

No. 23-1270

IN THE
Supreme Court of the United States

PIERRE RILEY,
Petitioner,
v.

MERRICK GARLAND, U.S. ATTORNEY GENERAL,
Respondent.

**On Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit**

**JOINT APPENDIX
VOLUME I**

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Petition for a Writ of Certiorari Filed: May 31, 2024
Certiorari Granted: Nov. 4, 2024

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

06 Cr. 80 (NRB)

UNITED STATES OF AMERICA,

- against -

ADREAN FRANCIS,

Defendant.

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

MEMORANDUM AND ORDER

After a jury trial, defendant Adrean Francis was convicted of the charges of conspiring to distribute over 1,000 kilograms of marijuana, in violation of 21 U.S.C. § 846, and possessing a firearm in furtherance of the conspiracy, in violation of 18 U.S.C. §§ 924(c) and 2. On March 22, 2011, the Court imposed a sentence of 300 months' imprisonment. On October 5, 2020, the Court received defendant's *pro se* motion for compassionate release from North Lake CI.¹ For the following reasons, defendant's motion is granted.

Defendant moves for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i), which permits a court to "reduce a term of imprisonment" if, after considering the factors set forth in 18 U.S.C. § 3553(a), "it finds that . . . extraordinary and compelling reasons warrant

¹ Defendant has since been moved to CI Rivers.

such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A).² A court may reduce a defendant’s sentence under Section 3582(c)(1)(A)(i) only “upon motion of the Director of the Bureau of Prisons” or “upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” 18 U.S.C. § 3582(c)(1)(A). Defendant submitted a copy of a letter by the Facility Administrator of North Lake CI, denying his request for compassionate release on a number of grounds including that (1) the defendant’s medical condition was stable and treatable in an institutional setting; (2) the nature and circumstances of the offense showed a disregard for public safety and the community; (3) the defendant has only served approximately 57% of his sentence to date; and (4) the defendant is subject to a detainer lodged by the Immigration and Customs and Enforcement (“ICE”) for possible deportation. ECF No. 329, Ex. A.

As this motion is brought *pro se*, it should “be construed liberally to raise the strongest arguments [it] suggest[s].” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 479 (2d Cir. 2006). However, defendant still bears the burden of demonstrating that his release is justified under Section 3582(c)(1)(A). *See*

² Defendant initially requested that the Court order his release to home confinement in New York, but in his reply to the government’s objection, acknowledges that he is subject to deportation upon release and not eligible for home confinement. ECF No. 337.

United States v. Butler, 970 F.2d 1017, 1026 (2d Cir. 1992). Because he has done so, his motion is granted.

Defendant states in his motion that he “is currently on a cocktail of medication to deal with Type 2 Diabetes and has on several occasions been treated for chronic bronchitis and pneumonia resulting in hospitalization.” ECF No. 329 at 6-7. While defendant has not provided evidence to substantiate that he suffers from these conditions, the government acknowledges that “[b]ased on a review of the defendant’s North Lake CI medical records, the defendant, a 41-year-old male, suffers from Type II diabetes, which appears to be controlled by medication.” ECF No. 334 at 3. Type II diabetes has been identified by the CDC as a risk factor for severe illness from COVID-19,³ and the government concedes in its objection to defendant’s motion that defendant satisfies the “extraordinary and compelling reasons” inquiry under 18 U.S.C. § 3582(c)(1)(A)(i). ECF No. 334 at 7. Indeed, several courts in this Circuit have found that inmates suffering from diabetes risk severe illness from COVID-19 and are therefore eligible for compassionate release. See e.g., *United States v. Miranda*, 457 F. Supp. 3d 141, 146 (D. Conn. 2020); *United States v. Daugerdas*, No. 09-cr-581, 2020 WL 2097653, at *3 (S.D.N.Y. May 1, 2020); *United States v. Colvin*, 451 F. Supp. 3d 237, 241 (D. Conn. 2020). The Court agrees that defendant has shown “extraordinary and compelling reasons” that warrant his release.

³ See People with Certain Medical Conditions, CDC, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html (last updated Dec. 23, 2020).

Because defendant has satisfied his burden under Section 3582(c)(1)(A)(i), the Court now applies the factors set forth in 18 U.S.C. § 3553(a) to determine if they override defendant's extraordinary and compelling circumstances.⁴ We find that they do not. These factors include "the nature and circumstances of the offense," the need for the sentence imposed "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense," as well as "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. §§ 3553(a)(1), (a)(2)(A), (a)(6).

The government points to defendant's participation in a drug conspiracy to distribute a substantial amount of marijuana, and the fact that the Court imposed the congressionally mandated minimum sentence on defendant, to argue that reducing his sentence to time served "would minimize the severity of the defendant's actions." ECF No. 334 at 6. Congress, however, has revisited the penalties for defendant's crimes since his sentencing. Were defendant to be sentenced today, his prior drug-related conviction would not constitute a "serious drug felony" under 18 U.S.C. § 841(b)(1)(A), and he would not be subject to enhanced penalties.⁵

⁴ "[A] court confronted with a compassionate release motion is still required to consider all the Section 3553(a) factors to the extent they are applicable, and may deny such a motion if, in its discretion, compassionate release is not warranted because Section 3553(a) factors override, in any particular case, what would otherwise be extraordinary and compelling circumstances." *United States v. Gotti*, No. 02 Cr. 743-07 (CM), 2020 WL 497987, at *2 (S.D.N.Y. Jan. 15, 2020).

⁵ Before trial, the government filed a prior drug felony information stating that defendant was convicted of criminal possession of marijuana in the third degree for which he received

Moreover, at defendants' sentencing, the Court stated on the record that had it "felt free to do so, [it] would not sentence [defendant] to more than . . . 15 years." Hr'g. Tr. 14:6-8 (Mar. 22, 2011). Given the change in the law and the Court's contemporaneous view of the appropriate sentence, the Court finds that defendant serving approximately fourteen and a half years in prison amply "provide[s] just punishment" for his offenses and otherwise satisfies the goals of § 3553 and is consistent with applicable policy statements issued by the Sentencing Commission. The Court is likewise satisfied that defendant will not pose a danger to any persons or to the community, as the government informs us that defendant is subject to an active ICE detainer and that ICE intends to effectuate the defendant's removal to his home country of Jamaica upon his release. ECF No. 334 at 4.

For the foregoing reasons, the defendant's motion is granted. Defendant is to be released solely to ICE custody in order to initiate his removal proceedings to Jamaica.

SO ORDERED.

Dated: New York, New York
January 22, 2020

a sentence of five years' probation. ECF No. 90. Possession of marijuana in the third degree is a Class E felony under New York law for which the maximum term of imprisonment is four years. N.Y. Penal Law §§ 70.00(2)(e); 221.20 (McKinney). A "serious drug felony" under the amended § 841 is defined *inter alia* as "an offense under state law . . . for which the maximum term of imprisonment [is] ten years" and for which "the offender served a term of imprisonment of more than 12 months." 18 U.S.C. § 924(e)(2); 21 U.S.C. § 802(57). Defendant's prior felony satisfies neither requirement.

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Defendant (pro se)

Adrean Francis

A copy of the foregoing Memorandum and
Order have been mailed to the following:

Adrean Francis (#53403-054)
CI Rivers
145 Parker's Fishery Rd.
Winton, NC 27986

Final Administrative Removal Order

In removal proceedings under section 238(b) of the
Immigration and Nationality Act

Event No: NOR2101000081

FIN: 1307999559

File Number XXXXXXXXXX 840

Date January 26, 2021

To: PIERRE YASSUE NASHUN RILEY
AKA: FRANCIS, ADRIAN; RILEY, PEIRRE

Address: ICE/BRO Custody

(Number, Street, City, State and ZIP Code)

Telephone: _____
(Area Code and Phone Number)

ORDER

Based upon the allegations set forth in the Notice of Intent to Issue a Final Administrative Removal Order and evidence contained in the administrative record, I, the undersigned Deciding Officer of the Department of Homeland Security, make the following findings of fact and conclusions of law. I find that you are not a citizen or national of the United States and that you are not lawfully admitted for permanent residence. I further find that you have a final conviction for an aggravated felony as defined in section 101(a)(43)(u/b) of the Immigration and Nationality Act (Act) as amended, 8 U.S.C. 1101(a)(43)(u/b), and are ineligible for any relief from removal that the Secretary of Homeland Security, may grant in an exercise of discretion. I further find that the administrative record established by clear, convincing, and unequivocal evidence that you are deportable as an alien convicted of an aggravated felony pursuant to section 237(a)(2)(A)(iii) of the Act, 8 U.S.C.

1227(a)(2)(A)(iii). By the power and authority vested in the Secretary of Homeland Security, and in me as the Secretary's delegate under the laws of the United States, I find you deportable as charged and order that you be removed from the United States to:

Jamaica
or to any alternate country prescribed in section 241 of the Act.

Digitally signed by
CRAIG R. FILECCIA
Date 2021.01.28
13:35:38 -05'00'

C. 7429 FILECCIA CRAIG R FILECCIA
(Signature of Authorized Official)

(A)AFOD
(Title of Official)

01/28/2021 SALEM, VA
(Date and Office Location)

Certificate of Service

I served this FINAL ADMINISTRATIVE REMOVAL ORDER upon the above named individual.

1/28/2021 Norfolk, VA Personal
(Date Time, Place and Manner of Service)

/s/ [Illegible]
(Signature and Title of Officer)

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

Respondent Name:
RILEY, PIERRE YASSUE NASHUN

To:
RILEY, PIERRE YASSUE NASHUN
DHS/ICE/CDF
P.O BOX 1460
BOWLING GREEN, VA 22427

Alien Registration Number:
[REDACTED] 840

Riders:
In Reasonable Fear Case Proceedings
Initiated by the Department of Homeland Security

Date:
03/17/2021

ORDER OF THE IMMIGRATION JUDGE

On 03/17/2021, a review of the Department of Homeland Security's (DHS) Reasonable Fear Determination was held in the matter noted above. Testimony was was not taken regarding the alien's background and the alien's fear of returning to the country of origin or last habitual residence.

ORDER: After consideration of the evidence, the immigration court finds that the alien has has not established a reasonable possibility that the alien would be persecuted on the basis of a protected ground, or a reasonable possibility that the alien would be tortured in the country of removal.

The immigration court concurs in the DHS Reasonable Fear Determination because:

Additional reasoning is is not continued on a separate sheet. The case is returned to the DHS for removal of the alien. This is a Final Order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to INA § 242.

- The Court vacates the decision of the DHS immigration officer. Pursuant to 8 C.F.R. § 1208.31(g)(2), the alien is hereby placed in “withholding-only” proceedings.

/s/ Karen Donoso Stevens
Immigration Judge: Donoso Stevens, Karen
03/17/2021

Appeal:

Department of Homeland Security:

waived

reserved

Respondent:

waived

reserved

Appeal Due:

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service

To: [] Alien | [M] Alien c/o custodial officer | [] Alien’s atty/rep. | [M] DHS

By: Donoso Stevens, Karen, Immigration Judge

Date: 03/17/2021

[1] U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

File: A [REDACTED]-840

In the Matter of
PIERRE YASSUE NASHUN RILEY
Applicant

IN WITHHOLDING ONLY PROCEEDINGS
Transcript of Hearing

Before Choi, Raphael, Immigration Judge

Date: July 27, 2021

Place: ARLINGTON, VIRGINIA

Transcribed by Free State Reporting, Inc.-3

Official Interpreter:

Language:

Appearances:

For the Applicant: DIMITAR GEORGIEV REMO,

For the DHS: HEIDI HALL

* * *

[38] The last time I entered the United States was
February 3, '95.

MR. REMO TO MR. RILEY

And have you traveled outside of the United States
since?

MR. RILEY TO MR. REMO

No I have not traveled since then.

MR. REMO TO MR. RILEY

So how long have you been in the United States since you last entered?

MR. RILEY TO MR. REMO

A little over 26 years.

MR. REMO TO MR. RILEY

Okay. And, Mr. Riley, in your declaration you state that you believed yourself to be a United States citizen. Why is that?

MR. RILEY TO MR. REMO

Well the reason for that is when I came to the United States in '95 I came here to live with my dad and he had indicated to me that I won't be going back to Jamaica and he, he's going to file for my U.S. citizenship because he's a citizen. He's been a citizen since 1980. And it should derive me citizenship through derivative – it says once he, once he filed it it should be automatic and he did. He paid a lawyer sometime in '96 to do that so that's how I thought I was a United States citizen.

MR. REMO TO MR. RILEY

And when did you find out that you were not a United States citizen?

MR. RILEY TO MR. REMO

The first time was in a little after my trial in 2008 when ICE agents saw me to interview me and then the second time there was a detain placed on me when I was transferred to Elkton, Ohio Facility in 2015.

[39] MR. REMO TO MR. RILEY

Mr. Riley, you mentioned that you had a trial –
MR. RILEY TO MR. REMO

And, and yeah. I was going to say well sure be it ICE custody I didn't know that I am not a citizen.

MR. REMO TO MR. RILEY

Mr. Riley, you mentioned a trial. What happened?
MR. RILEY TO MR. REMO

I distributed marijuana back in the past. I got caught and was sentenced to 25 years.

MR. REMO TO MR. RILEY

And what if anything did you use the proceeds from that distribution to do with?

MR. RILEY TO MR. REMO

Hold up. You broke up for a second. Can you repeat that?

MR. REMO TO MR. RILEY

What if anything did you use the proceeds from the distribution to do with the money that you got from the distribution. What did you use that money for?

MR. RILEY TO MR. REMO

Well me and a couple of my co-defendants and associates, we had opened up a record label. And we had invested in promoting and producing and hosting one of the largest hip hop shows in Jamaica called Sashi [phonetic sp.].

MR. REMO TO MR. RILEY

Sashi. And, Mr. Riley, while you were incarcerated what if anything did you do to better your life?

MR. RILEY TO MR. REMO

[40] Well first I earned – excuse me.

MR. REMO TO MR. RILEY

I didn't say anything.

MR. RILEY TO MR. REMO

Somebody say something.

JUDGE TO MR. RILEY

Actually, no.

JUDGE TO MR. REMO

That's not relevant, counsel. I just need you to go into why he's more likely than not to be tortured.

MR. REMO TO JUDGE

Okay, Your Honor.

MR. REMO TO MR. RILEY

Mr. Riley, why do you fear –

JUDGE TO MR. REMO

You have to understand equities and his contacts in the United States, it's not relevant to these proceedings.

MR. REMO TO JUDGE

Understood, Your Honor.

MR. REMO TO MR. RILEY

Mr. Riley, why do you fear going back to Jamaica?

MR. RILEY TO MR. REMO

Well the reason I fear going back to Jamaica is because of the specific duress on account of my affiliation and threats that I will be killed if I return to Jamaica. [REDACTED] are the people who

have made threats and is still making direct threats [41] against my life. He gave orders and murdered two of my male cousins and he was never held accountable. And that's based on the fact that he had strong connections and influence on law enforcement in Jamaica and politicians. He's an ex-police officer for the Jamaican –

JUDGE TO MR. RILEY

Hold on, hold on, hold on. What is this individual's name again?

MR. RILEY TO JUDGE

██████████.

JUDGE TO MR. RILEY

██████████. How do you know ██████████
██████████?

MR. RILEY TO JUDGE

Yes. He's actually from the community, neighborhood that I grew up in called ██████████
██████████, Your Honor.

JUDGE TO MR. RILEY

██████████. Is that right?

MR. RILEY TO JUDGE

Yeah the name of the community, the neighborhood that I grew up in. the name of it is ██████████ and it's in ██████████ in Kingston, Jamaica.

JUDGE TO MR. RILEY

Okay. Well you left that area in 1995. And you have not returned.

MR. RILEY TO JUDGE

Yes, sir.

JUDGE TO MR. RILEY

So why would anyone in that old neighborhood be interested in you much less remember you?

[42] MR. RILEY TO JUDGE

Well, Your Honor, when you asked me in particular anyone or [REDACTED]?

JUDGE TO MR. RILEY

Okay. Well let's go with [REDACTED] specifically.

MR. RILEY TO JUDGE

Okay. Well; [REDACTED] took over that neighborhood as area leader in a don, Your Honor. When an area leader in a don is politically backed by a political constituency in Jamaica. There are two major political constituencies in Jamaica. One is the PNP, and the second one is the JLP. The PNP means People's National Party, and the JLP means Jamaica Label Party. So now that community, that neighborhood was at first a PNP constituency which my grandparents were stern supporters of that political party. So now in the late '70's and early '80's that neighborhood was taken over by the JLP constituency and when they came in they burned people's house down, they kill people. They force people to vote for them you know. They torture people and they banished people from the neighborhood. They did all types of cruel acts, Your Honor. So now in saying that [REDACTED] took over this neighborhood in the early 2000's as the political area leader and don. So now when that happened he – actually he migrated to the United States and became a big drug kingpin. So even though

he migrated here he still called the shots. He still give orders. He still did everything. So how I'm connected to this was my cousin, [REDACTED] [phonetic sp.] him and [REDACTED] actually shared – no not shared, his daughter and [REDACTED]'s kids are cousins. So now he would be in contact with [REDACTED] and basically anybody that left from that community and neighborhood that migrated he will still contact them to donate money to political campaigns for the JLP constituencies. And to – he's pretty tied in with all facets of law enforcement in Jamaica, Your Honor, at his behest. He has all [43] these political people at his behest like doing things for him, all these biddings. And when I say biddings I mean killing people for him, giving him connections as far as to push his drug operations and stuff as that nature. So now back to my cousin, [REDACTED], my cousin [REDACTED] reach out.

JUDGE TO MR. RILEY

No, no. Hold on, hold on, hold on.

MR. RILEY TO JUDGE

Excuse me, sorry, Your Honor.

JUDGE TO MR. RILEY

[REDACTED] is part of the JOC Party, is that right?

MR. RILEY TO JUDGE

JLP Party, Your Honor. Jamaica Labor Party.

JUDGE TO MR. RILEY

JLP. Okay.

MR. RILEY TO JUDGE

Yes because he's an area leader in a don and they you know – everywhere in Jamaica every area leader and every don is run by a political constituency. And

they have the backing of politicians and police officers and JDF which is the Jamaica Defense Force which is equivalent to soldiers.

JUDGE TO MR. RILEY

Okay, hold on.

JUDGE TO MR. REMO

All right, counsel.

MR. RILEY TO JUDGE

Yes, sir.

[44] JUDGE TO MR. REMO

There's background. I assume you submitted background information on this.

MR. REMO TO JUDGE

Yes, Your Honor. The criminal history of [REDACTED] appears in tab D, page 28.

JUDGE TO MR. REMO

Okay, I'm more curious about the country condition information.

MR. REMO TO JUDGE

Yes, Your Honor.

JUDGE TO MR. REMO

About the JLP Party and the influence of people – or the influence of dons or –

MR. REMO TO JUDGE

Yes, Your Honor. Relevant evidence appears on page 190, 169 and 214.

JUDGE TO MR. REMO

All right. Hold on one second.

JUDGE TO MR. RILEY

Okay, back to the respondent. Okay, sir,

MR. RILEY TO JUDGE

Yes, sir.

JUDGE TO MR. RILEY

You said that this [REDACTED] individual came to the United States. Is that correct?

MR. RILEY TO JUDGE

Yes, Your Honor.

JUDGE TO MR. RILEY

Where is he today?

[45] MR. RILEY TO JUDGE

He's back in Jamaica, Your Honor, he was deported back to Jamaica some time in [REDACTED].

JUDGE TO MR. RILEY

Do you know where he resides in Jamaica?

MR. RILEY TO JUDGE

Actually people of [REDACTED]'s stature, Your Honor, doesn't reside at any one place. He has multiple properties all through Jamaica and we, we have submitted evidence that actually shows that of seizures of some of his properties in Jamaica.

JUDGE TO MR. RILEY

Okay. You said he was deported back in [REDACTED]. Is that right?

MR. RILEY TO JUDGE

Yeah sometime in [REDACTED]. Late [REDACTED] I would say.

JUDGE TO MR. RILEY

And how do you know this?

MR. RILEY TO JUDGE

How do – people have seen him that I've spoken to, Your Honor. I'm in contact with –

JUDGE TO MR. RILEY

Who was that?

MR. RILEY TO JUDGE

Excuse me. My mom and my sister. And I've called people from the community that have seen him, drove through the community to check on things because he still runs that community, Your Honor. He's still the don in the area of that community, Your Honor.

[46] JUDGE TO MR. RILEY

And your mother and sister are in Jamaica currently in that neighborhood that's run by [REDACTED] and the JLP Party. Is that right?

MR. RILEY TO JUDGE

Yes, sir. Yes, Your Honor.

JUDGE TO MR. RILEY

Have your relatives been threatened by [REDACTED]?

MR. RILEY TO JUDGE

Yes, Your Honor. They have been threatened. Mostly male relatives. Well my mom and my sister have been lately but just to clarify. What are you talking about in the past, Your Honor or presently?

JUDGE TO MR. RILEY

Well both. But it sounds like the male relatives have been threatned in the past and then they along with the mom and sister continue to be threatned currently, is that correct?

MR. RILEY TO JUDGE

Yes, sir. It is – soon as my reduction – sentence reduction was made public and everybody knew at some point I was in Immigration custody there were multiple threats, daily threats coming into my mom and my sister and some to my brother, Ramiro Thompson. My son, Pierre Junior and my stepdad. All know about these threats and all have been receiving threats and it was multiple threats on Jamaica, a well-known Jamaica social media site. It's called Matey and Groupie [phonetic sp.]. one called the pink wall. I think my brother have the facts on that. It's been publicized. Everybody in California. Well everybody I know in California. Everybody that knows me in Jamaica, New York, and North Carolina.

[47] JUDGE TO MR. RILEY

Okay. The big question is –

MR. RILEY TO JUDGE

Yes, sir.

JUDGE TO MR. RILEY

Why does [REDACTED] have any interest in harming you?

MR. RILEY TO JUDGE

Well yes, Your Honor. After he murdered my two cousins, me coming to Jamaica he sees as a threat, Your Honor.

JUDGE TO MR. RILEY

How do you know this?

MR. RILEY TO JUDGE

That's the big question.

JUDGE TO MR. RILEY

How do you know this?

MR. RILEY TO JUDGE

I know this, Your Honor, because it's just the Jamaican lifestyle, Your Honor. When you kill somebody's cousin you got to expect that retaliation is coming. And this is how Jamaican lifestyle is. That's why he killed my second cousin and that's why he threatned and send out gang members to shoot at some of my other cousins back in Jamacia before they migrated.

JUDGE TO MR. RILEY

Okay. So [REDACTED] thinks that you would seek revenge on him for killing your two cousins. Is that right?

MR. RILEY TO JUDGE

[48] Yes, sir.

JUDGE TO MR. RILEY

And he thinks this because that's the Jamaican way, is that right?

MR. RILEY TO JUDGE

Yes, sir. I'm related to that family and he threatened every male member in that family and most of them have migrated because of that situation. So now me coming to Jamaica he just sees me as a threat coming there to retaliate against him. He had already

threatened everybody, every male member in that family, Your Honor. Killed two of us and threatened every male member of that family.

JUDGE TO MR. RILEY

Okay.

MR. RILEY TO JUDGE

So he starts calling –

JUDGE TO MR. RILEY

So where are all the male members of your family?

MR. RILEY TO JUDGE

Most of them migrated to the United States. They're here in the United States, Your Honor.

JUDGE TO MR. RILEY

You said [REDACTED] killed two cousins for what reason?

MR. RILEY TO JUDGE

Yes, Your Honor, that's what I was trying to lay the context for earlier. When – so when he tried to reach out to my cousin, [REDACTED], he – matter of fact he – that's what I was explaining earlier about the relations of his kids and [REDACTED]'s kids. So he was pretty close to [REDACTED] in particular.

[49] JUDGE TO MR. RILEY

Now who is [REDACTED]? Who is [REDACTED]?

MR. RILEY TO JUDGE

Now being a don – [REDACTED] is my – he's my cousin, Your Honor.

JUDGE TO MR. RILEY

Is he, is he one of [REDACTED]'s victims?

MR. RILEY TO JUDGE

Yes, sir. Yes, Your Honor.

JUDGE TO MR. RILEY

So he's one of two cousins who passed away. Is that right?

MR. RILEY TO JUDGE

Yes. [REDACTED] gave orders to kill.

JUDGE TO MR. RILEY

Okay. So why did he do that?

MR. RILEY TO JUDGE

How did – that started, Your Honor, was [REDACTED], he would call [REDACTED] to basically donate money as far as sending back to the community to donate to his cause. And when I say his cause I mean like to basically send money back to the neighborhood to make sur things is okay with everybody, to fund political campaigns and pay off government officials that's on his payroll. So after that – after a while – I mean [REDACTED] did appease to that in donating to that but after that [REDACTED] is just tired of it and say, hey man listen I don't want to have anything to do with that Jamaican politics and stuff anymore, none of that stuff. And so he took that as a sign of disrespect because that's how dons in Jamaica run their area. It doesn't matter if you migrated and come to the United States or not. Once you have family ties back there he still thinks that he [50] controls people even though you live in the United States. So now when O'Neal told him, no I don't want to have nothing to do with that stuff anymore, he took that as

disrespect that you're going against the order which means like you're not doing what I tell you to do.

JUDGE TO MR. RILEY

Now how do you know this?

MR. RILEY TO JUDGE

Him and [REDACTED] would get into arguments like –

JUDGE TO MR. RILEY

How do you know this?

MR. RILEY TO JUDGE

I spoke to [REDACTED] when he was alive at the time. And remember [REDACTED] used to call us and try to tell us about what he said because he had told [REDACTED] to reach out to me and the rest of my male cousins. But we had told [REDACTED] like hey man, listen man we don't have nothing to do with that world. We – I left Jamaica a long time ago. I am not got nothing to do with that man and you shouldn't either. So we would talk because we grew up pretty close. That's how I know, Your Honor.

JUDGE TO MR. RILEY

Okay and then your other cousin, the one who was killed, why was he killed?

MR. RILEY TO JUDGE

He was killed because when he got – he had got deported sometime in [REDACTED] and when nothing was done about [REDACTED]'s murder in Jamaica basically the police just discarded it. They like didn't care because they're pretty connected to [REDACTED] because he was ex-police himself and he has massive political ties. And that's how just the dons run the areas and that's how politics goes in Jamaica, Your Honor. So now

[51] when he got deported, [REDACTED] [phonetic sp.], my cousin. When he got deported he started putting pressure on the police. Central Kingston Police station. That is the police station that has jurisdiction over the community I grew up in. so he started putting pressure on them saying why isn't nobody doing anything about the murder when they know who did it and they know what happened. Because it's a well-known situation in my community, Your Honor. So now when he starts putting pressure on the police about doing something about it and he actually went over their heads to their supervisors which I think is, I think it's intercom, yeah that's the name of the supervisors that supervise police that's not doing their job.

JUDGE TO MR. RILEY

Hold on, hold on. What is this other cousin's name?

MR. RILEY TO JUDGE

[REDACTED].

JUDGE TO MR. RILEY

So he tries to get police investigate [REDACTED]'s murder but then what happened?

MR. RILEY TO JUDGE

Yeah so nothing happened, Your Honor. So then after nothing happened, after going to like I said the Central Kingston Police Station which I had said before, they're the ones that's in charge of the community, the jurisdiction of my community. Now when you see nothing is happening he went to their – he went over their heads to their superiors and started telling them to put pressure on them to do something about it. So shortly after that [REDACTED] was killed. The order was given and [REDACTED] was killed, Your Honor.

JUDGE TO MR. RILEY

And who gave the order?

[52] MR. RILEY TO JUDGE

██████████ gave the order, Your Honor. He runs that community.

JUDGE TO MR. RILEY

How do you know, sir? How do you know?

MR. RILEY TO JUDGE

How do I know is because the people that killed my cousin still live in that community, Your Honor. People that witness it.

JUDGE TO MR. RILEY

Yeah how do you know it was ██████████ who gave the order to kill your cousin, ██████████?

MR. RILEY TO JUDGE

Because, Your Honor, ██████████ and his gang members, his henchmen, they brag about this stuff, Your Honor. You know they would brag about the – we get out of killing boy, that's patchua [phonetic sp.] for saying that yeah, yeah we gave the order to kill those guys, yeah because they went against the grain, they went against the order. It's not hidden. That's how the community is ran. People live in fear. They have to do what he says and that's just how it is in Jamaica, Your Honor. Political area leader dons. So now and back to what you said about how do I know – I actually saw –

JUDGE TO MR. RILEY

Hold on, hold on. Hold on, hold on.

MR. RILEY TO JUDGE

Sorry, sir.

JUDGE TO MR. RILEY

So after [REDACTED] was killed did the police investigate his death?

MR. RILEY TO JUDGE

[53] No, sir. No, sir.

JUDGE TO MR. RILEY

You have other male relatives living there in Jamaica, is that right?

MR. RILEY TO JUDGE

Yeah in Jamaica, no, Your Honor.

JUDGE TO MR. RILEY

You do not have any male relatives living there?

MR. RILEY TO JUDGE

No, sir. He threatened every single one of them. And he's very powerful and it's a losing battle to go up against individual as [REDACTED].

JUDGE TO MR. RILEY

You ever meet [REDACTED]?

MR. RILEY TO JUDGE

Yeah I saw him growing up in the neighborhood. Because we're all from the same neighborhood, Your Honor. I know him growing up. He's older than me but I know him.

JUDGE TO MR. RILEY

Were you friends?

MR. RILEY TO JUDGE

No, no, sir.

JUDGE TO MR. RILEY

Okay. Thank you.

JUDGE TO MR. REMO

All right. Counsel, sorry, go ahead.

MR. REMO TO JUDGE

[54] Thank you, Your Honor.

MR. REMO TO MR. RILEY

Mr. Riley, what happened – how did your family react after you received your compassionate release order in January?

MR. RILEY TO MR. REMO

Excuse me, you broke up for a second. What you say –

MR. REMO TO MR. RILEY

To your knowledge, how did your family react?

MR. RILEY TO MR. REMO

That is –

MR. REMO TO MR. RILEY

Sorry. Is that better?

MR. RILEY TO MR. REMO

It's cracking, the video is cracking up and the sound is cracking up.

MR. REMO TO MR. RILEY

Is this better? Little –

MR. RILEY TO MR. REMO

Yeah.

MR. REMO TO MR. RILEY

Okay.

MR. RILEY TO MR. REMO

Yeah it's still kind of muddled but okay.

MR. REMO TO MR. RILEY

Okay. I'll try to speak into the microphone. After your compassionate release, to your knowledge, how did your family react to your release?

[55] MR. RILEY TO MR. REMO

I mean they were happy. They were happy about my release, my reduction sentence.

MR. REMO TO MR. RILEY

And were they posting anything on social media?

MR. RILEY TO MR. REMO

Yes. They were posting that you know my son and my brother and the rest of my family congratulate me and happy, I'm coming out sometime soon.

MR. REMO TO MR. RILEY

And in your declaration you stated that your mother started receiving threats. What were the nature of those threats?

MR. RILEY TO MR. REMO

You said my mother, right?

MR. REMO TO MR. RILEY

Yes.

MR. RILEY TO MR. REMO

Cracking up again, man. Yeah okay. So now my mom had like about couple days after my immediate release – excuse me, sentence reduction. My mom started receiving threats like two, three times a day. People calling her talking about they had the green light to kill me and anywhere I go in Jamaica I can't hide, they going to kill me as soon as I get down there. So now one day she was at work and the neighbor, Ms. Patsy, called her and told her that some guys they got masks over their face in a blue Toyota roller car, pulled up and jumped out in front of her home and jumped out in front of Ms. Patsy and asked if I return back from the United States yet. So now she called my mom and told my mom what was going on. So now with all the threats and that [56] happened my mom went to the same Central Police Kingston Station that has restriction, to try to lay a report. So now the front desk officer at the front desk he told her he's not going to take a report because I'm not in Jamaica yet an di haven't been harmed yet. And she went on to try to describe the calls and how recent the calls have been coming in and she tried to tell them about what Ms. Patsy told her about the car, and the guy, the masked man that came out asking for me. And he just wouldn't take a statement. So now she start ed getting a little upset like why are you not taking, why are you not taking a report from me. So now the sergeant came out and when he came out he basically – he gave it to her, man. He told her to hey listen, your son is going to be a deportee in Jamaica – the government of Jamaica don't have time to protect deportees. That's not our job, it's not our business and the reason why your son is getting threats is because it's payback. He's a criminal. And things of that nature and they telling her that he going to have to just be like everybody else that comes

down here, he going to have to pay for protection. It's not the Jamaican government's problem. It's the United States problem, that's where he broke the law. So now after that happened she went to, she went to the same intercom again and tried to report them not taking any reports from her. So now that – she was at work in Western Kingston, the coronation of Mark and Western Kingston. She's a clothes vendor. That's where she works. She sells clothes. Now out t here [REDACTED] [REDACTED] and two of his henchmen pulled up on her and tell her that now hey listen we know about you trying to lay reports, you better knock it off and tell your son anytime him come on Jamaica a stray bullet – well that was patchua I just spoke but what that means is that any time you come to Jamaica it's going to be gun shots for him.

MR. REMO TO JUDGE

And, Your Honor, corroborating –

[57] MR. RILEY TO MR. REMO

And I told her after –

MR. REMO TO JUDGE

Sorry. Your Honor. Corroborating evidence about the mistreatment of deportees appears in tab I starting on page 263.

MR. REMO TO MR. RILEY

Sorry, Mr. Riley, continue.

MR. RILEY TO MR. REMO

Yeah so now basically when that – when he came – when he pulled up on, when he pulled up on my mom at her workplace and said that to her I basically told her, hey listen man, don't go to no stings, don't go to no – I don't care who – what kind of government official

just stop going there because they're not going to help us and I'm just not going to be able to live with myself if something should happen to you over this. See what I'm saying. So I just tell her listen. Stop going to lay reports. Just stay by yourself. Don't ask these people for no help because obviously they're not going to help us. See what I'm saying? And that really kind of upset me because I mean I'm not going to be able to live with myself if something should happen to my mom, you know what I'm saying, or my little sister. So that's what I told her, man.

MR. REMO TO MR. RILEY

Mr. Riley, you mentioned your little sister. To your knowledge what threats has she received against her life?

MR. RILEY TO MR. REMO

Yes. She is in a similar situation. After my sentence reduction she started getting threats too over the Facebook and Instagram and she had received a few calls. So now my sister, she's a popular concert hoster and promoter. That's her thing in [58] Jamaica. So now one day she was hosting a day rave party, that's the name of the party that they keep in Jamaica, and two guys walked up to her and told her that they have the green light, they got the green light to kill me on sight. And the family better not be hiding me and not to worry because they got people at the airport and if my name comes up on the list they going to get it. You know Aleyah [phonetic sp.], she's a little braver girl. She asked them why you want to kill my brother and they told her to stay out of man business. She's a woman, stay out of man business. So Aleyah has a security – actually he's a police officer in Jamaica, Mr. Samuels. He does the security for her.

JUDGE TO MR. RILEY

Okay hold on, hold on, hold on.

MR. RILEY TO JUDGE

Yes, yes, sir.

JUDGE TO MR. RILEY

Your sister is currently in Jamaica. Is that right?

MR. RILEY TO JUDGE

Yes, yes, Your Honor.

JUDGE TO MR. RILEY

Has she herself been threatened or has she only been approached with threats to you?

MR. RILEY TO JUDGE

What do you mean by threatned like her life?.

JUDGE TO MR. RILEY

Correct?

MR. RILEY TO JUDGE

[59] No they didn't threaten her life, Your Honor. They, they called her and over Facebook and Instagram and called her on her phone and the two guys walked up to her sending the threats about me, saying that they got the green light to kill me, Your Honor.

JUDGE TO MR. RILEY

And for what reason did they say this to your sister, if you know?

MR. RILEY TO JUDGE

Your Honor, that's [REDACTED], Your Honor. Sending them to threaten me, Your Honor. That's the

reason. This is all coming from [REDACTED] and his affiliates and his henchmen and his gang members that he runs, Your Honor. The multiple gangs that he runs in Jamaica, Your Honor.

JUDGE TO MR. RILEY

Has he ever been arrested in Jamaica?

MR. RILEY TO JUDGE

[REDACTED]?

JUDGE TO MR. RILEY

As far as you know, yes, has he ever been arrested in Jamaica?

MR. RILEY TO JUDGE

No, Your Honor. He's not going to be arrested. He's backed by politicians and government officials, Your Honor. He's not going to be arrested.

JUDGE TO MR. RILEY

Okay. Thank you.

JUDGE TO MR. REMO

Go ahead, counsel.

MR. REMO TO MR. RILEY

[60] Mr. Riley, why does [REDACTED] want to kill you?

MR. RILEY TO MR. REMO

Like I told Your Honor, Dimitar, retaliation. He's afraid of retaliation. And I'm members of the family that he threatned which is – I'm family members with [REDACTED] and [REDACTED].

MR. REMO TO MR. RILEY

Now, Mr. Riley, in your declaration you mentioned and individual named, George. Who is George?

MR. RILEY TO MR. REMO

George is a friend that grew upon the same community that me and [REDACTED] came from. We all grew up, we all came from the same community, which is [REDACTED].

MR. REMO TO MR. RILEY

And what do you talk about George I your declaration?

MR. RILEY TO MR. REMO

Well [REDACTED] had spoke to George about – after [REDACTED] had died and basically just telling George like yeah he did that because disrespect, he went against the grain and basically like you me, I'm going to kill all of them family which means I'm going to kill all his family if they try to come at me.

MR. REMO TO MR. RILEY

And when did George tell you about this?

MR. RILEY TO MR. REMO

This was a little after [REDACTED] died, a couple months. So I want to say it was like [REDACTED].

MR. REMO TO MR. RILEY

[61] Okay. And similarly, Mr. Riley, you mentioned individual, Sammy or Sam, in your declaration. Who is Sam?

MR. RILEY TO MR. REMO

Yeah. Sam is another, another guy that comes from the neighborhood, the community.

MR. REMO TO MR. RILEY

Okay. And you mentioned that he was talking “shit”. What did you mean by that?

MR. RILEY TO MR. REMO

Yeah so that was in [REDACTED] so that’s pretty much like a little after he was deported to Jamaica like – because this was like six years after [REDACTED] died. So he was talking shit meaning he was still kind of threatening the family like, you tell them it’s still on and popping you know I’m not afraid of none of that, meaning I’m not afraid of any of them.

MR. REMO TO MR. RILEY

And, Mr. Riley, why can’t you move to another part of Jamaica if [REDACTED] has such a hard grip on [REDACTED], your community?

MR. RILEY TO MR. REMO

Hold up. You broke up. Say it again.

MR. REMO TO MR. RILEY

Why are you unable to move to another part of Jamaica if you’re deported?

MR. RILEY TO MR. REMO

Because I have to be registered with the government. And being registered with the government I will be deemed a restricted person that means I have to like wear ankle monitors and report to them and that’s where [REDACTED] has his influence. He’s political tied to every facet of law enforcement in Jamaica and government people.

[62] MR. REMO TO MR. RILEY

And what if any family do you have outside of Kingston?

MR. RILEY TO MR. REMO

None. I don't have any family. I just have my mom and my sister and same home that my grandparents lived in.

MR. REMO TO MR. RILEY

And, Mr. Riley, why did you not tell any of this to the officer who conducted your reasonable fear interview?

MR. RILEY TO MR. REMO

When I first came into ICE custody that was like about January 28th. As you know I was compassionate release under – for Covid reasons. That's the reason why the judge released me from – so now coming from prison and coming over here and the same day I came in I noticed there were Covid signs on the cell doors. So now that had put me just in a state of stress, like tremendous stress you know the judge just released me because she didn't want me to you know contract the disease to become terminally ill or die and now here I am with this disease, this deadly disease facing me right int eh face. So I was just stressed. I was going through a lot of stress. And plus I was on quarantine for 14 days, mandatory quarantine.

JUDGE TO MR. RILEY

Was it 14 days or 4 days? You broke up.

MR. RILEY TO MR. REMO

No, 14 days, 14 days.

MR. RILEY TO JUDGE

Your Honor, can you hear me?

JUDGE TO MR. RILEY

[63] Yes we can hear you.

MR. REMO TO MR. RILEY

Yes.

MR. RILEY TO MR. REMO

Okay. I thought you said –

MR. REMO TO MR. RILEY

Continue.

MR. RILEY TO MR. REMO

Yeah 14 days. So my movements was restricted. I was allowed to use the one you know probably once every two days. So I wasn't in contact with my family. I didn't know all these threats was going on. Because these threats had started happening right after I got released. So I wasn't in contact with them. And plus yeah my family too, they didn't want to tell me a lot of this stuff because they was afraid it triggered my health conditions and stuff like that.

MR. REMO TO MR. RILEY

Mr. Riley, what will happen if the Judge grants your application today?

MR. RILEY TO MR. REMO

First, I would like to make amends to my children. To my family you know, to society. And what I mean by making amends to my children is I want to sit them down, I want to say I apologize for missing their childhood. You know what I mean, based on the bad choices I made back int eh past. And I know that it's

gone and I can't get it back but I would really, I would really like to try my best to make it up to them anyway possible. Whatever that takes. And you know as far as making amends to society I just like you know want to get a job, stay out of trouble, you know be an asset to society. Because I used to work at American Trade Patent office in prison and I'm really thinking [64] about calling them up and asking them for a job. Because I was an SME, [indiscernible] expert. So you know I definitely want to do that. I'm going to go live with Ramiro and my son, he's got a [indiscernible], my daughter, Kayla [phonetic sp.], is trying to get into cosmetics so I just want to be there for them. Definitely get a job, stay out of trouble. I know what's important, man. Today I know what's important and that's family. I just want to be there with my family.

MR. REMO TO MR. RILEY

And, Mr. Riley, just briefly before we conclude who is [REDACTED] [phonetic sp.]?

MR. RILEY TO MR. REMO

[REDACTED], three of my children, that's the father of three of my children's little brother. Their brother. The father of their brother and he was deported also back in Jamaica and he was shot in the head and killed right in front of his mother and sister. That happened in March of this year.

MR. REMO TO JUDGE

No further questions, Your Honor.

JUDGE TO MR. REMO

Okay. Thank you.

JUDGE TO MR. RILEY

Sir, did you ever work with [REDACTED]?

MR. RILEY TO JUDGE

No, no, Your Honor.

JUDGE TO MR. RILEY

You know when [REDACTED] was deported back to Jamaica?

MR. RILEY TO JUDGE

[65] Sometime in [REDACTED], Your Honor. I will more say [REDACTED]

JUDGE TO MR. RILEY

Okay. Thank you.

JUDGE FOR THE RECORD

All right. We're going to take a ten minute recess. Come back and start cross.

MR. REMO TO JUDGE

Thank you, Your Honor.

JUDGE FOR THE RECORD

All right. We are off the record.

MR. RILEY TO JUDGE

Thank you, Your Honor.

* * *

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PIERRE RILEY,
Petitioner,

v.

MERRICK GARLAND, ATTORNEY GENERAL,
Respondent.

PETITION FOR REVIEW

Pierre Riley hereby petition the court for review of the Order of the Board of Immigration Appeals (name of agency, board or commission) entered on May 31, 2022.

/s/ Dimitar P. Georgiev-Rommel
Signature of attorney or unrepresented party

Dimitar Plamenov Georgiev-Rommel
Printed name

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U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
Office of the Clerk

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Arlington VA 22202

Name: RILEY, PIERRE YASSUE NASHUN

██████████ 840

Date of this Notice: 5/31/2022

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

/s/ Donna Carr

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

Panel Members:

Baird, Michael P.
Gorman, Stephanie
Wilson, Earle B.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
Office of the Clerk

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Name: RILEY, PIERRE YASSUE NASHUN
[REDACTED] 840

Date of this Notice: 5/31/2022

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

/s/ Donna Carr

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

[FILED May 31, 2022]

MATTER OF:

Pierre Yassue Nashun RILEY, [REDACTED] 840

Applicant

ON BEHALF OF APPLICANT: Dimitar P. Georgiev-
Rommel, Esquire

ON BEHALF OF DHS: Heidi A. Hall, Assistant Chief
Counsel

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

¹ The Convention Against Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty

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 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

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.

██████████ 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 ██████████.

The applicant, who has been in the United States for many years, claims that ██████████ 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 ██████████ killed his relatives or why. Indeed, the grand jury indictment in California against ██████████ 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 ██████████ killed his cousins, he stated that ██████████ and his gang members "brag about this stuff" (Tr. at 51-52). Yet, the affidavits from the applicant's family make no mention of ██████████ (Exh. 6). Nor do the affidavits from the applicant's mother, sister, and stepfather mention ██████████ 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 ██████████ 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 ██████████ for his cousins’ deaths because that is the “Jamaican lifestyle” (Tr. at 47-48). Thus, the applicant’s claims that ██████████ 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 ██████████ 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 ██████████ 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 ██████████ 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

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

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.

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.

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.