

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 18 2026

FOR THE NINTH CIRCUIT

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

LORENA ANDREA VARGAS RINCON;
SEBASTIAN GIL ESCUDERO; E. A. V.
R.; M. G. V.,

Petitioners,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 25-3332

Agency Nos.

A241-730-123

A241-730-122

A241-730-124

A241-730-125

MEMORANDUM*

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

Argued and Submitted August 31, 2026
San Francisco, California

Before: GOULD, BYBEE, and BRESS, Circuit Judges.

Petitioners Lorena Andrea Vargas Rincon, Sebastian Gil Escudero, E. A. V., and M. G. V., natives and citizens of Colombia, petition for review of the Board of Immigration Appeals’ (“BIA”) decision dismissing their appeal of the Immigration Judge’s (“IJ”) order denying Petitioners’ applications for asylum, withholding of

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

removal, and protection under the Convention Against Torture (“CAT”). The parties are familiar with the facts, and we do not recount them here. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition.

When, as here, “the BIA conducts its own review of the evidence and law, rather than adopting the IJ’s decision, our review is limited to the BIA’s decision, except to the extent the IJ’s opinion is expressly adopted.” *Lapadat v. Bondi*, 145 F.4th 942, 950 (9th Cir. 2025) (internal quotation marks and citation omitted).

We review the BIA’s legal conclusions *de novo*, *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059 (9th Cir. 2017) (en banc), and factual findings and applications of undisputed fact to law under the substantial evidence standard, *Singh v. Blanche*, 176 F.4th 1139, 1144 (9th Cir. 2026). We can only hold that substantial evidence does not support the agency’s conclusions if any reasonable fact finder, reviewing the same record, would be compelled to reach a conclusion contrary to that of the agency. *Bringas-Rodriguez*, 850 F.3d at 1059.

1. The BIA correctly stated and applied the legal standard governing whether a petitioner has met his burden to demonstrate that a foreign government is either unwilling or unable to control a non-state actor. Asylum applicants need only show that harm by non-state actors was or would be committed by forces that their government was *either* unwilling *or* unable to control. *Madrigal v. Holder*, 716 F.3d 499, 503, 506 (9th Cir. 2013).

Here, the BIA repeatedly stated in the disjunctive that Petitioners were required to show the Colombian government’s unwillingness *or* inability to control the Gulf Clan. The BIA applied that standard correctly by examining both willingness *and* ability. *See id.* at 506–07. For example, the BIA discussed the Colombian police’s commitment to investigate the death threats received by Petitioners, a Colombian prosecutor’s follow up call to Petitioners after Petitioners reported an assassination attempt, and the country conditions evidence describing the Colombian government’s efforts to control cartel violence. The BIA also applied this Court’s precedent and found that Petitioners failed to establish that the Colombian government is unable to control the persecutors. *See, e.g., Doe v. Holder*, 736 F.3d 871, 878 (9th Cir. 2013) (“[I]nability to control persecutors is not demonstrated simply because the police ultimately were unable to solve a crime or arrest the perpetrators.”); *Antonio v. Garland*, 58 F.4th 1067, 1077 (9th Cir. 2023) (“When the government has promised future action but taken none, we have concluded the government was either unable or unwilling to exercise such control.”).

Where, as here, the agency assessed both indicia of willingness *and* ability, the BIA committed no legal error in analyzing whether Petitioners met their burden to demonstrate the Colombian government’s unwillingness or inability to control the Gulf Clan. *See Madrigal*, 716 F.3d at 506.

2. Substantial evidence supports the BIA’s conclusion that Petitioners did not

meet their burden to demonstrate the Colombian government’s unwillingness or inability to control the Gulf Clan. A government’s failure to “prevent *all* risk of harm” does not necessarily demonstrate inability to control a non-state actor. *Hussain v. Rosen*, 985 F.3d 634, 648 (9th Cir. 2021) (emphasis in original). Instead, we examine the efforts the government made to subdue the non-state actor and other relevant evidence in the record, including country conditions reports. *See id.*

While Petitioners do not dispute the Colombian government’s willingness to control the Gulf Clan, they argue that the government is unable to do so. But Petitioners fled Colombia within just three weeks of reporting the Gulf Clan’s death threats to the police and within just a day of reporting the Gulf Clan’s assassination attempt to a prosecutor, and the prosecutor reached out to them just a few weeks later as part of the investigation. Furthermore, the country conditions evidence in the record shows “efforts by the Colombian government to address violence and crime committed by armed drug cartels,” including successful prosecutions of cartel leaders and members. Substantial evidence therefore supports the BIA’s determination that Petitioners did not meet their burden because the record does not compel a conclusion that the Colombian government is unable or unwilling to control the Gulf Clan. *See id.*

3. Even assuming Petitioners have not forfeited the issue by failing to address it sufficiently in their opening brief, substantial evidence supports the BIA’s

determination that Petitioners did not establish that they more likely than not will be tortured by or with the consent or acquiescence of the Colombian government. *See Sharma v. Garland*, 9 F.4th 1052, 1067 (9th Cir. 2021).

PETITION DENIED.¹

¹ Petitioners' opposed motion to stay removal pending appeal (Dkt. No. 2) is denied.