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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NELSON IVAN DONIS-DONIS, et al., Petitioners, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 24-231 Agency Nos. A220-312-760 A220-312-761 A220-312-762 MEMORANDUM[*]

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

Submitted December 5, 2024[**]
Seattle, Washington

Before: BOGGS[***], McKEOWN, and R. NELSON, Circuit Judges.

Nelson Ivan Donis-Donis, Karla Pérez-Paredes, and Yeferson Cruz Donis-Pérez (Petitioners)—natives and citizens of Guatemala—petition for review

[*] 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 Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

of a Board of Immigration Appeals (BIA) decision dismissing their appeal of an immigration judge's (IJ) order denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252 and deny the petition.

We review questions of law de novo. *Perez-Portillo v. Garland*, 56 F.4th 788, 792 (9th Cir. 2022). We review the BIA's factual findings for substantial evidence, *ibid.*, meaning that they "are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary," 8 U.S.C. § 1252(b)(4)(B).

1. The BIA correctly denied asylum. Petitioners claimed asylum based on past persecution on account of their membership in the particular social group "Guatemalans who refuse to pay money to the gangs." First, the BIA correctly found that Petitioners were not persecuted, which is an "extreme concept" of suffering or harm. *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995). Death threats can constitute persecution only in the "small category" of cases where the threats are "so menacing" as to cause significant actual suffering or harm. *Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000). Relevant considerations include whether the group making the threat has "the will or the ability to carry it out," *Aden v. Wilkinson*, 989 F.3d 1073, 1083 (9th Cir. 2021) (quoting *Kaiser v. Ashcroft*, 390 F.3d 653, 658 (9th Cir. 2004)); whether the threat "leaves the person with no realistic choice but to conform" to the persecutor's demands, *ibid.*; and whether the threats are "repeated, specific

and 'combined with confrontation or other mistreatment,'" *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019) (quoting *Lim*, 224 F.3d at 936). However, "cases with threats alone, particularly anonymous or vague ones, rarely constitute persecution." *Ibid.* On two occasions, members of a Guatemalan gang allegedly called Donis-Donis and demanded money, with the threat of killing him or harming his family if he did not pay. These phone calls do not meet the requirements of our precedents. There is no clear indication that the callers had the will or ability to harm or kill Petitioners. Thus, the calls did not leave Petitioners with no other realistic choices but to pay the money. And neither call was combined with confrontation—certainly not the extreme level of physical confrontation held sufficient in *Reyes-Guerrero v. INS*, where petitioners were tracked down in person even after they repeatedly "changed vehicles, residences, offices, and phone numbers" in attempts to evade pursuit. 192 F.3d 1241, 1244 (9th Cir. 1999).

Second, the BIA correctly found that "Guatemalans who refuse to pay money to the gangs" is not a cognizable particular social group. A particular social group must be: "(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question." *Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (citation omitted). Refusing to pay money to gangs is not an immutable characteristic because it is neither one that the members "cannot change" nor one that they "should not be

required to change" because it is "fundamental to their individual identities or consciences." *In re W-G-R-*, 26 I. & N. Dec. 208, 212 (B.I.A. 2014), *partially vacated and remanded on other grounds sub nom. Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016).

This group is also not defined with particularity or socially distinct. In Guatemala, the group "Guatemalans who refuse to pay money to the gangs" lacks particularity. It could "include large swaths of people and various cross-sections of a community." *Macedo Templos v. Wilkinson*, 987 F.3d 877, 882 (9th Cir. 2021). Or it could include "large numbers of people with different conditions and in different circumstances." *Mendoza-Alvarez v. Holder*, 714 F.3d 1161, 1164 (9th Cir. 2013). Petitioners point to no evidence in the record showing that Guatemalan society at large perceives "Guatemalans who refuse to pay money to the gangs" as a distinct group.

2. The BIA correctly denied withholding of removal. An applicant for withholding of removal must satisfy "a more stringent standard" than the standard for asylum by showing that it is "more likely than not" that he would be persecuted on account of a protected ground if removed. *Duran-Rodriguez*, 918 F.3d at 1029 (quoting 8 C.F.R. § 1208.16(b)(2)). As discussed above, Petitioners have not pleaded a cognizable particular social group. It "necessarily follows" that they have not established eligibility for withholding of removal. *Ibid.*

3. The BIA correctly denied protection under the CAT. Petitioners claim entitlement to CAT protection because there is a "high likelihood that some government official would willfully turn a blind eye to [their] torture." As evidence, they point only to the country-conditions evidence and the police's failure to apprehend the callers.

Acquiescence requires that a public official, prior to the activity's occurrence, have had actual knowledge or willful blindness of an activity constituting torture. 8 C.F.R. § 1208.18(a)(7). Willful blindness requires a public official who "was aware of a high probability of activity constituting torture and deliberately avoided learning the truth," but it is "not enough" if the official only "was mistaken, recklessly disregarded the truth, or negligently failed to inquire." *Ibid.* This high standard is why "general ineffectiveness on the government's part to investigate and prevent crime" does not qualify as acquiescence. *Andrade-Garcia v. Lynch*, 828 F.3d 829, 836 (9th Cir. 2016). Here, instead of deliberately avoiding learning the truth, the police opened a case and told Donis-Donis that they would investigate the complaint. The record confirms that the Public Prosecution Office of Sayaxche filed this report on June 18, 2021, the day Donis-Donis went to the police. Though the police did not thereafter contact him or come to his house, the mere fact that the investigation did not bear fruit is not enough.

Additionally, a person's speculations about government corruption vis-à-vis gang activity are insufficient to constitute particularized awareness of specific, allegedly torturous, activity. We have reversed agency determinations that future torture is not likely only when these determinations totally failed to consider specific evidence establishing "government complicity in the criminal activity." *Ibid.* For example, in *Madrigal v. Holder*, we found that there could be acquiescence where "[v]oluminous evidence" explained that "police officers and prison guards frequently work[ed] directly on behalf of drug cartels." 716 F.3d 499, 510 (9th Cir. 2013). Willful blindness requires specific awareness of torturous activity or voluminous evidence of this sort of particularized corruption.

Petitioners' country-conditions evidence is also unavailing. Though it "acknowledge[s] crime and police corruption . . . generally," it "fails to show . . . a particularized, ongoing risk of future torture." *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 706–07 (9th Cir. 2022). Petitioners have offered no evidence of "any particularized risk of torture . . . higher than that faced by all [Guatemalan] citizens" based on the two calls they received in the past. *Id.* at 707. This is especially true because the first and last time the Mara 18 gang appeared in person was three years ago on August 6, 2021, when members came to Donis-Donis's home and demanded money from his mother-in-law after he had already left Guatemala.

PETITION DENIED.