NOT FOR PUBLICATION

FILED

DEC 13 2022

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DIEGO SEBASTIAN MATEO, et al., Petitioners, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 20-70257 Agency Nos. A205-261-629 A209-480-619 MEMORANDUM*

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

Submitted December 8, 2022**
San Francisco, California

Before: NGUYEN and SANCHEZ, Circuit Judges, and BOUGH,*** District Judge.

Petitioners, Diego Sebastian Mateo ("Diego") and his minor son ("V.R.S.Z.") seek review of the Board of Immigration Appeals' December 30,

* 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 Stephen R. Bough, United States District Judge for the Western District of Missouri, sitting by designation.

2019, decision denying their motion to terminate and dismissing their appeal from an Immigration Judge's May 10, 2018, decision denying their applications for asylum, withholding of removal, and protection under the regulations implementing the Convention Against Torture. They are citizens of Guatemala. We review the BIA's determinations for substantial evidence. *Diaz-Jimenez v. Sessions*, 902 F.3d 955, 958 (9th Cir. 2018). We have jurisdiction under 8 U.S.C. §1252. We deny the petition for review.

1. We affirm the BIA's determination that the IJ did not lack jurisdiction over Petitioners' removal proceedings. The failure of a notice to appear to include time, date, and place information "does not deprive the immigration court of subject matter jurisdiction." *United States v. Bastide-Hernandez*, 39 F.4th 1187, 1188 (9th Cir. 2022) (en banc); *see also Aguilar Fermin v. Barr*, 958 F.3d 887, 889 (9th Cir. 2020).

2. Substantial evidence supports the BIA's determination that Diego has not suffered harm rising to the level of past persecution because he has not shown he received threats causing suffering or harm. *See Lim v. I.N.S.*, 224 F.3d 929, 936 (9th Cir. 2000) ("Threats standing alone . . . constitute past persecution . . . only when the threats are so menacing as to cause significant actual 'suffering or harm.'"). Diego testified Movimiento Social threatened him and his family members but never acted on those threats. He also testified he was present during

an attempted shooting of the local mayor and that a drunk man shot at him on a separate occasion. This record does not compel a finding of past persecution. *See Aguilera-Cota v. I.N.S.*, 914 F.2d 1375, 1379 (9th Cir. 1990).

3. Substantial evidence supports the agency's determination that Petitioners could avoid future persecution by relocating within Guatemala. *See Akosung v. Barr*, 970 F.3d 1095, 1101 (9th Cir. 2020) (explaining that petitioners do not qualify for asylum or withholding of removal if they can avoid future persecution by relocating to another part of the county and "under all the circumstances, it would be reasonable to expect [them] to do so"). Petitioners have not rebutted evidence that relocation would be reasonable. Diego's brother, who was also threatened by Movimiento Social, relocated to a town three hours away and remains there without incident. *See Hakeem v. I.N.S.*, 273 F.3d 812, 816 (9th Cir. 2001), *superseded by statute on other grounds as stated in Ramadan v. Gonzales*, 479 F.3d 646, 650 (9th Cir. 2007) (holding that well-founded fear claim "is weakened, even undercut" when "similarly-situated family members continue to live in the country [of removal] without incident").[1]

4. We lack jurisdiction to consider Petitioners' due process claim, because it

[1] The Court finds the above analysis to be dispositive of Petitioners' asylum and withholding of removal claims. It is not necessary to reach the remaining issues. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (explaining courts are not required to decide issues unnecessary to the results they reach).

was not raised before the BIA and is thus unexhausted. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004); 8 U.S.C. § 1252(d)(1).

PETITION DENIED.