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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

EBDANASSR ALEBW,
Petitioner

v.

ARNALDO HERNANDEZ,
SUPERINTENDENT, ANCHORAGE
CORRECTIONAL COMPLEX; et al.

Defendants.

Case No. 3:26-cv-00228-SLG

**RESPONSE IN OPPOSITION TO AMENDED MOTION FOR
TEMPORARY RESTRAINING ORDER**

Petitioner moved for a temporary restraining order (“TRO”) requesting he not be transported out of the District of Alaska and requesting his release from custody. Dkt. 2. The Court granted the TRO prohibiting his transfer out of the District. Dkt. 6. Petitioner filed a supplemental motion renewing his request for a TRO. Dkt. 16. The Government responds in opposition. The Government incorporates by reference its prior briefing and

filings at Dkts. 11; 11-1; 11-2; 11-3; 11-4; 12; 13; 13-1; 14; 14-1; and 14-2.

In his amended petition and amended motion for a TRO, Petitioner contends that the Convention against Torture (“CAT”) and the Foreign Affairs Reform and Restructuring Act (“FARRA”) entitle him to *ad nauseum* litigation in the immigration court. Petitioner, however, fails to engage in a meaningful analysis of the facts, applied to the law. Rather, Petitioner posits conclusions. First, that he is afraid of being persecuted or tortured in the Central African Republic and second, that he was deprived of procedural due process.

Petitioner claims the DHS memo requires that because he *sua sponte* expressed a general fear of removal to the Central African Republic in his informal interview, that he be referred to an asylum officer. Dkt. 16 at 7-8. Petitioner misreads the DHS memorandum. It does not require that he be referred to an asylum officer because the Government has received diplomatic assurances that he will not be subjected to persecution or torture. Dkt. 11-1. Such a policy is congruent with regulation, declaring that once diplomatic assurances are provided, “the alien's claim for protection under the Convention Against Torture shall not be considered further by an immigration judge, the Board of Immigration Appeals, or an asylum officer.” 8 C.F.R. § 208.18(c)(1)-(3). Judicial review is also foreclosed. 8 C.F.R. § 208.18(e).

At the immigration court, Petitioner litigated his asylum claim, a claim he failed to establish. He was ordered removed to his home country, Syria. Petitioner was, however, given a withholding of removal to his home country of Syria. Petitioner was given robust, full, due process at the Immigration Court, resulting in a final order of removal. Recently,

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he was provided a notice of revocation and informed that he would be removed to a third country, the Central African Republic. Dkts. 14-1; 14-2. The Constitution requires nothing further. The Supreme Court has held that when the Executive determines a country will not torture a person on his removal, that is conclusive. *Munaf v. Geren*, 553 U.S. 674, 702-703 (2008); see *Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) (federal courts “may not question the Government’s determination that a potential recipient country is not likely to torture a detainee”), *cert. denied*, 559 U.S. 1005 (2010). The “*Munaf* decision applies here *a fortiori*: That case involved transfer of American citizens, whereas this case involves transfer of alien detainees with no constitutional or statutory right to enter the United States.” *Kiyemba*, 561 F.3d at 517-518 (Kavanaugh, J., concurring). When the Executive decides an alien will not be tortured abroad, courts may not “second-guess [that] assessment,” at least unless Congress has specifically authorized judicial review of that decision. *Id.* at 517 (citation omitted); see *Munaf*, 553 U.S. at 703 n.6.

It is not necessary for the Executive Branch to make an individualized assessment to satisfy due process. Indeed, federal courts may not “second-guess” the scope of the Executive’s conclusion any more than its substance. See *Kiyemba*, 561 F.3d at 517-518 (Kavanaugh, J., concurring). The decision that a foreign government’s categorical assurance against torture is sufficient to be accepted for all aliens is itself a “foreign policy” judgment the Judiciary “is not suited” to question. *Munaf*, 553 U.S. at 702.

Relatedly, the objection to the government’s reliance on a categorical assurance from a foreign government is not procedural due process at all. It is a substantive objection

that an assurance alone provides insufficient basis for the government to find that an alien is not likely to be tortured. Attempts to “recast in ‘procedural due process’ terms” what is really a challenge to the “‘substantive’” criteria that the government has adopted have been rejected. *Reno v. Flores*, 507 U.S. 292, 308 (1993) (rejecting similar argument for “individual[ized]” procedure). For good reason: It makes no sense to require the Government to provide additional process with respect to potential evidence that is immaterial under the substantive standard the government has adopted. When the government is satisfied based on foreign assurances that no alien will be tortured in the receiving country, a further “individualized” assessment serves no rational purpose. The only purpose served is further delay of Petitioner’s ultimate removal.

Here, the Central African Republic has provided diplomatic assurances that aliens removed from the United States pursuant to the Third Country Removal Agreement will not be subjected to persecution or torture. Dkt. 12. The Department of State determined that these diplomatic assurances were credible. *Id.*

These procedures are entirely consistent with established immigration law. Most analogously, in expedited-removal proceedings, aliens are expected to raise fears of removal “almost immediately,” and are often processed in a matter of hours. *See, e.g.*, 8 U.S.C. § 1225(b)(1)(B)(i). If the asylum officer decides the alien does not have a credible fear, any review by an immigration judge must be completed within seven days after that finding was made. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. § 1003.42(e). The expedited-removal statute does not limit the countries to which an alien can be removed pursuant to

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Section 1231(b), *see* 8 U.S.C. § 1225(b), so its expedited procedures for raising and assessing fear claims apply even when an alien is removed somewhere other than his home country, *see, e.g.*, 8 U.S.C. § 1231(b)(1)(A)-(C) (listing alien's country of birth or citizenry as alternatives only where removal to the country from which the alien arrived is unavailable).

Next, Petitioner, for the first time, claims that his notice of revocation was invalid and relies upon an out of district case, *M.P.P.P. v. Santacruz*, 2026 U.S. Dist. Lexis 124346 (C.D. Cal. 2026). The claim the notice was insufficient belies the record and the very existence of this case. If Petitioner did not have notice through the notice of revocation and being simultaneously informed he was being removed to the Central African Republic, he would not have filed the instant petition. His claim, thus, fails. It is rather simply an attempt to delay his lawful removal.

Finally, Petitioner posits that if he is removed, he will be unable to litigate his claims. This argument, however, fails, as he can still litigate in his immigration court case while in the Central African Republic. Indeed, Petitioner has filed documents establishing the case was reopened. Dkt. 17-1. Petitioner will be free to litigate his immigration court case from abroad, should he choose to do so.

CONCLUSION

Petitioner received procedural due process rights at the immigration court. Further, by Petitioner's own admission, he was given notice he would be removed to the Central African Republic. This Court should dissolve the TRO.

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RESPECTFULLY SUBMITTED this June 10, 2026, in Anchorage, Alaska.

MICHAEL J. HEYMAN
United States Attorney

/s/ Joshua A. Traini
Assistant U.S. Attorney
United States of America

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2026,
a true and correct copy of the foregoing
was served electronically on the following:

Jane M. Imholte
Federal Public Defender
District of Alaska
Attorney for Petitioner

/s/ Joshua A. Traini
Office of the U.S. Attorney