

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 17-13329  
Non-Argument Calendar

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Agency No. A206-910-037

MARIA DE LOURDES CAMACHO VAZQUEZ,  
GERMAN CORTES DIAZ,  
MARIA DE LA CRUZ CORTES CAMACHO,  
ANA PAOLA CORTES CAMACHO,  
JOSE LUIS CORTES CAMACHO,  
YAMILET CORTES CAMACHO,

Petitioners,

versus

U.S. ATTORNEY GENERAL,

Respondent.

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Petition for Review of a Decision of the  
Board of Immigration Appeals

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(May 4, 2018)

Before MARCUS, ROSENBAUM, and JULIE CARNES, Circuit Judges.

PER CURIAM:

Petitioners Maria De Lourdes Camacho Vazquez (“Camacho”) and German Cortes (“Cortes”) Diaz and their minor children,<sup>1</sup> natives and citizens of Mexico, petition for review from the Board of Immigration Appeals’s (“BIA”) order affirming the Immigration Judge’s (“IJ”) denial of their applications for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). Petitioners argue that substantial evidence does not support the BIA’s and IJ’s determination that they failed to establish that they were persecuted or that they would be persecuted on account of a statutorily protected ground. After careful review, we dismiss the petition in part and deny in part.

## **I. BACKGROUND**

### **A. Initiation of Proceedings**

Petitioners arrived in the United States in September 2014. The Department of Homeland Security issued Petitioners notices to appear, charging them as inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being applicants for admission who were not in possession of a valid entry or travel document.

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<sup>1</sup> Both Camacho and her husband Cortes filed applications for asylum, withholding of removal, and relief under the Convention Against Torture and listed their four minor children as derivative beneficiaries.

Petitioners conceded removability and indicated that they would seek relief in the form of asylum, withholding of removal, and CAT relief.

**B. Asylum Application and Merits Hearing**

Cortes and Camacho filed separate applications for asylum, withholding of removal, and CAT relief, alleging that they feared returning to Mexico on account of their membership in a particular social group. Specifically, they alleged that they would be killed for failing to pay a mandatory monthly fee to a criminal organization known as “Los Caballeros Templarios.”

The IJ conducted a merits hearing on Petitioners’ applications. At the hearing, Petitioners indicated that they also feared persecution on account of their political opinion. Cortes testified that he and his wife came to the United States with their children in September 2014. They left Mexico because they were being extorted by a criminal organization known as Los Caballeros Templarios. Their problems with Los Caballeros Templarios began in May 2014, when two people stole their daughter Ana Paola’s cell phone on her way home from school. Approximately one week later, Cortes received a phone call from individuals who did not identify themselves. These individuals informed Cortes that he needed to cooperate by paying \$10,000 pesos per month because he owned a ranch and anybody who owned a business or a ranch needed to cooperate. Cortes told the callers that he did not have the money to pay them. The individuals called back the

next day and threatened to take away one of Cortes's daughters if he did not comply with their demands.

Two days later, two men who identified themselves as Los Caballeros Templarios approached Cortes when he was returning home from work. They were in a truck and the passenger pointed a rifle at Cortes and demanded money. When Cortes said that he did not have the money, the passenger told Cortes that he would have to pay \$5,000 pesos per month or the men would kidnap one of his daughters. Cortes subsequently paid them on five different occasions until he ran out of money. After Cortes told the men that he could not make any more payments, two men approached his wife and daughter in September 2014. The men told his wife that there would be consequences if Cortes did not continue to make payments. That same day, Cortes received another threatening phone call. Thereafter, Cortes received \$15,000 pesos from his brother-in-law and he fled with his family to the United States.

Camacho testified largely about the same events. She realized that her husband was the victim of extortion in September 2014, when she was approached by two men while walking to the bus stop with her daughter. The men were armed and told her that there would be consequences if Cortes did not continue making payments. When she informed Cortes, he told her that the problems began after their daughter Ana Paola's cell phone was stolen in May 2014. Cortes told her that

they were receiving threats because he did not have any more money to pay the gang. Camacho's brother loaned them money and they came to the United States.

The IJ denied Petitioners' applications for asylum, withholding of removal, and relief under CAT. First, the IJ found Camacho and Cortes not credible based on inconsistencies in their testimony, as well their failure to provide sufficient corroborating evidence. However, the IJ determined that even assuming Camacho and Cortes testified credibly, their applications would still be denied because they failed to establish past persecution and a well-founded fear of future persecution on account of a statutorily protected ground. Specifically, the IJ determined that the events described by Camacho and Cortes did not amount to past persecution, as they endured only threats and harassment and they were not physically harmed.

As to a well-founded fear of future persecution, the IJ concluded that Petitioners' fear of persecution based on their political opinion or membership in a particular social group was not objectively reasonable. Specifically, the country condition evidence submitted by Petitioners did not demonstrate a reasonable probability that they would be persecuted by Los Caballeros Templarios if they returned to Mexico. The IJ also determined that Petitioners failed to establish a nexus between the alleged persecution and a statutorily protected ground. The evidence showed that Petitioners were victims of indiscriminate gang violence, not that their failure to make extortion payments was based on an actual or imputed

political opinion. The IJ noted that Petitioners also failed to establish persecution on account of membership in a particular social group, as they failed to articulate or define the group to which they belonged. Finally, the IJ denied Petitioners applications for withholding of removal and CAT relief.

Petitioners appealed to the BIA. They challenged the IJ's adverse credibility determination. They also asserted that they established persecution on account of their political opinion and that the IJ erred by concluding that they failed to show a nexus between the alleged persecution and their imputed political opinion.

The BIA affirmed the IJ's decision and dismissed the appeal. The BIA declined to address the IJ's adverse credibility determination, concluding that even if Petitioners were deemed credible, they failed to meet their burden of proof for establishing asylum and withholding of removal. Specifically, the threats received by Petitioners did not rise to the level of past persecution on account of a protected ground. The BIA also concluded that Petitioners failed to establish a reasonable possibility of future harm on account of their political opinion or membership in a particular social group. Finally, the BIA did not address the IJ's denial of Petitioners' CAT claim, as they did not meaningfully challenge that issue on appeal.

## II. DISCUSSION

### A. Standard of Review

We review the BIA's decision as a final judgment, unless the BIA has expressly adopted the IJ's decision. *Carrizo v. U.S. Att'y Gen.*, 652 F.3d 1326, 1330 (11th Cir. 2011). Where the BIA agrees with the IJ's reasoning, we also review the decision of the IJ to the extent of that agreement. *Kazemzadeh v. U.S. Att'y Gen.*, 577 F.3d 1341, 1350 (11th Cir. 2009). Here, the BIA issued its own opinion but agreed with several aspects of the IJ's reasoning. Thus, we review the BIA's decision and the IJ's decision to the extent of that agreement.

We review factual findings for substantial evidence. *Forgue v. U.S. Att'y Gen.*, 401 F.3d 1282, 1286 (11th Cir. 2005). Under the substantial evidence test, we must affirm a determination "if it is supported by reasonable, substantial, and probative evidence on the record considered as whole." *Id.* (quotation omitted). The evidence is viewed in the light most favorable to the agency's decision, drawing all reasonable inferences in favor of that decision. *Id.* In other words, we will not overturn a factual finding unless the record compels reversal. *Id.* at 1287.

### B. Asylum and Withholding of Removal

An applicant for asylum must meet the Immigration and Nationality Act's definition of refugee. 8 U.S.C. § 1158(b)(1)(A). A refugee is a person who cannot return to his home country due to "persecution or a well-founded fear of

persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. *Id.* § 1101(a)(42)(A). Petitioners contend that they suffered persecution based on their membership in a particular social group and on their political opinion: both of which are included in the above list of statutorily protected grounds. To establish eligibility for asylum, an applicant must demonstrate either past persecution, or a well-founded fear of persecution based on a statutorily protected ground. *Ruiz v. U.S. Att’y Gen.*, 440 F.3d 1247, 1257 (11th Cir. 2006).

To qualify for withholding of removal, an applicant must establish that his life or freedom would be threatened in his country of origin on account of one of the statutorily protected grounds. *See* 8 U.S.C. § 1231(b)(3)(A). The burden is on the alien to show a clear probability of future persecution, meaning that it is “more likely than not” that he will be persecuted or tortured if returning to his country. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1232 (11th Cir. 2005).

1. Membership in a Particular Social Group

Petitioners assert that the record compels the conclusion that they suffered persecution and would face future persecution on account of their membership in a particular social group, specifically, a group identifying as business owners who ideologically oppose drug traffickers. We lack jurisdiction to review Petitioners’ arguments concerning persecution based on their membership in a particular social



group, however, because Petitioners failed to present this claim to the BIA.

*Indrawati v. U.S. Att’y Gen.*, 779 F.3d 1284, 1297 (11th Cir. 2015) (explaining that we lack jurisdiction to review a particular challenge to a final order unless the alien has exhausted his available administrative remedies by raising the challenge before the BIA).

In their brief to the BIA, Petitioners argued only that the IJ’s adverse credibility determination was erroneous and that the IJ erred by concluding that they had not established persecution on account of political opinion. The IJ correctly noted that Petitioners had failed to define or identify which particular social group they belonged to. In fact, the first time Petitioners actually defined their social group—as business owners who oppose drug traffickers—was in the present appeal to this Court. That the BIA *sua sponte* observed that Petitioners had failed to establish that they would suffer harm on account of their membership in a particular social group does not allow Petitioners an exemption from the jurisdictional consequence of their failure to raise this claim before the BIA. *See Amaya-Artunduaga v. U.S. Att’y Gen.* 463 F.3d 1247, 1251 (11th Cir. 2006) (concluding that this Court lacks jurisdiction over unexhausted arguments even if

the BIA addresses them *sua sponte*).<sup>2</sup> Accordingly, we dismiss this portion of the petition for review.

## 2. Political Opinion

Petitioners argue that the BIA's and IJ's determination that they failed to establish persecution on account of their political opinion is not supported by substantial evidence. Specifically, Petitioners argue that the cumulative harm they suffered was more than enough to demonstrate past persecution. They also contend that Los Caballeros Templarios targeted them because of their political opinion: that opinion being their objection to paying money to lawless gangs who have extorted that money.

The IJ found Petitioners not to be credible as to their allegation of the extortionate activity. Because the BIA declined to consider the IJ's adverse credibility determination, however, that ground is not before us and cannot serve as a basis for affirming the BIA's decision. *See Martinez v. U.S. Att'y Gen.*, 446 F.3d 1219, 1221 n.2 (11th Cir. 2006). The BIA upheld the IJ's decision based on its conclusion that (1) the conduct described by Petitioners did not constitute persecution and (2) even if it did, Petitioners failed to show that they had been—or would be—persecuted based on a political opinion. As to the first ground, the BIA

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<sup>2</sup> To the extent Petitioners attempt to raise a claim that there is a “pattern or practice” of persecution by drug traffickers in Mexico against business owners, we also conclude that Petitioners failed to exhaust this argument to the BIA. *See Indrawati*, 779 F.3d at 1297.

noted that “the alleged events wherein the [Petitioners] were threatened, but never physically harmed, after refusing to pay the extortion demands of the criminal organization, do not satisfy the [Petitioners’] burden of demonstrating that they were targeted for harm rising to the level of persecution.” We do not have to reach the question whether the described conduct constituted persecution, however, because it is so obvious that Petitioners’ claim fails on the second ground, as we now explain.

An alien must show a nexus between the persecution he suffered or fears and a statutorily protected ground “by offering credible, direct, and specific evidence in the record.” *See Rodriguez Morales v. U.S. Att’y Gen.*, 488 F.3d 884, 890 (11th Cir. 2007) (quotations omitted). Further, the alien must show that the statutorily protected ground “was or will be at least one central reason for persecuting the applicant.” 8 U.S.C. § 1158(b)(1)(B)(i). Stated another way, the applicant must demonstrate that he will be persecuted “because of” the protected ground. *See Sanchez v. U.S. Att’y Gen.*, 392 F.3d 434, 438 (11th Cir. 2004) (emphasis omitted) (explaining that a petitioner had to show that guerillas persecuted her because of her political opinion).

Substantial evidence supports the BIA’s and IJ’s determination that Petitioners failed to establish that they were or would be targeted on account of a political opinion. Petitioners did not present any evidence showing that they had a

political opinion, let alone that they were targeted because of that opinion. Cortes admitted that he and his wife were not members of any political organizations and that they had never expressed any political opinion. Nor does the evidence show that the Los Caballeros Templarios members who allegedly extorted money from Petitioners were motivated by Petitioners' politics as opposed to a desire to obtain money. Indeed, we have held that a refusal to cooperate with guerillas or to pay a war tax does not establish persecution on account of political opinion. *See Rivera v. U.S. Att'y Gen.*, 487 F.3d 815, 822 (11th Cir. 2007); *see also Sanchez*, 392 F.3d at 438.

Additionally, the record does not show that Los Caballeros Templarios considered Petitioners' failure to make the demanded payments to constitute a political expression. *See Rivera*, 487 F.3d 821–22 (explaining that a petitioner must show that the guerillas will persecute him “because of” of his political opinion, and not just his refusal to cooperate (quoting *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 488 (1992))). Instead, assuming the truth of Petitioners' allegations, they were at most victims of general criminal activity and extortion, which is a terrible thing, but it does not constitute persecution based on political opinion. *See Ruiz v. U.S. Att'y Gen.*, 440 F.3d 1247, 1258 (11th Cir. 2006) (“[E]vidence that either is consistent with acts of private violence or the petitioner's failure to cooperate with guerillas, or that merely shows that a person has been the victim of criminal

activity, does not constitute evidence of persecution based on a statutorily protected ground.”). Thus, substantial evidence supports the BIA’s and IJ’s denial of Petitioners’ applications for asylum and withholding of removal.<sup>3</sup>

### **C. CAT Relief**

Finally, Petitioners challenge the agency’s denial of their claim for relief under CAT. Yet, Petitioners did not challenge the IJ’s denial of their CAT claim in their brief to the BIA. In fact, the BIA noted Petitioners’ failure to make any argument pertaining to CAT relief its opinion affirming the IJ’s decision. Because Petitioners did not exhaust their administrative remedies with respect to this claim, we lack jurisdiction to review their arguments on appeal. *See Indrawati*, 779 F.3d at 1297.

### **III. CONCLUSION**

For the foregoing reasons, we dismiss the petition for review in part and deny in part.

**PETITION DISMISSED IN PART AND DENIED IN PART.**

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<sup>3</sup> Because Petitioners failed to meet the less onerous standard to support their claim for asylum, they cannot meet the more stringent burden for withholding of removal. *See Forgue*, 401 F.3d at 1288 n.4 (explaining that a petitioner who fails “to establish a claim of asylum on the merits . . . necessarily fails to establish eligibility for withholding of removal”).