

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 23 2023

FOR THE NINTH CIRCUIT

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

CRISTOVAL REYES NAPOLES,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-874

Agency No.
A077-395-195

MEMORANDUM*

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

Submitted October 18, 2023**
San Francisco, California

Before: BEA, CHRISTEN, and JOHNSTONE, Circuit Judges.

Cristoval Reyes Napoles, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' (BIA) order denying his applications for asylum, withholding of removal, and protection under the Convention Against

* 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).

Torture (CAT). Because the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 8 U.S.C. § 1252. We review denials of asylum, withholding of removal, and CAT for substantial evidence. *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019). We deny the petition.

Substantial evidence supports the BIA’s finding that Reyes Napoles did not demonstrate a nexus between his alleged persecution and membership in his family. “Harm to a child can amount to past persecution of the parent when that harm is, at least in part, directed against the parent ‘on account of’ or ‘because of’ *the parent’s* race, religion, nationality, membership in a particular social group, or political opinion.” *Sumolang v. Holder*, 723 F.3d 1080, 1084 (9th Cir. 2013) (citing 8 U.S.C. §§ 1101(a)(42)(A) (asylum) and 1231(b)(3)(A) (withholding of removal) (emphasis in original)). Similarly, “acts of violence against a petitioner’s friends or family members may establish a well-founded fear” of future persecution, but the violence must “create a pattern of persecution closely tied to the petitioner.” *Arriaga-Barrientos v. INS*, 937 F.2d 411, 414 (9th Cir. 1991).

The record shows that Reyes Napoles’s son Ricardo Reyes Gonzalez was most likely threatened because he witnessed a shooting. While Reyes Napoles’s other son Cristobal Reyes Gonzalez was very likely murdered because of his relationship to Ricardo, Reyes Napoles has not been harmed or threatened on account of his relationship to Ricardo. If the attackers had been motivated to kill

Ricardo’s family members, they could have harmed Reyes Napoles’s wife or grandchildren when they came to Reyes Napoles’s home—but they did not. Substantial evidence therefore supports the BIA’s finding that Reyes Napoles’s asylum and withholding claims fail for lack of nexus to a protected ground.

Substantial evidence also supports the BIA’s finding that Reyes Napoles did not demonstrate a likelihood of torture if returned to Mexico. To qualify for CAT relief, “[t]he torture must be by government officials or private actors with government acquiescence.” *Arrey v. Barr*, 916 F.3d 1149, 1160 (9th Cir. 2019). The death threat that Ricardo received likely constitutes “torture” because the attackers followed through when they hunted for him and killed Cristobal. But Reyes Napoles did not show that any future harm would be by or with the acquiescence of the Mexican government. While the record suggests that the police did not begin an investigation after Ricardo was threatened, the police responded appropriately after Cristobal was killed: they cordoned off the scene and interviewed witnesses, including Reyes Napoles’s wife. There is no evidence that the government was “willfully blind” to the family’s situation or that it was “unwilling to oppose it.” *Kaur v. Garland*, 2 F.4th 823, 837 (9th Cir. 2021) (quoting *Cole v. Holder*, 659 F.3d 762, 771 (9th Cir. 2011)).

PETITION DENIED.