

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Nyynkpao Banyee v. Pamela Bondi

Banyee · No. 24-3590 · Decided January 29, 2026

SUMMARY

The United States Court of Appeals for the Eighth Circuit denied Nyynkpao Banyee’s petition for review of the Board of Immigration Appeals’ dismissal of his appeal from a removal order. The court held that Banyee’s North Dakota robbery conviction qualifies categorically as an attempted-theft aggravated felony under the Immigration and Nationality Act, making him ineligible for cancellation of removal. The court also declined to reconsider Banyee’s objections to his immigration detention because that issue had previously been decided.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Benton; Loken; Shepherd
JURISDICTION	United States Court of Appeals for the Eighth Circuit
DECIDED	January 29, 2026
DOCKET	24-3590
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review of the Board of Immigration Appeals' dismissal of Banyee's appeal from an Immigration Judge's order finding him statutorily ineligible for cancellation of removal and ordering his removal to the Ivory Coast.
STANDARD OF REVIEW	The court reviewed the BIA's removal order as the final agency decision. Because Banyee's removability was based on an offense covered by 8 U.S.C. § 1252(a)(2)(C), judicial review was limited to constitutional and legal challenges. Whether the North Dakota robbery conviction constituted an attempted-theft aggravated felony was reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	Nyynkpao Banyee v. Pamela Bondi, Attorney General of the United States

TOPICS

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QUESTIONS PRESENTED

1. Whether the Eighth Circuit had jurisdiction to review Banyee's challenge to the final removal order under 8 U.S.C. § 1252(a)(2)(C).
2. Whether North Dakota's robbery statute categorically includes attempted theft within the aggravated-felony definition in 8 U.S.C. § 1101(a)(43)(G) and (U).
3. Whether North Dakota's robbery statute is facially broader than the generic federal definition of theft because it allegedly encompasses theft by deception or consensual takings.
4. Whether Banyee satisfied the realistic-probability test by identifying actual North Dakota cases applying the robbery statute to nongeneric conduct.
5. Whether Banyee could relitigate his objections to immigration detention.

HOLDINGS

1. Because Banyee was removable based on an offense covered by 8 U.S.C. § 1227(a)(2)(A)(iii), the court could review only constitutional and legal challenges to the final order of removal.
2. North Dakota robbery necessarily includes attempted theft and therefore falls within the attempted-theft aggravated-felony provisions of 8 U.S.C. § 1101(a)(43)(G) and (U).
3. North Dakota's robbery statute is not unambiguously broader than the generic federal definition of attempted theft; its alleged application to theft by deception or consensual takings presents, at most, theoretical possibilities.
4. Because Banyee failed to demonstrate a realistic probability that North Dakota would apply its robbery statute to theft by deception or other nongeneric conduct, his robbery conviction was an attempted-theft aggravated felony and he was statutorily ineligible for cancellation of removal.
5. Banyee could not relitigate his objections to immigration detention because the Eighth Circuit had already decided the issue in the same cause.

KEY QUOTATIONS

“This court can consider only “constitutional and legal challenges to the final order of removal.”” (-3-)

“The robbery statute thus includes attempted theft under 8 U.S.C. § 1101(a)(43)(G), (U).” (-8-)

“The robbery statute on its face does not unambiguously criminalize conduct beyond the generic definition of attempted theft.” (-11-)

“Since Banyee cannot satisfy his burden of demonstrating that North Dakota would apply its robbery statute to thefts by deception, his state-robbery conviction is an attempted-theft aggravated felony.” (-11-)

FACTUAL BACKGROUND

Banyee, a native and citizen of the Ivory Coast, immigrated to the United States as a child refugee in 2004 and became a lawful permanent resident in 2005. In 2018, he was convicted under North Dakota's robbery statute after brandishing a gun and menacing others while committing a theft; the conviction was a Class B felony carrying a four-year sentence with one year of probation. DHS later charged him with removability, and the dispositive issue became whether the robbery conviction was an attempted-theft aggravated felony that barred cancellation of removal.

PROCEDURAL HISTORY

The Department of Homeland Security charged Banyee with removability based on two crimes involving moral turpitude and a North Dakota robbery conviction alleged to constitute an attempted-theft aggravated felony. The Immigration Judge initially found him removable but eligible for cancellation of removal, concluding that the robbery statute was overbroad. The BIA disagreed and remanded for application of the realistic-probability test. On remand, the IJ found that Banyee had not shown a realistic probability that North Dakota would apply its robbery statute to nongeneric theft conduct, found him ineligible for cancellation of removal, and ordered removal. The BIA dismissed his appeal, and the Eighth Circuit denied his petition for review.

DISPOSITION

other

CASES CITED

- Banyee v. Garland, 115 F.4th 928, 930-31 (8th Cir. 2024)
- Thok v. Garland, 74 F.4th 555, 559 (8th Cir. 2023)
- Nasrallah v. Barr, 590 U.S. 573, 575-76 (2020)
- Hanan v. Mukasey, 519 F.3d 760, 763 (8th Cir. 2008)
- Jima v. Barr, 942 F.3d 468, 471-72 (8th Cir. 2019)
- Borden v. United States, 593 U.S. 420, 424 (2021)
- Huynh v. Garland, 102 F.4th 943, 944-45 (8th Cir. 2024)
- Moncrieffe v. Holder, 569 U.S. 184, 190-91, 206 (2013)
- Pereida v. Wilkinson, 592 U.S. 224, 227 (2021)
- Peh v. Garland, 5 F.4th 867, 871-72 (8th Cir. 2021)
- Mowlana v. Lynch, 803 F.3d 923, 925 (8th Cir. 2015)
- Gonzales v. Duenas-Alvarez, 549 U.S. 183, 189, 193 (2007)
- Armenta-Lagunas v. Holder, 724 F.3d 1019, 1024-25 (8th Cir. 2013)
- Gonzalez v. Wilkinson, 990 F.3d 654, 660 (8th Cir. 2021)

- Ahmed v. Sessions, 890 F.3d 719, 721 (8th Cir. 2018)
- Matter of Garcia-Madruga, 24 I. & N. Dec. 436, 439-41 (BIA 2008)
- Matter of Koat, 28 I. & N. Dec. 450, 453 (BIA 2022)
- Behlmann v. Century Sur. Co., 794 F.3d 960, 963 (8th Cir. 2015)
- Kroschel v. Levi, 866 N.W.2d 109, 113-14 (N.D. 2015)
- State v. Long, 950 N.W.2d 178, 181 (N.D. 2020)
- State v. Hartson, 6 N.W.3d 639, 643 (N.D. 2024)
- State v. McKing, 593 N.W.2d 342, 343-44 (N.D. 1999)
- State v. Carlson, 559 N.W.2d 802, 810 (N.D. 1997)
- State v. Pulkrabek, 900 N.W.2d 798, 800 (N.D. 2017)
- State v. Bourbeau, 250 N.W.2d 259, 263 (N.D. 1977)
- State v. Clinkscales, 536 N.W.2d 661, 663-65 (N.D. 1995)
- Rutherford v. Kessel, 560 F.3d 874, 881 (8th Cir. 2009)
- Browne v. Thorn, 272 F. 950, 951 (8th Cir. 1921), aff'd, 260 U.S. 137 (1922)
- Thompson v. United States, 872 F.3d 560, 565 (8th Cir. 2017)

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