

United States Court of Appeals for the Fifth Circuit

No. 25-60219
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 27, 2026

Lyle W. Cayce

Clerk

MELVIN GEOVANNY NUNEZ MORENO; ANA MARGARITA
HERNANDEZ CARRANZA; ANA PAOLA NUNEZ HERNANDEZ,

Petitioners,

versus

PAMELA BONDI, *U.S. Attorney General,*

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
Agency Nos. A206 967 338,
A206 967 339, A206 967 340

Before BARKSDALE, GRAVES, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Petitioners Melvin Geovanny Nunez Moreno, his wife, Ana Margarita Hernandez Carranza, and his minor daughter, Ana Paola Nunez Hernandez, natives and citizens of Honduras, petition for review of the Board of Immigration Appeals' (BIA) affirming an Immigration Judge's (IJ) denying

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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Moreno's application for asylum, withholding of removal, and relief under the Convention Against Torture (CAT). (Moreno's wife and daughter are derivative beneficiaries of his asylum claim. *See* 8 U.S.C. § 1158(b)(3)(A) (providing spouse and child of alien granted asylum may be granted same status)).

Our court reviews the BIA's decision and considers the IJ's decision only to the extent it influenced the BIA. *Orellana-Monson v. Holder*, 685 F.3d 511, 517 (5th Cir. 2012). The BIA's factual findings are reviewed for substantial evidence; its legal conclusions, *de novo*. *Id.* Findings of fact, including an applicant's eligibility for asylum, withholding of removal, and relief under CAT, are reviewed under the substantial-evidence standard. *E.g., Chen v. Gonzales*, 470 F.3d 1131, 1134 (5th Cir. 2006). Under this standard, our court will not disturb the BIA's decision unless the evidence "compels" a contrary conclusion. *E.g., Revencu v. Sessions*, 895 F.3d 396, 401 (5th Cir. 2018) (emphasis in original) (citation omitted).

As an initial matter, Moreno contends the BIA erred in relying on our court's precedent. His contention fails. *See Arce-Vences v. Mukasey*, 512 F.3d 167, 172 (5th Cir. 2007) ("The precedents of this court bind the [BIA] when it considers an appeal from an [IJ] in the Fifth Circuit."); *United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013) (noting "only an intervening change in the law . . . permits a subsequent panel to decline to follow a prior Fifth Circuit precedent").

Turning to Moreno's asylum and withholding-of-removal contentions, he asserts the BIA erred in concluding his claimed particular social groups (PSG)—"Honduran business owners with perceived wealth" and "Honduran men who refuse to participate in gang-related activities on account of moral, religious, and sociopolitical beliefs"—are not cognizable. *See Vazquez-Guerra v. Garland*, 7 F.4th 265, 269–70 (5th Cir. 2021) (noting

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applicant for asylum or withholding of removal must show harm based on protected ground, including membership in PSG). Substantial evidence supports the BIA's conclusion. *See Munoz-De Zelaya v. Garland*, 80 F.4th 689, 693 (5th Cir. 2023) (holding "Salvadoran business owners" not cognizable PSG); *Castillo-Enriquez v. Holder*, 690 F.3d 667, 668 (5th Cir. 2012) (holding wealthy citizen of country not cognizable PSG).

Moreover, his contending the BIA erred in not addressing the cognizability of his two-remaining PSGs fails because he did not address them in his BIA brief. The BIA considered the issue waived, and, accordingly, we do not consider it. *See Santos-Alvarado v. Barr*, 967 F.3d 428, 440 n.13 (5th Cir. 2020). We likewise decline to consider his asserting the IJ failed to consider his political-opinion claim because he did not brief it before the BIA, and the Government raises exhaustion. *See* 8 U.S.C. § 1252(d)(1); *Carreon v. Garland*, 71 F.4th 247, 257 (5th Cir. 2023).

As for Moreno's nexus contention, substantial evidence supports the BIA's concluding the gang's threats and harm to his property were not based on a protected ground, *i.e.*, his political opinion. *See Martinez-De Umana v. Garland*, 82 F.4th 303, 312 (5th Cir. 2023) (noting "conduct that is driven by criminal . . . motives does not constitute persecution on account of a protected ground" (citation omitted)); *Garcia v. Holder*, 756 F.3d 885, 890 (5th Cir. 2014).

Regarding CAT relief, Moreno must show, *inter alia*, he more likely than not would be tortured with government consent or acquiescence if repatriated. *See Morales-Morales v. Barr*, 933 F.3d 456, 464 (5th Cir. 2019). Notwithstanding his contention to the contrary, "a government's inability to protect its citizens does not amount to acquiescence". *Qorane v. Barr*, 919

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F.3d 904, 911 (5th Cir. 2019). Accordingly, he does not show the evidence compels a conclusion contrary to that of the BIA. *See Chen*, 470 F.3d at 1134.

DENIED.