characteristic—*i.e.*, her race, religion, nationality, political opinion, or membership in a PSG.¹ *See* 8 U.S.C. § 1158(b)(1)(B)(i). And to qualify as a legally cognizable

¹ The government argues that Petitioner waived her challenge to the BIA’s nexus finding because she did not present a “meaningful argument” that the BIA’s finding was erroneous. “[I]ssues which are not specifically and distinctly argued and raised in a party’s opening brief are waived.” *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001). Petitioner’s opening brief specifically argues

PSG, “the group [Petitioner] claim[s] membership in must be: ‘(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.’” *Macedo Templos v. Wilkinson*, 987 F.3d 877, 882 (9th Cir. 2021) (quoting *Matter of W-G-R-*, 26 I. & N. Dec. 208, 237 (BIA 2014)). An immutable characteristic is one “that the members of the group either cannot change, or should not be required to change[,] because it is fundamental to their individual identities or consciences.” *Id.*

Petitioner argues that “small business owners and their family members” is a PSG based on “shared past experience,” contending that because her former ownership of a small business is something she cannot change, it is an immutable characteristic. But Petitioner did not propose *former* small business owners as her PSG, and there is no suggestion that criminals or drug cartels target former small business owners for any unique training, skills, or experience. *Cf. Plancarte Saucedo v. Garland*, 23 F.4th 824, 834 (9th Cir. 2022) (professional nursing skills made petitioner “uniquely valuable to the cartel in a way that taxi drivers are not,” even if she were to change jobs).

“that she suffered past physical and psychological harm by gang members on account of her membership in the valid particular social group of small business owners and their family members.” But the brief contains no substantive analysis or development of this argument. Because “a bare assertion does not preserve a claim,” *id.*, it is a close question whether the issue was waived. However, even assuming without deciding that it was not, Petitioner’s argument fails for the reasons explained below.

Petitioner argues further that “small business owners” are analogous to “landowners,” who we have held may constitute a PSG in some circumstances. *See Cordoba v. Holder*, 726 F.3d 1106, 1114 (9th Cir. 2013). However, Petitioner fails to explain how these groups are similar, and we have held that similar groups of “business owners” lack particularity because the group “could include large swaths of people and various cross-sections of a community.” *Macedo Templos*, 987 F.3d at 882.

We also fail to see how being a “small business owner” is an immutable characteristic. *Id.* at 882–83 (being a “wealthy business owner” is not “fundamental to [the] individual’s identity”). At bottom, we agree with the BIA that Petitioner’s proposed PSG is not cognizable.

But even assuming Petitioner’s proposed PSG were legally cognizable, Petitioner has failed to establish any nexus between the cartel’s extortion and her proposed group, and the record does not compel the conclusion that the extortion was motivated by any other protected characteristic. That criminals may have threatened and extorted Petitioner because they perceived her as having the means to pay does not indicate that their conduct was motivated by Petitioner’s particular status as a small store owner. And merely claiming that demands for money were based on Petitioner’s business ownership is not enough to establish a nexus. *See Rodriquez-Zuniga v. Garland*, 69 F.4th 1012, 1015 (9th Cir. 2023) (no nexus when

criminal never mentioned victim's PSG and "seemed to only want money"). Because Petitioner fails to show that the cartel's extortion was motivated by anything other than financial gain, the BIA did not err in finding that her "desire to be free from harassment by criminals motivated by theft . . . bears no nexus to a protected ground." *Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010). Substantial evidence supports the BIA's denial of Petitioner's application.

2. Substantial evidence also supports the agency's denial of CAT protection. Petitioner must show that she would, more likely than not, be tortured with the acquiescence or consent of public officials if returned to Mexico. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). When assessing CAT claims, we consider "all evidence relevant to the possibility of future torture[.]" including instances of past torture. 8 C.F.R. § 1208.16(c)(3). For past harm to be "torture" under 8 C.F.R. § 1208.18(a)(2), it must be an "extreme form of cruel and inhuman treatment."

Petitioner's past harm does not rise to the level of torture. *See id.* We have held more egregious harms to "fall below the high threshold for torture." *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 700, 706–07 (9th Cir. 2022) (petitioner kidnapped, held for ransom, strip-searched, and beaten with brass knuckles); *see also Kumar v. Gonzales*, 444 F.3d 1043, 1047–48 (9th Cir. 2006) (petitioner held in confinement for a month, beaten "with wooden sticks and leather belts," and saw his friend shot by a police officer); *Ahmed v. Keisler*, 504 F.3d 1183,

1188–89 (9th Cir. 2007) (petitioner sent to “resettlement camps,” beaten on multiple occasions, and watched the army kill his uncle). Petitioner’s past harms—one beating, threats of violence, and her mother’s shoulder injury—are less extreme.

Additionally, Petitioner’s arguments regarding general crime rates and police corruption in Mexico are not enough to establish a future risk of torture; there must be a particularized risk. *See Tzompantzi-Salazar*, 32 F.4th at 706–07.

Finally, Petitioner fails to show acquiescence or consent by Mexican law enforcement. Petitioner must show that public officials were (1) aware of, or willfully blind to, the torture, and (2) “breach[ed] their legal responsibility to intervene to prevent the activity because they are unable or unwilling to oppose it.” *Garcia-Milian*, 755 F.3d at 1034. The fact that Petitioner did not report the incidents undermines her argument that Mexican police were aware of, or willfully blind to, the alleged torture. *See Hernandez v. Garland*, 52 F.4th 757, 770 (9th Cir. 2022). That the police left Petitioner’s town also does not compel a conclusion of state acquiescence or consent.

PETITION DENIED.²

² Petitioner’s Motion to Stay Removal, Dkt. No. 2, is denied. The temporary stay of removal is lifted.