

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 13 2026

FOR THE NINTH CIRCUIT

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

GORDIAN DIZEH AFUNGCHWI,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 25-7956

Agency No.
A221-391-489

MEMORANDUM*

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

Submitted September 16, 2026**
Portland, Oregon

Before: W. FLETCHER, FRIEDLAND, and DE ALBA, Circuit Judges.

Petitioner Gordian Dizeh Afungchwi, a native and citizen of Cameroon, seeks review of a decision by the Board of Immigration Appeals (“BIA”) dismissing his appeal from an Immigration Judge’s (“IJ”) decision denying his application for asylum. We have jurisdiction under 8 U.S.C. § 1252. We grant the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

petition and remand for further proceedings.

“Where, as here, the BIA agrees with and incorporates specific findings of the IJ while adding its own reasoning, we review both decisions.”¹ *Bhattarai v. Lynch*, 835 F.3d 1037, 1042 (9th Cir. 2016). “We ‘review questions of law de novo’ and the agency’s ‘factual findings for substantial evidence.’” *Urquia-Yanez v. Blanche*, 176 F.4th 622, 626 (9th Cir. 2026) (quoting *Ruiz-Colmenares v. Garland*, 25 F.4th 742, 748 (9th Cir. 2022)). Mixed questions of law and fact qualify as questions of law. *Urias-Orellana v. Bondi*, 607 U.S. 537, 550 (2026).

The IJ determined that Afungchwi would be entitled to asylum “but for the Circumvention of Lawful Pathways Bar.” The Circumvention of Lawful Pathways Rule (“CLP Rule”) creates a rebuttable presumption of asylum ineligibility for noncitizens who unlawfully crossed the southern border into the United States between May 11, 2023, and May 11, 2025, after traveling through a country other than their home country. 8 C.F.R. § 1208.33(a); 88 Fed. Reg. 31314 (May 16, 2023).² The agency erred when it determined that Afungchwi had failed to rebut

¹ We refer to the BIA and the IJ collectively as “the agency.”

² In *Garcia Morales v. Blanche*, No. 25-1760, 2026 WL 2564025 (9th Cir. August 31, 2026), we held that the CLP Rule is inconsistent with the asylum statute. *Id.* at *8. If the CLP Rule is invalid, Afungchwi is clearly entitled to asylum based on the IJ’s findings. The mandate in *Garcia Morales* has not yet issued, but we need not rely on *Garcia Morales* to decide this case because Afungchwi is eligible for asylum even if the CLP rule is valid.

the Rule’s presumption of asylum ineligibility. The Rule provides that the presumption of asylum ineligibility “can be rebutted if an alien demonstrates by a preponderance of the evidence that exceptionally compelling circumstances exist, including if the alien demonstrates that, at the time of entry, . . . [he] [f]aced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder.” 8 C.F.R. § 1208.33(a)(3)(i). The rule specifies that an alien who “demonstrates by a preponderance of the evidence any of the circumstances” specifically enumerated, such as imminent threat of kidnapping, “shall *necessarily* rebut the presumption.” *Id.* § 1208.33(a)(3)(ii) (emphasis added).

Afungchwi demonstrated by a preponderance of the evidence that exceptionally compelling circumstances existed at the time of his entry into the United States. It is undisputed that he was kidnapped by armed men the night he arrived in Mexico and held captive and beaten during a three-day period until his family paid his kidnappers a \$5,000 ransom. Afungchwi fled to Tijuana after he was released by his captors. He crossed into the United States the night he arrived in Tijuana. Afungchwi not only experienced an imminent *threat* of kidnapping, but he was actually held captive for three of the roughly five days he spent in Mexico. That he escaped from actual kidnapping and immediately fled across the border demonstrates that Afungchwi faced the kind of “exceptionally compelling

circumstances” of which the threat of kidnapping is just one enumerated example.

Id. § 1208.33(a)(3)(i).

The BIA decision emphasized that Afungchwi “did not claim to have been harmed or threatened in Tijuana.” But the agency ignored the fact that Afungchwi spent mere hours in Tijuana. Because Afungchwi demonstrated an imminent threat of kidnapping by a preponderance of the evidence, he necessarily rebutted the presumption of ineligibility and is therefore entitled to asylum.

Petitioner’s emergency motion to stay removal (Dkt. No. 22) is granted.

PETITION GRANTED and REMANDED.