

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 15 2023

FOR THE NINTH CIRCUIT

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

PEDRO AVILA CRUZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-946

Agency No.
A205-720-058

MEMORANDUM*

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

Submitted June 9, 2023**
Pasadena, California

Before: GRABER and OWENS, Circuit Judges, and TUNHEIM, District
Judge.***

Pedro Avila Cruz (“Avila”), a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) dismissal of his appeal from the Immigration Judge’s (“IJ”) denial of his applications for asylum,

* 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 John R. Tunheim, United States District Judge for the District of Minnesota, sitting by designation.

withholding of removal, and relief under the Convention Against Torture (“CAT”). As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

We review the agency’s legal conclusions de novo and its factual findings for substantial evidence, under which they are “conclusive unless any reasonable adjudicator would be compelled to conclude the contrary.” *Flores Molina v. Garland*, 37 F.4th 626, 632 (9th Cir. 2022) (quoting 8 U.S.C. § 1252(b)(4)(B)).

Avila admittedly did not experience past persecution, and substantial evidence supports the BIA’s determination that he failed to show a well-founded fear of future persecution on account of his proposed particular social group (“PSG”) of family. He argues that cartels in Michoacan may harm him because they would believe that he had returned to avenge the killings of his cousin in 2003 or 2004 and his sister-in-law’s nephew in 2017, though he does not know who the perpetrators were. Substantial evidence supports the conclusion that his fear rests on mere speculation. *See Nagoulko v. INS*, 333 F.3d 1012, 1018 (9th Cir. 2003) (holding that substantial evidence supported the BIA’s finding that the petitioner failed to establish a well-founded fear where the possibility of harm was speculative). Avila’s claim is further undermined by the fact that his immediate family members have lived in Mexico unharmed since his departure more than twenty years ago. *See Tamang v. Holder*, 598 F.3d 1083, 1094 (9th Cir. 2010) (“[A] petitioner’s fear of future persecution ‘is

weakened, even undercut, when similarly-situated family members’ living in the petitioner’s home country are *not* harmed.” (citations omitted)). And nothing in the record compels the conclusion that he could not safely relocate within Mexico.

Having failed to establish a well-founded fear for asylum, it follows that Avila also failed to meet the more stringent standard for withholding of removal based on his PSG of family. *See Zehatye v. Gonzales*, 453 F.3d 1182, 1190 (9th Cir. 2006) (noting that the “clear probability” standard for withholding of removal is more stringent than that for asylum (citation omitted)).

Reviewing de novo, *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241-42 (9th Cir. 2020), we agree with the BIA that Avila’s proposed PSG of “Mexican males who fled Mexico at a young age who are now returning after a lengthy stay in the United States and are acculturated to the United States” is not cognizable. It lacks particularity and social distinction. *See Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1228-29 (9th Cir. 2016) (holding that the proposed PSG of “imputed wealthy Americans,” who would allegedly be targeted because of their American appearance and mannerisms, was not cognizable); *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151-52 (9th Cir. 2010) (per curiam) (holding that the proposed PSG of “returning Mexicans from the United States” was not cognizable).

To the extent that Avila fears general violence—*e.g.*, kidnapping and ransom based on his perceived wealth—he has failed to show nexus to a

protected ground for either asylum or withholding of removal. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (“[A petitioner]’s desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground.”).

Finally, regarding his CAT claim, substantial evidence supports the agency’s determination that Avila failed to establish that he will more likely than not be tortured in Mexico. General violence and corruption do not amount to grounds for CAT protection; Avila must establish a particularized risk of torture, *see Dhital v. Mukasey*, 532 F.3d 1044, 1051-52 (9th Cir. 2008) (*per curiam*), which he has failed to do.

The stay of removal remains in place until the mandate issues.

PETITION DENIED.