

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 6 2026

FOR THE NINTH CIRCUIT

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

ENILDA MARICELA GUZMAN-  
LOPEZ; E. C. I. C.-G.,

Petitioners,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 25-3463

Agency Nos.

A209-984-458

A209-984-452

MEMORANDUM\*

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

Argued and Submitted September 1, 2026  
San Francisco, California

Before: BYBEE and BRESS, Circuit Judges, and SILVER, District Judge.\*\*

Enilda Maricela Guzman Lopez petitions for review of the decision by the  
Board of Immigration Appeals (BIA) to affirm an immigration judge's (IJ's) denial

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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 Honorable Roslyn O. Silver, United States District Judge for the  
District of Arizona, sitting by designation.

of her applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT).<sup>1</sup> Petitioner challenges the BIA’s assessment of her proposed particular social group (PSG), the nexus between her proposed PSG and the harm she suffered, and the specific intent of her harassers. We have jurisdiction pursuant to 8 U.S.C. § 1252 and review the BIA’s decision as well as any portion of the IJ’s decision expressly adopted by the BIA. *Umana-Escobar v. Garland*, 69 F.4th 544, 547, 550 (9th Cir. 2023). Factual determinations are reviewed for substantial evidence, and legal determinations are reviewed de novo. *Id.* at 550. For the reasons stated below, we deny the petition with respect to the asylum and withholding claims but grant it with respect to the CAT claim.

1. We only review arguments that Petitioner has exhausted. *See* 8 U.S.C. § 1252(d)(1). “Exhaustion requires a non-constitutional legal claim to the court on appeal to have first been raised in the administrative proceedings below, and to have been sufficient to put the BIA on notice of what was being challenged.” *Umana-Escobar*, 69 F.4th at 550 (quoting *Bare v. Barr*, 975 F.3d 952, 960 (9th Cir. 2020)). Here, Petitioner failed to exhaust a proposed PSG of “Guatemalan women” before the BIA. She referenced her sex and nationality only in scattershot and disparate ways that failed to provide sufficient notice of the proposed PSG, especially when

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<sup>1</sup> Guzman Lopez’s daughter, E. C. I. C. G., is a derivative beneficiary of her mother’s application for asylum. Adopting the language used in Petitioner’s briefs, we refer solely to “Petitioner” (Guzman Lopez).

compared to the proposed PSG she explicitly articulated: “Girls and women who are victimized and murdered in Guatemala due to a combination of societal attitudes which debase their lives, active targeting, and persecution by gangs working with law enforcement and the refusal of the Guatemalan government to protect these vulnerable citizens.” Although “IJs and the BIA are not free to ignore arguments raised by a petitioner,” they are not ignoring an argument if it was not properly raised. *Antonio v. Garland*, 58 F.4th 1067, 1075 (9th Cir. 2023) (quoting *Sagaydak v. Gonzales*, 405 F.3d 1035, 1040 (9th Cir. 2005)).

2. With respect to the PSGs that Petitioner sufficiently presented to the BIA, substantial evidence supports the BIA’s conclusion that the abuse Petitioner endured in Guatemala was attributable to the general criminality of the gangs operating there, not on account of Petitioner’s membership in her proposed PSGs. *See, e.g., Zetino v. Holder*, 622 F.3d 1007, 1015–16 (9th Cir. 2010). Accordingly, we deny the petition with respect to Petitioner’s asylum and withholding of removal claims.

3. The BIA’s CAT-claim analysis reflected error. In its decision, the BIA asserted that it affirmed the denial of Petitioner’s CAT claim based on the IJ’s stated rationale—namely, that Petitioner “failed to establish the specific intent of torture.” The IJ concluded that because the gang members’ “intention was the extortion and the criminal conduct of extortion and requiring the respondent to pay a quota” and

physical harm was only a means to that financial end, Petitioner failed to demonstrate that her assailants had the specific intent to torture her.

The IJ's factual conclusion is not supported by substantial evidence. Specific intent requires that the perpetrators intend to inflict "severe pain and suffering," even if some other goal ultimately motivates the abuse. 8 C.F.R. § 1208.18(a)(1) (defining torture "as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . coercing him or her or a third person"). The IJ recited the standard but provided no factual basis for evaluating the specific intent of the gang members here. *Cf. Al-Saher v. I.N.S.*, 268 F.3d 1143, 1147 (9th Cir. 2001) (granting a petition for review of a denied CAT claim where the petitioner was subjected to sustained beatings for a month and burned with cigarettes over an eight- to ten-day period following arrests, actions that "were specifically intended by officials to inflict severe physical pain"). That the gang members were seeking to extort money from Petitioner does not mean that they lacked the requisite specific intent to torture her in pursuit of that end.

The post hoc rationalizations offered in Respondent's briefing to support the BIA's specific intent conclusion are inapposite. "We 'cannot affirm the BIA on a ground upon which it did not rely.'" *Arrey v. Barr*, 916 F.3d 1149, 1157 (9th Cir. 2019) (quoting *Navas v. I.N.S.*, 217 F.3d 646, 658 n.16 (9th Cir. 2000)). Because the BIA affirmed the denial of CAT relief "for the reasons stated by the Immigration

Judge,” its decision was not supported by substantial evidence. We grant the petition with respect to petitioner’s CAT claim and remand for further proceedings.

**PETITION GRANTED in part and DENIED in part; REMANDED.<sup>2</sup>**

Each party shall bear its own costs.

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<sup>2</sup> The motion to stay removal is granted. *See* Dkt. No. 2. The stay of removal remains in place until the mandate issues.