

NOT FOR PUBLICATION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

MILDER GARCIA BERMUDEZ,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 26-439

Agency No.
A216-482-802

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.***
Concurrence by Judge TUNG.

Milder Garcia Bermudez, a native and citizen of Colombia and a citizen of
Venezuela, petitions for review of a decision of the Board of Immigration Appeals

* 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.

(“BIA”) dismissing her appeal from an immigration judge’s denial of asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”), and denying her motion to remand. We have jurisdiction under 8 U.S.C. § 1252. We deny the petition.

Because Garcia Bermudez does not “specifically and distinctly” challenge the agency’s denial of asylum, withholding of removal, or CAT protection in her opening brief, any such challenges are forfeited. *Hernandez v. Garland*, 47 F.4th 908, 916 (9th Cir. 2022) (quoting *Velasquez-Gaspar v. Barr*, 976 F.3d 1062, 1065 (9th Cir. 2020)). Garcia Bermudez instead argues that the BIA erred by failing to terminate or administratively close proceedings, or, alternatively, remand to the immigration judge, based on her pending Form I-485 adjustment of status application.

To the extent Garcia Bermudez argues that the BIA should have terminated or administratively closed proceedings based on her pending adjustment application, those arguments are unexhausted. Garcia Bermudez’s motion before the BIA sought remand to the immigration court so that proceedings could be held in abeyance pending USCIS’s decision on the Form I-485. It did not ask the BIA to terminate or administratively close proceedings on that basis. Because the government has invoked 8 U.S.C. § 1252(d)(1), we decline to consider those

unexhausted arguments. *Suate-Orellana v. Garland*, 101 F.4th 624, 629 (9th Cir. 2024).

The BIA did not abuse its discretion in denying remand. *See Alcarez-Rodriguez v. Garland*, 89 F.4th 754, 759 (9th Cir. 2023). The formal requirements of a motion to remand and a motion to reopen are the same. *Id.* A motion to reopen “for the purpose of submitting an application for relief must be accompanied by the appropriate application for relief and all supporting documentation.” 8 C.F.R. § 1003.2(c)(1); *see Alcarez-Rodriguez*, 89 F.4th at 760. The BIA may deny remand when the petitioner fails to establish a prima facie case for relief, meaning “a reasonable likelihood that the petitioner would prevail on the merits.” *Fonseca-Fonseca v. Garland*, 76 F.4th 1176, 1179 (9th Cir. 2023).

The BIA permissibly denied remand because Garcia Bermudez did not submit a copy of her Form I-485 or sufficient supporting evidence demonstrating prima facie eligibility for adjustment of status. *See Young Sun Shin v. Mukasey*, 547 F.3d 1019, 1025 (9th Cir. 2008). Garcia Bermudez’s motion included a marriage certificate, her husband’s naturalization certificate, and a USCIS notice canceling her adjustment interview. Although those materials indicated that USCIS had scheduled and later canceled an adjustment interview, they did not provide the BIA with the Form I-485, the substance of the application, or sufficient

evidence to establish a reasonable likelihood that Garcia Bermudez was eligible for adjustment. *See* 8 C.F.R. § 1003.2(c)(1); *Fonseca-Fonseca*, 76 F.4th at 1179.

Garcia Bermudez's due process claim also fails because she has not shown that the proceedings were fundamentally unfair or that any alleged error caused prejudice. *See Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014); *Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000).

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

PETITION DENIED.¹

¹ Garcia Bermudez's motion for judicial notice, Dkt. 11, is denied. Even assuming the materials accurately reflect the status of Garcia Bermudez's Form I-485, they do not cure Garcia Bermudez's failure to provide the BIA with the application and sufficient supporting documentation.

SEP 18 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS*Garcia Bermudez v. Blanche*, Case No. 26-439

TUNG, Circuit Judge, concurring:

I concur in the denial of Petitioner’s motion for stay of removal, but the stay should have been lifted much sooner. Petitioner filed a motion for stay of removal, Dkt. 2, on January 21, 2026. The skeletal motion made no effort whatsoever to demonstrate eligibility for a stay under *Nken v. Holder*, 556 U.S. 418 (2009). Instead, it requested fourteen days to submit a supplemental brief addressing the merits of Petitioner’s request, as procedurally provided for under this Court’s General Order 6.4(c)(2). This request was automatically granted. Dkt. 4. Fourteen days came and went with no supplemental brief. Yet the stay remained in effect. The Government then opposed the stay after Petitioner failed to submit the required supplemental briefing. Dkt. 8 (Feb. 5, 2026). Still, the stay remained in place. Only several months later was this case assigned to a merits panel, which today denies the motion and lifts the stay. As several of my colleagues and I have pointed out, our “manifestly unlawful” practice of reflexively granting prolonged stays of removal needs to be fixed; hopefully, it will soon. *See Rojas-Espinoza v. Bondi*, 160 F.4th 991, 1002 (9th Cir. 2025), *reh’g en banc granted, opinion vacated*, 167 F.4th 1069 (9th Cir. 2026); *Rojas-Espinoza v. Bondi*, 167 F.4th 1069, 1075–78 (9th Cir. 2026) (VanDyke, J., dissenting); *Rojas-Espinoza v. Bondi*, 169 F.4th 967, 970 (9th

Cir.), *vacated sub nom. Rojas-Espinoza v. Blanche*, 177 F.4th 1270 (9th Cir. 2026)

(Tung, J., separate statement).