

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2255

CESAR AUGUSTO PLAZA RIVERA; V. P.F.,
Petitioners

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of a Final Order
Of the Board of Immigration Appeals
(BIA Nos. A240-849-168 & A240-849-169)
Immigration Judge: Maria I. Akalski

Submitted under Third Circuit LAR 34.1(a)
on June 4, 2026

Before: PORTER, MATEY, and AMBRO, *Circuit Judges*
(Opinion Filed August 21, 2026)

OPINION*

* This disposition is not an opinion of the full Court and under I.O.P. 5.7 does not constitute binding precedent.

AMBRO, *Circuit Judge*

Cesar Augusto Plaza Rivera (“Rivera”) and his daughter (together, “Petitioners”), citizens of Colombia and Panama, respectively, entered the United States in search of sanctuary from sustained threats and extortion attempts by members of a criminal gang known as the Death Line. An Immigration Judge (“IJ”) denied their application for asylum, withholding of removal, and protection under Article 3 of the United Nations Convention Against Torture (“CAT”) and ordered Petitioners to be removed from the country. The Board of Immigration Appeals (“BIA”) affirmed. In any case, Petitioners did not exhaust their administrative remedies and failed to establish it is more likely than not that they would be tortured with the acquiescence of the Colombian government. Thus, we will deny their petition for review.

I. BACKGROUND

On May 22, 2023, Rivera filed an application for asylum, withholding of removal, and CAT protection, listing his daughter as a derivative.¹ Petitioners claimed both past persecution and fear of future persecution and torture by members of the Death Line in Rivera’s home country of Colombia. In support of their application, Rivera stated that he was extorted, threatened, and blackmailed by the Death Line beginning in 2008. However, Rivera admitted that he had not been injured by, paid any money to, joined, or assisted the

¹ Rivera included his minor daughter as a derivative beneficiary on his application. 8 U.S.C. § 1158(b)(3)(A); 8 C.F.R. § 1208.3(a). Because the Immigration and Nationality Act does not authorize derivative withholding of removal, Rivera’s daughter was limited to seeking derivative asylum relief. *See* 8 U.S.C. § 1231(b)(3) (defining eligibility for withholding of removal).

Death Line in any way. He also conceded that he has not received any threats from that group since arriving in the United States.

On March 5, 2025, an IJ issued a decision denying Petitioners' application for asylum, withholding of removal, and CAT protection. With respect to asylum and withholding of removal, the IJ concluded that Rivera failed to establish the requisite nexus to a protected ground. With respect to CAT protection, the IJ ruled that Rivera had not established he would more likely than not be tortured upon returning to Colombia because there was no evidence of past harm "amounting to persecution, let alone torture," and the record was devoid of any indication that members of the Death Line "ha[d] been looking for [Rivera] in order to torture him." JA 14. Additionally, the IJ concluded that Rivera failed "to show that he would be tortured by or with the acquiescence of a public official" because he "never went to the police in Colombia" and "the government generally investigated and prosecuted such actions when reported." JA 15.²

On March 24, 2025, Petitioners appealed the denial of their application to the BIA. Regarding their asylum and withholding-of-removal claims, they argued that they had established past persecution and thus enjoyed a presumption of future persecution, but they did not challenge the IJ's nexus determination. They also argued that the IJ erred in denying CAT relief. The BIA, for its part, dismissed their appeal after concluding that Petitioners failed to challenge (1) the IJ's dispositive nexus determination in connection with their asylum and withholding of removal claims, and (2) "the specific factual findings or legal

² Although Petitioners' application for relief was denied, the IJ found Rivera to be "candid, forthright, and responsive." JA 11.

reasoning” supporting the denial of their application for CAT protection. JA 7. Petitioners timely petitioned for review in our Court.

II. JURISDICTION & STANDARD OF REVIEW

We have jurisdiction under 8 U.S.C. § 1252(a). Where “the BIA affirms the IJ’s determinations without expressly rejecting any of its findings and only adds its own gloss to the analysis, we may review both the BIA’s and the IJ’s decisions.” *Doe v. Att’y Gen.*, 956 F.3d 135, 141 (3d Cir. 2020). We review pure legal determinations de novo. *Herrera-Reyes v. Att’y Gen.*, 952 F.3d 101, 106 (3d Cir. 2020). Findings of fact, on the other hand, are reviewed for substantial evidence, and we consider them “conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” *Thayalan v. Att’y Gen.*, 997 F.3d 132, 137 (3d Cir. 2021) (citation omitted).

III. DISCUSSION

On appeal, Petitioners argue that they established past persecution and thus enjoyed a presumption of future persecution. So, according to Petitioners, the IJ and BIA erroneously denied their asylum and withholding-of-removal claims. Additionally, with respect to their CAT claim, Petitioners contend that record evidence of unchecked torture in Colombia was sufficient to demonstrate they are more likely than not to be tortured with the acquiescence of the government should they be forced to return. Petitioners thus argue that the IJ and BIA erroneously denied their CAT claim as well. However, we will deny their petition for two reasons.

A. Petitioners failed to exhaust all administrative remedies in connection with the IJ's dispositive nexus determination.

To establish eligibility for asylum, applicants must prove they are “unable or unwilling to return to . . . th[eir] country [of nationality] because of persecution or a well-founded fear of persecution.” 8 U.S.C. § 1101(a)(42)(A). Such persecution must be “on account of” at least one of the following protected grounds: “race, religion, nationality, membership in a particular social group, or political opinion.” *Id.*, *see also id.* § 1158(b)(1)(A). That is the case where a protected ground is “an essential or principal reason for the persecution.” *Gonzalez-Posadas v. Att’y Gen.*, 781 F.3d 677, 685 (3d Cir. 2015). And we apply this requirement under the withholding-of-removal statute as well. *Thayalan*, 997 F.3d at 138 (explaining that both asylum and withholding of removal require an applicant to demonstrate that a protected ground was or will be at least one central reason for the claimed persecution). Thus, “an applicant who cannot meet the standard for asylum will necessarily be unable to meet the standard for withholding of removal.” *Id.* (quoting *Gomez-Zuluaga v. Att’y Gen.*, 527 F.3d 330, 348–49 (3d Cir. 2008)).

To establish persecution on a protected ground, Petitioners applied for relief based on membership in a particular social group. Because they were not represented by counsel and failed to propose a particular social group, the IJ suggested two groups: “Colombians with many friends” and “Colombians believed to be wealthy.” JA 12. However, the IJ ultimately concluded those groups were not legally cognizable and thus found no nexus between harm to Petitioners and any protected group. The BIA, for its part, did not address this conclusion on the basis that Rivera failed to make “any arguments meaningfully

challenging [it].” JA 7 (explaining that issues not meaningfully developed on appeal may be deemed waived). Moreover, the record makes clear that Petitioners made no effort to challenge the IJ’s conclusion as to their membership in a particular social group before the BIA. *See* JA 142-50 (challenging the IJ’s conclusions solely as to persecution).

For the first time, Petitioners challenge the IJ’s conclusion before us and argue that Rivera is a member of a particular social group of “Colombians who oppose gang recruitment.” Petitioners’ Opening Br. 12. However, we may review a final removal order only where “the alien has exhausted all administrative remedies available to the alien as of right.” 8 U.S.C. § 1252(d)(1). Although this provision is a claim-processing rule subject to waiver and forfeiture, *Santos-Zacaria v. Garland*, 598 U.S. 411, 416-23 (2023), we “‘must enforce the [exhaustion] rule’ where . . . the Government ‘properly raises it.’” *Aguilar v. Att’y Gen.*, 107 F.4th 164, 169 (3d Cir. 2024) (quoting *Fort Bend Cnty. v. Davis*, 587 U.S. 541, 549 (2019)). And the Government did so here. Respondent’s Brief 13-15. Accordingly, we will enforce its request. *See Gomez-Gabriel v. Att’y Gen. United States*, 146 F.4th 327, 330 (3d Cir. 2025) (citation omitted) (explaining that we will enforce the exhaustion requirement when a petitioner fails “to place the [BIA] on notice of a straightforward issue being raised on appeal”).³

³ Petitioners also failed to acknowledge the BIA’s waiver determination in their brief. As a result, that issue is itself waived. *United States v. Pelullo*, 399 F.3d 197, 222 (3d Cir. 2005) (“[F]ailure to identify or argue an issue in [one’s] opening brief constitutes waiver of that issue on appeal.”).

B. Substantial evidence supports the IJ's conclusion that Petitioners failed to demonstrate it was more likely than not they would be tortured by or with the consent or acquiescence of the Colombian government.

To establish eligibility for protection under the CAT, applicants must prove it is “more likely than not” that they would be tortured upon returning to their country of removal. 8 C.F.R. § 1208.16(c)(2). An act constitutes torture only if it is “by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim.” *Myrie v. Att’y Gen.*, 855 F.3d 509, 515 (3d Cir. 2017). Furthermore, “[t]o establish acquiescence, an applicant must demonstrate that, prior to the activity constituting torture, a public official was aware of” or “willfully blind to such activities.” *Id.* at 516.

An IJ must undertake a two-part analysis to determine whether an applicant has established acquiescence. *Id.* “First, the IJ makes a factual finding or findings as to how public officials will likely act in response to the harm the petitioner fears.” *Id.* Second, “the IJ assesses whether the likely response from public officials qualifies as acquiescence under the governing regulations.” *Id.* “While the [BIA] reviews the first part for clear error, it must review the second de novo.” *Id.* at 516–17. And in this case, neither the IJ nor BIA erred.

Petitioners conceded before the IJ that Rivera never reported historical threats to the police. The IJ considered evidence that the Colombian “government generally investigated and prosecuted” violent crimes and threats of violence by criminal gangs. JA 15. And record evidence demonstrated that the Colombian government “took credible steps to identify and punish officials who may have committed human rights abuses.” JA 15. Thus,

there is substantial evidence that the IJ correctly concluded that Petitioners failed to establish acquiescence.

Even if that were not the case, Petitioners did not meaningfully challenge the IJ's factual findings or reasoning before the BIA. Nor have they done so in our Court. Instead, without citing any evidence in the record, Petitioners simply assert that local officials "are ineffective" and "the police would make no effort to save them from death and/or torture at the hands of gang members." Petitioners' Opening Br. 23. Accordingly, "we deem such arguments waived and we will not address them." *Khan v. Att'y Gen.*, 691 F.3d 488, 496 n.5 (3d Cir. 2012).

* * * *

Petitioners failed to exhaust their arguments regarding asylum and withholding of removal, and substantial evidence supports the IJ's factual findings regarding CAT protection. As a result, we deny their petition for review.