

DEC 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>JOSE NEFTALI MUNGUIA; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p> |
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No. 08-71981

Agency Nos. A070-777-525  
A075-745-352  
A097-608-467  
A097-124-597

MEMORANDUM \*

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

Submitted December 15, 2009\*\*

Before: GOODWIN, WALLACE and FISHER, Circuit Judges.

Jose Neftali Munguia (Munguia) and his children, Arquimides Del Carmen Munguia Vasquez, Teresa de Jesus Munguia Vasquez and Jose Neftali Munguia Vasquez, natives and citizens of El Salvador, petition pro se for review of a Board of Immigration Appeals order dismissing their appeal of an immigration judge's

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

(IJ) decision denying their application for asylum, withholding of removal and protection under the Convention Against Torture (CAT). Munguia also petitions for review of the Board's order dismissing his appeal of the IJ's denial of his application for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review factual findings for substantial evidence. *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992). We dismiss in part and deny in part the petition for review.

Substantial evidence supports the Board's denial of asylum and withholding of removal because Munguia failed to show that the guerillas' attempt to recruit him was on account of a protected ground. *See Elias-Zacarias*, 502 U.S. at 481-82.

Substantial evidence also supports the Board's denial of CAT relief based on the Board's finding that Munguia did not establish a likelihood of torture by, at the instigation of, or with the consent or acquiescence of the El Salvadoran government. *See Arteaga v. Mukasey*, 511 F.3d 940, 948-49 (9th Cir. 2007).

As for Munguia's cancellation claim, we lack jurisdiction to review the agency's discretionary determination that Jose Neftali Munguia failed to show exceptional and extremely unusual hardship to his U.S. citizen children. 8 U.S.C. § 1252(a)(2)(B); *Mendez-Castro v. Mukasey*, 552 F.3d 975, 979 (9th Cir. 2009).

**PETITION FOR REVIEW DISMISSED in part; DENIED in part.**