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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED APRIL 26, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1609

PIERRE YASSUE NASHUN RILEY,

Petitioner,

v.

MERRICK B. GARLAND, ATTORNEY GENERAL,

Respondent.

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

March 27, 2024, Submitted;
April 26, 2024, Decided

Before KING, HARRIS, and QUATTLEBAUM, Circuit Judges.

Petition dismissed by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

Appendix A

PER CURIAM:

Pierre Yassue Nashun Riley, a native and citizen of Jamaica, petitions for review of an order of the Board of Immigration Appeals ("Board") vacating the Immigration Judge's ("IJ") order granting Riley's application for deferral of removal under the Convention Against Torture ("CAT") and ordering Riley removed to Jamaica. Because we lack jurisdiction over Riley's petition for review, we dismiss it.

I.

Riley entered the United States in 1995 on a tourist visa. In 2006, a federal grand jury returned an indictment charging Riley with conspiracy to distribute and possess with intent to distribute 1000 kilograms or more of marijuana and possession of a firearm in furtherance of a drug-trafficking crime. A jury found Riley guilty of both offenses, and he was sentenced to 25 years' imprisonment. In January 2021, Riley was granted compassionate release.

Just after Riley's release from federal prison, the immigration authorities took custody of him. On January 26, 2021, the Department of Homeland Security issued a Final Administrative Removal Order, explaining that Riley was removable because he had been convicted of an aggravated felony. *See* 8 U.S.C. § 1228(b). Riley expressed a fear of returning to Jamaica, and an immigration officer conducted a reasonable fear interview. The immigration officer determined that Riley had not established a

reasonable fear of persecution or torture in Jamaica, but an IJ disagreed and referred Riley to the immigration court for withholding-only proceedings.

Riley appeared with counsel before the IJ and conceded removability under § 1228(b). Although Riley applied for asylum, statutory withholding of removal, and both withholding of removal and deferral of removal under CAT, he later conceded that he was eligible only for deferral of removal under CAT given his prior convictions.

After an evidentiary hearing, the IJ granted Riley's application for deferral of removal under CAT. The Department of Homeland Security appealed the IJ's decision to the Board, and a three-member panel of the Board issued a May 31, 2022, unpublished decision sustaining the appeal. That is, the Board vacated the IJ's order granting relief and ordered Riley removed to Jamaica.

On June 3, 2022, Riley petitioned this court for review of the Board's decision. We later placed this appeal in abeyance for the issuance of the mandate in *Martinez v. Garland*, No. 22-1221 (4th Cir.). The mandate in *Martinez* has issued, and so Riley's case has been removed from abeyance.

Appendix A

II.

A.

"We have an independent obligation to assure ourselves of jurisdiction to decide an appeal." *Martinez v. Garland*, 86 F.4th 561, 566 (4th Cir. 2023). We generally possess jurisdiction to review "a final order of removal." 8 U.S.C. § 1252(a)(1). A noncitizen must petition for review within 30 days "of the final order of removal." 8 U.S.C. § 1252(b)(1). "The 30-day deadline is mandatory and jurisdictional and is not subject to equitable tolling." *Martinez*, 86 F.4th at 566 (internal quotation marks omitted). "[O]nce we have a final order of removal before us, we can consider along with it 'all questions of law and fact . . . arising from any action taken or proceeding brought to remove [the] alien from the United States.'" *Id.* (quoting 8 U.S.C. § 1252(b)(9)) (ellipsis and second alteration in original).

Riley seeks review of the Board's order vacating the IJ's order and denying his application for deferral of removal under CAT. We recently held in *Martinez*, however, that an order denying CAT relief is not a final order of removal for purposes of § 1252(a)(1). *Id.* at 567. So for us to exercise jurisdiction over the Board's order denying CAT relief, Riley "must identify another eligible order" that is properly before us. *Id.* But Riley cannot do so because he did not timely petition for review of a final order of removal. That is, Riley did not petition for review within 30 days of the January 26, 2021, Final Administrative Removal Order. So there is no final order of removal properly in front of us that would allow us to

review the Board's order denying CAT relief. We thus lack jurisdiction over Riley's petition for review. *Id.* at 571.

B.

Riley offers several arguments in favor of our exercise of jurisdiction, but none convinces us. To start, Riley contends that *Martinez* should not control in this case because it involves a Final Administrative Order of Removal issued under § 1228(b), not a reinstated removal order, which *Martinez* addressed. But Riley offers no persuasive justification for differentiating between those two types of orders when applying the jurisdictional principles delineated in *Martinez*, and we discern no reason to do so.

Riley next argues that the Final Administrative Order of Removal was not actually final for purposes of § 1252(a)(1) because he applied for asylum. Riley was statutorily ineligible for asylum, however, and he effectively withdrew his asylum application during his merits hearing. *See* 8 U.S.C. § 1158(b)(2)(A)(ii), (B)(i). Because Riley could not have obtained asylum relief, his asylum application did not impact his removability. The Final Administrative Order of Removal was thus in fact final despite Riley's asylum application.

Finally, Riley maintains that we may exercise jurisdiction over the Board's order affirming the denial of CAT relief under 8 U.S.C. § 1252(a)(4) ("[A] petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive

means for judicial review of any cause or claim under [CAT.]"). But that provision means only that we may review an order denying CAT relief as part of our review of a final order of removal. It does not authorize us to review an order denying CAT relief without a final order of removal properly before us. *See Nasrallah v. Barr*, 140 S. Ct. 1683, 1691, 207 L. Ed. 2d 111 (2020) (citing § 1252(a)(4) and explaining that order denying CAT relief is reviewable "as part of the review of a final order of removal" (internal quotation marks omitted)); *Martinez*, 86 F.4th at 567 (recognizing that federal appellate court may review order denying CAT relief only as part of its review of final order of removal); *Bhaktibhai-Patel v. Garland*, 32 F.4th 180, 190 n.13 (2d Cir. 2022) (explaining that § 1252(a)(4) does not enable federal appellate court to exercise jurisdiction over order denying CAT relief "in the absence of a judicially reviewable final order of removal").

III.

Because we lack jurisdiction, we dismiss the petition for review. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DISMISSED

APPENDIX B — OPINION OF THE UNITED STATES DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, BOARD OF IMMIGRATION APPEALS, FILED MAY 31, 2022

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

MATTER OF:

PIERRE YASSUE NASHUN RILEY, A097-534-840

Applicant

IN WITHHOLDING ONLY PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Arlington, VA

Before: Baird, Appellate Immigration Judge; Gorman, Appellate Immigration Judge; Wilson, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Wilson

WILSON, Appellate Immigration Judge

The Department of Homeland Security ("DHS") has appealed from an Immigration Judge's July 27, 2021, decision granting the applicant's request for protection under the regulations implementing the Convention

Against Torture ("CAT").[1] The applicant, a native and citizen of Jamaica, has filed responses in opposition to DHS' appeal. The appeal will be sustained.

We review the Immigration Judge's factual findings for clear error. 8 C.F.R. § 1003.1(d)(3)(i). Questions of law, discretion and judgment, and all other issues, are reviewed de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The applicant alleged before the Immigration Judge that a man named [redacted] a gang leader in his former neighborhood in Kingston and a drug kingpin, will torture or kill him upon his return to Jamaica. He alleges that [redacted] killed two of the applicant's cousins in 2008 and 2011 and has recently sent death threats to his mother and sister because he believes the applicant will seek retribution against him for killing his cousins (IJ at 8; Tr. at 47-48, 55-59; Exhs. 2, 6A).

The Immigration Judge found that based on the applicant's credible testimony and the background information in the case he has demonstrated that he faces a particularized risk of torture and that it is more likely than

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). The applicant's attorney stated that he is only applying for deferral of removal under the CAT (Tr. at 33). The Immigration Judge found the applicant is not eligible for asylum, withholding of removal under the INA or withholding of removal under the CAT because he has been convicted of a particularly serious crime (IJ at 6). This finding has not been contested on appeal.

not that [redacted] will harm the applicant upon his return to Jamaica (IJ at 9-10). In addition, the Immigration Judge found that the applicant credibly testified that [redacted] has influence with the neighborhood and the police, that the applicant would be forced to register with the police and keep them informed of his movements, which would allow [redacted] to know his whereabouts and that he will more likely than not be tortured with the acquiescence of the government (IJ at 10).

DHS challenges the Immigration Judge's positive credibility determination (IJ at 4-6). Based on the deferential clear error standard of review, we discern no clear error in the Immigration Judge's credibility determination and will treat the applicant's testimony as credible for purposes of this appeal.

However, as explained more fully below, we discern clear error in the Immigration Judge's factual findings regarding what is likely to happen to the applicant upon his removal to Jamaica, and we agree with DHS that the applicant has not met his burden of proof to show eligibility for deferral of removal under the CAT. The applicant bears the burden to show that it is more likely than not that he would be tortured in Jamaica by, or with the consent or acquiescence (to include the concept of willful blindness) of, a public official or an individual acting in an official capacity. 8 C.F.R. §§ 1208.16(c), 1208.18. The applicant must make two distinct showings: (i) likely future mistreatment, i.e., that it is more likely than not he will endure severe pain or suffering that is intentionally inflicted; and (ii) that the likely future mistreatment will

occur at the hands of the government or with the consent or acquiescence of the government. *Cruz-Quintanilla v. Whitaker*, 914 F.3d 884, 886 (4th Cir. 2019). Importantly, an applicant cannot establish eligibility by stringing together a series of suppositions to show that it is more likely than not that torture will result where the evidence does not establish that each step in the hypothetical chain of events is more likely than not to happen. *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006). An Immigration Judge's findings regarding the likelihood of future harm and of acquiescence by the government (i.e., what is likely to happen) are factual findings that the Board reviews for clear error. Whether that predicted future harm meets the definition of torture and whether future governmental conduct meets the definition of consent or acquiescence are questions of law we review de novo. *Turkson v. Holder*, 667 F.3d 523, 530 (4th Cir. 2012).

DHS argues on appeal that the Immigration Judge erred in finding that the applicant showed he will more likely than not be tortured and should have found that he presented a speculative chain of events that would happen to him. We agree. While the Immigration Judge found that the applicant has shown a particularized risk of torture, this finding is based on speculative assertions by the respondent regarding [redacted]

The applicant, who has been in the United States for many years, claims that [redacted] killed two of his cousins in Jamaica. But other than his testimony, which is not based on first-hand knowledge, there is no objective corroborating evidence that [redacted] killed his relatives

or why. Indeed, the grand jury indictment in California against [redacted] states he was arrested on February 12, 2010, on his way to pick up marijuana, and thus, he would have been incarcerated in the United States at the time of the cousin's murder in 2011 (Exh. 6D). When asked how he knows [redacted] killed his cousins, he stated that [redacted] and his gang members "brag about this stuff" (Tr. at 51-52). Yet, the affidavits from the applicant's family make no mention of [redacted] (Exh. 6). Nor do the affidavits from the applicant's mother, sister, and stepfather mention [redacted] when describing threats to kill the applicant they received in 2021 (Exh. 6B). The mother's affidavit states she received phone calls "from individuals who live in Jamaica threatening to kill [the applicant] on site should he come home" and that neighbors reported to her that three masked men asked about the applicant's whereabouts (Exh. 6B; Tr. at 68-69). The applicant's sister states in her affidavit that "people" have asked about him and unknown guys told her the applicant has a green light on him but did not tell her why (Exh. 6B; Tr. at 68-69). When the applicant was asked why [redacted] has any interest in harming him now and sees him as a threat, the applicant testified "[t]hat's the big question" and that he will expect the applicant to retaliate against [redacted] for his cousins' deaths because that is the "Jamaican lifestyle" (Tr. at 47-48). Thus, the applicant's claims that [redacted] killed or ordered the killing of his cousins and is behind the threats his mother and sister received in 2021 are speculative.

The Immigration Judge also found that country conditions evidence supports the applicant's claim

but cited generalized statements in the 2020 State Department Report regarding government human rights abuses, fatalities involving government security forces, allegations of torture of people in police custody, and insufficient action in addressing abuse and unlawful killings by security forces (IJ at 8-9; Exh. 4C). The Immigration Judge did not explain and did not cite to any particular evidence of record corroborating the claim that [redacted] is an ex-police officer, that he controls the applicant's old neighborhood, that he killed the applicant's relatives, or that he poses a particularized risk of harm to the applicant that would amount to torture. The country conditions evidence does not mention [redacted] and does not indicate the police will acquiesce in torture. In fact, the evidence the applicant cites in his brief on appeal is either information about crime and safety for foreign travelers to Jamaica or evidence indicating that crime is a significant problem, but the evidence also indicates that Jamaica has an independent police oversight body and that efforts are made to address gangs, corruption, and impunity for police killings (Exh. 6 at pages 142-52, 158-64). Moreover, the mother's affidavit does not demonstrate a likelihood of acquiescence simply because the police stated it would not investigate threats from unknown persons against the applicant who currently is not in Jamaica (Exh. 6B). The mere existence of a pattern of human rights violations in a particular country does not constitute a sufficient ground for finding that a person would more likely than not be tortured. *Nolasco v. Garland*, 7 F.4th 180, 191 (4th Cir. 2021).

Thus, we conclude that the respondent's claim is based on the stringing together of a series of suppositions and is not supported by sufficient objective evidence to corroborate his speculative fear of torture by [redacted] or that the government will acquiesce in his torture. *Matter of O-R-E-*, 28 I&N Dec. 330, 350 (BIA 2021); *Matter of J-F-F-*, 23 I&N Dec. at 917-18.[2]

For these reasons, we will reverse the Immigration Judge's determination that the applicant has demonstrated that it is more likely than not that he would be subjected to torture inflicted by, or at the instigation of or with the consent, acquiescence, or willful blindness of a Jamaican public official or other person acting in an official capacity for purposes of deferral of removal under the CAT.

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2. The applicant also alleges in his reply brief that the Immigration Judge did not consider, in the aggregate, the likelihood of torture because of his status as a criminal deportee and his long-time residence in the United States (Respondent's Reply Br. at 22-24). However, the Immigration Judge found that the applicant never mentioned that he fears the police directly (IJ at 7). The applicant states he will be required to register with the government and wear an ankle monitor and cites evidence stating that criminal deportees are stigmatized (Exh. 6 at 263-303, 310-25). However, he has not cited specific evidence that police or other government officials subject criminal deportees to extreme mistreatment, intentionally inflict torture on them, or that he personally faces a risk of torture by the government or with the consent or acquiescence of a public official. The evidence he cites does not mention torture of criminal deportees, but rather discusses the difficulty criminal deportees have reintegrating into society and the blame they experience by society and the government for rising crime rates (Exh. 6). Thus, we find this claim to be without merit.

Accordingly, the following orders will be entered.

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Immigration Judge's order dated July 27, 2021, granting deferral of removal under the CAT is vacated, and the applicant is ordered removed from the United States to Jamaica.

APPENDIX C — DECISION AND ORDER OF THE UNITED STATES DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, UNITED STATES IMMIGRATION COURT, ARLINGTON, VIRGINIA, DATED JULY 27, 2021

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ARLINGTON, VIRGINIA

File: A097-534-840

In the Matter of

PIERRE YASSUE NASHUN RILEY

Applicant

IN WITHHOLDING ONLY PROCEEDINGS

July 27, 2021

CHARGES:

APPLICATIONS: Form I-589, application for withholding of removal under INA Section 241(b)(3), and under the Convention against Torture.

Appendix C

ORAL DECISION OF THE IMMIGRATION JUDGE

PROCEDURAL HISTORY

Applicant is a native and citizen of Jamaica. He last entered the United States on a visitor visa in 1995; overstayed. While in the United States he was arrested twice. First in 1998 for marijuana possession as a minor, youthful offender, and then in 2006 he was convicted for distribution of marijuana and possession of a firearm in furtherance of that distribution and then was sentenced to 25 years' incarceration. Fast forward to 2021, the District Court Judge signed an order authorizing compassionate release, and thereafter he was placed in ICE custody and was ordered removed pursuant to INA Section 238(b). And then he claimed a reasonable fear which an Immigration Judge found to be reasonable and placed in these proceedings.

SUMMARY OF RELEVANT TESTIMONY

Applicant was born on March 22, 1979, native and citizen of Jamaica, lived in Kingston. He did use an alias, Adrian Francis for ID and to get into certain bars and clubs, what have you. He last entered the United States under his real name on February 3, 1995 and never left. He testified to having distributed marijuana in the past, acknowledged that he was convicted and sentenced to 25 years. Ultimately he was released. He said if he returned to Jamaica he would be tortured and killed by a man named [redacted]

This person, [redacted] he is from the neighborhood of Central Kingston, Jamaica, same neighborhood as the applicant. In fact, applicant said he knew [redacted] His family knew him growing up. Applicant said that [redacted] took over the neighborhood sometime in the 2000's. He was an ex-cop, supporter of the JLP Party, and after he took over the neighborhood he and his supporters in the neighborhood would harm people and property. Applicant testified that at one point [redacted] even came to the United States but he still had contacts in his old neighborhood in Jamaica, including authorities. Applicant testified that [redacted] was deported back to Jamaica from the United States sometime in 2016 or 2017. He knows because the applicant's mother and sister still live in Jamaica. They have seen [redacted] Applicant testified also that [redacted] has an issue with his family. He had killed two of the applicant's cousins, a person named O'Neal, as well as a person named Darrel, and then threatened all male relatives which includes the applicant, that he would kill them or threaten to kill them if they return or if he sees them in Jamaica. And this is because, according to the applicant, [redacted] feels that the relatives of the two people that he murdered would exact revenge for the murders against [redacted] Now, [redacted] wants to harm the applicant because he thinks applicant is going to seek revenge against him.

Regarding these two cousins who died, one was O'Neal, he died in 2008. He was actually somewhat associated with [redacted] He used to give money to him to pay off groups, individuals and politics. But when O'Neal wanted to quit doing this [redacted] killed him because he

took that as a sign of disrespect. Applicant said that the police did nothing to investigate or solve O'Neal's murder. And in fact, when his other cousin, Darrel Scott, tried to get the police to investigate further, [redacted] ordered him killed, according to word on the street. That was sometime in March 2011. The police, according to applicant, did not investigate Darrel's death.

The applicant, after serving 15 years in prison, was released for his marijuana distribution conviction, following a sentence reduction. Thereafter, his mother started receiving calls threatening to harm the applicant if he ever returned to Jamaica. Applicant said there was even a car with masked men who approached applicant's mother looking for the applicant in Jamaica. Applicant testified that his mother then went to file a police report but the police told applicant's mother that the applicant was not even in Jamaica as among the reasons why they refused to take the report. They also knew that the report was against [redacted] Applicant said that his mother was even approached at work by [redacted] himself and threatened that he will kill the applicant. At this point the applicant told his mother to stop reporting to the police for fear of being killed. He said his sister also received communication from [redacted] in Jamaica. They threatened to harm the applicant. He said that the people who approached his sister said they have the green light to murder the applicant from [redacted] Applicant also testified as two other individuals who live in the same neighborhood as he did in Jamaica both died following deportation back. He said he cannot relocate anywhere in Jamaica because Jamaican authorities force him to

register upon his return, they would know where he is. That would tie directly into [redacted] and allow [redacted] to easily become aware of where the applicant is located. That and the entire country of Jamaica is about the size of New Jersey. It is fairly small.

Cross-examination he said at the interview that he grew up in a neighborhood controlled by the JLP. But explained that was just a point of fact, not like a choice that he was making. He also clarified that he could be killed as a member or for being a supporter of the JLP because that is just the way people are killed in Jamaica. There is a lot of violence; a lot of it is political. And he indicated he did not mean to claim that he was a member of the JLP or the family was a member of the JLP.

LAW FINDINGS, ANALYSIS, CREDIBILITY, CORROBORATION

When testimony is offered in support of an application for relief the Court must consider whether such testimony is credible. INA Section 240(c)(4)(B). For applications filed after May 11, 2005 provisions of the REAL ID Act govern the credibility analysis. Making this determination the Court considers the totality of the circumstances and all relevant factors. *See id.* Section 240(c)(4)(C). *Matter of J-Y-C-*, 24 I&N Dec. 260, 262 (BIA 2007). Generally, to be credible, testimony shall satisfactorily explain any material discrepancies or omissions, INA Section 240(c)(4)(C). The Court may base a credibility determination on the witness's demeanor, candor, or responsiveness, the inherent plausibility of his account. INA Section 240(c)

(4)(C). Other factors include the consistency between written and oral statements without regard to whether inconsistency goes to the heart of the applicant's claim. *Id.*; *Matter of J-Y-C-*, 24 I&N Dec. at 263-66.

In this case the Court listened carefully to the applicant's testimony. I observed the applicant very carefully as he was answering questions, reviewed the detailed affidavit and the Form I-589 as well as the background *Country Reports* from the Department of State and other background country evidence in this case. Based on this Court's thorough review it will find the applicant to be generally credible. The Court notes applicant did provide a very detailed application, Form I-589, affidavit. Lays out his history growing up. His commission of the crime, his fear of return, who he fears return from. Harm that his family experienced as the basis for his own fear. And testified in a manner that was overall consistent with his prior statements. The Court notes that the evidence also independently corroborates the identity of this individual named [redacted] his involvement with drugs, convictions here in the United States. There is a letter from family members that also identify [redacted] as being influential in the neighborhood having been the source of various threats. There is also corroboration of the two cousins who were killed, and clearly the death reports or the death certificates are not going to indicate or point the finger at who committed the offense. The applicant has himself filled in that gap at portion of the testimony to what the Court finds to be credible just based on the information provided by the applicant, the manner in which he testified. And

the Court's opinion that he was forthright and honest. He clarified some of the statements that he was confronted with by the Government on cross-examination, namely, that pertaining to questions of his involvement with the JLP Party or the opposition party to the JLP, initially it appeared that applicant was critical of the JLP Party with no indication that he was a member. The Government did point to some questions and answers in the reasonable fear interview that would seem to indicate that he was either a member or supporter of the JLP Party. The applicant clarified that the way the question was asked and the way he answered that it was much more narrow point that he was trying to make. That is that he grew up in a neighborhood that was controlled by the JLP Party. Again, the applicant indicated that he presented this just as a matter of fact and not some choice that his family made to join the JLP versus another party. He followed that up with an explanation of his answers as to whether he could be killed for being a member of the JLP Party. His answer was in the affirmative, but he clarified that not him as a member of the JLP Party but that this is what happens in Jamaica. Politics is violent. One could be killed for simply being a member of the JLP Party or any other party. The Court accepts these explanations. The Court notes that applicant had been in prison for 15 years and is only questioned about his fear of return. It appears that the answers could be construed in several different ways. The Court gives the applicant the benefit of the doubt and I would accept his explanations for why he answers the questions in the manner he did. And with that clarified the Court would find the applicant has put forth a credible claim.

Appendix C

DEFERRAL OF REMOVAL UNDER THE CONVENTION AGAINST TORTURE

Initially, the Court notes that the applicant is not eligible for asylum under INA Section 208 or withholding under Section 241(b)(3) or withholding under the Convention against Torture for having been convicted of a particularly serious crime, that pertaining to distribution of marijuana and then having been sentenced to 25 years, reduced to 15. That leaves him eligible to apply for protection from removal under the Convention against Torture or deferral of removal under the Convention against Torture.

To be extended protection under the Convention against Torture the applicant must establish that it is more likely than not that he would be tortured if removed to his home country. *See* 8 C.F.R. Section 208.16(c), and *see also Matter of M-B-A-*, 23 I&N Dec. 474, 477-78 (BIA 2002). Torture is defined in part as the intentional infliction of severe physical or mental pain or 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 C.F.R. Section 1208.18(a)(1). To meet his burden for CAT protection the applicant must meet two distinct showings. First, he must demonstrate likely future mistreatment in his home country that constitutes severe pain or suffering that is intentionally inflicted. *See Cruz-Quintanilla v. Whittaker*, 914 F.3d 884, 886 (4th Cir. 2019). And second, the applicant must show the mistreatment will occur at the hands of government or with their consent or acquiescence. *See id.*

Appendix C

In this case, the applicant testified that he fears [redacted] and his associates. Applicant never mentioned that he fears the police directly. His only comment about the police is that they will not do anything and that they did not do anything when his mother and his cousin, two of whom are dead, but one of them went to the police and ended up dying. In neither of those incidents the police ever did anything. So the applicant must demonstrate that it is more likely than not that the police, the authorities in Jamaica would acquiesce to his torture at the hands of [redacted] or [redacted] associates. To prove this, applicant must do more than show that the government is powerless to stop the torture. He has to show that the public official would have awareness of or will remain willfully blind to the activity constituting torture prior to its commission, and therefore breach their responsibility to intervene to prevent such activity. 8 C.F.R. Section 1208.18(a)(7); *see also Suarez-Valenzuela v. Holder*, 714 F.3d 241, 245-46 (4th Cir. 2013). Relevant factors to assessing willful blindness include but is not limited to, evidence of past torture, evidence of gross, flagrant or mass violations of human rights, general country conditions, and whether the applicant could relocate to another part of the country where he or she is unlikely to be tortured. *See Suarez-Valenzuela v. Holder*, 714 F.3d at 245.

Applicant here has credibly testified, as previously mentioned, the existence of this individual named Andrew [redacted] his Jamaican nationality, his involvement with drugs, and credibility he testified as to his control over the neighborhood in which applicant lived in which his

mother and sister continue to live. Applicant also credibly testified as to [redacted] biography. He is an ex-cop. He is tied politically to the JLP Party which dominates his neighborhood in Jamaica. Applicant also credibly testified as to the harm that [redacted] caused his two cousins, having killed one and then having killed the other for trying to get police to investigate the killing of the first cousin. Applicant also credibly testified that the police, when informed of threats of [redacted] against him, did not do anything, refused to do anything. And the Court found all of the above credible, not just based on the detailed testimony, but based on the background evidence in this case. The one that is very reliable is the U.S. Department of State *Human Rights Report* of Jamaica, the most recent one coming from 2020. Right off the bat on page one it states significant human rights include numerous reports of unlawful and arbitrary killings by government security forces, harsh and life-threatening conditions in prisons and detention facilities, arbitrary arrests and detentions, serious corruption by officials, lack of accountability for violence against vulnerable populations. It also states the government took steps to investigate, prosecute officials, but there were credible reports that some officials alleged to have committed human rights abuses were not subject to full and swift accountability. The report goes on to discuss the number of people who have been killed, or examples of people who have been killed by the government security forces. The increase in the number of fatalities involving security forces in 2020 compared to 2019. Specific to torture, the Department of State states that there is no definition of torture in Jamaica. That there were allegations of torture

especially for people in police custody. Some examples of these torture that resulting in death, injury, rape. States that the government did not take sufficient action to address abuse and unlawful killings by security forces. Says the government has mechanisms to investigate and punish the abuse, but they were not always employed. In fact, it states fewer than ten percent of investigations of abuse resulted in recommendations for disciplinary action or criminal charges, and fewer than two percent led to a conviction. All of this is not inconsistent with the applicant's description of how police reacted to his cousin's attempt to find or to have police investigate the murder of the applicant's first cousin, O'Neal, or the applicant's testimony as to how his mother tried to get the police take the report but they refused to do so. Based on the applicant's credible testimony which is consistent with the background information in this case, and the Court is not even going to go into, although it can, the various other background articles that were submitted in support of the applicant's case, which details gang violence, prevalence or the influence of gangs, the growing influence of gangs in Jamaica. There is also a detailed article on the growing influence of gangs and gang violence in Jamaica from Amnesty International. That is all under Exhibit 6, tabs F and G. And for these reason the Court finds the applicant has done enough to demonstrate he faces a particularized risk of torture. That being that he is a male member of his family who have all been threatened by [redacted] who has killed two male members of his family with the police not investigating the death of the cousins. Applicant has also credibility testified as to the influence that this individual, [redacted] has in the neighborhood and on police. That is

important for a variety of reasons, one of which is also that applicant would be forced to register his return to Jamaica and keep police informed of his movements which as counsel pointed out would allow [redacted] to know the applicant's whereabouts. So based on the history of this case and [redacted] treatment of applicant's family the Court find that the threats are real and it is more likely than not that [redacted] would harm the applicant if he returns to Jamaica. Again, a small country with the police knowing where the applicant is, and does not find it reasonable for the applicant to relocate and be safe. And therefore would find that the applicant is more likely than not to be tortured through the acquiescence of and therefore will grant applicant protection from removal under the Convention against Torture.

CONCLUSION AND ORDERS

For the reasons stated, the court enters the following orders.

IT IS ORDERED that the applicant be ordered removed from the United States to Jamaica.

FURTHER ORDERED that the applicant's application for withholding of removal under Section 241(b)(3) be denied.

FURTHER ORDERED that the applicant's application for withholding of removal under the Convention against Torture be denied.

FURTHER ORDERED that applicant's application for deferral of removal under the Convention against Torture be granted.

July 27, 2021

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CHOI, RAPHAEL
Immigration Judge

Appendix C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ARLINGTON IMMIGRATION COURT

Respondent Name:
RILEY, PIERRE YASSUE NASHUN

To:
Georgiev-Remmel, Dimitar Plamenov
1220 N. Fillmore St.
Suite 300
Arlington, VA 22201

Alien Registration Number:
097534840

Riders:
In Withholding Only Proceedings Initiated by the Department of Homeland Security

Date:
07/27/2021

ORDER OF THE IMMIGRATION JUDGE

☒ This is a summary of the oral decision entered on 07/27/2021.

☐ Both parties waived the issuance of a formal oral decision in this proceeding.

Appendix C

The alien's request for:

☐ Withholding of Removal under Immigration and Nationality Act § 241(b)(3) is:
☐granted ☒denied ☐withdrawn.

☐ Withholding of Removal under the Convention Against Torture is:
☐granted ☒denied ☐withdrawn.

☒ Deferral of Removal under the Convention Against Torture is:
☒granted ☐denied ☐withdrawn.

/s/
Immigration Judge: Choi, Raphael
07/27/2021

Appeal: Department of Homeland Security:
☐waived ☒reserved

Respondent:
☒waived ☐reserved

Appeal Due: 08/26/2021