

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 16 2023

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

KARLA SOLORIO REYES; RHIANNA
ZARAGOZA; MARIA ZARAGOZA,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-363

Agency Nos. A216-272-537,
A216-272-538,
A216-272-539

MEMORANDUM*

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

Submitted May 12, 2023**
San Francisco, California

Before: FRIEDLAND, BENNETT, Circuit Judges, and BENNETT,** District
Judge.

Karla Solorio Reyes and her two minor daughters, natives and citizens of
Mexico, petition for review of the Board of Immigration Appeals' ("BIA")

* 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 Richard D. Bennett, United States District Judge
for the District of Maryland, sitting by designation.

dismissal of their appeal from an Immigration Judge's ("IJ") order denying asylum, withholding of removal, and protection under the United Nations Convention Against Torture ("CAT").¹ Exercising jurisdiction under 8 U.S.C. § 1252(a), we deny the petition in part and dismiss it in part.

Petitioners entered the United States in January 2018 without valid entry documents. The Department of Homeland Security charged them with removability and served them with individual notices to appear ("NTA").² Petitioners conceded removability, but applied for asylum, withholding of removal, and CAT protection. Before the IJ, Solorio Reyes testified that she feared two of her uncles. One uncle, Pedro, had a substance abuse disorder and repeatedly threatened to kill her family "when [Solorio Reyes] was a girl." But most of her testimony focused on a second uncle, Homero, who is the head of a local gang that repeatedly tried to recruit her husband, Erik. After Erik moved to the United States, Homero, who had learned Erik had left, visited Solorio Reyes at her home with two other armed men. When she refused to tell them where Erik had gone, Homero told her: "Well, we'll see how things go for you guys." Solorio Reyes took this statement to be a death threat considering the

¹ Solorio Reyes included her daughters as derivative applicants on her application for asylum. *See* 8 U.S.C. § 1158(b)(3)(A). We refer to them collectively as "Petitioners."

² Petitioners contested the validity of their NTAs before the BIA, but they do not raise that issue on appeal.

gang's history of killing the families of prospective recruits that declined to join the organization. She testified that her family was not threatened again or harmed after that incident.³ She also testified that her father and brother continue to live in her home state unharmed. But she fears retribution by both uncles if she returns to Mexico.

The IJ found Solorio Reyes credible but denied all relief, and the BIA dismissed Petitioners' appeal. We review the agency's legal conclusions de novo and its factual determinations for substantial evidence. *Plancarte Saucedo v. Garland*, 23 F.4th 824, 831 (9th Cir. 2022).

The agency correctly determined that Petitioners' past harm did not rise to the level of persecution.⁴ Persecution "is an extreme concept" that "does not include every sort of treatment our society regards as offensive." *Sharma v. Garland*, 9 F.4th 1052, 1060 (9th Cir. 2021) (quoting *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995)). Threats, without more, generally do not rise to the

³ For the first time in their opening brief, Petitioners allege that they experienced "physical abuse" and that "gang members assaulted [Solorio Reyes], and threatened her with bodily harm." Because these allegations were not presented to the agency, we cannot consider them here. *See Tomczyk v. Garland*, 25 F.4th 638, 643 (9th Cir. 2022) (en banc) ("Our consideration of the petition is limited to the administrative record . . .").

⁴ The standard of review for past persecution findings is unsettled. *See Singh v. Garland*, 57 F.4th 643, 651–52 (9th Cir. 2022) (collecting cases and noting that while some apply de novo review, others apply the substantial evidence). We need not resolve the issue here because Petitioners' harm does not constitute past persecution under either standard.

level of persecution. *See Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019) (“[D]eath threats alone . . . 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.” (cleaned up)). There is no evidence that the threats Petitioners received were “accompanied by evidence of violent confrontations, near-confrontations [or] vandalism.” *Flores Molina v. Garland*, 37 F.4th 626, 634 (9th Cir. 2022) (quoting *Mashiri v. Ashcroft*, 383 F.3d 1112, 1119 (9th Cir. 2004)).⁵ Under these circumstances, we conclude that the threats from Pedro and Homero do not constitute past persecution. Moreover, Petitioners do not contest the BIA’s determination that they have not established a well-founded fear of future persecution.⁶ Accordingly, we deny the petition with respect to the asylum claim.

For the same reasons, we deny the petition to the extent it challenges the agency’s withholding determination. 8 C.F.R. § 1003.1(d)(3)(ii); *see also Silva v. Garland*, 993 F.3d 705, 719 (9th Cir. 2021) (“[A]n applicant who is unable to

⁵ In a written declaration, Solorio Reyes recounted one incident where Pedro menacingly approached her and other family members, forcing them to hide in a locked room while he shouted profanities. But this incident occurred almost two decades ago, and there is no indication that Pedro ever physically attacked anyone.

⁶ Petitioners also do not challenge the agency’s determination that they could safely and feasibly relocate within Mexico. And although Petitioners do contest the IJ’s determination that their past harm was not on account of membership in a particular social group, we cannot review that determination because the BIA relied solely on the persecution finding, which we affirm. *See Garcia v. Wilkinson*, 988 F.3d 1136, 1142 (9th Cir. 2021).

show a ‘reasonable possibility’ of future persecution ‘necessarily fails to satisfy the more stringent standard for withholding of removal.’” (quoting *Mansour v. Ashcroft*, 390 F.3d 667, 673 (9th Cir. 2004))). Further, we dismiss the petition to the extent it challenges the agency’s denial of CAT relief because Petitioners did not exhaust that argument below. *See* 8 U.S.C. § 1252(d)(1); *Honcharov v. Barr*, 924 F.3d 1293, 1296 & n.2 (9th Cir. 2019).

PETITION DENIED in part and DISMISSED in part.