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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ASTRI YENIFER RODRIGUEZ JIMENEZ; M. Y. R. R., Petitioners, v. TODD BLANCHE, Attorney General, Respondent.	No. 26-931 Agency Nos. A241-389-425 A241-389-426 MEMORANDUM[*]

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

Submitted October 26, 2026[**]
Pasadena, California

Before: PAEZ, OWENS, and SANCHEZ, Circuit Judges.

Astri Yenifer Rodriguez Jimenez ("Rodriguez Jimenez") and her derivative minor child, natives and citizens of Guatemala, petition for review of the Board of Immigration Appeals' ("BIA") decision dismissing their appeal from an

[*] 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).

immigration judge's ("IJ") decision denying asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). "Where, as here, the BIA cites [*Matter of Burbano*, 20 I. & N. Dec. 872 (BIA 1994),] and also provides its own review of the evidence and law, we review both the IJ's and the BIA's decisions." *Ali v. Holder*, 637 F.3d 1025, 1028 (9th Cir. 2011). "We review the denial of asylum, withholding of removal and CAT claims for substantial evidence." *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019). "Under this standard, we must uphold the agency determination unless the evidence compels a contrary conclusion." *Id.* As the parties are familiar with the facts, we do not recount them here. We deny in part and grant in part the petition for review.

1. "To be eligible for asylum, a petitioner has the burden to demonstrate the likelihood of 'persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'" *Sharma v. Garland*, 9 F.4th 1052, 1059 (9th Cir. 2021) (quoting 8 U.S.C § 1101(a)(42)(A)). "An applicant alleging past persecution has the burden of establishing that (1) [her] treatment rises to the level of persecution; (2) the persecution was on account of one or more protected grounds; and (3) the persecution was committed by the government, or by forces that the government

was unable or unwilling to control." *Guo v. Sessions*, 897 F.3d 1208, 1213 (9th Cir. 2018) (citation omitted).

Substantial evidence supports the agency's finding that the past harm suffered by Rodriguez Jimenez did not rise to the level of persecution. Rodriguez Jimenez relies on several extortion phone calls she received from unknown individuals. Rodriguez Jimenez testified that these individuals threatened her life and her daughter's life if she did not pay them. They also told her not to leave her house. However, these extortionists never confronted, harmed, or performed any other act of mistreatment against her, her daughter, or other family members. Because these phone calls were anonymous threats without confrontation or other mistreatment, substantial evidence supports the agency's finding that they did not rise to the level of persecution. *See Duran-Rodriguez*, 918 F.3d at 1028 (explaining that "cases with threats alone, particularly anonymous or vague ones, rarely constitute persecution" unless they are "repeated, specific and 'combined with confrontation or other mistreatment'" (citation omitted)).

Substantial evidence also supports the agency's finding that Rodriguez Jimenez did not establish a well-founded fear of future persecution. In the absence of past persecution, Rodriguez Jimenez is not entitled to a presumption of a well-founded fear of future persecution. *Sharma*, 9 F.4th at 1060. As noted above, the past threatening phone calls she received do not rise to the level of persecution, and

she did not contend that she feared or was likely to face a different form of future persecution in Guatemala. Moreover, her brother continues to reside safely in Guatemala. *See id.* at 1066 ("The ongoing safety of family members in the petitioner's native country undermines a reasonable fear of future persecution.").

2. Because substantial evidence supports the denial of asylum, Rodriguez Jimenez necessarily failed to meet the higher showing required for withholding of removal. *See id*.

3. The BIA erred by finding that Rodriguez Jimenez waived the IJ's denial of her CAT claim by failing to "meaningfully challenge[]" that issue. A petitioner must simply put "'the BIA on notice' of a challenge such that the BIA 'had an opportunity to pass' on it." *Martinez v. Barr*, 941 F.3d 907, 922 (9th Cir. 2019) (citation omitted).

Here, Rodriguez Jimenez sufficiently put the BIA on notice of her challenge to the IJ's denial of her CAT claim. In her brief to the BIA, she did not merely mention CAT protection in passing. *Cf. Alanniz v. Barr*, 924 F.3d 1061, 1068-69 & n.8 (9th Cir. 2019) (finding that BIA did not err in concluding that the petitioner waived the CAT claim where the petitioner's brief to the BIA merely "mentioned" CAT twice and made "no argument for relief under the CAT"). Instead, Rodriguez Jimenez included a separate two-page section in her brief titled "CONVENTION AGAINST TORTURE" where she set forth the CAT standard, pointed to

supporting evidence, and made arguments challenging the IJ's sole reason for denying CAT protection. This was sufficient notice of her challenge to the IJ's denial of the CAT claim, so the BIA erred by deeming it waived.

Because the CAT claim was not reviewed on the merits by the BIA, we do not address it. *See Montes-Lopez v. Gonzales*, 486 F.3d 1163, 1165 (9th Cir. 2007) ("[W]e usually decline to hear the claim unless the BIA does so in the first instance."); *see also I.N.S. v. Orlando Ventura*, 537 U.S. 12, 16 (2002) (per curiam) ("[A] court of appeals should remand a case to an agency for decision of a matter that statutes place primarily in agency hands."). The BIA's adoption of the IJ's decision under *Burbano* is insufficient because where the BIA explicitly declines to reach an unexhausted issue, we interpret the BIA's citation to *Burbano* to incorporate only the portions of the IJ's decision that the BIA decided on the merits. *See Abebe v. Gonzales*, 432 F.3d 1037, 1040-41 & n.4 (9th Cir. 2005) (en banc).

Therefore, the CAT claim is remanded.

PETITION DENIED IN PART AND GRANTED IN PART.[1]

[1] The motion to stay removal, Dkt. No. 2, is granted.