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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRENDA JULISSA MENJIBAR COTO;
E.-M.-M.,

Petitioners,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 25-6322

Agency Nos.
A220-939-874
A220-939-875

MEMORANDUM*

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

Argued and Submitted September 2, 2026
San Francisco, California

Before: S.R. THOMAS, BYBEE, and BRESS, Circuit Judges;
Concurrence by Judge BRESS.

Brenda Julissa Menjibar Coto and her daughter petition for review of the decision of the Board of Immigration Appeals (BIA) affirming the denial by an immigration judge (IJ) of their applications for asylum, withholding of removal,

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

and protection under the Convention Against Torture (CAT).¹ We have jurisdiction under 8 U.S.C. § 1252. We deny in part and grant in part the petition for review, and we remand for further proceedings.

1. Substantial evidence supports the agency’s determination that Menjibar Coto failed to establish she suffered harm that rises to the level of persecution. The agency reasonably concluded that a single, vague threat Menjibar Coto received while at a soccer field did not amount to past persecution. *See Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019) (“[C]ases with threats alone, particularly anonymous or vague ones, rarely constitute persecution.”); *see also Lata v. INS*, 204 F.3d 1241, 1245 (9th Cir. 2000). The only interaction between Menjibar Coto and a gang member involved a vague threat that led to no harm, *see Sharma v. Garland*, 9 F.4th 1052, 1065 (9th Cir. 2021), and the record does not compel the conclusion that any gang member has shown a continuing interest in her since she left Honduras, *see Gonzalez-Lara v. Garland*, 104 F.4th 1109, 1116 (9th Cir. 2024). Nor is the evidence of harm to Menjibar Coto’s family sufficient to render her fear of persecution objectively reasonable. *See, e.g., Tamang v. Holder*, 598

¹ Each petitioner submitted a separate application for asylum, withholding of removal, and CAT protection based on the facts contained in Menjibar Coto’s application. Menjibar Coto’s daughter is also a derivative beneficiary of her mother’s application. For ease of reference, we refer to both petitioners as Menjibar Coto.

F.3d 1083, 1094-95 (9th Cir. 2010). In particular, substantial evidence supports the agency's conclusion that the incident involving Menjibar Coto's brother concerned a personal dispute unrelated to her. Therefore, the agency did not err in determining that Menjibar Coto was not entitled to a presumption of a well-founded fear of future persecution.

2. However, the agency erred in determining that Menjibar Coto did not have a well-founded fear of future persecution on account of a pattern or practice of persecution of "Women in Honduras." The agency concluded that the proposed social group was categorically too broad to be recognized under the applicable statute. But that conclusion is foreclosed by circuit precedent. *See Perdomo v. Holder*, 611 F.3d 662, 667-69 (9th Cir. 2010). Therefore, we must vacate the BIA's pattern or practice holding and remand for further consideration by the agency on that issue.

3. In her appeal to the BIA, Menjibar Coto did not meaningfully challenge the IJ's denial of withholding of removal, so the BIA appropriately deemed it waived. We thus do not address her withholding claim because it is unexhausted. *See Magana-Magana v. Bondi*, 129 F.4th 557, 573-74 (9th Cir. 2025); *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 820-21 (9th Cir. 2003).

4. Substantial evidence supports the BIA's determination that Menjibar Coto failed to establish a particularized risk of torture by or with the acquiescence of a government official in Honduras. The record does not compel the conclusion that local authorities in Honduras are likely to subject Menjibar Coto to torture, or that they would consent or acquiesce to gang-related crime. *See Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014).

PETITION DENIED IN PART; GRANTED IN PART; REMANDED.²

² The motion for a stay of removal (Dkt. Nos. 7, 12) is granted. The stay of removal remains in place until the mandate issues. Each party shall bear its own costs. *See* Fed. R. App. P. 39(a)(4).

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BRESS, Circuit Judge, with whom BYBEE, Circuit Judge, joins, concurring:

I concur in the court's decision, although I do so reluctantly when it comes to granting the petition based on petitioner's proposed particular social group of "women in Honduras." In light of our decision in *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010), the court correctly concludes that the Board of Immigration Appeals (BIA) erred in dismissing "women in Honduras" out of hand as not legally cognizable. But I have concerns with the *Perdomo* decision and write separately to explain why we should revisit it.

An alien is entitled to withholding of removal to a foreign country if "the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A); *see also* 8 U.S.C. § 1158(b)(1)(B)(i) (same for asylum, based on the definition of "refugee" in 8 U.S.C. § 1101(a)(42)(A)). In *Perdomo*, the petitioner asserted a proposed particular social group of "all women in Guatemala." 611 F.3d at 663. We held that the BIA erred in rejecting this group as overbroad and "a mere demographic division of the population." *Id.* Relying on BIA precedent and the then-prevailing agency interpretation of "particular social group," *Perdomo* held that "women in a particular country, regardless of ethnicity or clan membership, could form a particular social group." *Id.* at 667. *Perdomo*

explained that “we have rejected the notion that a persecuted group may simply represent too large a portion of a population to allow its members to qualify for asylum.” *Id.* at 669. *Perdomo* did not decide whether the proposed group of “all women in Guatemala” was legally cognizable. Instead, it remanded for the BIA to make that determination in the first instance. *Id.*

In the years since *Perdomo*, we have routinely granted petitions for review based on *Perdomo* when, as here, the BIA rejects without further analysis a “women in Country X” particular social group as not cognizable. Although these decisions were not published, the large number of decisions indicates that other panels have understood *Perdomo* as requiring these remands, as we have in this case. *See, e.g., Torres Valdivia v. Barr*, 777 F. App’x 251, 252 (9th Cir. 2019) (remanding a withholding of removal claim where the BIA “concluded that ‘all women in Mexico’ lacks particularity because this group ‘could include persons of any age or background’”); *Martinez-Mejia v. Barr*, 825 F. App’x 421, 423 (9th Cir. 2020); *Hernandez-Lopez v. Garland*, 2022 WL 596856, at *2 (9th Cir. Feb. 28, 2022); *Perez v. Bondi*, 2026 WL 674249, at *2 (9th Cir. Mar. 10, 2026); *Rodriguez v. Garland*, 2023 WL 2675064, at *1 n.1 (9th Cir. Mar. 29, 2023); *Silvestre-Mendoza v. Sessions*, 729 F. App’x 597, 598 (9th Cir. 2018); *Ticas-Guillen v. Whitaker*, 744 F. App’x 410, 410–11 (9th Cir. 2018).

I do not read our cases to have held that “women in Country X” groups are necessarily cognizable, but rather that the BIA errs if it dismisses these groups without further consideration of the record evidence. The result of our decisions is that petitioners can gain remands to the agency for further consideration. It is not apparent that petitioners have ultimately secured immigration relief on this basis, whether in our court or before the agency. Still, *Perdomo* has prolonged the resolution of petitions that should be denied outright.

With the exception of an extraordinary case in which a petitioner brings forth evidence showing that all women in a country are subject to common mistreatment, *Perdomo* was wrongly decided. Our more recent cases have adopted the BIA’s modern formulation of the particular social group concept, as set forth in *Matter of W-G-R-*, 26 I. & N. Dec. 208 (BIA 2014), and *Matter of M-E-V-G-*, 26 I. & N. Dec. 227 (BIA 2014). See *Reyes v. Lynch*, 842 F.3d 1125, 1135–36 (9th Cir. 2016); *Macedo Templos v. Wilkinson*, 987 F.3d 877, 882 (9th Cir. 2021). This requires applicants to “establish that the group they claim 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*, 987 F.3d at 882 (quoting *M-E-V-G-*, 26 I. & N. Dec. at 237). The “particularity” requirement ensures that “overbroad” groups are not cognizable. *Id.* (quoting *W-G-R-*, 26 I. & N. Dec. at 214).

Although sex is an immutable characteristic, the proposed particular social group of “women in Honduras” is overbroad and therefore fails the “particularity” requirement. Such a group would include all women in the country, regardless of age, ethnicity, socio-economic status, religion, or any other differentiator. Such a group is simply too broad under the prevailing understanding of a particular social group. Indeed, since *Perdomo* we have rejected proposed particular social groups that are far less broad. *See id.* (rejecting a proposed particular social group of wealthy business owners in Mexico as lacking particularity “because it could include large swaths of people and various cross-sections of a community”); *Mendoza-Alvarez v. Holder*, 714 F.3d 1161, 1164 (9th Cir. 2013) (rejecting a proposed particular social group of insulin-dependent diabetics because it included “large numbers of people with different conditions and in different circumstances” and “swe[pt] up a large and disparate population”); *Villegas Sanchez v. Garland*, 990 F.3d 1173, 1181 (9th Cir. 2021) (rejecting the proposed particular social groups of “Salvadoran women who refuse to be girlfriends of MS gang members” and “Salvadoran women who refuse to be victims of violent sexual predation of gang members” for lack of social distinction). If these groups are not cognizable, it is hard to see how “women in Honduras” could be.

In a recent published decision, *Matter of K-E-S-G-*, 29 I. & N. Dec. 145 (BIA 2025), the BIA explained the matter quite well. As the BIA reasoned, “[g]roups

defined solely by the characteristics of sex and nationality contain no narrowing features” and are therefore “too broad and diffuse” to qualify as particular social groups. *Id.* at 151. Further, treating such a group as cognizable “would essentially create another protected ground under the INA—that of sex—to add to the grounds of race, religion, nationality, membership in a particular social group, or political opinion.” *Id.* But had Congress “intended sex in and of itself to be a protected ground,” it “could have specifically listed it as a separate ground.” *Id.*

Perdomo runs contrary to these compelling points. For support, *Perdomo* relied on *Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005). *See Perdomo*, 611 F.3d at 667. This reliance was misplaced. In *Mohammed*, we held that the petitioner could assert “Somalian females” as a particular social group. 400 F.3d at 797. But that was because her claim was based on a fear of female genital mutilation, and the record showed that female genital mutilation was “deeply imbedded in the culture throughout the nation and performed on approximately 98 percent of all females.” *Id.* Further, “there is little question that genital mutilation occurs to a particular individual *because* she is a female.” *Id.* at 798.

A country in which female genital mutilation is rampantly practiced is an example of the type of extraordinary evidentiary circumstances that would support a particular social group defined solely by sex and nationality. That may explain why even the BIA’s recent decision in *K-E-S-G-* brackets out such groups. *See*

K-E-S-G-, 29 I. & N. Dec. at 151 n.8 (“The present case does not involve a claim of female genital mutilation and our holding in this case does not affect the viability of such claims in the future.”). But *Perdomo* erred in taking the extraordinary case of countries that practice female genital mutilation as an example of a supposed broader rule under which “women in Country X” groups may be cognizable. The conclusion does not follow. These groups in the main are overbroad and therefore not particular, and the BIA should be allowed to easily reject them as such, as it did here.

To this point, various other circuits have rejected the logic of *Perdomo*. See *Gomez v. INS*, 947 F.2d 660, 664 (2d Cir. 1991) (“Possession of broadly-based characteristics such as youth and gender will not by itself endow individuals with membership in a particular group.”); *Chavez-Chilel v. Att’y Gen. U.S.*, 20 F.4th 138, 146 & n. 8 (3d Cir. 2021) (holding that “‘Guatemalan women’ is not a cognizable PSG” because it “lacks particularity” and declining to follow *Perdomo*); *Jaco v. Garland*, 24 F.4th 395, 402, 407 (5th Cir. 2021) (rejecting “Honduran women unable to leave their domestic relationships” as non-cognizable because the “group is neither particularized nor socially distinct” and noting that “without the illicit element of persecution, the group ‘Honduran women’ is even less particularized”); *Cristales-de Linares v. Bondi*, 161 F.4th 401, 410, 412 (6th Cir. 2025) (holding that “‘Salvadoran women’ is not a cognizable PSG” because “[g]roups including all country members of a particular age or sex generally encompass large, diverse

portions of the population and thus fail the particularity requirement”); *Safaie v. INS*, 25 F.3d 636, 640 (8th Cir. 1994) (noting that the petitioner “asserts that Iranian women, by virtue of their innate characteristic (their sex) and the harsh restrictions placed upon them, are a particular social group” but concluding that “this category is overbroad, because no factfinder could reasonably conclude that all Iranian women had a well-founded fear of persecution based solely on their gender”), *superseded by statute on other grounds*; *Maatougui v. Holder*, 738 F.3d 1230, 1241 (10th Cir. 2013) (“[G]ender alone is not a sufficiently distinct ‘social group’ on which to base a ‘refugee’ finding.”); *Amezcu-Preciado v. U.S. Att’y Gen.*, 943 F.3d 1337, 1344 (11th Cir. 2019) (“[W]hile the members of [the petitioner’s] proposed social group arguably share the immutable characteristic of being women, that characteristic alone is insufficient to make them cognizable as a particular social group under the INA.”).

The government in this case urges us not to follow *Perdomo* because it was based on an earlier agency interpretation of the “particular social group” concept. *See* 611 F.3d at 665–66, 669 (citing *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985)). Although this argument is not without some force, I conclude that the agency definition of “particular social group” has not changed so much since *Perdomo* that we can decline to treat that case as binding circuit precedent. *See Reyes*, 842 F.3d at 1131 (“The BIA explained that its articulation of the ‘particularity’ and ‘social

visibility’ requirements was not a departure from or abrogation of its construction of a ‘particular social group’ in *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985).”); *see also Perdomo*, 611 F.3d at 666 (acknowledging the particularity requirement).

If I were deciding this case on a blank slate, I would hold that “women in Honduras” is too broad to constitute a particular social group. When a petitioner, as here, does not come forward with the extraordinary evidentiary showing by which a factfinder could conclude that all women in a particular country suffer from a common mistreatment, the agency should be able to reject as legally non-cognizable proposed social groups based only on sex and nationality. The BIA here did not err. *Perdomo* is based on an untenable understanding of the immigration laws and unnecessarily prolongs immigration proceedings. We should revisit *Perdomo* as an en banc court at the earliest opportunity.