

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 23 2026

FOR THE NINTH CIRCUIT

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

CARLOS AMADO VALENCIA-
VALENCIA *et al.*,

Petitioners,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 24-3052

Agency Nos.

A240-261-323

A220-960-273

A220-960-274

A220-960-275

MEMORANDUM*

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

Submitted October 19, 2026**
San Francisco, California

Before: CALLAHAN and LEE, Circuit Judges, and EZRA,** District Judge.

Petitioner Carlos Amado Valencia-Valencia, his wife Katherine Portocarrero-Rios, and their two minor children M.P. and L.P. challenge the Board of Immigration

* 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 David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

Appeals’ (“BIA”) dismissal of their appeal. They petition for review of the BIA’s affirmance of an Immigration Judge’s (“IJ”) decision denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. “Our review is limited to those grounds explicitly relied upon by the [BIA].” *Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1075 (9th Cir. 2020) (quoting *Budiono v. Lynch*, 837 F.3d 1042, 1046 (9th Cir. 2016)). “Where the BIA writes its own decision, as it did here, we review the BIA’s decision, except to the extent it expressly adopts the IJ’s decision.” *Id.* at 1075–76 (quoting *Rodriguez v. Holder*, 683 F.3d 1164, 1169 (9th Cir. 2012)). “[T]he BIA is entitled to look to the brief for an explication of the issues that petitioner is presenting to have reviewed,” and a failure to include an issue in one’s brief to the BIA constitutes waiver. *Abebe v. Mukasey*, 554 F.3d 1203, 1207–08 (9th Cir. 2009) (en banc). The Court reviews *de novo* the BIA’s determination that an issue was waived. *Alanniz v. Barr*, 924 F.3d 1061, 1065 (9th Cir. 2019). And “[a] panel may only affirm on the grounds set forth in the BIA’s decision.” *Diaz Reynoso*, 968 F.3d at 1088.

1. The Government argues that Petitioners’ waiver of dispositive issues before the BIA is determinative here. The Government is correct. *See Abebe*, 554 F.3d at 1207–08. The BIA did not err when it determined that Petitioners had waived their ability to challenge certain dispositive issues on appeal. This is because Petitioners

proposed a cognizable particular social group (“PSG”) (or a different protected ground of their eligibility for asylum and withholding of removal) for the first time on appeal to BIA. *See Honcharov v. Barr*, 924 F.3d 1293, 1297 (9th Cir. 2019) (per curiam) (“[T]he Board did not err when it declined to consider [the petitioner’s] proposed particular social groups that were raised for the first time on appeal.”)).

2. Additionally, Petitioners’ opening brief in this Court did not meaningfully challenge the BIA’s findings on the two new PSGs they described—*i.e.*, (1) a “person taking concrete steps to oppose gang activity and gang persecution” and (2) “victims of gang violence and persecution.” They had previously waived the ability to challenge the IJ’s PSG determination by omitting any such challenge from their briefing to the BIA. *See Matter of R-A-M-*, 25 I. & N. Dec. 657, 658 n.2 (BIA 2012). This Court cannot now review the dispositive issues that were waived before the BIA. *Id.*; *see also Bingxu Jin v. Holder*, 748 F.3d 959, 964 n.2 (9th Cir. 2014). Petitioners also waived their CAT claim because they did not meaningfully challenge the agency’s finding that the Colombian government would not acquiesce to any future torture. Accordingly, the Court finds no error in the BIA’s holding.

The Petition is **DENIED**.

The motion to stay removal (Docket Entry No. 2) is denied.