

NOT FOR PUBLICATION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

ROBERTO ANTONIO LINARES-  
ESCOBAR,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 25-6282

Agency No.  
A070-030-884

MEMORANDUM\*

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

Submitted September 16, 2026\*\*  
Phoenix, Arizona

Before: M. SMITH and TUNG, Circuit Judges, and DIMKE, District Judge.\*\*\*

Roberto Antonio Linares-Escobar, a native and citizen of El Salvador,  
petitions for review of a decision of the Board of Immigration Appeals (“BIA”)

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\* 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 Mary K. Dimke, United States District Judge for the Eastern District of Washington, sitting by designation.

dismissing his appeal from an immigration judge's ("IJ") denial of asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). The BIA also rejected Linares-Escobar's ineffective assistance of counsel claim based on his failure to comply with *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988). We have jurisdiction under 8 U.S.C. § 1252. We deny the petition.

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 IJ's grounds. *See 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 legal questions de novo and factual findings for substantial evidence. *See Rodriguez Tornes v. Garland*, 993 F.3d 743, 750 (9th Cir. 2021). The agency's factual findings "are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B). We review the BIA's denial of remand for abuse of discretion. *See Alcarez-Rodriguez v. Garland*, 89 F.4th 754, 759 (9th Cir. 2023). To the extent Linares-Escobar raises a constitutional ineffective assistance claim, we review that claim de novo. *See Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005).

Linares-Escobar has not preserved any challenge to the agency's denial of asylum. The IJ denied asylum as untimely because Linares-Escobar did not file

within one year of entering the United States and did not establish changed or extraordinary circumstances excusing the delay. The BIA concluded that Linares-Escobar did not challenge that dispositive ruling on appeal and therefore deemed the issue waived. Linares-Escobar forfeited any argument to the contrary by failing to raise it in his opening brief. *See Lemus-Escobar v. Bondi*, 158 F.4th 944, 962 (9th Cir. 2025).

The BIA did not err in denying Linares-Escobar's withholding of removal claim. To qualify for withholding, an applicant must show that his "life or freedom would be threatened" in the proposed country of removal "because of" a protected ground. 8 U.S.C. § 1231(b)(3)(A). When the asserted protected ground is membership in a particular social group, the applicant bears the burden of clearly identifying the proposed group before the agency. *See Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1084 (9th Cir. 2020); *Garay Reyes v. Lynch*, 842 F.3d 1125, 1132 n.3 (9th Cir. 2016).

Linares-Escobar failed to clearly delineate a particular social group before the IJ. The IJ stated that Linares-Escobar did "not specify any particular social group that he alleges to be a member of and that he was persecuted because of," and the BIA agreed that he "did not clearly indicate on the record the exact delineation of any proposed particular social group."

Before the BIA, Linares-Escobar proposed groups based on land ownership, deportee status, and perceived wealth due to time spent in the United States. He now relies on land ownership and family membership. None of these proposed groups was clearly presented to the IJ. Because Linares-Escobar did not identify the proposed groups before the IJ, the BIA did not err in affirming the denial of withholding on that basis. *See Diaz-Reynoso*, 968 F.3d at 1084; *Honcharov v. Barr*, 924 F.3d 1293, 1296-97 (9th Cir. 2019).

Linares-Escobar also did not challenge before the BIA the IJ's political opinion nexus finding. Because the government invokes exhaustion, we do not consider that theory. *See* 8 U.S.C. § 1252(d)(1); *Suate-Orellana v. Garland*, 101 F.4th 624, 629 (9th Cir. 2024). Linares-Escobar also forfeited any political opinion theory by failing to raise it in his opening brief. *See Lemus-Escobar*, 158 F.4th at 962. Because no protected ground supporting withholding is properly before us, we need not decide whether Linares-Escobar's past harm rose to the level of persecution. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam).

Substantial evidence also supports the agency's denial of CAT protection. To qualify for CAT protection, Linares-Escobar had to show that it is more likely than not that he would be tortured if removed to El Salvador, and that the torture would be inflicted by, or with the consent or acquiescence of, a public official or

person acting in an official capacity. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1); *Mairena v. Barr*, 917 F.3d 1119, 1125 (9th Cir. 2019).

The IJ found that Linares-Escobar did not suffer past torture and had not shown a clear probability of future torture. The BIA affirmed because Linares-Escobar did not identify any clear factual or legal error in the IJ's CAT analysis. The record does not compel a contrary conclusion. Linares-Escobar testified that armed men threatened him while looking for his brother-in-law, but he was not physically injured. He also testified that he feared gangs, but acknowledged that he had not personally had problems with them. His remaining testimony described generalized gang violence, including the killing of a friend. General evidence of crime, gang violence, or country conditions, without a particularized showing that the applicant himself is more likely than not to be tortured with government acquiescence, does not compel CAT relief. *See Park v. Garland*, 72 F.4th 965, 980 (9th Cir. 2023); *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (per curiam). The IJ stated that it considered the admitted evidence and Linares-Escobar's testimony, and nothing in the record indicates that the agency failed to consider the country conditions evidence. *See Cruz v. Bondi*, 146 F.4th 730, 739 (9th Cir. 2025).

The BIA did not abuse its discretion in rejecting Linares-Escobar's ineffective assistance of counsel claim. A noncitizen asserting ineffective

assistance of counsel generally must submit an affidavit detailing the agreement with former counsel and the alleged deficient performance, notify former counsel of the allegations and allow counsel an opportunity to respond, and file a complaint with the appropriate disciplinary authorities or explain why no complaint was filed. *Matter of Lozada*, 19 I. & N. Dec. at 639; see *Hernandez-Ortiz v. Garland*, 32 F.4th 794, 801 (9th Cir. 2022). “Under ordinary circumstances[,] the BIA does not abuse its discretion” by requiring compliance with *Lozada*. *Castillo-Perez v. INS*, 212 F.3d 518, 525 (9th Cir. 2000).

Before the BIA, Linares-Escobar argued that prior counsel was ineffective for failing to renew his Temporary Protected Status application and for failing to pursue possible relief under the Nicaraguan Adjustment and Central American Relief Act of 1997. But he did not submit an affidavit establishing the relevant facts, did not show that he notified prior counsel and gave him an opportunity to respond, and did not show that he filed a disciplinary complaint or explain why he did not do so. The BIA therefore reasonably concluded that Linares-Escobar failed to comply with *Lozada*.

Linares-Escobar’s reliance on *Singh v. Garland*, 117 F.4th 1145 (9th Cir. 2024), does not require remand. *Singh* held that substantial compliance with *Lozada* was not required for the BIA to consider attorney involvement as one factor in the totality of the circumstances analysis for rescinding an in absentia

removal order based on “exceptional circumstances.” *Id.* at 1151. This case, unlike *Singh*, does not involve an in absentia removal order or an exceptional circumstances motion. Linares-Escobar asserted ineffective assistance as an independent ground for remand, and the BIA did not abuse its discretion by applying *Lozada*’s requirements in the ordinary circumstances presented here. *See Castillo-Perez*, 212 F.3d at 525.

To the extent Linares-Escobar now argues that prior counsel was ineffective for failing to delineate a particular social group before the IJ, that theory was not presented to the BIA. We therefore do not consider it. *See* 8 U.S.C. § 1252(d)(1); *Suate-Orellana*, 101 F.4th at 629; *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023).

The motion for stay of removal, Dkt. 2, is denied.

**PETITION DENIED.**