**NOT FOR PUBLICATION**

FILED

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| OMAR LEONARDO CEPEDA VIGOYA; YULIAN GICEDT MINA BERNAL; LUCIANA CEPEDA MINA,<br><br>Petitioners,<br><br>v.<br><br>MERRICK B. GARLAND, Attorney General,<br><br>Respondent. | No. 23-4294<br><br>Agency Nos.<br>A240-857-109<br>A240-857-080<br>A240-857-082<br><br>MEMORANDUM* |

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

Submitted December 4, 2024**
Portland, Oregon

Before: CALLAHAN, NGUYEN, and SUNG, Circuit Judges.

Omar Leonardo Cepeda Vigoya, along with his wife and daughter (collectively, "Cepeda Vigoya"), are natives and citizens of Colombia. Cepeda

* 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).

Vigoya applied for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"),[1] claiming fear of guerilla groups who had threatened to kill Cepeda Vigoya and his family if he did not vote for Gustavo Petro in Colombia's presidential election. An immigration judge ("IJ") denied Cepeda Vigoya's application, and the Board of Immigration Appeals ("BIA") dismissed the appeal. Cepeda Vigoya now petition this court for review. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition.

1. Substantial evidence supports the agency's determination that Cepeda Vigoya did not establish harm that rises to the level of past persecution. Contrary to Cepeda Vigoya's argument, the agency did not rest its conclusion on the fact that the threats went "unfulfilled." The BIA adopted "the reasons stated in the [IJ] decision," *see Velasquez-Gaspar v. Barr*, 976 F.3d 1062, 1064 (9th Cir. 2020), which pointed out there were "no mental health issues" or "physical harm" resulting from the threats and "no follow-up confrontations." Although the threats were specific, we require at least some indication that the threats were "accompanied by evidence of violent confrontations" or "near-confrontations." *See Mashiri v. Ashcroft*, 383 F.3d 1112, 1119 (9th Cir. 2004). The BIA thus properly looked at "all of the surrounding circumstances." *Duran-Rodriguez v.*

[1] Cepeda Vigoya was the lead respondent, and his wife and daughter were derivative applicants.

*Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019).

2. Substantial evidence also supports the BIA's determination that Cepeda Vigoya does not face a likelihood of persecution upon return to Colombia. Cepeda Vigoya has family members who continue to live safely in Colombia. *See Sinha v. Holder*, 564 F.3d 1015, 1022 (9th Cir. 2009) ("We have also held that 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." (quoting *Hakeem v. INS*, 273 F.3d 812, 816 (9th Cir. 2001))). Even though Cepeda Vigoya argues he is not similarly situated to his family members because he has an "ongoing association" with certain property in Colombia, fear of persecution based on association with the property for extortion money is untethered from a protected ground. *See* 8 U.S.C. § 1101(a)(42).

3. Although Cepeda Vigoya did not clearly challenge the denial of CAT relief before the BIA, we nonetheless review the claim because the BIA was arguably "on notice of what was being challenged." *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023) (internal quotation marks and citations omitted). Substantial evidence supports the agency's determination that Cepeda Vigoya is not entitled to relief under CAT. The record does not compel finding that the Colombian government would consent to or acquiesce in any torture directed at Cepeda Vigoya. As the IJ noted, Cepeda Vigoya successfully reported the threats

to the police, who "took a report and were going to forward it to the attorney general's office for further investigation and prosecution."

4. In the petition to this court, Cepeda Vigoya raises a due process claim for the first time, arguing that "the IJ (and as embraced by the BIA) made many statements which reveal his bias." We decline review because the BIA was not put "on notice" of this claim. *Umana-Escobar*, 69 F.4th at 550.

**PETITION DENIED**.