

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 29 2024

FOR THE NINTH CIRCUIT

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

MARVIN ERNESTO RAMOS BONILLA
and YESENIA ABIGAIL VELADO DE
RAMOS,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 23-252

Agency No.

A209-945-324

A208-450-236

MEMORANDUM*

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

Submitted March 26, 2024**
Pasadena, California

Before: RAWLINSON, LEE, and BRESS, Circuit Judges.

Marvin Ernesto Ramos Bonilla and Yesenia Abigail Velado de Ramos, natives and citizens of El Salvador, seek review of the Board of Immigration Appeals' (BIA) decision denying their applications for asylum, withholding of

* 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).

removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

1. Petitioners are ineligible for asylum. Asylum may be granted to a noncitizen who can “demonstrate a likelihood of ‘persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.’” *Sharma v. Garland*, 9 F.4th 1052, 1059 (9th Cir. 2021) (quoting 8 U.S.C. § 1101(a)(42)(A)).

The petitioners’ asylum claims rest on threats made by gang members to Ramos Bonilla’s mother in El Salvador. On two separate occasions in 2015, gang members broke into the mother’s home and threatened to harm her family members. The gang members specifically threatened to kill Ramos Bonilla and Velado de Ramos. The petitioners testified that they did not make a police report because they feared that the police were corrupt.

Assuming that the petitioners’ family is a socially distinct group, substantial evidence supports the BIA’s conclusion that the petitioners did not establish that they suffered harm rising to the level of persecution. Although the petitioners are “correct that credible death threats alone can constitute persecution, they constitute persecution in only a small category of cases, and only when the threats are so menacing as to cause significant actual suffering or harm.” *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019) (citations and quotation marks omitted).

Ramos Bonilla testified that no one in his family suffered physical harm. “[A]lthough it may have been *possible* for the IJ to conclude that the threats were sufficiently serious and credible to rise to the level of persecution, we cannot say the evidence *compels* the conclusion that [the petitioners] suffered past persecution.” *Id.* at 1028 (citations omitted). Additionally, the petitioners’ “claim of future persecution is undermined by the fact that [they] ha[ve] other family members living unharmed in [El Salvador].” *Santos-Ponce v. Wilkinson*, 987 F.3d 886, 890–91 (9th Cir. 2021) (citation omitted).

Substantial evidence also supports the BIA’s conclusion that the petitioners’ membership in their family is not “one central reason,” or even “a reason,” for any persecution they may have suffered. *Barajas-Romero v. Lynch*, 846 F.3d 351, 358–59 (9th Cir. 2017); 8 U.S.C. § 1158 (b)(1)(B)(i). Rather, the petitioners were targeted by the gangs solely for economic gain. The BIA correctly held that “harassment by criminals motivated by theft or random violence by gang members” is not causally related to a protected ground. *Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010); *see also Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1020 (9th Cir. 2023) (finding that the threat toward a victim’s son was only “an instrumental means to obtain money, and was not motivated intrinsically by his familial relationship...”). Here, there is no evidence that the gang members were independently motivated by

the petitioners' protected familial relationship. *Cf. Ayala v. Sessions*, 855 F.3d 1012, 1021 (9th Cir. 2017).

2. Petitioners are ineligible for withholding of removal. The agency did not err in denying the petitioners' applications for withholding of removal. Withholding of removal is available to applicants who demonstrate a "clear probability" of persecution upon return. *Singh v. Garland*, 57 F.4th 643, 658 (9th Cir. 2022) (citation omitted). "Withholding's 'clear probability' standard is more stringent than asylum's well-founded-fear standard" *Id.* (citation omitted). Because the petitioners cannot establish eligibility for asylum, they likewise cannot establish eligibility for withholding. *Id.* Nor did petitioners demonstrate nexus under the "a reason" standard, as we have explained above.

3. Petitioners are ineligible for protection under the CAT. To be eligible for CAT protection, the petitioners "bear[] the burden of establishing that [they] will more likely than not be tortured with the consent or acquiescence of a public official if removed to [their] native country." *Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1183 (9th Cir. 2020) (citing *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1078–79 (9th Cir. 2015)); 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1).

"Because the BIA could reasonably conclude that [the petitioners'] past harm did not rise to the level of persecution, it necessarily falls short of the definition of torture." *Sharma*, 9 F.4th at 1067. Nor does the record compel the conclusion that

petitioners will be tortured upon their return to El Salvador, given that no family member has suffered any physical harm there.

PETITION DENIED.