**NOT FOR PUBLICATION**

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| ERIKA MARICELA HERNANDEZ DE PAIZ; BYRON HERNANDEZ-PAIZ,<br><br>Petitioners,<br><br>v.<br><br>MERRICK B. GARLAND, Attorney General,<br><br>Respondent. | No. 16-70932<br><br>Agency Nos. A206-836-525<br>A206-836-526<br><br>MEMORANDUM* |

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

Submitted September 20, 2022**
Pasadena, California

Before: BOGGS,*** WARDLAW, and IKUTA, Circuit Judges.

Erika Maricela Hernandez de Paiz and her son, Byron, natives and citizens

* 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 Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

of El Salvador, petition for review of the Board of Immigration Appeal's ("BIA") order dismissing her appeal from an immigration judge's ("IJ") decision denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). Our jurisdiction is governed by 8 U.S.C. § 1252. We deny the petition for review.

1. Substantial evidence supports the agency's conclusion that two of Hernandez de Paiz's three proposed social groups— (1) witnesses to crimes who cooperate with law enforcement and (2) witnesses to crimes and their immediate family members who cooperate with law enforcement—lack social distinction and are therefore not cognizable particular social groups. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1242 (9th Cir. 2020). There is no "corroborative, objective evidence" in the record, *Diaz Torres v. Barr*, 963 F.3d 976, 982 (9th Cir. 2020), independent of Hernandez de Paiz's testimony, suggesting that either "group exists and is perceived as 'distinct' or 'other' in a particular society," *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014) (citation omitted). The country conditions report submitted by Hernandez de Paiz at most notes broad issues with policing and law enforcement. The report does not speak to "risks or barriers associated" with witnesses reporting crimes (to themselves or family members), nor does it speak to whether Salvadoran "society *recognizes* those who, without more, report gang violence as a distinct group." *Conde Quevedo*, 947 F.3d at 1243.

2. Even if we were to conclude that Hernandez de Paiz's third proposed social group—individuals targeted based on their family relationships—is cognizable, *Rios v. Lynch*, 807 F.3d 1123, 1128 (9th Cir. 2015) ("[T]he family remains the quintessential particular social group."), substantial evidence supports the agency's finding that Hernandez de Paiz did not suffer past persecution and failed to establish a well-founded fear of persecution on account of that family relationship.

"Mere threats, without more, do not necessarily compel a finding of past persecution." *Villegas Sanchez v. Garland*, 990 F.3d 1173, 1179 (9th Cir. 2021). "We have been most likely to find persecution where threats are repeated, specific, and 'combined with confrontation or other mistreatment.'" *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019) (citation omitted). Further, "although harm to a petitioner's close relatives, friends, or associates may contribute to a successful showing of past persecution," it must be "part of a 'pattern of persecution closely tied to'" the petitioner. *Wakkary v. Holder*, 558 F.3d 1049, 1060 (9th Cir. 2009) (citation omitted). Hernandez de Paiz and her family received regular death threats from gang members from 2005 to 2010, and gang members killed her uncle's son in 2007. But gang members did not act upon any threats after 2007, nor did the family face "mistreatment" aside from these threats. *Duran-Rodriguez*, 918 F.3d at 1028. Further, there is no "pattern of persecution"

closely tied to Hernandez de Paiz. The record instead suggests that her uncle and his children were targeted and killed based on his membership in a rival gang, while no other members of the family were targeted.

3. Substantial evidence also supports the agency's determination that Hernandez de Paiz failed to establish a well-founded fear of future persecution. *Parada v. Sessions*, 902 F.3d 901, 909 (9th Cir. 2018) (well-founded fear must be subjectively genuine and objectively reasonable). The evidence does not compel the conclusion that her fear is objectively reasonable. Hernandez de Paiz was threatened after her uncle's murder, including by gang members who followed her to a relative's home. But Hernandez de Paiz and her family received unfulfilled death threats for years and stopped receiving threats after her uncle went into hiding. Further, it does not appear that, since her departure, any of her family members have been harmed. *See Mansour v. Ashcroft*, 390 F.3d 667, 673 (9th Cir. 2004) (holding that ongoing safety of family undermines reasonable fear of future persecution).

4. Substantial evidence also supports the agency's denial of CAT protection because Hernandez de Paiz failed to show it is more likely than not she will be tortured by or with the consent or acquiescence of the government if returned to El Salvador. *Lalayan v. Garland*, 4 F.4th 822, 840 (9th Cir. 2021). Neither Hernandez de Paiz's testimony nor documentary evidence submitted in support of

her application speaks to a likelihood of future torture. The country conditions report does not suggest that Hernandez de Paiz "would be subject to a *particularized threat* of torture, and that such torture would be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." *Dhital v. Mukasey*, 532 F.3d 1044, 1051 (9th Cir. 2008) (per curiam) (internal quotation marks and citation omitted).

5. Hernandez de Paiz also argues that she was persecuted based on imputed political opinion, but made no arguments as to her political opinion before the IJ (although her counsel stated that she had an imputed political opinion of being opposed to government corruption), or raise this on appeal to the BIA. Further, she challenges the IJ's adverse credibility determination, but did not do so in her brief to the BIA. Because Hernandez de Paiz did not exhaust either claim and exhaustion is not excused, we lack jurisdiction to consider either challenge. *Iraheta-Martinez v. Garland*, 12 F.4th 942, 948 (9th Cir. 2021).

**PETITION DENIED.**