

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 24 2024

FOR THE NINTH CIRCUIT

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

JUAN DANILO ALVARES-HINCAPIE,

Petitioner,

v.

MERRICK B. GARLAND, United States
Attorney General,

Respondent.

No. 23-4022

Agency No.
A240-650-721

MEMORANDUM*

On Petition for Review of an Order of the
Department of Homeland Security

Submitted September 13, 2024**
Phoenix, AZ

Before: RAWLINSON and COLLINS Circuit Judges, and FITZWATER District
Judge.***

Juan Danilo Alvarez-Hincapie (Alvarez-Hincapie), a native and citizen of

* 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 Sidney A. Fitzwater, United States District Judge for
the Northern District of Texas, sitting by designation.

Colombia, petitions for review of a decision from an Immigration Judge (IJ) affirming the negative reasonable fear determination of the Department of Homeland Security (DHS). We have jurisdiction under 8 U.S.C. § 1252(a)(1) and we deny the petition for review.

We review an IJ's affirmance of a negative reasonable fear determination for substantial evidence. *See Andrade-Garcia v. Lynch*, 828 F.3d 829, 831 (9th Cir. 2016), *as amended*.

Substantial evidence supports the IJ's conclusion that Alvarez-Hincapie failed to establish a reasonable fear of persecution or torture.

[A non-citizen] shall be determined to have a reasonable fear of persecution or torture if the [non-citizen] establishes a reasonable possibility that he or she would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal. . . .

Id. at 836 (citations omitted).

1. Based on Alvarez-Hincapie's testimony, the guerillas were not motivated to harm him on account of a protected ground, but rather because he counseled two of his companions not to "murder people and carry out extortions." *See INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992) (observing that resisting recruitment into a guerilla group does not itself establish persecution on a protected ground).

2. Substantial evidence supports the IJ’s finding that Alvarez-Hincapie did not establish a reasonable fear of torture. *See Orozco-Lopez v. Garland*, 11 F.4th 764, 774 (9th Cir. 2021). Alvarez-Hincapie has never had problems with government officials in Colombia, there was no evidence presented that government officials cooperated with the guerillas, and authorities were willing to investigate the incident. Alvarez-Hincapie did not report the attack himself, and conceded that his brother did not provide “any identifying information about the Guerilla group or the individuals that harmed” Alvarez-Hincapie. *See Andrade-Garcia*, 828 F.3d at 836 (“The inability to bring the criminals to justice is not evidence of acquiescence, as defined by the applicable regulations.”).

PETITION DENIED.¹

¹ The temporary stay of removal shall remain in place until the mandate issues. The motion to stay removal, Dkt. 3, and the supplemental motion to stay removal, Dkt. 8, are otherwise denied. Judge Collins would deny the stay motion forthwith.