

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 15 2023

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

ISAAC NEEMIAS CANTARERO-
PINEDA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-56

Agency No. A078-321-976

MEMORANDUM*

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

Submitted March 8, 2023**
San Francisco, California

Before: FRIEDLAND, R. NELSON, Circuit Judges and CARDONE***,
District Judge.

Isaac Neemias Cantarero-Pineda, a native and citizen of Honduras,
petitions for review of an immigration judge's ("IJ") decision concurring in the

* 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 Kathleen Cardone, United States District Judge for the Western District of Texas, sitting by designation.

negative reasonable-fear determination of an asylum officer (“AO”).

In 2019, the U.S. Department of Homeland Security notified Cantarero-Pineda of its intent to reinstate an order of removal entered against him in absentia in 2001. Because Cantarero-Pineda expressed a fear of returning to Honduras, he was referred to an AO for a reasonable-fear determination. The AO concluded that Cantarero-Pineda did not establish a reasonable fear of persecution or torture, and Cantarero-Pineda sought review by an IJ, who concurred.

We have jurisdiction under 8 U.S.C. § 1252. *See Andrade-Garcia v. Lynch*, 828 F.3d 829, 835–36 (9th Cir. 2016). “We review the IJ’s determination that the [non-citizen] did not establish a reasonable fear of persecution or torture for substantial evidence.” *Bartolome v. Sessions*, 904 F.3d 803, 811 (9th Cir. 2018). We review questions of law de novo. *See Arteaga v. Mukasey*, 511 F.3d 940, 944 (9th Cir. 2007). We deny the petition.

1. Substantial evidence supports the IJ’s determination that Cantarero-Pineda did not establish a reasonable possibility of persecution. Cantarero-Pineda testified that he feared persecution and cites two incidents in which he was threatened. But Cantarero-Pineda was not physically harmed, and the fact that he remained in Honduras for several months following the incidents indicates that the threats were not imminent. The record accordingly does not compel the conclusion that Cantarero-Pineda suffered past persecution, and he offered no other evidence in support of his argument that he is likely to face

persecution in the future. *See Sharma v. Garland*, 9 F.4th 1052, 1063–64 (9th Cir. 2021); *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019).

2. Assuming Cantarero-Pineda did not forfeit a challenge to the IJ’s determination that he did not establish a reasonable possibility of torture, that determination is supported by substantial evidence for the same reasons. *See* 8 C.F.R. § 208.18(a)(4)(iii); *Sharma*, 9 F.4th at 1067.

3. Cantarero-Pineda was not deprived of his right to counsel during the hearing before the IJ.¹ He was provided with notice of his right to obtain counsel and a list of legal services providers six days before the hearing. In reasonable fear proceedings commenced due to the reinstatement of a prior order of removal, nothing more is required. *See Rivera Vega v. Garland*, 39 F.4th 1146, 1157 (9th Cir. 2022).

4. The temporary stay of removal remains in place until the mandate issues. The motion for stay of removal is otherwise denied.

PETITION FOR REVIEW DENIED.

¹ We assume without deciding that this issue is neither forfeited nor barred by the “party presentation principle.” *See United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020).