No.

In the Supreme Court of the United States

TODD BLANCHE, ACTING ATTORNEY GENERAL,
PETITIONER

v.

IZUCHUKWU OZURUMBA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

An alien is removable and ineligible for various immigration benefits if he has provided material support to a terrorist organization. The question presented is whether, under 8 U.S.C. 1182(a)(3)(B)(iv)(VI), such support must advance the organization's actual commission of terrorism to qualify for that bar.

PARTIES TO THE PROCEEDING

Petitioner (respondent below) is Todd Blanche, Acting Attorney General of the United States.*

Respondent (petitioner below) is Izuchukwu Ozurumba.

RELATED PROCEEDING

United States Court of Appeals (4th Cir.):

Ozurumba v. *Bondi*, No. 24-2070 (Sept. 2, 2025)

* The Acting Attorney General is automatically substituted for his predecessor. See Sup. Ct. R. 35.3.

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OPINIONS BELOW

The decision of the court of appeals (App., *infra*, 1a-34a) is reported at 153 F.4th 396. The decisions of the Board of Immigration Appeals (App., *infra*, 36a-40a) and immigration judge (App., *infra*, 41a-73a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 2, 2025. A petition for rehearing was denied on December 30, 2025 (App., *infra*, 35a). On March 24, 2026, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including April 29, 2026. On April 20, 2026, the Chief Justice further extended the time within which to file a petition for a writ of certiorari to and including May 29, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the appendix to this petition. App., *infra*, 74a-82a.

INTRODUCTION

Under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, an alien who has given "material support * * * to a terrorist organization" is removable and ineligible for various immigration benefits. 8 U.S.C. 1182(a)(3)(B)(i)(I), (iv)(VI)(cc) and (dd); see 8 U.S.C. 1227(a)(4)(B). By its plain terms, the bar against those who provide "material support" does not distinguish between guns and butter. It applies to all who help a terrorist *organization* function, not just to those who specifically advance its terrorist activities.

In the decision below, however, the Fourth Circuit took "a red pen to the material-support bar." App., *infra*, 34a (Richardson, J., dissenting). Under its view, general support that helps a terrorist organization operate day-to-day is too trifling to be "material." It must be "sufficiently substantial standing alone to help the terrorist organization accomplish its terrorist activities." *Id.* at 16a. In other words, the support must be something that the terrorist "organization could use or readily divert to plan or carry out its terrorist activities." *Ibid.*

As Judge Richardson explained in dissent, that reading is wrong—and irreconcilable with this Court's analysis of the bar's criminal counterpart in *Holder* v. *Humanitarian Law Project*, 561 U.S. 1 (2010). The decision below also conflicts with the decisions of at least three other circuits. If allowed to stand, it will visit significant harm on the government's ability to remove, and deny immigration benefits to, aliens with ties to terrorism.

The decision below finds no footing in the statutory text. Most glaring, the INA prohibits "material support" both "for the commission of a terrorist activity," 8 U.S.C. 1182(a)(3)(B)(iv)(VI)(aa), and also "to a terrorist organization," 8 U.S.C. 1182(A)(3)(B)(iv)(VI)(cc) and (dd). By insisting that support must have some nexus to terrorist activity before it is considered "material," the court of appeals conflated those two grounds, effectively erasing the latter.

The decision below also defies Congress's rationale for discouraging all material support "to" a terrorist organization. As this Court recognized in *Humanitarian Law Project*, even seemingly benign forms of support for terrorist organizations "can further terrorism by foreign groups in multiple ways," including by "free[ing] up other resources within the organization." 561 U.S. at 30. The same intuition governs in this context: Material support may come in the form of supplying life's essentials—*e.g.*, food, shelter, bedding, clothes—even if those items cannot be "use[d for] or readily divert[ed] to plan or carry out [the organization's] terrorist activities." App., *infra*, 16a. As Judge Richardson's dissent put it: "[P]roviding for the basic needs of the members of a terrorist organization" "materially support[s] the organization." *Id.* at 34a.

Under the correct approach, this should have been a straightforward case. Respondent cooked thousands of meals for the leadership of a conceded terrorist organization for about half a year. App., *infra*, 4a, 6a. Providing meals to a terrorist organization's members is no less a material form of support than providing gasoline for its vehicles. In holding otherwise, the decision below conflicts with the decisions of multiple other circuits, including in cases squarely involving food. The Fourth

Circuit's demanding yet opaque standard also imposes heavy operational burdens on the government's efforts to apply the material-support bar, which it must do in thousands of immigration proceedings per year. This Court should grant review.

STATEMENT

1. An alien who "has engaged in a terrorist activity" is inadmissible to the United States and deportable. 8 U.S.C. 1182(a)(3)(B)(i)(I), 1227(a)(4)(B). Such activity also renders an alien ineligible to receive various immigration benefits, such as asylum, statutory withholding of removal, and withholding of removal under the Convention Against Torture (CAT) regulations. See 8 U.S.C. 1158(b)(2)(A)(v), 1231(b)(3)(B)(iv); 8 C.F.R. 1208.16(d)(2).

The INA defines what it means to "engage in terrorist activity," specifying in key part that it includes the commission of "an act that the actor knows, or reasonably should know, affords material support" either "for the commission of terrorist activity" or "to a terrorist organization." 8 U.S.C. 1182(a)(3)(B)(iv)(VI)(aa), (cc), and (dd).[1] Those provisions, coupled with their consequences for an alien's inability to obtain any relief or protection from removal, are collectively referred to as the INA's "material support bar." *Ay* v. *Holder*, 743 F.3d 317, 319 (2d Cir. 2014) (per curiam).

The INA itself does not define "material support." But it supplies some illustrative examples, specifically

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[1] As relevant here, a "terrorist organization" includes a "group of two or more individuals, whether organized or not, which engages in or has a subgroup which engages in [terrorist activities]." 8 U.S.C. 1182(a)(3)(B)(vi)(III). The definition also includes organizations that have been designated as terrorist organizations by executive-branch officials. See 8 U.S.C. 1182(a)(3)(B)(vi)(I) and (II).

identifying "a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training." 8 U.S.C. 1182(a)(3)(B)(iv)(VI). The Board of Immigration Appeals (Board or BIA) has held that "'material support' to a terrorist organization" means any "act [that] has a logical and reasonably foreseeable tendency to promote, sustain, or maintain the organization, even if only to a de minimis degree" and even if not directly "intended to aid the organization." *In re A-C-M-*, 27 I. & N. Dec. 303, 308 (2018).

Congress tempered that otherwise "broad and categorical" bar with a "discretionary exemption." *Sufiyan* v. *Blanche*, No. 22-6392, 2026 WL 1468976, at *5 (2d Cir. May 26, 2026). The INA generally empowers the Executive Branch to grant waivers to those who would otherwise fall within the ambit of the material-support bar. 8 U.S.C. 1182(d)(3)(B)(i); see *Sesay* v. *Attorney General*, 787 F.3d 215, 223-224 (3d Cir. 2015) (describing the waiver process). And the Executive has exercised that authority to "address excusable violations," such as "support provided under duress or to only a de minimis degree." *A-C-M-*, 27 I. & N. Dec. at 308.

2. Respondent is a native and citizen of Nigeria. App., *infra*, 3a. After a lengthy stint in Venezuela, he returned home in 2010. *Ibid.* Yet in Lagos, respondent struggled to find meaningful work. *Ibid.* He was eventually tipped off by a friend in 2022 that there was an opportunity to "work as a cook" at the "camp" where that friend was employed. *Id.* at 3a, 43a-44a (internal quotation marks omitted). Respondent agreed to go to

the camp (about 45 minutes out of town) to try to apply for the job. *Ibid.*

Respondent described the camp as something of a "factory" town, with facilities, warehouses, and places for its workers to live. App., *infra*, 3a-4a, 44a. Once he arrived, he was told that if the leaders of the camp liked his style of cooking, he would be taken on full-time. *Id.* at 4a. They did, and respondent was hired: His job was to "cook three meals a day for the 15 to 17 'bosses' of the camp." *Ibid.*; see *id.* at 49a (noting respondent also did some "grocery shopping").

When respondent first arrived at the camp, he learned that the camp was named for the "Unknown Gunmen." App., *infra*, 4a, 45a. Shortly after he started working there, he learned how the group acquired that name: It was a separatist organization that sought to "kill people working for the government" and "cause destruction." *Id.* at 44a-45a; see *id.* at 4a, 52a. Respondent did not approve of the group's violent tactics. *Id.* at 4a, 5a. But according to him, "there was no way for him to leave." *Id.* at 4a (brackets omitted). Respondent claims that, after he indicated opposition to the group's ways and refused to join an operation, he was rebuked by one of the camp's leaders with a "harsh voice" and was generally isolated from the other workers. *Id.* at 45a-46a. Later, the group's leadership "stopped paying" respondent entirely. *Id.* at 5a, 45a.

Respondent ultimately cooked for the camp's leaders for about six months—three of which were without pay. App., *infra*, 6a. He was eventually able to arrange his departure, running away from a gas station while on a grocery trip for the camp. *Ibid.* While hiding out in Lagos, respondent was attacked or threatened multiple times by members of the Unknown Gunmen. *Ibid.* He

soon left the country for Venezuela, where he renewed his legal status to reside. *Id.* at 7a, 43a, 47a. Even there, however, members of the Unknown Gunmen threatened respondent, calling him to say that they would kill him either in Venezuela or in Nigeria (should he ever return). *Id.* at 7a, 47a-48a.

Respondent remained in Venezuela for around five months, saving money to come to the United States. App., *infra*, 7a, 47a. Respondent then entered this country illegally in July 2023, where he presented himself to Border Patrol near the southern border. *Id.* at 7a. The next month, DHS initiated removal proceedings against him, charging him with lacking valid entry documents upon his application for admission. *Id.* at 7a, 41a.

3. At his initial removal hearing, respondent conceded his removability, but he later applied for asylum, statutory withholding of removal, and withholding of removal under the CAT regulations. App., *infra*, 7a, 42a.

a. In March 2024, following two more hearings, the immigration judge (IJ) denied respondent all forms of relief, and ordered him removed to Nigeria. App., *infra*, 41a-73a. As relevant here, the IJ held that the material-support bar rendered respondent ineligible for asylum and withholding of removal. *Id.* at 56a-59a. The IJ first found that the Unknown Gunmen qualified as a "terrorist organization" under the INA. *Id.* at 57a-60a. The IJ further found that respondent had "provided material support" to that organization. *Id.* at 58a-59a. In cooking three meals a day for the "leaders" of the Unknown Gunmen over a period of six months, respondent had provided support that "had some effect on the ability of the organization to accomplish its goals" because he helped "satisfy[] basic human needs." *Id.* at

58a. The IJ also found that the material-support bar does not include any exception for support given under duress. *Id.* at 59a.

b. In September 2024, the Board affirmed. App., *infra*, 36a-40a. It agreed that respondent's six months as a daily cook for Unknown Gunmen leadership constituted "material support" to that terrorist organization. *Id.* at 38a. The Board explained that, even if "actions such as cooking may be relatively minimal," performing such actions for a terrorist group "frees up resources for the group to accomplish its goals." *Ibid.* The Board also agreed the material-support bar does not include an unwritten exception for acts performed under duress. *Ibid.*

c. Respondent filed a timely petition for review in the court of appeals. App., *infra*, 9a. In December 2024, he sought an emergency stay of his removal, which the court of appeals denied. *Ibid.* In April 2025, respondent was removed to Nigeria. *Ibid.*

4. In September 2025, a divided panel of the court of appeals granted respondent's petition for review, vacated his order of removal, and remanded his case back to the BIA for further proceedings. App., *infra*, 1a-34a.

a. In an opinion by Judge Wynn, the majority held that "the Board erred in applying the material-support bar to deny [respondent's] application for asylum and withholding of removal." App., *infra*, 17a. At the threshold, the court noted that respondent did "not challenge" that the Unknown Gunmen qualified as a terrorist organization; nor did he dispute that he knew of their nature while he worked for them. *Id.* at 11a & n.4. The question of the bar's applicability therefore turned on whether respondent's cooking qualified as "material"

support. *Id.* at 11a. The court concluded that it did not. *Id.* at 11a-17a.

Focusing on the word "material," plus the non-exhaustive examples supplied in the statute (*e.g.*, a "safe house"), the court concluded that "material support" must be something that "can either be directly used to plan or carry out terrorist activities or can be readily diverted to such use"—*i.e.*, it must "advance the organization's commission of terrorism." App., *infra*, 13a (citations omitted). General assistance to a terrorist organization, without any nexus to its terrorist activity, is insufficient. In this context, "material support" must be "support that is sufficiently substantial standing alone to help the terrorist organization accomplish its terrorist activities." *Id.* at 16a.

Measured against that standard, the court of appeals found that respondent's cooking for Unknown Gunmen leadership was insufficient to constitute material support. App., *infra*, 16a. Although cooking meals for the Unknown Gunmen "may have 'sustained' the organization in the broadest possible sense," respondent's cooking "provided nothing that the organization could use or readily divert to plan or carry out its terrorist activities." *Ibid.*

Once vacating the order of removal on that ground, the court of appeals declined to reach any other issue, including whether the material-support bar includes any sort of implicit duress exception. App., *infra*, 17a-21a & n.8.

b. Judge Richardson dissented. App., *infra*, 22a-34a. On his view, the bar on "material support" to a terrorist organization "sweeps more broadly than support for the terrorist acts that a terrorist organization takes." *Id.* at 26a. It must be broader, Judge Richardson

explained, because the INA's bar expressly covers "material support" not only "for the commission of a terrorist activity," but also "to a terrorist organization." *Ibid.* (quoting 8 U.S.C. 1182(a)(3)(B)(iv)(VI)(aa) and (dd)) (emphasis omitted). By insisting that all material support must advance the commission of terrorism, the majority effectively wrote the latter ground "out of the statute." *Id.* at 22a.

Unlike the majority, Judge Richardson would have defined "material support" as requiring "enough support to have some meaningful impact on the terrorist organization's ability to achieve its goals." App., *infra*, 30a. And under that test, respondent "undoubtedly" provided material support to the Unknown Gunmen. *Ibid.* On respondent's own account, he prepared around 8000 meals for the bosses of that terrorist organization. See *id.* at 22a. And that support clearly helped that organization function. "An organization acts through its members, and its members need to eat." *Id.* at 31a. Judge Richardson found it "quite difficult to imagine how a terrorist organization could achieve any goal without first being fed." *Ibid.* He therefore would have found that "substantial evidence supports the Board's conclusion that the material-support bar applies" to respondent. *Id.* at 33a.

Judge Richardson further recognized that, in holding otherwise, the majority had disagreed with "several of our sister circuits," which had held that material support to a terrorist organization need not be "[]connected to any particular act of terrorism." App., *infra*, 32a. More specifically, he cited cases from the Second and Third Circuits that held that "providing food and shelter" qualifies as material support. *Ibid.* (citing *Hernandez* v. *Sessions*, 884 F.3d 107, 109 (2d Cir. 2018), and

Singh-Kaur v. *Ashcroft*, 385 F.3d 293, 298-301 (3d Cir. 2004)).

c. On December 30, 2025, the court of appeals denied the government's petition for rehearing and rehearing en banc, with no judge requesting a poll or noting a dissent. App., *infra*, 35a.

REASONS FOR GRANTING THE PETITION

The court of appeals held that an alien does not provide "material support * * * to a terrorist organization" under 8 U.S.C. 1182(a)(3)(B)(iv)(VI)(dd) unless his support is "sufficiently substantial standing alone to help the terrorist organization accomplish its terrorist activities." App., *infra*, 16a. That interpretation of the statute is inconsistent with the text, context, and rationale of the material-support bar, and it conflicts with decisions of at least three other circuits about the bar's scope, including two published decisions specifically addressing the provision of food to terrorists. If allowed to stand, the decision below will cause—and indeed, has already caused—serious confusion about its application and will substantially increase the burden on the government in excluding aliens with links to terrorism. This Court's review is warranted.

A. The Decision Below Erroneously Conflates Support For A Terrorist Organization With Support For Terrorist Activities

1. In holding that "material support" provided "to a terrorist organization" must include a nexus to that organization's "terrorist activities," the court of appeals erred.

To start, the court of appeals' nexus requirement has no basis in the statute's text. "Support" is a broad term, which includes "[s]ustenance or maintenance; esp., articles such as food or clothing." *Black's Law Dictionary*

1453 (7th ed. 1999); see *Webster's Third New International Dictionary* 2297 (2001) (def. 3.a: "to supply with the means of maintenance (as lodging, food or clothing)"; def. 3.b: "to provide a basis for the existence or subsistence of : serve as the source of material or immaterial support, nourishment, provender, fuel, raw material, or sustenance of"). And as an adjective, "material" typically means either "relating to matter; physical" (as in "material goods") or "having some logical connection with the consequential facts." *Black's Law Dictionary* 991.

Accordingly, "material support" to a terrorist organization naturally means concrete assistance that would logically help the organization operate. See *Singh-Kaur* v. *Ashcroft*, 385 F.3d 293, 298-301 (3d Cir. 2004). Food and cooked meals are thus material support even though they are not used as, or easily converted into, weapons. In fact, when describing the reach of the initial (and narrower) version of the material-support bar that was enacted in 1990, the House Judiciary Committee flagged "providing food" as a type of support that would render an alien "excludable." H.R. Rep. No. 882, 100th Cong., 2d Sess. 29-30 (1988).

The statutory structure further defeats the court of appeals' construction. If "material support" meant only forms of support that can readily "advance the organization's commission of terrorism," App., *infra*, 13a (citation omitted), then much of the material-support bar would be rendered meaningless. The INA specifically enumerates the objects toward which material support can run. The first item in subclause (VI) addresses support "for the commission of a terrorist activity." 8 U.S.C. 1182(a)(3)(B)(iv)(VI)(aa). But the second item addresses support "to any individual" who "has

committed or plans to commit a terrorist activity." 8 U.S.C. 1182(a)(3)(B)(iv)(VI)(bb). Similarly, the third and fourth items address support "to a terrorist organization." 8 U.S.C. 1182(a)(3)(B)(iv)(VI)(cc) and (dd). The decision below conflates the distinction in those provisions. By requiring material support to be the kind of support that advances the commission of terrorist activities, the Fourth Circuit overlooked Congress's explicit decision to include support that is defined by the identity of its recipient rather than the activities that it supports.

If Congress wanted to adopt a rule like the one imposed below, it could simply have barred "material support" to any "individual" or "organization" that is given "for the commission of a terrorist activity." But that is not the law Congress enacted. Instead, Congress prohibited material support "for" a proscribed purpose ("the commission of a terrorist activity") as well as support "to" certain dangerous recipients (terrorist organizations, their members, and terrorist individuals). 8 U.S.C. 1182(a)(3)(B)(iv)(VI). That expansive scope—separately targeting support for bad activities and to bad actors—was deliberate, as the bar's statutory history makes clear. Compare Immigration Act of 1990, Pub. L. No. 101-649, § 601(a), 104 Stat. 5068-5070 (barring "material support to any individual, organization, or government in conducting a terrorist activity at any time"), with Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, § 411(a)(1), 115 Stat. 345-347 (expanding prohibition to its current structure).

In context, the INA's specific bar on "material support * * * to a terrorist organization," 8 U.S.C.

1182(a)(3)(B)(iv)(VI)(cc) and (dd), naturally includes support that helps such an organization operate, even if the precise form of that support is not something that "the organization could use or readily divert to plan or carry out its terrorist activities." App., *infra*, 16a. After all, there are many ways to contribute to an organization without directly advancing its ultimate product: A company's H.R. department, medical staff, or (most to the point) cafeteria workers can all be critical parts of the organization, even if the services that they provide cannot be "used or readily diverted" into the production of the widgets that drive its business. The same, common-sense principle holds here.

2. The decision below also conflicts with this Court's decision in *Holder* v. *Humanitarian Law Project*, 561 U.S. 1 (2010). There, this Court interpreted the material-support bar's criminal counterpart, which makes it illegal to "knowingly provide[] material support or resources to a foreign terrorist organization." 18 U.S.C. 2339B(a)(1). The plaintiffs sought a declaration that certain forms of support—*e.g.*, training members of a terrorist organization "on how to use humanitarian and international law to peacefully resolve disputes," or how to "present claims for tsunami-related aid to mediators and international bodies"—fell outside the law's reach. 561 U.S. at 14-15 (citations omitted). They argued that the statute was best read as prohibiting only support that is "intended to further a foreign terrorist organization's illegal activities." *Id.* at 16.

This Court "reject[ed]" that argument as "inconsistent with the text of the statute." *Humanitarian Law Project*, 561 U.S. at 16. By the law's plain terms, what mattered was "the organization's connection to terrorism, not [the] specific intent to further the organ-

ization's terrorist activities." *Id.* at 16-17. There (as here) the text addressed material support "to" a terrorist organization, without any additional qualifier. 18 U.S.C. 2339B(a)(1). And there (as here), Congress specified elsewhere when an action needed to be done with the "intent to further terrorist activity." *Humanitarian Law Project*, 561 U.S. at 17-18 & n.3. Accordingly, "material support" included general support to a terrorist organization, even where that support was directed toward the organization's "legitimate activities" and "not [its] terrorism." *Id.* at 29; see *id.* at 30-39.

This Court explained why that made sense. Congress understood that resources are "fungible," and that even support for nonviolent activity can "free[] up resources within the organization that may be put to violent ends." 561 U.S. at 30-31. Support that nominally goes to "peaceable, lawful conduct" may also "lend legitimacy" to the organization—aiding its ability to recruit and fundraise. *Id.* at 30. Given those realities, Congress adopted a prophylactic bar that would starve terrorist organizations of any outside support. *Id.* at 29, 35. It thus outlawed "even seemingly benign support" on the view that all kinds of assistance can further the ultimate "terrorist activities of th[e assisted] organization." *Id.* at 36.

Humanitarian Law Project should have made this a simple case. If the criminal bar on providing "material support * * * to a foreign terrorist organization" includes general support disconnected from any terrorist activity, 18 U.S.C. 2339B(a)(1), then so should the civil bar. It is "incongruous," to say the least, that an alien could be jailed for decades for conduct that would not prohibit his admission to this country. *Singh-Kaur*, 385 F.3d at 299. Indeed, the rationale for a "sweeping stat-

utory provision" is even stronger in the immigration context, where Congress is less concerned with deciding "culpab[ility]," and is instead focused on how best to allocate the highly oversubscribed benefit of lawful status within the United States. *Sufiyan* v. *Blanche*, No. 22-6392, 2026 WL 1468976, at *6 (2d Cir. May 26, 2026); see *Negusie* v. *Holder*, 555 U.S. 511, 526-527 (2009) (Scalia, J., concurring) (explaining that immigration policy is often attuned to an alien's "desirability," not just his "culpability").

The court of appeals had no persuasive answer to *Humanitarian Law Project*. It noted this Court's emphasis on the fungibility of "money" and on how activities that boost "legitimacy" could help terrorist organizations fundraise (among other things). App., *infra*, 15a. Then the court of appeals characterized this Court as having held only that "support" is "material insofar as it helps the organization carry out its terrorist activities." *Ibid.*

But as Judge Richardson explained in his dissent, that "treatment of [*Humanitarian Law Project*] is facially incorrect"—and in fact adopts the understanding of material support that was unsuccessfully advanced by Justice Breyer's dissent. App., *infra*, 28a. This Court's rationale was that any support directed to a terrorist organization—whether benign or nefarious—was prohibited because it assisted such an organization. At no point did the Court insist on any greater nexus between the support provided and actual terrorist acts. Indeed, the Court's opinion could be fairly described as focused on *rejecting* that particular proposition. See *Humanitarian Law Project*, 561 U.S. at 38.

Worse, the decision below would seem to create a system where the civil material-support bar is in fact

narrower than its criminal counterpart. If providing basic needs to the leadership of a terrorist organization (*e.g.*, food, shelter, bedding, clothes) is not material support, then it is difficult to see how much of the activity at issue in *Humanitarian Law Project* would qualify. After all, if feeding terrorists before they launch their attacks does not count—because their meals were "nothing the organization could use or readily divert to plan or carry out its terrorist activities," App., *infra*, 16a—then neither should the "legal expertise in negotiating peace agreements" that triggered the criminal bar in *Humanitarian Law Project*, 561 U.S. at 15.

3. The counter-arguments offered by the court of appeals are not persuasive. The court relied heavily on the "examples of material support" provided in the statute, and inferred from them that "material support" must particularly advance the commission of terrorism, because each of the listed examples "can either be directly used to plan or carry out terrorist activities or can be readily diverted to such use." App., *infra*, 13a (quoting respondent's brief). But in *Humanitarian Law Project*, the statute defined "material support" by reference to a similar set of examples. 18 U.S.C. 2339A(b)(1). And this Court declined to impose that very gloss. See 561 U.S. at 16-17; contra *id.* at 57-58 (Breyer, J., dissenting).

The same gloss should be rejected here. As with the criminal provision, the statute here introduces its examples with the word "including," 8 U.S.C. 1182(a)(3)(B)(iv)(VI), which makes clear that it reaches beyond its enumerated items. *Federal Land Bank of St. Paul* v. *Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941); see *Khan* v. *Holder*, 766 F.3d 689, 698 (7th Cir. 2014) ("[T]he list is not exhaustive"). For that matter,

even the "pattern" identified by the court of appeals does not support the inference of a nexus requirement. App., *infra*, 14a. Many of the statute's examples of material support—*e.g.*, "funds," "transportation," "communications"—often have nothing to do with terrorism, and are instead the sort of sometimes-benign "support" that is nevertheless barred because, among other things, it "frees up other resources" for the organization. *Humanitarian Law Project*, 561 U.S. at 30.

The decision below expressed concern that the government's reading would mean that there is "no such thing" as "*immaterial* support." App., *infra*, 16a. But that is not so. Under the term's plain meaning, support is immaterial, for instance, when it is the sort of incorporeal assistance that will not logically help that organization function. See pp. 11-12, *supra*. For that reason, something like "uncoordinated advocacy" that is "generally supportive" of a terrorist organization would, without more, fall outside the bar's scope. App., *infra*, 30a (Richardson, J., dissenting).

The court of appeals invoked another sense of the term "material" and concluded that material support must be "significant" or "essential" support. App., *infra*, 12a. But even assuming that support must be "significant" to be "material," respondent's regular provision of meals over six months for 15 to 17 leaders of a terrorist organization would qualify. See *id.* at 33a n.11 (Richardson, J., dissenting). In any event, al-though "material" takes that meaning in some contexts, adding such a quantitative component here fits poorly within the statutory framework. See, *e.g.*, *S.A.B.* v. *Boente*, 847 F.3d 542, 545 (7th Cir. 2017) ("[M]inor material support is still material support within the meaning of the statute."), cert. denied, 583 U.S. 1055 (2018). The fed-

eral courts are ill-equipped to determine when support is "enough to make a difference" for a terrorist organization's conduct, as the court of appeals would require. App., *infra*, 13a; see *Humanitarian Law Project*, 591 U.S. at 33. But rather than go down that road, Congress created a framework under which the "sweeping material support bar is accompanied by an exemption process." *Sufiyan*, 2026 WL 1468976, at *6. Congress thus empowered the Executive Branch—rather than the Judiciary—to use its expertise to decide when support is so "insignificant" that the bar's applicability can be waived. *A-C-M-*, 27 I. & N. Dec. at 308.

4. Under the correct standard, respondent's conduct plainly constituted material support to the Unknown Gunmen, an organization that he undisputedly knew was engaged in terrorist activities as defined under the INA. Sustenance in the form of food is a prime example of "support." See pp. 11-12, *supra*. And supplying that basic necessity to the members of a terrorist organization has a logical connection to that organization's functioning. Perhaps even more than a radio, map, or gun, food is a prerequisite for any sort of sustained terrorist activity. App., *infra*, 22a (Richardson, J., dissenting) ("An army marches on its stomach."). In cooking thousands of meals for the leadership of the Unknown Gunmen over a period of months, respondent afforded material support to that organization, and the court of appeals erred in concluding otherwise.

B. The Decision Below Conflicts With Decisions From Other Circuits

As Judge Richardson noted in his dissent, the decision below conflicts with those of "sister circuits." App., *infra*, 32a. In particular, the Second and Third Circuits have both "upheld Board decisions [finding] that

providing food and shelter, unconnected to any particular act of terrorism, constitutes material support." *Ibid.*

In *Hernandez* v. *Sessions*, 884 F.3d 107 (2d Cir. 2018), the court affirmed that providing "$100 packages of foodstuffs every three months for more than two years" constituted material support. *Id.* at 109. In doing so, that court necessarily rejected any requirement that support have a nexus to some later act of terrorism. And that court has since reiterated that material support need only help the terrorist organization itself. See, *e.g.*, *Doleck Nepali* v. *Barr*, 828 Fed. Appx. 14, 18 (2d Cir. 2020) (rejecting the contention that serving "snacks rather than full meals" was not material support, because *Hernandez* had "reiterated that providing food to a terrorist organization on several occasions may constitute material support"); *Ay* v. *Holder*, 743 F.3d 317, 319 (2d Cir. 2014) (no dispute that giving "food" on "four or five occasions" and "clothing" at least once could be material support).

Similarly, in an opinion joined by then-Judge Alito, the Third Circuit affirmed the Board's conclusion that an alien's "provision of food and setting up tents" for militants had constituted material support, even as the alien had "denied participating directly in any violence." *Singh-Kaur*, 385 F.3d at 299, 301. The Third Circuit has subsequently characterized *Singh-Kaur* as holding that "providing food and setting up tents at religious meetings constituted material support" even when those actions were "non-violent and tangential to any specific terrorist acts." *Sesay*, 787 F.3d at 221. Accordingly, if an alien "provide[s] general support to a group that ha[s] terrorist aims," that suffices to trigger the material-support bar in the Third Circuit. *Ibid.* That

cannot be reconciled with the result or reasoning of the decision below.[2]

Even outside the specific context of food, the Seventh Circuit has similarly adopted reasoning that conflicts with the decision below. In *Hussain* v. *Mukasey*, 518 F.3d 534 (7th Cir. 2008), the court held an alien may be providing "material support to a terrorist organization even though [the alien is] not providing direct support to any terrorist acts." *Id.* at 538. As the court elaborated, those who "provide material support to a terrorist organization * * * are engaged in terrorist activity even if [their] support is confined to the nonterrorist activities of the organization," such as "charity" or the "provision of social services." *Ibid.*; see *Khan*, 766 F.3d at 699 (citing *Hussain* in rejecting an alien's argument that "his participation was immaterial because it only related to the groups' peaceful political activities"). Under that standard, the Seventh Circuit held that the "sporadic and infrequent" provision of "interpreter services" during "medical appointments and social errands" was material support, even when those services "occurred outside the context of the group's terrorism-related activities." *Jabateh* v. *Lynch*, 845 F.3d 332, 340-341 (2017). That too is irreconcilable with the decision below.

The court of appeals found some support for its approach in *Hosseini* v. *Nielsen*, 911 F.3d 366 (6th Cir. 2018), cert. denied, 589 U.S. 924 (2019). See App., *infra*,

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[2] In an unpublished decision, the Ninth Circuit also held that "cooking" for a terrorist organization "for an extended period of time" would not qualify for any *de minimis* exception from the material-support bar, even assuming one might exist for cases that do not involve funds. *Nuure* v. *Garland*, 857 Fed. Appx. 394, 395 (2021).

12a-13a, 16a-17a. In *Hosseini*, the Sixth Circuit said that material support must be "relevant to terrorism" and "significant." 911 F.3d at 375-376. But *Hosseini* itself applied that standard so broadly that it held that the "copying and distribution of flyers" on behalf of a terrorist organization qualified as material support, even though the flyers were "non-violent" and the alien himself had refused to "support[]" the group's "violent activities." *Id.* at 377. It is difficult to see how the application of the Fourth Circuit's test would reach the same result. If feeding terrorist leadership is insufficient to constitute material support, it is far from clear how passing out "non-violent flyers" would suffice. *Ibid.* But that lack of clarity only suggests that the circuits are even more divided about what constitutes material support.

C. The Decision Below Warrants This Court's Review

1. The decision below is not only wrong, but unworkable. In critical part, the court of appeals defined "material support" as "support that is sufficiently substantial standing alone to help the terrorist organization accomplish its terrorist activities." App., *infra*, 16a. That invented standard will be difficult to apply in practice. Especially so, since the court's opinion foments more confusion than clarity.

To start, the decision below does not clarify whether certain categories of support are necessarily material, or whether every form of support must have tangible consequences. In particular, the court suggested that all monetary support would constitute material support, because "'funds'" can be "readily diverted for use in terrorism." App., *infra*, 13a-14a (quoting 8 U.S.C. 1182(a)(3)(B)(iv)(VI)); see *id.* at 15a ("Money is fungible") (quoting *Humanitarian Law Project*, 561 U.S. at

37). But by definition, small-dollar contributions will have insufficient effects when considered "standing alone"—as the court elsewhere seemed to require. *Id.* at 16a. In response, the court remarked that "material support is more qualitative than quantitative." *Id.* at 15a. But that does not resolve how to deal with small monetary contributions. And similar questions will apply to other kinds of support expressly identified in the statute. Does a single revolver suffice, even if it would not realistically be "enough to make a difference," *id.* at 13a, to the organization's terrorist acts?

Even taking the court of appeals' remarks on their own terms, the logic collapses upon itself. If money may be material support because it can be "redirected" towards terrorist activity (either directly or by freeing up money elsewhere), the same is equally true for the non-terroristic necessities that money buys. Yet under the decision below, a donation that could pay for six-months' worth of meals would be material support, but the actual provision of those meals is somehow insufficient. That makes no sense and offers no workable line for deciding when indirect support is sufficient.

The court of appeals also contemplated that actions which "lend legitimacy" to a terrorist organization may constitute material support. App., *infra*, 15a-16a (citation omitted). But that concession—advanced in an effort to accommodate *Humanitarian Law Project*—defies the logic of the rest of the decision below. The single reason that the court offered for why cooking was insufficient was that it was too many steps removed from the organization's actual commission of "terrorist activities." *Id.* at 16a. But promoting an organization's legitimacy will often be even *further* removed—the action must first add to the organization's appeal, which

will *then* translate into recruits or funds, which could *then* be used for terrorist activity. See *id.* at 34a n.11 (Richardson, J., dissenting). So while the court of appeals made clear that "material support" must involve some nexus to terrorist activity, its opinion offers no coherent principle for actually identifying one.

The decision below has already started to create confusion. In April 2026, the Board vacated and remanded a decision by an immigration judge holding that the former acting head of the Taliban's embassy in Spain was removable for having provided material support to a terrorist organization. *In re Wahidi*, AXXX-XXX-591 (B.I.A. Apr. 6, 2026). The Board concluded that a remand was needed for the IJ to decide whether the actions at issue satisfied the standard announced in the decision below. *Ibid.* It speaks volumes that the Fourth Circuit's standard raises questions about whether an ambassador for the Taliban provided material support to the Taliban.

2. The decision below has other significant practical consequences. The material-support bar is an especially important feature of the federal immigration laws. For example, this Office has been informed that it is relevant to thousands of immigration proceedings and adjudications every year. The State Department also regularly applies the material-support bar when screening visa applications. It is critical that the standard for material support be both administrable and correct.

The decision below also increases the burden of applying the material-support bar. Whatever the decision below actually entails, it is no longer sufficient for the government to trigger the bar's applicability by establishing that an alien has given a concrete good or service to a terrorist organization. The government must in-

stead make an additional, fact-intensive showing that such support was "sufficiently substantial standing alone to help the terrorist organization accomplish its terrorist activities." App., *infra*, 16a. That new standard places a weighty operational burden on already-resource-strapped agencies. The burden is increased because satisfying the standard will often turn on evidence from abroad. Cf. *Angov* v. *Lynch*, 788 F.3d 893, 901 (9th Cir. 2015) (describing difficulties in investigating events on "the other side of the globe" in this context), cert. denied, 577 U.S. 1102 (2016). And it is further increased because it is often preferable for the government to rely only on unclassified evidence in removal proceedings to avoid disclosing ongoing investigations or risk compromising its sources for classified information.

3. Finally, this case is an appropriate vehicle for resolving the question presented. Respondent did not challenge whether the Unknown Gunmen qualified as a "terrorist organization" under the INA. App., *infra*, 11a. Nor did he dispute that he was aware it was a terrorist organization. *Id.* at 11a n.4. Accordingly, the decision below turned entirely on whether respondent's conduct constituted "material support." *Id.* at 17a.

It is true that answering the question presented will not necessarily dispose of this case. If this Court reverses, the court of appeals has reserved the question whether the material-support bar has an implicit "duress" exception—an issue that would be left for remand. App., *infra*, 18a-20a. And even if this Court affirms, the IJ reached a series of alternative holdings that would render respondent ineligible for any relief or protection—grounds that the court of appeals left for the Board to review in the first instance. *Id.* at 17a n.8.

Even so, the decision below announced a legal standard with implications that go far beyond one alien. Absent this Court's review, that flawed standard will govern all such material-support cases in the Fourth Circuit.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MAY 2026

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-2070

IZUCHUKWU OZURUMBA, PETITIONER

v.

PAMELA JO BONDI, ATTORNEY GENERAL, RESPONDENT

AMERICAN IMMIGRATION LAWYERS ASSOCIATION;
INTERNATIONAL HUMAN RIGHTS AND REFUGEE LAW
EXPERTS, AMICI SUPPORTING PETITIONER

Argued: May 7, 2025
Decided: Sept. 2, 2025

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

Before WYNN, RICHARDSON, and BERNER, Circuit Judges.

Petition for review granted; vacated and remanded by published opinion. Judge Wynn wrote the majority opinion, in which Judge Berner joined. Judge Richardson wrote a dissenting opinion.

WYNN, Circuit Judge:

Under U.S. immigration law, a noncitizen is ineligible for asylum or withholding of removal if they have pro-

vided material support to a terrorist organization, even if they are otherwise eligible.

An immigration judge ("IJ") found that Petitioner Izuchukwu Ozurumba, a Nigerian citizen, provided material support to a terrorist organization when he was forced to prepare meals for its leaders, and denied his application for asylum or withholding of removal. The Board of Immigration Appeals ("Board") affirmed.

Because the record does not support the conclusion that Ozurumba provided material support, we grant the petition for review, vacate the Board's order, and remand to the Board for further proceedings.[1]

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[1] Our good colleague apparently enjoys bombast for law—wielding rhetorical flourishes about Napoleon's alleged digestive wisdom. But it is one thing to observe that soldiers need food; it is quite another to stretch that battlefield maxim into a statutory command Congress never enacted. The statute prohibits "material support" to terrorist organizations, yes—but it does so in the particular ways that Congress enumerated. The dissent, unfazed by textual restraint, wants to read "meals" into the statute as though judges have the freedom of grocery clerks who can stock the shelves of statutes as they see fit.

But Congress chose specific terms; judges are not free to supplement them because Frederick the Great talked about his dinner. To say that every provision of food is support for terrorism is to collapse the statute into absurdity: under the dissent's theory, a soup kitchen feeding the hungry—some of whom may be unsavory characters—would find itself guilty of aiding terrorism. That's not textual fidelity; that is judicial overreach.

Nonetheless, the dissent accuses the majority of policymaking. The irony is rich. What the dissent proposes is not interpretation of law but enactment of a new one—that makes for a stirring read but it's not what Congress wrote.

I.

A.

The following facts are drawn from Ozurumba's testimony, which the IJ found "generally credible . . . . [and] consistent," J.A. 193;[2] the testimony of Ozurumba's country-conditions expert, Dr. Inge Amundsen, which the IJ found "credible and helpful," J.A. 194; and Ozurumba's declaration in support of his application for asylum and withholding of removal. The Board did not disturb the IJ's credibility determinations.

Ozurumba is a 56-year-old native and citizen of Nigeria. In 2005, he traveled to Venezuela in search of more lucrative employment. He obtained a residential visa and remained in Venezuela for five years, working in clothing sales. Ultimately, however, after being robbed several times and in light of what he described as Venezuela's "turmoil," Ozurumba moved back to Nigeria in 2010. J.A. 526. He continued to work in clothing sales, but struggled to make ends meet. By 2022, Ozurumba was "desperate for a better job," and began asking "everyone [he] knew" for leads. J.A. 527. An acquaintance, Peter, told him about an opportunity to work as a cook at Peter's workplace. Peter did not answer Ozurumba's questions about the nature of his employer; he simply directed him to a bus station.

Ozurumba travelled to the bus station, boarded a van along with several other people, and was driven about 45 minutes "to a rural camp, where there were a couple of houses and a warehouse" and security officers who "patrolled and carried guns." J.A. 527. The camp looked to

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[2] Citations to the "J.A." refer to the Joint Appendix filed under seal by the parties in this appeal.

Ozurumba "like a factory" or "a company." J.A. 308. A man Ozurumba understood to be "the boss" told him that if the leaders of the camp liked his cooking, they would employ him. J.A. 311. The leaders did like his cooking, and they hired Ozurumba to cook three meals a day for the 15 to 17 "bosses" of the camp. J.A. 318.

Only after starting work did Ozurumba begin to discover the true purpose of the camp. Ozurumba testified that as soon as he arrived, "[t]here was no way for [him] to leave" because security forces guarded the gates. J.A. 320. He soon "observed people that were in government and politicians" entering and leaving the camp, including the governor of Imo State, who Ozurumba had heard was "not a good person." J.A. 312. He asked Peter what purpose the camp served and why politicians were visiting. Peter initially "refused to respond" to Ozurumba's questions, but eventually told him that the camp's leaders "used the young boys in that place to commit evil, destroy things like the police stations," and extort government officials. J.A. 313-14. Ozurumba soon learned that the camp belonged to a group known as the "Unknown Gunmen."

Ozurumba's country-conditions expert, Dr. Amundsen, testified that the Unknown Gunmen are likely Igbo separatists who operate in the Biafra region in southern Nigeria. Dr. Amundsen credited several reports showing that two Igbo separatist groups—the Indigenous People of Biafra and the Eastern Security Network—operate camps in the area that Ozurumba described. Some local politicians support these groups, but the Nigerian government considers them to be terrorist organizations. Dr. Amundsen explained that politicians sometimes hire Unknown Gunmen to intimidate voters

during elections, and Ozurumba cited reports of Unknown Gunmen burning down police stations and killing politicians. Dr. Amundsen noted that some workers in Unknown Gunmen camps are there voluntarily to earn money or to support the cause, but that others were "abducted or forced into it." J.A. 445. He testified, as did Ozurumba, that the police cannot protect people from the Unknown Gunmen.

Following his conversation with Peter, Ozurumba noticed that, after young people would leave and return to camp, he would see news reports of murder or arson. He concluded that those crimes were committed by the Unknown Gunmen. Because he opposes violence, Ozurumba "became very, very upset" and withdrew from the camp's social life. J.A. 314.

The "second in command" at the camp noticed that Ozurumba's attitude had changed. J.A. 326. He "use[d] a hard voice" with Ozurumba and told others to "monitor" him. J.A. 330. On one occasion, Ozurumba was asked to accompany a group of Unknown Gunmen on what he expected would be a violent raid; he feigned illness and did not participate in the raid. He later saw on the news that a politician's house and cars had been burned.

Around this time, the camp's leaders stopped paying Ozurumba for his work, and Ozurumba became afraid for his life. He told one of the leaders that he wanted to quit, but was told that he must keep working. The security guards wouldn't allow him to leave, so Ozurumba continued working without pay "until [he] had an escape plan." J.A. 528.

After around six months of cooking for the camp's leaders—three without pay—Ozurumba seized an op-

portunity to escape. The camp sent Ozurumba into town to buy groceries, escorted by someone else from the camp. When they stopped for gas, Ozurumba got permission to use the restroom. He escaped through an open gate into the bush, where he stayed for two days before making his way to a nearby city. From there he went to Lagos, where he stayed with a friend for two days. When the friend "became fearful," Ozurumba "started to move from house to house." J.A. 333. Members of the Unknown Gunmen called him "every day" to tell him that they would find him and "do something very bad to" him because he "had discovered what they were doing." J.A. 333-34.

One day in Lagos, as Ozurumba left a church service, he noticed a car following him. "[T]he next thing [he] knew, four people jumped [out of] the car." J.A. 334. They called his name, beat him with sticks and knives, and threatened to kill him if he did not go with them. Bystanders called the police, but Ozurumba does not know whether they reported to the scene because he passed out. He regained consciousness in a hospital, and staff informed him that he had been brought there by somebody who was not a police officer. Ozurumba suffered injuries to his head and leg.

On another occasion, Unknown Gunmen showed up at the door of a house in Lagos where Ozurumba was staying. Ozurumba screamed for the neighbors, and the Gunmen fled in a car. Yet another time, Unknown Gunmen followed Ozurumba on the way home from the store, threatening to kill him. He screamed again, drawing a crowd, and the Unknown Gunmen ran away. After this incident, Ozurumba felt that "if [he] stay[ed] [in Nigeria,] [he] [would] not be able to live." J.A. 338. He asked

his brother to sell their deceased father's land to raise funds for him to leave the country.

Ozurumba used the money to travel back to Venezuela, where he had last lived in 2010. But he "felt unsafe and knew [he] could not survive there." J.A. 529. At the same time, he could not go home: Unknown Gunmen called him frequently to tell him that the day he returned to Nigeria "would be the day that [he] would die." J.A. 341.

After five months in Venezuela, Ozurumba raised enough money to travel to the United States. He entered at the southern border in July 2023, where he surrendered himself to Border Patrol. He passed a credible-fear interview and rebutted the presumption of ineligibility for asylum under the Circumvention of Lawful Pathways rule. *See* 8 C.F.R. § 1208.33. On August 22, 2023, the Department of Homeland Security issued Ozurumba a notice to appear in removal proceedings. Ozurumba was detained by Immigration and Customs Enforcement throughout the proceedings that followed.

B.

In his first immigration hearing, Ozurumba admitted that he was a native and citizen of Nigeria and that he had entered the United States without valid entry documents. The IJ found him removable as charged but gave him an opportunity to apply for asylum and withholding of removal, and for protection under the Convention Against Torture. Ozurumba did so, and the IJ held merits hearings on his application in February and March 2024. In an oral decision issued on March 7, 2024, the IJ denied Ozurumba all forms of relief and ordered him removed to Nigeria.

Two elements of that decision, as later addressed by the Board, are relevant on appeal. First, the IJ found Ozurumba ineligible for asylum and withholding of removal based on a provision of the Immigration and Nationality Act known as the material-support bar, which deems inadmissible a noncitizen who "affords material support" to a "terrorist organization." 8 U.S.C. § 1182(a)(3)(B)(iv)(VI); *see id.* § 1182(a)(3)(B)(i)(I). The IJ concluded that the Unknown Gunmen qualify as a terrorist organization and that Ozurumba lent material support to the group by "providing food, in the form of cooking" for "the bosses of the camp three times a day for anywhere from three to six months." J.A. 197. Second, the IJ found Ozurumba ineligible for deferral of removal under the CAT and its implementing regulations because he failed to show that he would likely be tortured with the acquiescence of a public official if removed to Nigeria. *See* 8 C.F.R. §§ 208.16(c), 208.18(a)(1).

On September 27, 2024, the Board affirmed. It agreed with the IJ that the material-support bar has no de minimis or duress exceptions, such that even "relatively minimal" actions are sufficient to bar asylum and withholding of removal. J.A. 4. The Board also affirmed the IJ's denial of deferral of removal under the CAT, explaining that Ozurumba "has not shown a clear probability that members of the Unknown Gunmen will torture him in the future, or that any harm to him would be inflicted by or with the consent or acquiescence (including 'willful blindness') of a public official or other person acting in an official capacity." J.A. 5.

Ozurumba timely petitioned this Court for review. In December 2024, Ozurumba filed an emergency motion to stay the order of removal pending appeal. This Court

denied the motion a few weeks later. According to his attorneys, Ozurumba was removed to Nigeria on April 1, 2025.

II.

We have jurisdiction to review the Board's final order of removal under 8 U.S.C. § 1252(a).[3] We review the Board's "factual findings for substantial evidence, treating them as conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." *Portillo Flores v. Garland*, 3 F.4th 615, 626 (4th Cir. 2021) (en banc) (quoting *Cordova v. Holder*, 759 F.3d 332, 337 (4th Cir. 2014)). "We review the [Board]'s legal conclusions, including the question of whether the [Board] has applied the proper standard of review, de novo." *Ibarra Chevez v. Garland*, 31 F.4th 279, 288 (4th Cir. 2022). We will uphold the Board's decision unless we conclude that it abused its discretion—for example, "if it failed to offer a reasoned explanation for its decision, or if it distorted or disregarded important aspects of the applicant's claim." *Rodriguez-Arias v. Whitaker*, 915 F.3d 968, 972 (4th Cir. 2019) (quoting *Tassi v. Holder*, 660 F.3d 710, 719 (4th Cir. 2011)).

Although it did not expressly adopt the IJ's analysis, the Board plainly incorporated elements of that analysis into "an opinion of its own" that "affirm[ed] the IJ's decision." *Salgado-Sosa v. Sessions*, 882 F.3d 451, 456 (4th Cir. 2018); *see* J.A. 4 ("affirm[ing]," "agree[ing] with," and citing the IJ's analysis). We cannot evaluate the Board's reasoning without reference to the IJ's analysis;

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[3] The IJ's oral decision culminated in an order of removal, *see* J.A. 239, which became final (and thus appealable under 8 U.S.C. § 1252(a)) when the Board affirmed that order, *see* 8 U.S.C. § 1101(a)(47)(B)(i).

accordingly, "we review both decisions." *Salgado-Sosa*, 882 F.3d at 456; *see Barahona v. Holder*, 691 F.3d 349, 353 (4th Cir. 2012) ("Where, as here, the [Board] has adopted and supplemented the IJ's decision, we review both rulings."). However, because "generally we may only affirm on the grounds relied upon by the Board," *Herrera-Martinez v. Garland*, 22 F.4th 173, 180 n.1 (4th Cir. 2022) (quoting *Yanez-Marquez v. Lynch*, 789 F.3d 434, 461 n.14 (4th Cir. 2015)), we consider only those portions of the IJ's decision that have been incorporated, expressly or by reference, into the Board's decision, *Arita-Deras v. Wilkinson*, 990 F.3d 350, 356 (4th Cir. 2021).

III.

The Immigration and Nationality Act's material-support bar deems inadmissible a noncitizen who "has engaged in a terrorist activity," including by "commit[ing] an act that the [noncitizen] knows, or reasonably should know, affords material support . . . to a terrorist organization." 8 U.S.C. § 1182(a)(3)(B)(i)(I), (iv)(VI). The statute does not define "material support," although it provides some examples. *Id.* § 1182(a)(3)(B)(iv)(VI).

Noncitizens subject to the material-support bar are ineligible for asylum unless the Attorney General, in his or her discretion, makes an exception. *Id.* § 1158(b)(2)(A)(v). And "[b]ecause the burden of proof for withholding of removal is higher than for asylum—even though the facts that must be proved are the same—an applicant who is ineligible for asylum is necessarily ineligible for withholding of removal under [8 U.S.C.] § 1231(b)(3)." *Camara v. Ashcroft*, 378 F.3d 361, 367 (4th Cir. 2004). However, noncitizens subject to the material-support bar remain eligible for *deferral*

of removal under the CAT. *Kouyate v. Garland*, 122 F.4th 132, 141 (4th Cir. 2024), *cert. denied*, No. 24-6792, 2025 WL 1426729 (U.S. May 19, 2025).

Ozurumba does not challenge the IJ's conclusion that the Unknown Gunmen qualify as a Tier III terrorist organization under 8 U.S.C. § 1182(a)(3)(B)(vi)(III).[4] Instead, he argues that the material-support bar does not apply because any support he lent the group was not "material." We agree.

We have not expressly defined the minimum support necessary to qualify as "material support" in the context of the material-support bar. In *Viegas v. Holder*, we rejected a challenge to the Board's determination that an individual's payment of monthly dues to a terrorist organization for four years qualified as "material support." 699 F.3d 798, 803 (4th Cir. 2012). We agreed with the Board that "the sum of Viegas's dues was sufficiently substantial standing alone to have some effect on the ability of the [terrorist organization] to accomplish its goals," and held that it was not arbitrary and capricious for the Board to find that support meeting that de-

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[4] A noncitizen who provides material support to a Tier I or Tier II terrorist organization is inadmissible whether or not he knew that he was supporting a terrorist organization. 8 U.S.C. § 1182(a)(3)(B)(iv)(VI)(cc). But a noncitizen who provides material support to a Tier III terrorist organization remains admissible if he "can demonstrate by clear and convincing evidence that [he] did not know, and should not reasonably have known, that the organization was a terrorist organization." *Id.* § 1182(a)(3)(B)(iv)(VI)(dd); *see Hosseini v. Nielsen*, 911 F.3d 366, 373 (6th Cir. 2018). Ozurumba testified that he did not know that his employer was a terrorist organization until several weeks after starting his job as a cook and that he was unable to leave the camp. The government does not challenge that testimony.

scription qualified as material support. *Id.* (quotation marks omitted). But we stopped short of identifying the term's lower boundary.

As an initial matter, we note that Congress's inclusion of the modifier *material* "suggests that some support may not rise to the level that would disqualify [a noncitizen]"—in other words, some forms of support are immaterial. *Hosseini v. Nielsen*, 911 F.3d 366, 375 (6th Cir. 2018). A contrary conclusion would violate "the 'cardinal principle' of interpretation that courts 'must give effect, if possible, to every clause and word of a statute.'" *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (quoting *Williams v. Taylor,* 529 U.S. 362, 404 (2000)).

Because the statute does not define "material," we turn to dictionaries. As other courts of appeals have observed, two definitions of the word "material" are pertinent in this context. Black's Law Dictionary "compares material to 'relevant,' explaining that material means 'having some logical connection with the consequential facts.'" *Hosseini*, 911 F.3d at 375 (quoting *Material*, *Black's Law Dictionary* (10th ed. 2014)). "But material may also mean 'significant' or 'essential.'" *Id.* (quoting *Material*, *Black's Law Dictionary* (10th ed. 2014)); *see Singh-Kaur v. Ashcroft*, 385 F.3d 293, 298 (3d Cir. 2004); *Merriam-Webster's Collegiate Dictionary* 717 (10th ed. 1993) ("[H]aving real importance or great consequences.").

Statutory context confirms that "material" takes both overlapping meanings here. We interpret a general term "'in light of any common attribute[s] shared by' statutory examples of that term." *Env't Prot. Agency v. Calumet Shreveport Refin., L.L.C.*, 145 S. Ct. 1735, 1746

(2025) (some quotation marks omitted) (quoting *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022)).

Here, the statute offers a list of examples of material support, including: "a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training." 8 U.S.C. § 1182(a)(3)(B)(iv)(VI). Every item on that list "can either be directly used to plan or carry out terrorist activities or can be readily diverted to such use." Opening Br. at 25. Indeed, the "examples suggest that the support must be 'significant' or even 'essential' to the commission of terrorism." *Hosseini*, 911 F.3d at 375-76; *see also Nuure v. Garland*, 857 F. App'x 394, 397 (9th Cir. 2021) (Friedland, J., concurring) (explaining that "unlike cooking," each of the activities enumerated in the statute are "important to advancing the goals of terrorism"). That suggests that "material support" must be both relevant (logically related to terrorism) and significant (enough to make a difference).[5]

Our colleague in dissent argues that material support need not "advance the organization's commission of terrorism." Dis. Op. at 26. That view is hard to square with this enumerated list of activities. "Perhaps," the dissent ventures, "the statute enumerates safe houses"—not because safe houses, like funds or weapons or the other items on the list, can be used to conduct terrorist activities—but because "shelter for an organization's members is

[5] We stress that "relevance" and "significance" overlap, and thus do not lend themselves to a two-part test.

important."[6] *Id.* at 31. Furthermore, the dissent continues, a "safe house never used for committing terrorism would still help the organization accomplish its goals because it provides members a place to regroup, to meet to conduct general operations, or to keep as one of many options for future activities." *Id.*

Respectfully, this argument fails to recognize the pattern between the enumerated activities, which are all susceptible to use for terrorism. To be sure, a safe house could be used for any number of non-terrorist purposes. Our reading is not that every item on the list could *only* be used for terrorism, but rather that every item on the list—safe houses included—could be readily diverted for use in terrorism. That pattern helps illustrate what sorts of support Congress was concerned with, and, by implication, the sorts of support Congress was *not* concerned with.

Our reading is consistent with the Supreme Court's interpretation of "material support" in a similar statute in *Holder v. Humanitarian Law Project* (*HLP*), 561 U.S. 1 (2010). There, the Supreme Court interpreted the criminal material-support provision in 18 U.S.C. § 2339B as prohibiting, among other things, "train[ing] members of [the terrorist organization] on how to use humanitarian and international law to peacefully resolve

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[6] Even disregarding the other items on the list, were Congress actually concerned with the literal shelter of members of a terrorist organization, it could have said something like "housing." A "safe house," on the other hand, surely connotes criminal activity in this context. *See Safe House*, *Black's Law Dictionary* (8th ed. 2004) (noting that "[l]awbreakers" use safe houses "to shield criminal activity," but that safe houses could be used legally by "[l]aw enforcement agencies" to "protect witnesses").

disputes" and "how to petition various representative bodies such as the United Nations for relief"—which, the Court was careful to note, "naturally included monetary relief." *Id.* at 36-37. "Money is fungible," the Court explained, "and Congress logically concluded that money a terrorist group . . . obtains using the techniques plaintiffs propose to teach could be redirected to funding the group's violent activities." *Id.* at 37. "Such support . . . . also importantly helps lend legitimacy to foreign terrorist groups—legitimacy that makes it easier for those groups to persist, to recruit members, and to raise funds—all of which facilitate more terrorist attacks." *Id.* at 30. In other words, the Court held that support was material insofar as it helps the organization carry out its terrorist activities.

The government argues that *material* refers to "a type of support rather than an amount or quantity." Response Br. at 21. We agree with the premise: the measure of material support is more qualitative than quantitative.

But the government makes no persuasive attempt to identify what type of support is material. The closest it comes is to cite the Board's definition from its 2018 decision in *In re A-C-M-*, which encompasses any support that has a "logical and reasonably foreseeable tendency to promote, sustain, or maintain the organization, even if only to a de minimis degree." Response Br. at 20 (quoting *In re A-C-M-*, 27 I. & N. Dec. 303, 308 (BIA 2018)). That interpretation does not bind us, nor are we permitted to defer to the Board's reasoning. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024).

Moreover, *A-C-M-*'s interpretation reads the word "material" out of the statute. Support that meets

A-C-M-'s criteria need not be relevant or significant to terrorist activities. The government admits as much when it argues that "material support . . . is a term of art designed to cut off *all* support to terrorist organizations." Response Br. at 32. Tellingly, the government fails to identify a single example of *immaterial* support. Under its interpretation, it seems, no such thing exists.

We decline to read the material-support bar so broadly. Instead, we adopt the definition we gestured toward in *Viegas*: "material support" is support that is sufficiently substantial standing alone to help the terrorist organization accomplish its terrorist activities. *Cf. Viegas*, 699 F.3d at 803.

Ozurumba's contributions to the Unknown Gunmen do not meet that standard. Cooking meals using food and supplies purchased by the organization may have "sustained" the organization in the broadest possible sense—by converting raw groceries into meals they enjoyed—but provided nothing that the organization could use or readily divert to plan or carry out its terrorist activities. As far as the record shows, Ozurumba was simply a captive laborer whose work had nothing to do with those activities.

Nor did Ozurumba's brief association with the group—which appears to have been the result of a bait-and-switch—"lend legitimacy" to the group. *HLP*, 561 U.S. at 30. In *Hosseini v. Nielsen*, the Sixth Circuit, citing *HLP*, concluded that the material-support bar applied to an individual who copied and distributed flyers for two terrorist groups because that action introduced others to the terrorist organizations, "allowed th[e] organizations to redirect some of their communications re-

sources elsewhere," and "gave [them] legitimacy."[7] 911 F.3d at 377. By contrast, Ozurumba's cooking demonstrated no expressive affinity for the Unknown Gunmen, and neither publicized nor legitimized their activities.

In sum, we conclude that Ozurumba's cooking was not sufficiently substantial standing alone to help the Unknown Gunmen accomplish their terrorist activities. On this record, the Board erred in applying the material-support bar to deny Ozurumba's application for asylum and withholding of removal. We therefore vacate the order of removal and remand for further proceedings.[8]

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[7] Similarly, in *Viegas*, we affirmed the Board's application of the material-support bar to a noncitizen who "hung posters for" a terrorist organization, although our holding relied on that noncitizen's four years of "voluntarily paid dues," which were "sufficiently substantial standing alone to have some effect on the ability of the [terrorist organization] to accomplish its goals." 699 F.3d at 803 (quotation marks omitted).

[8] Ozurumba also argues that the Board erred in denying his application for deferral of removal under the CAT. As a matter of judicial economy, we decline to reach that claim. *See Immigr. & Naturalization Serv. v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach."); *Arita-Deras*, 990 F.3d at 361 n.10 (declining to reach withholding-of-removal and CAT claims in light of vacatur and remand on asylum claim). If the Board were to decide on remand to reverse the IJ's denial of asylum or withholding of removal, there would be no need for the Board or this Court to address Ozurumba's CAT arguments. And in light of our vacatur, the Board could decide to remand to the IJ for further proceedings on the CAT issue. Accordingly, we express no view on the merits of the CAT claim.

IV.

Ozurumba argues in the alternative that any material support he provided to the Unknown Gunmen was under duress, and that the material-support bar includes an implied exception for material support provided under duress. This raises an unanswered question of administrative law that we will leave for a future case.

In *Barahona v. Holder*, we "defer[red]" under *Chevron* to the Board's determination that the material-support bar has no implied duress exception. 691 F.3d at 356 (4th. Cir. 2012). In other words, we held that the statute was ambiguous as to whether it included a duress exception but that the Board reasonably concluded that it didn't. But in *Loper Bright Enterprises v. Raimondo*, the Supreme Court held that courts "may not defer to an agency interpretation of the law simply because a statute is ambiguous." 603 U.S. at 413 (2024). At first blush, then, it's not clear that *Barahona*'s holding—which was based on *Chevron* deference—retains precedential value.

However, *Loper Bright* held, "we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite our change in interpretive methodology." *Id.* at 412. We reaffirmed that approach in *Chavez v. Bondi*, 134 F.4th 207, 213 (4th Cir. 2025).

The government contends *Loper Bright* "made clear that just because a prior decision was based on *Chevron* is insufficient to undermine its precedential value," so "*Barahona*'s holding that there is no implied duress exception to the [material-support] bar remains intact."

Response Br. at 46, 48 (capitalization normalized). We aren't so sure. *Loper Bright* binds us to our "holdings . . . that *specific agency actions are lawful*." 603 U.S. at 412 (emphasis added). In *Barahona*, the specific agency action was "deeming [Barahona] ineligible for . . . relief." 691 F.3d at 350. So, while Barahona may not reopen his case simply because *Chevron* is dead, it's not clear that Ozurumba is precluded from making a duress argument. On the other hand, *Loper Bright* instructs us to apply "*statutory*" stare decisis, which might indicate that our statutory interpretation is still binding. 603 U.S. at 412 (emphasis added).

Loper Bright is not crystal clear on how to square this circle, and circuits have already split on how to treat *Chevron* holdings. *Compare In re MCP No. 185*, 124 F.4th 993, 1002 (6th Cir. 2025) (holding that "we are not bound" by a *Chevron* statutory interpretation because that case approved of a different "specific agency action" than the one before the Sixth Circuit), *with Lopez v. Garland*, 116 F.4th 1032, 1045 (9th Cir. 2024) (holding that the statutory interpretation in a *Chevron* case "remains precedential authority which binds us").

The government's approach to stare decisis also presents a practical problem. Prior to *Loper Bright*, agencies were, within certain bounds, permitted to change their interpretations of a statute. Under the government's view, we would be stuck—forever—with the most recent agency interpretation that we upheld before *Loper Bright*. That strikes us as arbitrary.

Because we hold that any support Ozurumba provided the Unknown Gunmen was not "material," we leave these questions for a more appropriate case,

where parties can better brief and argue this important question of administrative law.

V.

Ozurumba's attorneys represent that on April 1, 2025, the government removed him to Nigeria. Shortly after his deportation, Ozurumba requested that we order the government to facilitate his return to the United States. We decline to do so at this stage, instead leaving the matter for the agency to address in the first instance.

As we explained in our 2018 decision in *Ramirez v. Sessions*, "[u]nder an Immigration and Customs Enforcement (ICE) policy directive, '[a]bsent extraordinary circumstances, if [a noncitizen] who prevails before . . . a U.S. court of appeals was removed while his or her [petition for review] was pending, ICE will facilitate the [noncitizen's] return to the United States if . . . the [noncitizen's] presence is necessary for continued administrative removal proceedings.'"[9] 887 F.3d 693, 706 (4th Cir. 2018) (citation omitted) (quoting U.S. Immigr. and Customs Enf't, Policy Directive Number 11061.1, *Facilitating the Return to the United States of Certain Lawfully Removed Aliens* (Feb. 24, 2012), https://www.ice.gov/doclib/foia/dro_policy_memos/11061.1_current_policy_facilitating_return.pdf [https://perma.

[9] As we explained in *Ramirez*, in this context, "facilitating [a noncitizen's] return" includes "enabling [them] to 'engage in activities which allow [them] to travel to the United States (such as by issuing a Boarding Letter to permit commercial air travel) and, if warranted, parol[ing] [them] into the United States upon . . . arrival at a U.S. port of entry.'" 887 F.3d at 706 n.11 (quoting Directive 11061.1). It "does not necessarily include funding the [noncitizen's] travel via commercial carrier to the United States or making flight arrangements for the [noncitizen]." *Id.* (quoting Directive 11061.1).

cc/24UQ-F5W8]). We leave it to the agency on remand to decide whether Ozurumba's presence will be necessary to his continued removal proceedings.

VI.

We grant Ozurumba's petition for review, vacate the Board's order of removal, and remand for further proceedings.

PETITION GRANTED; ORDER OF REMOVAL VACATED, AND REMANDED

RICHARDSON, Circuit Judge, dissenting:

"An army marches on its stomach." This truism is widely attributed to Napoleon Bonaparte, the famous French commander and emperor, and to Frederick the Great, the well-known King of Prussia. Perplexingly, the majority thinks it knows better, finding that providing thousands of meals to a terrorist organization does not constitute material support to that organization. It arrives at this answer by reading one of the several objects of material support—terrorist organization—out of the statute, narrowing it to only include support for acts of terrorism. Because I cannot go along with such judicial policy-making, or with the majority's other errors, I respectfully dissent.

I. Background

Izuchukwu Ozurumba admits that he cooked around 8,000 meals[1] for the bosses of the Unknown Gunmen, a Nigerian organization that he knew committed acts of terrorism. Ozurumba, however, eventually fled Nigeria to Venezuela. He later crossed the southern boder into the United States in July 2023.

When Ozurumba arrived in the United States, he was detained by Border Patrol personnel and ordered to appear for removal proceedings. At the removal proceedings, the Immigration Judge determined that the Unknown Gunmen were a Tier III terrorist organization.[2]

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[1] Ozurumba testified that he cooked meals for the 15-17 leaders of the camp, three times a day, seven days a week, for six months.

[2] Terrorist organizations are separated into three tiers. 8 U.S.C. § 1182(a)(3)(B)(vi). Tier I and II organizations must be designated as such by certain members of the executive branch. §§ 1182(a)(3)(B)(vi)(I)(II), 1189(a). Tier III organizations are

The Immigration Judge then found that Ozurumba had materially supported the Unknown Gunmen and thus barred him from receiving asylum or withholding of removal under the Convention Against Torture. *See* 8 U.S.C. §§ 1182(a)(3)(B)(i), (iv). The Board of Immigration Appeals affirmed the Immigration Judge's application of the material-support bar. Ozurumba timely petitioned for review.

II. Material Support To A Terrorist Organization Means Support Which Helps A Terrorist Organization Achieve Its Goals

Section 1182(a)(3)(B)(i) provides that "[a]ny alien who . . . has engaged in a terrorist activity . . . is inadmissible." Nobody contends, however, that Ozurumba "hijack[ed] . . . an aircraft" or "attack[ed] . . . an internationally protected person." *See* § 1182(a)(3)(B)(iii) (defining "[t]errorist activity"). He is not a terrorist in that sense.

But an alien may "engage in terrorist activity" in ways other than committing acts of terrorism. § 1182(a)(3)(B)(iv). Instead, the statute broadly defines "engage in terrorist activity" to include any "act that

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"group[s] of two or more individuals . . . which engage[] in" terrorist activities as defined by § 1182(a)(3)(B)(iv). § 1182(a)(3)(B)(vi)(III). Immigration Judges and the Board designate organizations as Tier III terrorist organizations "on a case-by-case basis . . . ., and [a]s a result," such a designation "only impacts the alien whose case is before that" Immigration Judge or the Board. *A.A. v. Att'y Gen. U.S.*, 973 F.3d 171, 178-79 (3d Cir. 2020).

Here, Ozurumba's Immigration Judge determined that the Unknown Gunmen were a Tier III terrorist organization. The Board held that Ozurumba waived any challenge to that determination. He does not appeal that decision, so I join the majority in accepting it. Majority Op. at 12.

the actor knows, or reasonably should know, affords material support . . . for the commission of a terrorist activity." § 1182(a)(3)(B)(iv)(VI)(aa). Importantly, its broad definition *also* includes any "act that the actor knows, or reasonably should know, affords *material support* . . . to a *terrorist organization*." § 1182(a)(3)(B)(iv)(VI)(dd) (emphasis added). It is whether Ozurumba provided "material support . . . to a terrorist organization" that we must answer.[3]

The phrase "material support to a terrorist organization" is not self-defining. But our traditional tools of interpretation reveal its meaning. Start with the noun "support." "Support" is broadly defined as many things, including "a source or means of living," "sustenance," etc. *Support*, *Black's Law Dictionary* (6th ed. 1990); *accord Support*, *Black's Law Dictionary* (7th ed. 1999).[4] By definition, "support" plainly includes food, which is "sustenance."[5]

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[3] We must answer that question, as that's what the agency found barred Ozurumba's admission. *See Sec. & Exch. Comm'n v. Chenery Corp.*, 318 U.S. 80, 87 (1943).

[4] The material-support bar was added in 1990. Bryan Clark & William Holahan, *Material Support: Immigration and National Security*, 59 CATH. U. L. REV. 935, 939-42 (2010). In 2001, Congress amended the language to its present form. USA PATRIOT Act, Pub. L. No. 107-56, § 411(a)(1)(F), 115 Stat. 272, 346. Thus, dictionaries from this period inform the meaning of the material-support bar.

[5] The statutory examples illustrate that "material support" extends beyond providing the tools of terror, covering areas as diverse as shelter, transportation, and communications. § 1182(a)(3)(B)(iv)(VI) ("including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chem-

Next, the adjective "material." "Material" might have two senses—one quantitative, and one qualitative. In the first, "material" might mean that the support is "significant." *Material*, *Black's Law Dictionary* (7th ed. 1999); *see also Material*, *Black's Law Dictionary* (6th ed. 1990) (defining material as "important" or "having influence or effect."). In the second, "material" might mean relevant, or "logical[ly] connect[ed]" to the object of the noun it modifies. *See, e.g.*, *Material*, *Black's Law Dictionary* (7th ed. 1999).

Some types of support to an organization, even if quantitatively minimal, can be material merely because of their qualitative aspects, such as fungibility, legitimizing power, or aspects otherwise core to an organization's needs or goals. *See, e.g.*, *Sesay v. Att'y Gen. of U.S.*, 787 F.3d 215, 221 (3d Cir. 2015) (collecting cases). Qualitative materiality requires articulating *how* the support is connected to the organization's goals. Other types of support, standing alone, may lack qualitative significance. For example, letting one organization member walk across your property is likely not material. But sometimes quantity changes the qualitative nature of the support. If everyone in the organization crosses your land as a shortcut to their headquarters, significance and relevance emerge. By its nature, support is something helpful (even if only marginally in small quantities). It therefore follows that once there is

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ical, biological, or radiological weapons), explosives, or training"). By use of the term "including," the statute facially extends beyond the listed examples. *See, e.g.*, *Fed. Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941). Thus, terms like *safe house* and *transportation* shed light on what *material support* means "general[ly]." *Id.*

enough of it, no matter the type, it can become material.[6] Indeed, this Court has suggested that material support encompasses these ideas. We upheld a Board determination that an alien's provision of money and services was "material support" because it was "sufficiently substantial standing alone to have some effect on the ability of the" terror organization "to accomplish its goals." *Viegas v. Holder*, 699 F.3d 798, 803 (4th Cir. 2012).

Yet "material support to a terrorist organization" does not mean such support must advance the organization's commission of terrorism. In the material-support bar itself, Congress distinguished affording material support "for the *commission of a terrorist activity*" from material support "to a *terrorist organization*." §§ 1182(a)(3)(B)(iv)(VI)(aa), (dd) (emphasis added). By enumerating both objects, Congress has instructed us that the material-support bar sweeps more broadly than support for the terroristic acts that a terrorist organization takes. Congress could have added the phrase "for a terrorist activity" as a qualifier to subclause (dd)—but it did not. Nor did it in subclause (cc), which applies to support for Tier I and Tier II terrorist organizations (while (dd) applies to Tier III organizations). § 1182(a)(3)(B)(iv)(VI)(cc). Nor did it in subclause (bb), which bars anyone who provides material support "to any individual who the actor knows, or reasonably should know, has committed or plans to com-

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[6] This does not mean that anything can be material support. If something does not constitute support to begin with, increasing it will not magically transform it into support, much less material support. For example, let's say one started dumping garbage at a terrorist organization's camp. No matter how much garbage one gives to the terrorist organization, it would not count as "material support" because dumping garbage is not "support" at all.

mit a terrorist activity." § 1182(a)(3)(B)(iv)(VI)(bb). Congress three times, then, decided that material support extends beyond support tied to "the commission of terrorism" or the "accomplish[ment]" of "terrorist activities." *Contra* Majority Op. at 14, 16. The only possible interpretation of this statute is that a terrorist organization may be materially supported by means that lack a connection to acts of terrorism.[7]

The Supreme Court adopted this broad interpretation in *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010). In *HLP* the Supreme Court interpreted 18 U.S.C. § 2339B, a statute which criminalizes "knowingly" providing "material support or resources to" terrorist organizations. 561 U.S. at 7. Like Ozurumba and the majority, the organization in *HLP* argued that material support of a terrorist organization required "proof that a defendant intended to further a foreign terrorist organization's illegal activities"—that is, their terrorism. *HLP*, 561 U.S. at 16. The court swiftly rejected that view. In analyzing the breadth of "material support," the Court looked to surrounding statutory text. *See id.* Specifically, 18 U.S.C. § 2339A(a) criminalized "provid[ing] material support or resources . . . *knowing or intending* that they are to be used in preparation for, or in carrying out . . . violent terrorist acts." *Id.* at 17 (quoting § 2339A(a)) (cleaned up). In contrast, § 2339B(a)(1) only "prohibits '*knowingly*' providing material support" and makes no mention of specific terror-

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[7] This is nontrivial. Despite their name, terrorist organizations often have goals beyond committing acts of terrorism. *HLP*, 561 U.S. at 30-31. They may have social, political, and even charitable goals. *See id.* Without financial firewalls, funds raised for admirable goals can be redirected to terroristic ones. *Id.* at 31.

ist acts. *Id.* at 16. The Court found respondent's view "untenable in light of the sections immediately surrounding § 2339B," because Congress did not import the specific intent language of § 2339A into § 2339B, when it easily could have. *Id.* In other words, the Court refused to only apply § 2339B in situations where someone specifically aided terrorist activity, because that interpretation is unsupported by the statute's language.

The majority's treatment of *HLP* is facially incorrect. It reads the Supreme Court as saying "support" is "material insofar as it helps the organization carry out its terrorist activities." Majority Op. at 16. But that view was not expressed by the Supreme Court majority —it was the view of the dissent. *See HLP*, 561 U.S. at 56 (Breyer, J., dissenting) ("I would read the statute as criminalizing" the support at issue "only when the defendant knows or intends that those activities will assist the organization's unlawful terrorist actions."). The *HLP* majority squarely rejected that view: "[T]he dissent proposes a" construction that renders § 2339B "indistinguishable from the one Congress adopted in § 2339A." *Id.* at 18 n.3. Like the dissent's view in *HLP*, the majority's view here is untenable as it renders (dd) "indistinguishable" from (aa).[8]

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[8] Ignoring *HLP*'s section discussing statutory interpretation, 561 U.S. at 16-18, the majority instead cherry-picks language from an unexpected place: the section discussing why the government's prohibition on material support in the form of speech survives First Amendment scrutiny. *Id.* at 28-29. Because the government's material-support statute burdened speech, the Court demanded a government interest to justify that burden. Everyone agreed that the "interest in combating terrorism is an urgent objective of the highest order." *Id.* Yet the *HLP* plaintiffs argued that the government prohibition still violated the First Amendment because the material-

By the majority's account, material support *must* be "significant" or even "essential" to "the commission of terrorism." Majority Op. at 14 (quotation omitted). This interpretation is irreconcilable with the statutory text.

The majority justifies its conclusion by pointing out that "[e]very item on th[e] [enumerated] list can either be directly used to plan or carry out terrorist activities or can be readily diverted to such use." *Id.* at 13-14 (quotation omitted). That may be true in some sense. But safe houses and transportation can also support terrorist organizations' goals even if never used for, or diverted to use in, carrying out terrorist activities—and subclause (dd) tells us that would *still* be material support. Further, by artificially limiting the material-support bar's breadth, the majority's interpretation renders the enumeration of all the objects—terrorist activities, terrorists, and terrorist organizations—superfluous by ignoring all but the first. *See Corley v. United States*, 556 U.S. 303, 314 (2009) (It is "one of the most basic interpretive canons, that a statute should be construed . . . so that no part will be inoperative.") (quotation omitted); *Espinal-Andrades v. Holder*, 777 F.3d 163, 168 (4th Cir. 2015) (same).

The majority also incorrectly suggests that interpreting the term "material support to a terrorist organ-

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support ban was "not necessary" to further that interest. *Id.* at 28 (quotation omitted). The *HLP* Court then explained how Congress could justify banning material support in the form of speech to further *that specific interest*. *Id.* at 29-38. As this summary should make clear, the Supreme Court's language connecting the *HLP* plaintiffs' speech-based material support to furthering terrorism was applicable only to the First Amendment analysis. Nothing in *HLP* stands for the proposition that support is only "material" insofar as it helps the organization carry out its terrorist activities.

ization" to extend beyond support for specific terrorist activities permits any support to fall within its scope. Majority Op. at 16. But that is not the case. As I explained above, material support requires enough support to have some meaningful impact on the terrorist organization's ability to achieve its goals. For example, though food can constitute material support, selling a hot dog to a terrorist would not count. Nor would "material support to a terrorist organization" appear to include uncoordinated advocacy. It may be generally supportive of the terrorist organization, but advocacy not done in coordination with a terrorist organization would not appear to provide material support to that terrorist organization. *See HLP*, 561 U.S. at 24-26. Not all support qualifies as "material support to a terrorist organization."

While not everything qualifies, Ozurumba's actions do. Ozurumba's cooking undoubtedly constituted "support" "to a terrorist organization." The remaining question is whether Ozurumba's support was "material." Did it help the Unknown Gunmen "accomplish its goals"? *Viegas*, 699 F.3d at 803. I would answer, yes, *providing thousands of meals* to a terrorist organization is "material support to a terrorist organization."

First, Ozurumba's support was quantitatively material.[9] Ozurumba did not run a hot dog stand that the Un-

[9] I note that whether materiality has quantitative aspect is a debated question. Board precedent has found no such requirement. *Matter of A-C-M-*, 27 I. & N. Dec. 303, 306 (B.I.A. 2018) ("no such quantitative limitation exists."). Though at least one of our sister circuits has found that material means both "relevant and significant." *Hosseini v. Nielson*, 911 F.3d 366, 376 (2018). While this

known Gunmen happened to stop by once or twice. Rather, he acted as a private chef, providing three meals a day for over a dozen leaders of a terrorist organization —for months. These many meals, to my mind, were "sufficiently substantial." *Viegas*, 699 F.3d at 803.

I find nothing but support in precedent for this conclusion. In *Viegas*, for example, this Court found that a man who "every month for four years . . . voluntarily paid dues and hung posters for" a terrorist organization provided material support. *Id.* at 803. The Court explained that while "a single exchange of a small amount of food and money" might not be material support, "the sum of" the support provided over months was meaningful. *Id.* So too here—while a single meal might not be enough to have any impact, over 8,000 of them is enough. And our sister circuits seem to agree. For example, the Second Circuit accepted that providing "$100 packages of foodstuffs every three months for more than two years" constituted material support. *Hernandez v. Sessions*, 884 F.3d 107, 109 (2d Cir. 2018).

Second, Ozurumba's support was qualitatively material. An organization acts through its members, and its members need to eat. Food is a basic need. *Cf.* Abraham H. Maslow, *A Theory of Human Motivation*, 50 Psych. Rev. 351, 373 (1943) (famously listing food as a predicate need to the achievement of other goals). Indeed, it's quite difficult to imagine how a terrorist organization could achieve any goal without first being fed. And because of the regularity of the meals, the circumstances in which the meals were prepared and served—and, yes, the sheer quantity of the meals—Ozurumba's support

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Court has not explicitly taken a side on the issue, we intimated in *Viegas* that the amount of support matters. 699 F.3d at 803.

took on a different quality. It amounted to completely providing for one basic physiological need of the leaders of a terrorist organization. This is material support to the organization itself. That is, providing the basics helps terrorist organizations "accomplish [their] goals." *Viegas*, 699 F.3d at 803. Perhaps that's why the statute enumerates safe houses as a classic example of material support to a terrorist organization—shelter for an organization's members is important. A safe house never used for committing terrorism would still help the organization accomplish its goals because it provides members a place to regroup, to meet to conduct general operations, or to keep as one of many options for future activities. Preparing the daily nutritional requirements of the leadership of an organization is no less important.

In addition to common sense, precedent supports this conclusion. For example, in *Barahona v. Holder*, this Court took as a given that a man who allowed a terrorist organization to "prepar[e] food in [his] kitchen" and "occasionally sleep[] overnight when the weather was unfavorable" provided material support. 691 F.3d 349, 351-52, 354-55 (4th Cir. 2012). That support was not connected to any act of terror—it was just food and shelter more generally. *See id.* at 351-52. And several of our sister circuits have likewise upheld Board decisions that providing food and shelter, unconnected to any particular act of terrorism, constitutes material support. *See, e.g.*, *Singh-Kaur v. Ashcroft*, 385 F.3d 293, 298-301 (3d Cir. 2004); *Hernandez v. Sessions*, 884 F.3d 107, 109 (2d Cir. 2018).

Ozurumba provided thousands of meals for the leaders of the Unknown Gunmen.[10] Food is support. And the meals Ozurumba cooked provided for the leaders' basic needs, freeing up time, energy, and money for those leaders to focus on their goals. I would thus find that substantial evidence supports the Board's determination that the material-support bar applies.[11]

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[10] There is a factual dispute about whether Ozurumba worked voluntarily. That dispute is legally irrelevant: This Court has held that there is no duress exception to the material-support bar. *See Barahona*, 691 F.3d at 354-55. And, as the majority acknowledges, that decision may remain binding even after *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). *See Chavez v. Bondi*, 134 F.4th 207, 212-13 (4th Cir. 2025) ("[P]rior cases that relied on the *Chevron* framework . . . are still subject to statutory stare decisis.") (quotation omitted). But if *Barahona* is no longer binding, then I would find—for many of the reasons discussed in *Barahona*—that a duress exception cannot be read into the statutory material-support bar. So I would reject Ozurumba's duress argument.

[11] I add one final note—Ozurumba's cooking should qualify as material support under the majority's own criteria, as preparing every meal for the leaders of a terrorist organization is "significant or even essential to the commission of terrorism." Majority Op. at 14 (quotation omitted). Contrary to the majority's assertion, sustenance is a literal prerequisite to "plan or carry out" acts of terror. *Id.* at 17. It is no less necessary, in a strict sense, than a map or weapon. Furthermore, as the Supreme Court has recognized, "providing . . . even seemingly benign support" to a terrorist organization "bolsters the terrorist activities of that organization." *HLP*, 561 U.S. at 36. That's because the provision of "valuable resource[s] . . . . frees up other resources within the organization that may be put to violent ends." *Id.* at 30. Thus not only does the majority render the wrong interpretation of the material-support bar, but it also analyzes this case incorrectly under that interpretation.

The majority attempts to sidestep this by noting that Ozurumba "provided nothing that the organization could use or readily divert to plan or carry out its terrorist activities." Majority Op. at 17. But

* * *

The majority takes a red pen to the material-support bar, eliminating major provisions of the statute. It does so to find that providing for the basic needs of the members of a terrorist organization does not materially support the organization. I respectfully dissent.

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that's not the test it laid out just three pages earlier, *see id.* at 14, nor is it one which the statute permits. And even the majority implicitly recognizes that what is essential to terrorism may not be readily divertible to carrying out terrorist activities: Such support may first lend legitimacy to the organization, which *then* makes it easier to persist, recruit, and fundraise, and *only then* facilitates more attacks. *Id.* at 15-16.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-2070
(A [REDACTED])

IZUCHUKWU OZURUMBA, PETITIONER

v.

PAMELA JO BONDI, ATTORNEY GENERAL, RESPONDENT

AMERICAN IMMIGRATION LAWYERS ASSOCIATION;
INTERNATIONAL HUMAN RIGHTS AND REFUGEE LAW
EXPERTS, AMICI SUPPORTING PETITIONER

Filed: Dec. 30, 2025

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wynn, Judge Richardson, and Judge Berner.

For the Court

/s/ NWAMAKA ANOWI, Clerk
NWAMAKA ANOWI, Clerk

APPENDIX C

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

A [REDACTED]

MATTER OF IZUCHUKWU OZURUMBA, RESPONDENT

Filed: Sept. 27, 2024

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Annandale, VA

ON BEHALF OF RESPONDENT:
[REDACTED], Esquire

ON BEHALF OF DHS:
[REDACTED], Deputy Chief Counsel

Before: GORMAN, Appellate Immigration Judge

GORMAN, Appellate Immigration Judge

The respondent, a native and citizen of Nigeria, appeals the Immigration Judge's March 7, 2024, decision, denying his application for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), and protection under the

regulations implementing the Convention Against Torture ("CAT").[1] The Department of Homeland Security ("DHS") opposes the appeal.[2] The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent alleges fear of harm from members of the "Uknown Gunmen" because he escaped their camp in Nigeria where he worked as a cook for the leaders (IJ at 5-7; Tr. at 63-65, 81, 83-84, 95, 99; Respondent's Br. at 1-4). Among the reasons for denying asylum, statutory withholding of removal, and withholding of removal under the CAT, the Immigration Judge found that the material support bar precluded the respondent from establishing eligibility for these forms of relief and protection (IJ at 14-17).

We affirm the Immigration Judge's determination that the respondent provided "material support" to a Tier III terrorist organization (IJ at 14-17). *See* INA § 212(a)(3)(B)(i), 8 U.S.C. § 1182(a)(3)(B)(i) (prohibiting "engag[ing] in a terrorist activity"); INA § 212(a)(3)(B)(iv)(VI), 8 U.S.C. § 1182 (a)(3)(B)(iv)(VI) (defining "engage in terrorist activity" to include an act

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[1] The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c), 1208.18(a) (2020); 8 C.F.R. § 1208.17.

[2] DHS' motion to accept its untimely brief is granted.

that "affords material support" to a terrorist organization). On appeal, the respondent has not meaningfully challenged the Immigration Judge's determination that the Unknown Gunmen qualifies as a Tier III terrorist organization (IJ at 14-16). As such, this issue is waived. *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012). We also agree with the Immigration Judge that the respondent's job cooking three meals a day for the 15 to 17 Unknown Gunmen bosses every day for 6 months constitutes "material support" (IJ at 16; Tr. at 66, 68-70, 84).

On appeal the respondent argues that the Board's interpretation of material support in *Matter of A-C-M-*, 27 I&N Dec. 303 (BIA 2018), is flawed (Respondent's Br. at 16-18). The Court of Appeals for the Fourth Circuit in *Viegas v. Holder*, 699 F.3d 798, 803 (4th Cir. 2012), held that material support is one that is "sufficiently substantial standing alone to have some effect on the ability of the [terrorist group] to accomplish its goals." The respondent argues this creates a de minimis or duress exception to the material support bar (Respondent's Br. at 16-17). The respondent further argues that he cooked for the bosses at the Uknown Gunmen camp under duress, and his cooking was de minimis, therefore, the material support bar should not apply (Respondents' Br. at 15-18). We are not persuaded by the respondent's arguments and decline to overturn our prior decision. As discussed by the Immigration Judge, there is not a de minimis or duress exceptions to the "material support" bar under the INA (IJ at 17). *See Matter of A-C-M-*, 27 I&N Dec. at 306; *Matter of M-H-Z-*, 26 I&N Dec. 757 (BIA 2016). Additionally, we have previously held that actions such as cooking may be relatively minimal, but it frees up resources for the group to accomplish its goals. *See*

Matter of A-C-M-, 27 I&N Dec. at 310; *see also Viegas v. Holder*, 699 F.3d at 803. Thus, we agree with the Immigration Judge that the material support bar applies, and the respondent is ineligible for asylum under the INA, withholding of removal under the INA, or withholding of removal under the CAT (IJ at 14-17). *See* INA §§ 208(b)(2)(A)(v) and 241 (b)(3)(B)(iv), 8 U.S.C. §§ 1158(b)(2)(A)(v), 1231(b)(3)(B)(iv); 8 C.F.R. § 1208.16(d)(2). In light of this dispositive finding, we need not reach the respondent's remaining arguments on appeal at the present time. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) ("As a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach."); *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal regarding ineligibility for relief where an applicant is otherwise statutorily ineligible for such relief).

We also affirm the Immigration Judge's denial of deferral of removal under the CAT (IJ at 25-28). We discern no clear error in the factual findings underlying the Immigration Judge's determination that the respondent is ineligible for CAT protection (IJ at 26-28). The respondent argues on appeal that he faces a risk of harm by the government for being an Igbo or being perceived as a Biafra supporter and the Immigration Judge erred in not considering the aggregate risk to him (Respondent's Br. at 34-36).[3] However, as explained by the Im-

[3] The respondent claims the Immigration Judge erred in not analyzing the risk of torture or death to him from other groups such as the Indigenous People of Biafra or the Eastern Security Network (Respondent's Br. at 36). The record reflects that the respondent did not raise this claim before the Immigration Judge, therefore, we

migration Judge, the respondent's expert witness, Dr. Amundson, testified that those who merely support the Biafra movement are generally not at risk of harm by the authorities (IJ at 26; Tr. at 198-99). Upon reviewing all evidence relevant to the possibility of future torture, we agree with the Immigration Judge that the respondent has not shown a clear probability that members of the Unknown Gunmen will torture him in the future, or that any harm to him would be inflicted by or with the consent or acquiescence (including "willful blindness") of a public official or other person acting in an official capacity (IJ at 26-28). *See Turkson v. Holder*, 667 F.3d 523, 529-30 (4th Cir. 2012) (stating that an Immigration Judge's predictive findings concerning future harm are reviewed for clear error); *Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015) (same). Therefore, we affirm the denial of deferral of removal on that basis. *See* 8 C.F.R. § 1208.18; *see also Matter of J-F-F-*, 23 I&N Dec. 912 (A.G. 2006) (holding eligibility under the CAT cannot be established by stringing a series of suppositions to show the requisite likelihood of torture).

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

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will not address this issue. *Matter of R-S-H-*, 23 I&N Dec. 629, 638 (BIA 2003) (holding that matters not raised before an Immigration Judge are not preserved on appeal).

APPENDIX D

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ANNANDALE, VIRGINIA

A [REDACTED]

IN THE MATTER OF IZUCHUKWU OZURUMBA,
RESPONDENT

Filed: Mar. 7, 2024

Form I-589, for asylum under INA Section 208; withholding of removal under INA Section 241(b)(3); and under the Convention Against Torture

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CHARGE: INA Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, as amended: Immigrant who at the time of his application for admission was not in possession of a valid, unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, or a valid, unexpired passport or other suitable travel document or document of identity and nationality, as required under the regulations issued by the Attorney General under Section 211(a) of the Act

ON BEHALF OF RESPONDENT:
[REDACTED], Esquire

ON BEHALF OF DHS:
[REDACTED], Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent is a 54-year-old male native and citizen of Nigeria. He entered the United States without inspection or valid entry document. On or about July 20th, 2023, at or near San Ysidro, California, he expressed a credible fear of return to Nigeria before an asylum officer and was then issued a Notice to Appear dated August 22nd, 2023. He appeared pro se in the Annandale immigration court on October 18th, 2023, admitted the factual allegations, and the court found him removable as charged. He filed form I-589 on December 12th, 2023, which was amended on February 14th, 2024.

SUMMARY OF RELEVANT TESTIMONY

The respondent testified that he was born in Imo State in 1969, in Nigeria, and he was in school until 18, but his parents were unable to afford any further education. He also lived in Venezuela. He traveled there in 2005 to see if he could find a job. But then he lived there for five years and returned in 2010.

In Venezuela, he met his wife. Then he left Venezuela because he was unable to find a job. He said he left in 2010 and then returned to Nigeria with his wife. They married in a traditional ceremony. And then his wife left Nigeria in 2012 because she was pregnant at the time, and there was no safe place for delivery. The family wanted the respondent's wife to return. The respondent

did not return with his wife to Portugal because the respondent said he had no money.

Regarding his entry into Venezuela in 2005, the respondent said that he had a visa that allowed him to stay in Venezuela, and he stayed until 2010. He said his wife is a citizen of Portugal. He stated that, in 2005, he had legal status to live in Venezuela and to move around and work. He even renewed this status once, which was good for five years. During his time in Venezuela, he had a job that sold clothing, but the respondent said the job did not pay much and that's why he ended up returning to Nigeria. He claimed that he is able to return to Venezuela today, but that the country is not in good condition, meaning there's no security for him and there are no jobs. He claims that he'll likely be harmed in Venezuela because he was robbed there around 10 times. And he said he was called by the people in Nigeria between 2005 and 2010. He said these calls were from the people who wanted to harm him. He further stated that he received these calls in 2003 [phonetic] as well, when he returned to Venezuela for five months prior to his coming to the United States. He said he entered Venezuela most recently in 2023 with the same document as he did before; which, although it had expired, he was allowed in by the Venezuelan immigration officials and told to renew it. The respondent claimed that he previously had citizenship in Venezuela and that he renewed his status in 2023. He claims that this document or status in Venezuela allowed him the right to vote, but he had not voted yet.

So, after he left Venezuela in 2010 and returned to Nigeria, he arrived in Lagos. He looked for a job. He ultimately left Lagos to find a job as a cook. He said he was told about this cook position by a person named Pe-

ter, who was a classmate or an old associate, a friend. Peter told the respondent that this job as a cook was in a company, at a camp in Owerri. And he asked the respondent to come down into the east and meet the people of this camp; and that if they liked his food, then they would hire him. So, that's what the respondent did. He went east, transported to this camp, where he saw people of Igbo ethnicity. He said it was like a factory. The individuals who brought the respondent to the camp showed him where he would stay. And then the respondent met the boss of the camp, who asked him what type of food the respondent cooked. When the respondent said he only cooked his recipes, the boss told him that they were going to observe him cooking. And if they liked the food, then they would hire him. The boss also told the respondent to mind his own business during his time at the camp.

So, when the respondent was working, he was able to observe people in government and politicians he knew enter and leave the camp. He even saw the governor of Ibo [phonetic] State. He said he was aware that the governor of Ibo State was not a good person, and so found that curious, that he would be at this camp. He also noticed lots of security at the gates into the camp. About two weeks into his work, he said that he asked Peter what these people in the camp were doing. Peter did not respond. In fact, he refused to respond until the respondent got upset. And Peter finally revealed that the politicians used the young boys in the camp to do things, such as to kill people, to destroy things. The respondent noticed that the young boys were all from the Igbo tribe. That included himself. Now, Peter went on to describe that the young boys in the camp were used to kill people working for the government and politicians. They were

used to cause destruction, burn down and destroy houses. The respondent said that these acts were done whenever the boys at the camp would go out and return. And the respondent saw and heard about the things they had done in the news. The respondent, after learning about this, became upset and told Peter that he does not want to work at this camp anymore, to which Peter told the respondent to mind his own business.

At this point, the respondent was aware of who the leader of the camp was. His name was Japal [phonetic], although the respondent believes that was not his true name. The respondent described the name of the camp as "unknown gunmen." He said he found out the name of the camp when he first arrived. He claimed he was unable to leave, although, when he did first arrive, whether they hired him or not depended on his ability to cook food that they liked. Otherwise, they would not have hired him. The respondent said that he cooked for Japal as well as 15 to 17 bosses of the camp. He cooked for them three times a day: morning, afternoon, and night. And he only cooked for the bosses of the camp every day. He cooked rice, and yam, and traditional Igbo recipes.

Now, after the respondent found out the purpose of this camp, he acted differently. He said that he no longer socialized with the people of the camp. And then he began to feel like he was not safe. He said the leadership stopped paying him. Although they told him that they were not able to pay others as well, the respondent felt like this was not true. Also, the respondent recalls that the people at the camp wanted him to join one day in going out and conducting their activities, whatever they were doing. But the respondent refused. He later

learned that the people who were asking him to go out had burnt the home of a politician, including cars and other possessions of the politician, because the politicians did not support them. He also noticed that the second-in-command in the camp spoke to him differently, in a way that made him think about the possibility that he would be harmed. When asked what specifically caused him to think this, he said that the second-in-command shouted at him, used a harsh voice, and told others to monitor him; just to watch his behavior. But the respondent decided to suppress this fear to calm down and not put himself in trouble.

He said that he could not leave the camp because of the security at the gates and he had no permission to leave. He said he worked at the camp a total of about five to six months. And then, eventually, one day, he was able to escape, when he and another person were sent out of the camp to buy groceries and gas, food for cooking. While doing this outside of the camp, the respondent decided to run away, and he hid in the bush for about two days, and then went to the city of Benin and to Lagos, to stay with a friend. And they moved from house to house within Lagos. He said he did not have a permanent address and he kept moving. He said he was being called on the phone every day during this time, by the unknown gunmen, and he was being threatened. He said the unknown gunmen found him in Lagos one day because, according to the respondent, the unknown gunmen are everywhere. One day, he was going to church and he noticed a car following him. Four people jumped out of that car, called his name, and then beat him with sticks and knives. They told the respondent there was no place to hide in the city and that he had to return with them or else he would be killed. People around the pub-

lic, around the respondent at the time, called the police. The respondent blacked out. He woke up in the hospital. He was injured on his head and his leg. He does not know how he got to the hospital. He was told by the nurse that somebody brought him there.

Additionally, there was another time where he was in the yard, and that someone called his name to open the door. This person told the respondent that he cannot get away. The respondent screamed and called on the neighbors and the person from the unknown gunmen who had come to the house ran away. At another time, the respondent said he was followed as he was returning from the grocery store, and that is when he heard someone call his name again and threaten him. But when he screamed, he once again got the public's attention, and the unknown gunmen ran away. It was after this incident that the respondent took the steps to sell his family property so he could leave. He said, eventually, he traveled to Ghana, and then to Venezuela, where he had legal status. At the airport, he noticed that his documents had expired, but the respondent was able to explain to the immigration officers in Venezuela what happened to him. And then the officers eventually let him in and told him that he had to renew his papers.

Now, back in Venezuela, the respondent decided to stay for a little while before coming to the United States. He said his life was not safe in Venezuela and that the unknown gunmen kept calling him. They told him that, whenever he came back to Nigeria, he would be killed. He said he stayed in Venezuela for about five months to work, make money, save to come to the United States. Regarding these phone calls, he said that the caller told him that they would come to Venezuela; that there was

no place for him to hide. He said he does not know if the unknown gunmen came to Venezuela or not because the respondent threw his phone away, where the unknown gunmen called to speak to him. He said that he was never physically confronted by any unknown gunmen in Venezuela, and that he worked there at a store that sold clothing for a short time, and that he ultimately came to the United States.

After he came to the U.S., he said he was interviewed by the Customs and Border Protection office, but that this interview occurred in English and he was not able to understand everything. He said if he returns to Nigeria, he would be killed by unknown gunmen. He feels that nowhere is safe for him because the unknown gunmen are everywhere. He feels that the police would not protect him.

On cross-examination, he verified his filing of the form I-589, as well as the update in 2024. He was asked if he claimed that Fulani had targeted him in his original application. He said he did not; or if he did, it must have been a mistake. He claimed that he has never been a member of or supported the Biafra in any capacity. He said he never supported the Eastern Security Network in Nigeria, or the ESN. He said the location of the unknown gunmen camp is in Owerri in Igbo State. He said he does not know how many people lived in the camp, but certainly more than two. He saw weapons being carried by people at the camp. When asked what type of weapons, he said he only saw guns. He verified that he noticed acts of violence in the news after the people at the camp went out and returned. He believed that the members of the camp had committed these acts, which included burning houses, burning cars. The news would

talk about people in the houses and cars that were burned and died. He said, usually, the people who died were politicians, public figures, and their relatives. He said, generally, the people who were targeted by the people at the camp were Politicians who disagreed with certain views.

He testified that the unknown gunmen never offered him money to kill people and his only assistance to the unknown gunmen was to cook for them. And he reiterated several times he did not participate in any type of activities with the unknown gunmen. He verified he started working there in October 2022 and then escaped in December of 2022, which is about three months. But then he clarified that that was the three months he worked without pay, but he also had worked three months at the camp previously with pay for a total of about five to six months. He said he believed that the unknown gunmen killed politicians and bombed police stations based on what he saw on TV.

He agreed that the unknown gunmen were not part of the official Nigerian government, once again described that, at the camp, he only cooked and occasionally did grocery shopping. He said that when he first cooked for the camp boss, the boss liked his food and he was hired. He claimed that, initially, as he was cooking food for the boss, he did not know the nature of this group who were in the camp. He acknowledged that he saw the name "unknown gunmen," but he did not know what the group did. He said he does not know where his former friend Peter is today and that, prior to working in the camp, he did not have any problems with the unknown gunmen or security forces and was never physically harmed by the security forces or the police.

He said he cooked for the camp daily. He worked every day. And he continued to work, even without pay, because he could not do anything about it, and he did not want to draw attention to himself. He said he lived in the camp in a building which was like an apartment; there were lots of people. But he never had access to drive a vehicle in the camp but was able to leave the camp, always with someone, to procure groceries, and he had a small phone that had access to the internet. He said he never received weapons training and never provided training to any Unknown Gunmen and that, after escaping, he stayed in the bush for about two days and then went to Benin and Lagos the same day. He moved from place to place once he got to Lagos, it was approximately five people he stayed with. He stated that, as far as he is aware, the Unknown Gunmen are not associated with the Boko Haram. He verified three incidents where he was confronted by the Unknown Gunmen, one of them leading to a physical assault. When asked why he claimed at the asylum office he was beaten twice but testified to only one beating, he said that he did not understand the English being spoken at the asylum office. He said although he speaks English, it's very little, and he didn't understand the type of English and the speed of the English being used by the asylum officer. He verified that during the beating that he received by the Unknown Gunmen in Lagos, he was knocked unconscious. He described the other incident with the Unknown Gunmen in Lagos, where they ran away after he screamed. The respondent said that he thinks the Unknown Gunmen ran away because they did not want people to know what they do, and they didn't want to go to jail. He said after this beating that sent him to the hospital, he was treated but he has no documents from the hospital, as

documents are frequently lost in Nigeria. He said he told the asylum officer that the Unknown Gunmen wanted respondent killed because he knows what the Unknown Gunmen do and he refused to join them. He wrote in an affidavit that he saw a government official come to the camp, but he clarified that he really does not know why the politician was there or if the government is part of the Unknown Gunmen or not. He said he did not tell anyone at the asylum office that the police were part of the Unknown Gunmen. He said he is not a supporter of the violent aspects of Biafra. He said his family have not been harmed or threatened by the Unknown Gunmen. He said from February 2023 to July 2023, he lived in Caracas, Venezuela, and during this time he received over 20 phone calls from Unknown Gunmen. He claimed that the Unknown Gunmen had people in Venezuela, but they were not certain where he was. Respondent said that he believes that the Unknown Gunmen have contacts in Venezuela because there are Ibo people in Venezuela, and he said that Unknown Gunmen could make a phone call to people in Venezuela because they have people everywhere.

He said he was never physically harmed in Venezuela and was never found by the Unknown Gunmen in Venezuela. He said he threw away his phone there, as well as his belongings. He said he lived in Venezuela from 2005 to 2010, initially in the city of Caracas, then to Miranda. He is not aware of Nigeria being a drug trafficking hub, and he said he is not aware of why his name would be associated with the transport of drugs.

Regarding his current wife, he said that they had a traditional wedding, but he has not filed paperwork to have their marriage traditionally recognized because he

doesn't have the money. He described affidavits from his brothers, which is part of Exhibit 8, that they all know what happened to him because he told them.

TESTIMONY OF DR. AMUNDSEN

Dr. Amundsen testified that, currently Nigeria is undergoing a crisis between cattle herders in the north making insurgencies into farmland, that there is a militant problem, as well as abductions, and the IPOB, or the Indigenous People of Biafra, are committing violent acts. He said that Unknown Gunmen are many people throughout the country that commit abductions, robberies. He said Unknown Gunmen are referred to as "separatists" in the media, but that the government does not have a full understanding and have not fully acknowledged the identity of who is these "Unknown Gunmen." He described Unknown Gunmen as extremists who are supporters of various causes, including the IPOB and independence of the Biafra. Dr. Amundsen said he is aware of the existence of camps that are associated with Unknown Gunmen, and that in certain regions the main aim of the Unknown Gunmen is independence of the Biafra. He said this is not a political group, and that sometimes they support certain politicians, but that the use of Unknown Gunmen is not exclusively a political thing. He said that Unknown Gunmen generally claim that they are peaceful, but they do engage in violent actions. Regarding the IPOB and the ESN, he said that the ESN are the extreme militants of the IPOB who support Biafra independence, and that they operate in areas where the majority of people are Ibo. He said that the government of Nigeria has treated the IPOB and ESN as terrorist organizations and they have arrested IPOB or the IPOB leader. He said politi-

cians will claim that they are sympathetic to the Biafra, and that politicians may use Unknown Gunmen, however, during elections, or that the Unknown Gunmen could be hired as militants. He described the IPOB and ESN as having camps in the area that the respondent discussed and there are also Unknown Gunmen camps in other areas. He said it is hard to know which camp the respondent was in, but his strong opinion is that the camp that the respondent belonged to was part of the ESN, and this is based on what he heard as the very organized nature of the camp that the respondent described. He said police have raided some ESN camps and successfully eradicated certain camps. Dr. Amundsen feels that no one can be really protected by these Unknown Gunmen. He said Nigeria is among the most corrupt countries in the world, although he acknowledged that Nigeria has made efforts to stop or address corruption. He acknowledges that there are many strong laws in Nigeria; torture is banned, there are groups that are specified for human rights to address corruption, but that the key issue here is the enforcement of these laws. So, while they exist in the book, academically, they exist, but in real life these laws are ineffective.

LAW FINDINGS AND ANALYSIS CREDIBILITY

When testimony is offered in support of an application for relief, the immigration court must determine whether such assessment is credible. INA Section 240(c)(4)(B). For applications filed after May 11th, 2005, the provisions of the REAL ID Act govern the credibility analysis. In making this determination, the court considers the totality of circumstance and all relevant factors. Id Section 240(c)(4)(B); Matter of J-Y-C, 24 I&N Dec. 260, 262 (BIA 2007). Generally, to be credible,

testimony should satisfactorily explain any material discrepancies or omissions. INA Section 240C(c). And the court may base credibility determinants on the witness's demeanor, candor or responsiveness, and the inherent plausibility of his account. Id.

In this case, the court listened carefully to the respondent's testimony, observed the respondent carefully as he answered the questions, not just in demeanor but also the manner in which he answered. The court compared it to his affidavit, his statements on form I-589, letters in support from his family members, country conditions evidence support filed in this case, as well as information that he provided to asylum officers during his credible fear interview. Overall, the court will find the respondent to be generally credible. His testimony was generally consistent, in the court's opinion, with his declaration and that of his family members, and not inconsistent in the fears that he expressed and the events that he described with known country conditions as described in the background evidence in this case. Furthermore, he has pictures of injuries, this is part of Exhibit 7, Tab F. The declarations are Exhibit 7, Tabs A, B, C, and D.

There are certain discrepancies in his testimony from that which he provided at the asylum office. That interview can be found in Exhibit 3, Tabs A and B, and the government has highlighted many of these discrepancies, which includes issues with his timeline, mention of the Fulani people as individuals who he fears or harmed him—although, he did not describe that in testimony—or how many times he was harmed, whether it was once or twice, and these certainly are discrepancies. When asked why these discrepancies exist, the respondent

claimed that he did not understand the language. He claimed the asylum officer spoke English, although the respondent only speaks a little English. He claimed that an Igbo interpreter was not provided. He also claimed that the asylum officer spoke fast and, even though he understands a little English, he didn't understand the speed of the English and the specific English being used by the asylum officer. He said that this contributed to the inconsistencies, and this is not implausible. Respondent does demonstrate some level of English comprehension, but it's unclear to the court how much he comprehends, and the record does show that an interpreter was not provided to the respondent. Overall, the court cannot say there's enough here to not believe respondent's explanation for why certain discrepancies exist. It could have been based on misunderstanding or a misinterpretation of what the asylum officer was asking about. So, having accepted the respondent's explanations, the court finds the respondent's claim to be generally credible. Although, the court notes that it does not have to accept every explanation from the respondent. In fact, the court may make reasonable inferences from direct and circumstantial evidence in the record as a whole where other plausible views of the evidence are supported by the record. See Matter of D-R-, 25 I&N Dec. 445, 454-455 (BIA 2011).

In addition, the court finds the testimony of Dr. Amundsen to be credible and helpful. Dr. Amundsen explained his perspectives, basis of his perspectives, points that he agreed with the Department of State Country Report, and the context of his agreement, and also expressed doubts from inferences that may be made based on statements in the country report. The court

will overall find Dr. Amundsen's testimony to be credible.

MATERIAL SUPPORT BAR

There is an exception to asylum eligibility under INA Section 208(b)(2)(A)(iv), which states for any alien who is described in sub clause 1 of Section 212(a)(3)(B)(i), which includes under sub clause 1 of section 212(a)(3)(B)(i)(I) "any alien who has engaged in terrorist activity." An applicant is deemed to have engaged in terrorist activity if the applicant has committed an act as the actor knows or reasonably should know affords material support to a terrorist organization. See INA Section 208(b)(2)(A)(v); INA Section 241(a)(3)(B)(iv); INA Section 212(a)(3)(B)(iv)(VI). The Board of Immigration Appeals has held that the material support of a terrorist organization under INA Section 212(a)(3)(B)(iv)(VI) should be broadly construed. See Matter of S-K-, 23 I&N, Dec. 936, 941 (BIA 2006).

So, first looking at the specific group that the respondent describes, the court notes that a group qualifies as an undesignated Tier III terrorist organization if it is composed of a group of two or more individuals, whether organized or not, which engages in or has a subgroup which engages in terrorist activities. See INA Section 212(a)(3)(B)(vi)(III). Here, the specific group is referred to as "Unknown Gunmen." This group appears to be as disorganized as the name implies. It's a term, really, that refers to criminals or cult groups, Indigenous People of Biafra at times, communal militia, political thugs, among many other individuals. See Exhibit 10, Tab K3, page 273. According to background evidence in this case, Unknown Gunmen have attacked government offices, ethnic leaders, IPOB members or lead-

ers. And there have been allegations that Unknown Gunmen were hired by the government, as well as targeted the government. See Exhibit 10, Tabs K1 and K2. There's really no evidence that these groups all fight for the same cause. There is no unifying leader of a singular group known as Unknown Gunmen. But it appears that individuals who are Unknown Gunmen, not referring to as a group, but referring to individuals who are, literally speaking, unknown gunmen, are part of a rise in armed groups throughout Nigeria. This is what the background articles describe, as well as Dr. Amundsen. See Exhibit 10, Tab K3. And so, this is the general context in which the court will evaluate whether the respondent's group qualifies as a Tier III terrorist organization. The court finds that the respondent described being employed by an organized camp. Even Dr. Amundsen described the highly organized nature of the camp. He opined that the camp belonged to the ESN, which is an extremist group supporting the Biafra or an extreme wing of the IPOB. But regardless of whether the group was ESN or not, it's clear that this camp was highly organized, that it was led by a clear leadership hierarchy. The respondent never wavered on who the leader was, and even described the second in command, and described 15 to 17 bosses of the camp. The respondent also described the other members of the camp, including boys who were recruited to kill people and commit bombings and otherwise rob and destroy things. The respondent testified that his friend Peter [phonetic] told him that the targets were people working for the government, a politician. The respondent testified to suspecting this and having verified it by his friend Peter when the respondent asked Peter what the true nature of the camp was and by noticing camp members leaving

and hearing about violence committed by Unknown Gunmen in the news and seeing them when they returned. Based on the organized nature of this camp, which, again, included 15 to 17 bosses and the recruitment of young people, and his description of being housed in a large-style apartment which clearly included more than two people, and considering the acts perpetrated by the members of this camp, which included assassinations or killings of politicians, bombings, destruction of buildings and houses, the immigration court will find that the respondent's camp of Unknown Gunmen does constitute a Tier III terrorist organization.

So, the next issue here is whether the respondent provided material support to this group. According to his credible testimony, his one and only job, the purpose of him being in the camp, was to cook food. He did so for six months, three with pay and three without. He did so three times a day, morning, afternoon, and evening. He cooked for specific people at the camp, that is the leaders or bosses, 15 to 17 of them daily, who liked his specific ethnic Ibo recipes. Court notes that provision of food may constitute material support if it had some effect on the ability of the organization to accomplish its goals by satisfying certain basic human needs. See Ay v. Holder, 743 F.3d 317, 319 (2nd Cir. 2014) (Affirming the Board insofar as it found that providing food on four or five occasions, as well as providing clothing on at least one occasion, to a terrorist organization constituted material support). In this case, the court would find that the respondent's providing food, in the form of cooking Ibo recipes to the bosses of the camp three times a day for anywhere from three to six months, did satisfy basic human needs. The importance of the respondent had being in the camp, according to his testimony, was that

he was able to cook specific Ibo recipes. It appears that the bosses, or at least the top boss, found this to be very important to him, and they recruited the respondent for that specific purpose. He even went so far as to initially try out the food and to then decide whether to hire him or not. The court finds that the specific specialty that he was hired for and his actions of cooking food three times a day for three to six months did provide material support to the Unknown Gunmen, a Tier III terrorist organization.

The court also finds that there is no implied exception for individuals who provided material support to a terrorist organization under duress. See Baharona v. Holder, 691 F.3d 349, 355 (4th Cir. 2012); see also Matter of M-H-Z-, 26 I&N Dec. 757 (BIA 2016) (Holding that the material support bar does not include an implied exception for an applicant who has provided material support for a terrorist organization under duress). For that reason, the respondent's claim that he continued to cook out of fear is not relevant to the court's determination that he provided material support to a terrorist organization. And for those reasons, the respondent is then barred from asylum. The court also notes that the bar to asylum is also a bar to withholding of removal under INA Section 241(b)(3)(iv), which states that any alien who is described in Section 237(a)(4)(B) shall be considered to be an alien with respect to whom there are reasonable grounds for regarding the danger of the security of the United States. And turning to INA Section 237(a)(4)(B), it states that "any alien who is described in subpart B or F of Section 212(a)(3) is deportable." For that reason, the court finds respondent is barred from withholding of removal under INA Section 240(b)(3) and under the Convention Against Torture.

FIRM RESETTLEMENT BAR

In the alternative, even if the court were to find the respondent was not barred for providing material support to a terrorist organization, the court will find that the respondent is barred from asylum for having firmly resettled in another country prior to his arrival in the United States. See INA Section 208(b)(2)(A)(vi); see also 8 CFR § 1208.15; see also Mussie v. INS, 172 F.3d 329 (4th Cir. 1999). The regulations provide that an applicant is considered to be firmly resettled if, prior to his arrival in the United States, he or she entered into another country with or while in that country received an offer of permanent resident status, citizenship, or some other type of permanent resettlement. 8 CFR § 1208.15. In Matter of A-G-G, the Board has set forth a four-step framework for determinations involving firm resettlement as a mandatory bar to asylum. 25 I&N Dec. 486, 500-503 (BIA 2011). The court will address each step in turn.

In the first step, it is the Department of Homeland Security that bears the burden of presenting prima facie evidence of an offer of firm resettlement. See Matter of A-G-G-, 25 I&N Dec. at 501. In this case, the court finds that DHS meets its burden through respondent's testimony and his admissions. He claimed that he entered Venezuela with a visa in 2005, and renewed that status associated with this visa, stayed there until 2010. This status allowed him to remain for five years, and it was renewable. It allowed the respondent to live in Venezuela, to work. He said he sold clothing for a living during that time. It appears, according to Exhibit 14, that this status was a permanent migrant visa status. The court notes nobody forced the respondent to leave Venezuela.

He even referred to his status as citizenship. He said he was even allowed to vote, although he did not. Significantly, he returned to Venezuela in 2023, and entered with the same status, even though he claimed it had expired. The court finds that, based on his admissions, DHS meets this initial burden.

The second step, the applicant may rebut DHS' prima facie evidence by showing by a preponderance of the evidence that such an offer was not in fact made, or that he or she would not qualify for it. See Id at 503. Here, the court finds that there is no evidence to show that an offer of status that allowed him to reside permanently and not be forced to leave or be deported was not made. In fact, the respondent admits to permission being given for him to enter Venezuela, to live there, and that he could renew it. And, again, Exhibit 14 would seem to indicate that the status granted was a permanent migrant visa that is good for five years, which is exactly the number of years the respondent stayed, and then renewed that status in 2023.

Overall, the court will find that, based on the totality of the circumstances presented in the evidence and through testimony, that the applicant has not rebutted DHS's evidence of an offer of firm resettled. Again, the respondent testified to no instance that he was denied entry into Venezuela, was told to leave, or was arrested by immigration officers in Venezuela. In fact, the respondent was confronted with his visa status having been expired, and yet that was not even a barrier to his entry into Venezuela. According to the respondent, Venezuelan immigration officers told him to come in and just renew his status, which is exactly what he did. Background evidence describes residency requirements

in Venezuela, this is in Exhibit 10, Tab N4, and although the court does not have all the documents associated with those requirements, it is clear that the respondent met all those residency requirements because, again, he returned to Venezuela in 2023, which is less than a year ago, and was allowed to work there and remain there for five months, and he left under his own choosing. The court would note that there is civil unrest according to the country conditions evidence submitted by the respondent under Exhibit 10; that is civil arrest in Venezuela, lots of crimes. The respondent himself testified that he was the victim of at least 10 robberies. He claimed that he had no peace of mind in Venezuela. But under those conditions, the respondent still was able to live and work and avoid any harm. He was not restricted from traveling. He was not, according to his own testimony, restricted from participating in the political process insofar as he could vote. The court would find that, civil unrest aside, the conditions allowed him to resettle safely from the harm that he feared in Nigeria and live and work in Venezuela.

Finally, the court will find that the respondent has not established that his travel there was only a necessary consequence of his flight from persecution. His travel and stay was beyond just a necessary consequence of his flight. Again, it's revealed in the status that he had there. His entry, again, always with permission from Venezuelan officials. He lived freely without restrictions. He worked in clothing for business, and then for himself, he earned money, and he stayed as long as he wanted to earn enough money to come to the United States. Again, he was robbed 10 times, but being a victim of common crime in Venezuela does not constitute a restriction by the authorities of Venezuela. The court

cannot find that his conditions were so restrictive or that his entry was merely a necessary consequence of his flight from persecution. Therefore, the court would find that, in the alternative to the material support bar to asylum and withholding, he is also barred for asylum under INA Section 208 based on firm resettlement.

The alternative to that, the court would also find that he has not been persecuted in the past, either for asylum or for withholding. Respondent's harm included being forced to work, but the court finds that his employment and the conditions were not so restrictive to constitute past persecution. First, respondent was not forced to be employed. He said he knew the name of this group referencing themselves as Unknown Gunmen, but he chose to interview. He chose to cook food in a manner in which the leader of this group in a camp called Unknown Gunmen liked the food. He chose to be employed. In addition, his movements were not so restrictive. He said that there were gates and that there were lots of security, but he never testified that he tried to leave and was stopped or that he was harmed while trying to leave, never testified to being locked up to prevent him from leaving. Rather, he had to cook. That was his job. He was even allowed to leave, always with another person, but he was allowed to leave the camp to go buy groceries and gas. Additionally, the respondent even at one point declined to participate in other activities associated with the camp. He openly expressed discomfort, disagreement, but he was not harmed. At most, he was talked to loudly by a camp leader, the second in command. He said that they didn't pay him, but he was told that nobody got paid. This type of treatment sounds more like harassment, not persecution. The court cannot find this aspect of his claim to rise to the level of persecution, which must

go above mere harassment. See, Li v. Gonzales, 405 F.3d 171, 177 (4th Cir. 2005).

Outside of the camp, the respondent said that he was assaulted once by four people, who called his name and then beat him until he was knocked unconscious. He said he was hospitalized. The reason why the beating stopped was because someone in the public had called the police. The respondent does not know the specifics of what happened, but somebody—maybe the police, maybe somebody in the public—brought him to the hospital. There are pictures associated with the injuries the respondent suffered, but the description of the harm by the respondent and this single incidence of physical assault is just not enough for the court to find that it constitutes persecution, which is an extreme concept that does not include every sort of treatment that a society regards as offensive. See Id. In other instances, the respondent was identified in public. He was being followed and called on the phone constantly, but this type of behavior is more harassment than it is persecution. Apparently, all it took for these individuals to leave the respondent alone was a loud scream. It is clear that whoever was looking for the respondent not only feared the police but feared the public. The court considers all these harms or incidents in the aggregate and finds that they do not rise to that level of persecution. See Baharon v. Holder, 588 F.3d 228, 232-233 (4th Cir. 2009).

In the alternative, the court also finds that the respondent has failed to demonstrate either a more-likely-than-not chance of being persecuted in the future on account of a protected ground, or a well-founded fear of future on account of a protected ground. So, going to these grounds, the respondent puts forth two grounds.

First, regarding political opinion, respondent claims that his political opinion is opposition to violence perpetrated by the Unknown Gunmen. He says that he will be harmed directly as a result of this opinion, or that they would impute this opinion onto him. But here again, the court finds respondent was not persecuted in the past, even though the Unknown Gunmen group knew that the respondent disagreed with the camp activities or with their activities. Respondent claimed that he expressed his disagreement directly to his friend Peter, indirectly by not participating in certain activities, and that the group started suspecting the respondent to not be in agreement with the activities of the camp. He said he stopped socializing with them, he even directly refused to participate with the camp activities. And so, this opinion was known, and the respondent had expressed it. But what that led to was being yelled at, pay was restricted, but he was told it was restricted for everyone. And he was also given the opportunity to leave the camp to pick up groceries. After all, he was the cook. That was his role. He testified that this was his one and only role, and according to the evidence, that is exactly how he was treated: as the cook. Apparently, his agreement or disagreement with the activities of the camp was less relevant to the bosses than his ability and willingness to cook for them. So, it does not appear that his political opinion mattered whether he disagreed or not. At worst, they would yell at him. Based on this, the court cannot find that he is more likely than not, or that he has a well-founded fear of future persecution based on the same political opinion.

Now, after leaving the camp, he was assaulted, harassed with phone calls, but at that point, he wasn't in the camp. He had quit and he had left the camp without tell-

ing anyone, which is different from merely disagreeing with their philosophy or disagreeing with their violence. Again, he disagreed with it when he was in the camp, and nothing happened to him. At this point, he had left without permission. It is his burden to show, through direct or circumstantial evidence, that his political opinion will be at least one central reason for his persecution. See REAL ID Act Section 101(a)(3); Matter of C-T-L-, 25 I&N Dec. 341, 344 (BIA 2010). Based on this evidence, the court cannot find that his political opinion would be a basis for his harm in the future. The evidence shows that it might be because he left the camp, that he is no longer cooking food for the camp. But as it did in the past, whether he agrees or disagrees with their political philosophy, it appears to be incidental, tangential, even superficial to the real reason they want to harm him; that's because he left and quit and is no longer cooking food for the leaders of the camp. For this reason, the court will find that political opinion is not a basis for the respondent to have been persecuted in the past or to fear harm or is more likely than not to be persecuted in the future.

Another basis for his claim is his membership in a particular social group. And here the respondent offers three different iterations. First, Igbo men who explicitly oppose violence led by Unknown Gunmen. The court finds that this is neither immutable, particular, nor socially distinct. As far as immutability, this must be a characteristic that respondent cannot change or should not be required to change because it's so fundamental to their individual identities or conscience. The court understands if the group is described as Igbo men who oppose violence led by Unknown Gunmen. The key difference or what makes this not immutable is that the group

is described as those who explicitly oppose violence led by Unknown Gunmen. There's nothing here to indicate why the respondent cannot simply oppose violence, but that he must do so explicitly. In fact, it's even unclear to the court whether the respondent belongs to this group because his explicit opposition of violence appears to have been not participating in social events in the camp and telling his friend Peter, who was not a leader of the camp, not even a member of the camp, that he disagreed. The court finds this group to have immutability issues. In addition, the court finds this group to have particularity issues. This characteristic must be one that creates well-defined boundaries that delineate who does and does not belong to the group. See Matter of S-E-G-, 24 I&N Dec. 579, 582 (BIA 2008). It's unclear to the court what clearly defines an explicit opposition of violence. Again, it leads to questions such as whether the respondent, not expressly stating it, but through body language or through participation or declining to participate because he's a chef, whether all that means that he explicitly opposes violence. It appears subjective to the court whether the respondent's declining to go on activities or not participating in social activities is something that expresses explicit opposition or not. These questions are the precise types of questions that makes this group too amorphous to create a benchmark for determining who belongs in this category of those who explicitly oppose violence led by Unknown Gunmen. For these reasons, the court will find that this group is not legally cognizable.

The second iteration is individuals who have been held captive by Unknown Gunmen. The court finds that this is circular, it identifies the underlying harm, and that is being held captive, and therefore it is not legally

cognizable. See Amaya-De Sicaran v. Barr, 979 F.3d 210 (4th Cir. 2020). The final iteration here is individuals of Igbo ethnicity who support Biafran nationalism. This is kind of a hybrid particular social group/ ethnicity, and this group the court will find actually is immutable, particular, and there's enough here for social distinction. See Exhibit 9 Tabs, J1 through J4. But the next question here is whether this group would be a reason for why the respondent would be persecuted in the future.

As the court stated before, relevant here, is the evidence that shows that the respondent fears harm because he left the camp without permission or he walked away, not because he is a Igbo or that he is ethnic Igbo who supports Biafran nationalism. Nobody told the respondent that he is being sought after because he opposed violence or that he is Igbo or ethnic Igbo, or that he is being harmed because he is a supporter of Biafran nationalism. Nobody said this to him either in the camp or outside of the camp. After he left the camp, his name was called and told that there was no place to hide, which does not support that he is being harassed because he is ethnic Igbo or that he supports Biafran nationalism. Accordingly, the court finds that there is no nexus here to a cognizable particular social group to prove that has a well-founded fear or is more likely than not to be persecuted in the future. There being no other protected ground, the court must find, again, in the alternative to the material support bar and in the alternative to asylum protection under the firm resettlement bar, that the respondent has failed to meet an essential element of his claims for asylum or withholding of removal. Therefore, those forms of relief and protection, respectively, must be denied.

CONVENTION AGAINST TORTURE

To be protected under the Convention Against Torture, either withholding or, in the alternative, deferred, the respondent must establish it is more likely than not he or she will be tortured if removed to the proposed country of removal. 8 CFR § 212.16(c)(2); 8 CFR § 212.17(a); see also Matter of M-B-A-, 23 I&N Dec. 474, 477-478 (BIA 2002). Torture is defined in part as the intentional infliction of severe of physical or mental pain and suffering by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity in the country of removal. 8 CFR § 212.14(a)(1). To meet his burden for CAT protection, the respondent must make two distinct showings. First, he must demonstrate likely future mistreatment in his home country that constitutes severe pain or suffering that is intentionally inflicted. Cruz-Quintanilla v. Whittaker, 914 F.3rd 884, 886 (4th Cir. 2019). The Board specified that only extreme forms of cruel and inhuman treatment rise to the level of torture. See Matter of J-E-, 23 I&N Dec. 291, 297-299 (BIA 2002). Second, he must show that the mistreatment will occur at the hands of government or with the consent or acquiescence. See Cruz-Quintanilla, 914 F.3d at 886.

In this case, the court would find that the evidence does not show that the respondent would be directly tortured by the Nigerian government. The country condition evidence shows that Igbo-dominated regions have a history of trying to secede from Nigeria. The expert has testified to that. See also Exhibit 9, Tab G. Clearly, the respondent is a supporter of the Biafra. That's based on his own credible statement, as well as his declaration in Exhibit 8, Tab A, page seven. The evidence shows that

the Biafra being a separate state is not supported by the Nigerian government, Exhibit 9, Tab G, and that this all has led to violence against the Biafra supporters. Stated in country report, Exhibit 9, Tab H, page two; see also Exhibit 9, Tab H, page four. But all that aside, specific to the respondent, he just has not been harmed directly by the authorities at all. He has never had any problems with authorities in Nigeria. He's left the country multiple times, and he had no problems with the officials in entering, remaining, or leaving Nigeria. He was never arrested by authorities, never threatened with arrest, there's never harmed period. In fact, Dr. Amundsen even stated that those who are mere supporters of the Biafra are generally not at risk of harm by the authorities. So, the evidence does not show that he's more likely than not to be tortured by the government.

His only problem in the past and who he fears is the Unknown Gunmen. And the court will find that the record does not show there is a greater than 50 percent chance that he would be tortured either by Unknown Gunmen or with the acquiescence of government. Looking at the background evidence in this case, the Unknown Gunmen are described in, among other areas, Exhibit 9, Tabs I1, I2 and I3. They're described as criminal elements from various regions, who conduct operations involving murder, arson, bombings, abductions, among other acts. Exhibit 9, Tab I1. There have been accusations of these Unknown Gunmen used by local officials in Exhibit 10, Tab K3, page 274, but there is no evidence that Unknown Gunmen are generally part of the government in Nigeria. And in fact, other background evidence here shows that Unknown Gunmen have conducted many operations against the Nigeria government. See Exhibit 9 Tabs I1, I2; Exhibit 9 Tabs

I3. And so, with the evidence lacking any direct link between the Unknown Gunmen and the government, the evidence does not show that the police would simply and generally acquiesce to anyone's torture at the hands of the Unknown Gunmen. And the evidence goes the other way here. The evidence shows, according to the respondent's own experience, that the Unknown Gunmen have a fear of authorities, have a fear of the police. He testified that when the police were called during an attack, the attack stopped. Now, he blacked out, but found himself in the hospital. But he was aware that the public were alerting police officers to what was happening. The expert here, Dr. Amundson, also described that Unknown Gunmen are generally not supporters of the government. Again, the background evidence here does not show that public officials would remain willfully blind to his torture at the hands of the Unknown Gunmen and then breach their responsibility to intervene, which is his burden of proof. See 8 CFR § 1201.1(a)(7); see also Suarez Valenzuela v. Holder, 714 F.3d 241, 245-246 (4th Cir. 2013).

Additionally, in the court's opinion, the evidence here does not show that the Unknown Gunmen are more likely than not to torture the respondent. Again, there is no past torture here. It appears the Unknown Gunmen are very much afraid of the police and the public. Again, twice the respondent merely screaming had the Unknown Gunmen fleeing, running away. The phone calls that the respondent received never led to any confrontation, and simply bothered him to the point where he had to throw the phone away. This is harassment. It does not support him being more likely than not to be tortured. The respondent claims the Unknown Gunmen are everywhere, but again, it never led to torture in the

past. And his claim is not supported by the background evidence in this case, nor is it supported by Dr. Amundson, who does not describe the Unknown Gunmen as an organized group with a singular mission.

The court has considered the possibility of his torture directly by the government, by the Unknown Gunmen, and in the aggregate, for the reasons stated, cannot find that he has a greater than 50 percent chance of being tortured. See Rodriguez-Arias v. Whitaker, 915 F.3d 968, 973 (4th Cir. 2019). For these reasons, the respondents claim for deferral of removal under the Convention Against Torture or, in the alternative, withholding of removal under the Convention Against Torture must be denied.

CONCLUSION AND ORDERS

For reasons stated, the court enters the following orders:

It is ordered that the respondent's application for asylum under INA Section 208 be denied. It is further ordered that respondent's application for withholding of removal under INA Section 241(b)(3) be denied. It is further ordered that respondent's application for withholding of removal under the Convention Against Torture be denied. It is further ordered that respondent's application for deferral of removal under the Convention Against Torture be denied. It is further ordered that respondent be removed from the United States to Nigeria.

Please see the next page for electronic signature

Choi, Raphael
Immigration Judge

Digitally signed by

Choi, Raphael
/s/ CHOI, RAPHAEL
Immigration Judge
May 8, 2024 7:52 PM

APPENDIX E

1. 8 U.S.C. 1182(a)(3)(B) provides:

Inadmissible aliens

(a) Classes of aliens ineligible for visas or admission

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(3) Security and related grounds

(B) Terrorist activities

(i) In general

Any alien who—

(I) has engaged in a terrorist activity;

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(IV) is a representative (as defined in clause (v)) of—

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years,

is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this chapter, to be engaged in a terrorist activity.

(ii) Exception

Subclause (IX) of clause (i) does not apply to a spouse or child—

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

(iii) "Terrorist activity" defined

As used in this chapter, the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) "Engage in terrorist activity" defined

As used in this chapter, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization—

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for—

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(V) to solicit any individual—

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification,

weapons (including chemical, biological, or radiological weapons), explosives, or training—

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or

(dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

(v) "Representative" defined

As used in this paragraph, the term "representative" includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) "Terrorist organization" defined

As used in this section, the term "terrorist organization" means an organization—

(I) designated under section 1189 of this title;

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

2. 8 U.S.C. 1182(d)(3)(B) provides:

Inadmissible aliens

(d) Temporary admission of nonimmigrants

(3)(B)(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may determine in such Secretary's sole unreviewable discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection or that subsection (a)(3)(B)(vi)(III) shall not apply to a group within the scope of that subsection, except that no such waiver may be extended to an alien who is within the scope of subsection (a)(3)(B)(i)(II), no such waiver may be extended to an

alien who is a member or representative of, has voluntarily and knowingly engaged in or endorsed or espoused or persuaded others to endorse or espouse or support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a terrorist organization that is described in subclause (I) or (II) of subsection (a)(3)(B)(vi), and no such waiver may be extended to a group that has engaged terrorist activity against the United States or another democratic country or that has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians. Such a determination shall neither prejudice the ability of the United States Government to commence criminal or civil proceedings involving a beneficiary of such a determination or any other person, nor create any substantive or procedural right or benefit for a beneficiary of such a determination or any other person. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review such a determination or revocation except in a proceeding for review of a final order of removal pursuant to section 1252 of this title, and review shall be limited to the extent provided in section 1252(a)(2)(D). The Secretary of State may not exercise the discretion provided in this clause with respect to an alien at any time during which the alien is the subject of pending removal proceedings under section 1229a of this title.

(ii) Not later than 90 days after the end of each fiscal year, the Secretary of State and the Secretary of Homeland Security shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the

House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Homeland Security of the House of Representatives a report on the aliens to whom such Secretary has applied clause (i). Within one week of applying clause (i) to a group, the Secretary of State or the Secretary of Homeland Security shall provide a report to such Committees.