

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
1 FEDERAL DRIVE, SUITE 1850  
FORT SNELLING, MN 55111

The Advocates for Human Rights  
Sandison, Hanne  
330 Second Ave S  
Suite 800  
Minneapolis, MN 55401

In the matter of

File A

DATE: Feb 5, 2020

- \_\_\_ Unable to forward - No address provided.
- \_\_\_ Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals  
Office of the Clerk  
5107 Leesburg Pike, Suite 2000  
Falls Church, VA 22041
- \_\_\_ Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:  
IMMIGRATION COURT  
1 FEDERAL DRIVE, SUITE 1850  
FORT SNELLING, MN 55111
- \_\_\_ Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. 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 8 U.S.C. § 1252; INA §242.
- \_\_\_ Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

X Other: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
COURT CLERK  
IMMIGRATION COURT

cc:

FF

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
FORT SNELLING, MINNESOTA

File Number:

Date: 2/5/2020

In the Matter of:

)

)

)

)

)

)

)

In Removal Proceedings

**-DETAINED-**

Respondent.

**Charges:** INA § 212(a)(2)(A)(I)(i) – any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime).

INA § 212(a)(2)(A)(I)(iii) – any alien who at any time after admission, has been convicted of an aggravated felony as defined in INA § 101(a)(43)(F), a law relating to a crime of violence, for which a sentence of one year or more was imposed

**Re:** Applications for Asylum under INA § 208; Withholding of Removal under INA § 241(b)(3); relief under the Convention Against Torture.

**ON BEHALF OF RESPONDENT:**

Hanne Sandison, Esq.  
The Advocates for Human Rights  
330 Second Avenue South  
Minneapolis, MN 55401

**ON BEHALF OF THE DHS:**

Kenneth Knapp, Assistant Chief Counsel  
DHS, ICE  
1 Federal Dr., Suite 1800  
Fort Snelling, MN 55111

**DECISION AND MEMORANDUM OF THE IMMIGRATION JUDGE ON REMAND**

**I. Procedural History**

(Respondent) is a 25-year-old male native and citizen of Somalia. *See* Exs. 1, 2, 5. On October 9, 2012, Respondent was admitted to the United States as a refugee. *See* Ex. 1. On April 24, 2014, he adjusted status to lawful permanent residence. *Id.*

On June 6, 2019, the Department of Homeland Security (DHS) filed a Notice to Appear (NTA), Form I-862, charging Respondent with removability pursuant to the aforementioned grounds of removability. *Id.* On March 20, 2019, Respondent admitted the eight factual allegations. On the same date, Immigration Judge (IJ) Kristin W. Olmanson sustained the eight factual allegations and sustained the charges of removability by clear and convincing evidence on



Subsequent to IJ Olmanson's decision on removability, Respondent appealed his 2018 conviction for assault in the fifth degree, which served as the basis for the aggravated felony charge. As a result, this Court reversed IJ Olmanson's ruling with respect to removability under INA §237(a)(2)(A)(iii) at the individual hearing on May 20, 2019. *See* Exs. 4, 11. However, the Court upheld IJ Olmanson's decision with regard to removability under INA § 237(a)(2)(A)(i) based on Respondent's 2017 conviction for terroristic threats. *See* Ex. 3.

In an oral decision on May 20, 2019, the Court granted Respondent's application for asylum. DHS filed a timely appeal to the Board of Immigration Appeals (Board). While the appeal was pending, the Minnesota Court of Appeals dismissed Respondent's appeal. As a result, Respondent's fifth-degree assault conviction became final under *Matter of JM Acosta*, which has implications for Respondent's eligibility for asylum and withholding of removal. On October 11, 2019, the Board remanded the case for further proceedings and a new decision on relief.

At a master calendar hearing on October 30, 2019, the case was scheduled for a continued individual hearing on January 15, 2020. However, at a subsequent master calendar hearing on December 4, 2019, the parties agreed that there was no need for additional testimony. As such, the individual hearing was removed from the Court's calendar. The Court gave the parties deadlines to supplement the evidentiary record, which have now passed.

For the reasons below, the Court denies Respondent's requests for asylum and withholding of removal under the INA and under the Convention Against Torture (CAT). However, the Court grants Respondent's request for deferral of removal under CAT.

## **II. Evidence Presented**

In its May 20, 2019 oral decision, the Court recited the evidence in the record, including the testimony of Respondent, the testimony of \_\_\_\_\_ and the documentary evidence. The Court herein incorporates Section II of its oral decision into this written decision. In addition, the Court notes the following additional documentary exhibits:

- Ex. 13: The Court's \_\_\_\_\_, 2019 Summary Decision (Form Q6), Addendum of Legal Authority, and Oral Decision (transcribed)
- Ex. 14: DHS Motion to Remand, filed with the Board on July 10, 2019
- Ex. 15: The Board's October 10, 2019 decision remanding the Respondent's case to this Court
- Ex. 16: DHS Exhibit of Mental Health Conditions in Somalia, filed December 4, 2019 (32 pages)
- Ex. 17: Respondent's Supplemental Country Condition Evidence, filed January 9, 2020 (57 pages)

The Court hereby admits exhibits 13 through 17 into the evidentiary record.

### III. Credibility

In its May 20, 2019 oral decision, the Court conducted a credibility analysis. Neither party has presented new evidence or testimony that bears on credibility. As such, the Court hereby adopts its credibility analysis in Section III of its May 20, 2019 decision.

### IV. Findings of Fact

Similarly, neither party has presented new facts through testimony or evidence. The Court hereby adopts its findings of fact as set forth in Section IV of its May 20, 2019 oral decision.

### V. Relief

#### A. Asylum

Asylum is not available for applicants who have committed certain crimes or represent a danger to the security of the United States. See INA § 208(b)(2)(A)(i)-(v). In particular, an applicant who has been convicted of a particularly serious crime, including any aggravated felony, is ineligible for asylum. INA § 208(b)(2)(A)(ii)-(iii); INA § 208(b)(2)(B)(i).

Respondent's 2018 felony assault conviction under Minn. Stat. § 609.224 is now final. See Exs. 4, 14. At the time of Respondent's conviction, the statute of conviction, in relevant part, read:

Subdivision 1. Misdemeanor. Whoever does any of the following commits an assault and is guilty of a misdemeanor:

(1) commits an act with intent to cause fear in another of immediate bodily harm or death; or

(2) intentionally inflicts or attempts to inflict bodily harm upon another.

MINN. STAT. § 609.224, subd. 1 (2003). This offense categorically involves the use, threatened use, or attempted use of physical force. The Eighth Circuit has held that a conviction for "[k]nowingly or purposely causing or attempting to cause bodily injury or making another person fear imminent bodily harm necessarily requires using, attempting to use, or threatening to use physical force." *United States v. Salido-Rosas*, 662 F.3d 1254, 1256 (8th Cir. 2011) (citing *Johnson v. United States*, 559 U.S. 133, 140 (2010)). The Eighth Circuit has also held that a conviction for acting "with intent to cause fear in another of immediate bodily harm or death" was a "violent felony" as described in *Johnson* and met the Supreme Court's definition of violent force. See *United States v. Schaffer*, 818 F.3d 796, 798 (8th Cir. 2016). Notably, the statute at issue in *Schaffer*, (Minn. Stat. § 609.2242, subd. 1) uses the same statutory language as Respondent's statute of conviction, MINN. STAT. § 609.224 (2003). In *Schaffer*, the Eighth Circuit stated Minnesota's definition of bodily harm is not broader than the federal definition of physical force, explaining that the indirect use of force to cause illness, such as the use of poison or exposing a

person to a virus, would constitute physical force. *See id.*; *see also United States v. Rice*, 813 F.3d 704, 706 (8th Cir. 2016).

In light of the above, the Court finds Respondent's statute of conviction categorically constitutes a "crime of violence" as described in 18 U.S.C. § 16(a). Further, since Respondent was sentenced to 18 months of confinement, his conviction constitutes an aggravated felony under INA § 101(a)(43)(F). He is statutorily barred from seeking asylum.

B. Withholding of Removal

A conviction for a "particularly serious crime" will render an applicant statutorily ineligible for asylum and withholding of removal. *See* INA §§ 208(b)(2)(A)(ii), (B)(i), INA § 241(b)(3)(B)(ii). An aggravated felony conviction constitutes a particularly serious crime if the term of imprisonment equals or exceeds five years. *See* INA § 241(b)(3)(B). However, even in cases where aggravated felony sentences do not equal or exceed five years, the Court is authorized to determine whether a conviction constitutes a particularly serious crime. *See* INA § 241(b)(3)(B).

When determining if a crime is "particularly serious," the Court looks "to such factors as the nature of the conviction, the circumstances and underlying facts of the conviction, [and] the type of sentence imposed." *Tian v. Holder*, 576 F.3d 890, 897 (8th Cir. 2009) (quoting *Matter of Frentescu*, 18 I&N Dec. 244, 247 (BIA 1982)). Once the elements of an offense are found to potentially bring it within the ambit of a particularly serious crime, all reliable information that is relevant to the determination may be considered. *Matter of G-G-S-*, 26 I&N Dec. 339, 343 (BIA 2014) (citing *Matter of N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007)). A particularly serious crime analysis is on the crime that was committed. *Matter of Carballe*, 19 I&N Dec. 357, 360 (BIA 1986). The BIA has also noted that "[c]rimes against persons are more likely to be categorized as 'particularly serious crimes,' " although some crimes against property might also be particularly serious. *Frentescu*, 18 I&N Dec. at 247. The Court no longer engages in a separate determination to address whether respondent is a danger to the community. *Matter of N-A-M*, 24 I&N Dec. at 342.

The elements of the statute under which Respondent was convicted inherently involve a crime against a person (inflicting bodily harm on another person or committing an act with the intent to cause fear of bodily harm). The Court finds an offense under Minn. Stat. § 609.224 to be within the ambit of a particularly serious crime. The Statement of Probable Cause indicates that surveillance footage showed Respondent punching another inmate 15 times in the face and kicking him in the head and the chest, causing a broken nose. *See* Ex. 4, page 6. The victim did not fight back. *Id.* Respondent received an 18-month sentence. *Id.*

Respondent asks the Court to factor in his mental health history when determining whether his assault conviction constitutes a particularly serious crime. However, the Board did not list this mental illness as a factor to consider in *Frentescu* or *N-A-M-*. Further, the Respondent's history of mental illness in no way diminishes the seriousness of the injuries he caused to the victim. Based on the violent nature of Respondent's offense against a defenseless inmate and Respondent's sentence, the Court finds that his conviction constitutes a particularly serious crime under *Matter of N-A-M-*.

C. Convention Against Torture

Upon review of the evidence in the record, the Court finds Respondent has established his eligibility for relief, and, in the alternative, grants Respondent's application for relief under the Convention Against Torture.

i. Legal Standard

For asylum applications filed on or after April 1, 1997, an applicant for asylum shall also be considered for eligibility for withholding of removal or deferral of removal under the Convention Against Torture (CAT). *See* 8 C.F.R. § 1208.13(c)(1). Eligibility for this form of relief is set forth at 8 C.F.R. § 1208.16(c) and 8 C.F.R. § 1208.18. The burden of proof is on the applicant to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2). The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. 8 C.F.R. § 1208.16(c)(2).

"Torture" is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information or a confession, punishment, intimidation or coercion, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity." 8 C.F.R. § 1208.18(a). "A public official 'acts under color of law when he misuses power possessed by virtue of ... law and made possible only because he was clothed with the authority of . . . law.'" *Ramirez-Peyro v. Holder*, 574 F.3d 893, 900 (8th Cir. 2009), quoting *United States v. Colbert*, 172 F.3d 594, 596 (8th Cir. 1999). "Acquiescence" requires that the public official have prior awareness of the activity and thereafter breach his or her legal responsibility to intervene to prevent such activity. 8 C.F.R. § 1208.18(a)(7). It is not sufficient to show that the government is aware of the torture and is simply powerless to stop it. *See Ramirez-Peyro v. Gonzalez*, 477 F.3d 637, 639 (8th Cir. 2007). However, a government's willful blindness toward the torture of citizens by third parties amounts to unlawful acquiescence. *Gallimore v. Holder*, 715 F.3d 687, 689 (8th Cir. 2013).

In assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to: evidence of past torture inflicted upon the applicant; evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured; evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and other relevant information regarding conditions in the country of removal. *See* 8 C.F.R. § 1208.16(c)(3).

A pattern of human-rights violations alone is not sufficient to show that a particular person would be in danger of being subjected to torture upon his return to that country; rather, "[s]pecific grounds must exist that indicate the individual would be *personally* at risk." *Matter of S-V-*, 22 I&N Dec. 1306, 1313 (BIA 2000) (emphasis added) (citation omitted). Eligibility for relief cannot be established by stringing together a series of suppositions to show that torture is more likely than

not to occur unless the evidence shows 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, 917-918 (AG 2006).

ii. Analysis

Respondent fears he will suffer torture and/or death at the hands of either al-Shabaab, a private citizens or a government official. Given the particular circumstances of Respondent's case, the Court concludes Respondent has met his burden to show he would "more likely than not" be tortured with the acquiescence of the Somali government if returned to Somalia. 8 C.F.R. § 1208.16(c)(2). Specifically, Respondent has demonstrated that due to his particularized characteristics it is more likely than not that he will (1) become internally displaced and/or institutionalization in a state operated or privately operated mental health facility, (2) the treatment Respondent will receive in each context constitutes torture ; and, (3) given the Somali government's systemic eviction of internally displaced persons (IDPs) to insecure areas and lack of intervention on behalf of those with severe mental illnesses, the Somali government will demonstrate willful blindness to Respondent's torture.

a. Risk of Harm

Respondent has a lengthy history of mental illness, including post-traumatic stress disorder (PTSD), depression, and most recently schizophrenia. *See* Exs. 7, 10. Respondent's mental illnesses manifest in various ways, such as auditory hallucinations (hearing voices), disorganized thinking, suicidal ideation, homicidal ideation, paranoia, hypervigilance and violent behavior. *Id.* Further, Respondent has resorted to alcohol and drug use to cope with his mental illnesses. *Id.* This panoply of symptoms and manifestations makes difficult for Respondent to socialize, participate in health activities, build support systems, recognize the consequences of actions, and remain law abiding. *Id.*; *see also* Ex. 10.

In Somalia, persons with mental illnesses or psychosis who exhibit erratic behaviors are viewed as a discrete class of persons, and as a result, stigmatized, isolated, and excluded from all aspects of society, including employment and family life. *See* Ex. 8, pages 26, 31, 32, 35, 40, 52, 74, 90. The word "waali" in Somali means 'craziness' or 'madness;' as such, mentally ill individuals who exhibit behavioral disturbances are colloquially known as 'waalan' or "waali." *Id.* at 31, 32, 35. Family members often chain, imprison, cage, and/or physically beat individuals perceived as "waali." *See* Ex. 8, page 46, 50, 74. In extreme cases, members of the community employ a "fire-burning" ritual whereby a piece of burning coal, iron rod or hot stick is applied to the mentally ill person's skin. *Id.* at 50. In some parts of the country, the mentally ill person is locked in a room with a hyena overnight and gets clawed, bitten or killed so that the hyena may "eat the evil spirit." *Id.* Risk of institutionalization in either a State facility or a profit-driven private facility is high. *Id.* at 90. While institutionalized, patients are often chained, verbally and physically abused, held in unhygienic conditions as a form of punishment, and sexually abused. *Id.* at 50, 74, 76, 90-102, 124, 644-653; *see also* Ex. 16, pages 34, 38.

Access to mental health services and medication is scarce. *See* Ex. 8, page 46. There are very few specialized mental health services in Somalia and the facilities that have the capacity to give decent quality care are typically private, which requires payment for services. *Id.* at 26, 75, 88. Even in



the case of private facilities; competent staff is lacking and the government provides little to no oversight. *Id.* When pharmaceuticals are available, particularly in the private sector, there is a risk that the medication is counterfeit or expired. *Id.* at 27.

Throughout the course of Respondent's adult life, he has exhibited behavioral disturbances stemming from his mental illnesses. Even though Respondent had significant family ties in the United States when he immigrated as a refugee and enjoyed ready access to mental health services and medication in the United States, he has a dismal history in the United States of consistently accessing such services. *See* Exs. 7, 9, 10. At times, he is able to access medication such as Risperdol, Remeron, Zoloft, Seroquel, and Trazadone, but at other times, he is not able to access medication due to cost. *See* Ex. 7, page 46; *see also* Ex. 10. When he is not medicinally stable, he has experienced period of homelessness and job insecurity. *Id.* at 45; *see also* Ex. 10. He has been in and out of jail for various violent and non-violent offenses. *Id.*; *see also* Exs. 9, 10. While in jail, Respondent has exhibited increased paranoia and auditory hallucinations, which has led him to commit violent acts in jail and periods of confinement in segregation. *See* Exs. 9, 10. Based on Respondent's history in the United States, the Court finds that he falls within the class of persons coined "waalan" or "waali" in Somali society.

Seeing that mental health stability has eluded Respondent in the United States, it is exceedingly likely that he will have the same or worse experience in Somalia, particularly in light of the abysmal state of mental health services in Somalia and the generally accepted inhumane treatment of those individuals perceived as "waali." Respondent's only ties to Somalia include a sister and an aunt, whose exact whereabouts are unknown. With no familial support, a lackluster employment history, and virtually no realistic and accessible options for mental health services and/or medication, Respondent's continued mental state will undoubtedly remain the same or worsen in Somalia.

The culmination of Respondent's situational factors renders him vulnerable to various forms of inhumane treatment. His lack of familial and community ties, mental illnesses, long absence from Somalia, job instability, and membership in a minority clan leave Respondent virtually no options for support, employment, and housing outside an IDP camp or institutionalization. *Ex.* 8, pages 26, 74, 75, 90-102, 180, 461, 493-495, 498, 603-604, 615, 624, 662. Private healthcare comes with a cost that Respondent is exceedingly unlikely to manage. *Id.* at 26, 88, 96. In an IDP camp or an institution, Respondent's mental illnesses and volatile behavior will make him susceptible to an array of abuses by both private and government actors that are designed to punish Respondent, such as seclusion, chaining, physical beatings, shackling, sexual abuse, and potentially other forms of ritualistic mistreatment, i.e. burning. 46, 50, 74, 76, 90-102, 124, 643-653; *see also* Ex. 16, pages 34, 38. Based on the foregoing, Respondent is more likely than not to experience torture as a form of punishment in Somalia.

b. *Respondent has established he would be unable to relocate to a part of Somalia where he is not likely to be tortured.*

In assessing whether it is more likely than not an applicant would be tortured in the proposed country of removal, the Court considers whether or not an applicant could relocate to a part of the

country of removal where he is not likely to be tortured. 8 C.F.R. § 1208.16(c)(3). The Court finds Respondent has established he would be unable to avoid torture by relocating within Somalia.

Movement is quite difficult in Somalia. Due to armed conflict, prolonged droughts, floods and inadequate food distribution, the country is home to 2.6 million IDPs. *See* Ex. 8, pages 15, 180. From January 2018 to April 2019, more than 204,000 individuals had been evicted. *Id.* Private persons with claims to land and government authorities, for example, regularly pursued the forceful eviction of IDPs in Mogadishu. *Id.*

Checkpoints operated by government forces, allied groups, armed militias, clan factions, and al-Shabaab inhibited movement and exposed citizens to looting, extortion, harassment, and violence. *See* Ex. 8, page 179, 475. Roadblocks manned by armed actors and attacks on humanitarian personnel severely restricted movement and the delivery of aid in southern and central sectors of the country. *Id.* at 179-475, 523. Al-Shabaab and other nonstate armed actors continued to hinder commercial activities in the areas they controlled in the Bakool, Bay, Gedo, and Hiraa regions and impeded the delivery of humanitarian assistance. *Id.* Attacks against humanitarian workers and assets impeded the delivery of aid to vulnerable populations. *Id.*

Even if Respondent were able to freely and safely move throughout the country, he will not fare better in other parts of the country. Understaffing and lack of adequately trained staff was a problem throughout all of the private and public institutions that Human Rights Watch (HRW) visited from late 2014 to mid-2015. *See* Ex. 8, pages 74, 101. At those facilities, there were only four doctors, two psychiatric doctors who recently graduated, and two others who had received basic psychiatric training. *Id.* at 101. In addition to Respondent's mental illnesses, his economic and residential instability, his lack of familial and community support and his minority clan status further exacerbate Respondent's vulnerability when moving throughout the country. *Id.* at 461, 481, 493, 499, 603, 615, 624.<sup>1</sup>

c. *Respondent has established he would be tortured with the acquiescence of the government of Somalia.*

The Court finds Respondent has met his burden to establish the torture he fears will be inflicted with the unlawful acquiescence of the government of Somalia. 8 C.F.R. § 1208.18(a); *Gallimore v. Holder*, 715 F.3d at 689. Specifically, the use of inhumane treatment at state-operated mental health facilities, the lack of governmental oversight of private mental health facilities where the same forms of inhumane treatment are employed and the Somali government's systematic destruction of IDP camps and forceful eviction of IDPs to insecure areas constitutes willful blindness towards the harm the mentally ill face in each context.

As to the first context, state-operated mental health facilities, employees regularly implement barbaric and inhumane forms of treatment toward patients as a form of punishment, including chaining verbal and physical abuse, shackling, sexual abuse, and prolonged confinement in unhygienic conditions. *Id.* at 50, 74, 76, 90-102, 124, 643-653; *see also* Ex. 16, pages 34, 38. The widespread reports of the use of these techniques in state-operated mental health facilities,

---

<sup>1</sup> Members of the Madhiban clan are particularly vulnerable in the IDP context. *See* Ex. 8, page 499, 615, 624, 662.

particularly in the face of international efforts to cease such practices, are indicative of government complicity in such treatment. *Id.* at

As to the second context, privately operated mental health facilities, employees utilize practices similar to those employed in state operated facilities. As the Court noted above, Respondent does not have the resources to pay for treatment at a private healthcare facility. *Id.* at 26, 88, 96. In the unlikely event that Respondent finds himself in a private mental health facility, his treatment will be no more humane than what he would receive in a public facility. The government provides little to no oversight to private facilities, which effectively permits the employees of these facilities to operate unchecked and commit barbaric acts against patients with impunity. *Id.* The activities that take place in private facilities are no secret. The Somali government's failure or refusal to intervene constitutes a breach of its moral and legal duties to protect some of its most vulnerable citizens, the severely mentally ill, and provide basic humane care. *Id.* at 643-647

Finally, as to the third context, IDP camps, the Department of State Human Rights Report on Somalia for 2018 notes, among other major human rights abuses occurring in Somalia, the "forced eviction, relocation and sexual abuse of internally displaced persons (IDPs)." *See* Ex. 8, page 159, 435. The report elaborates:

Since January [of 2018] more than 204,000 individuals have been evicted. Private persons with claims to land and government authorities, for example, regularly pursued the forceful eviction of IDPs in Mogadishu. Increased reports of sexual and gender-based violence accompanied increased displacement, including reports of incidents committed by various armed groups and security personnel.

*Id.* at 180, 523. The record shows local government authorities have participated in, and tacitly endorsed, the forceful relocation of IDPs from shelters to insecure camps on the outskirts of urban areas. *Id.* at 435 ("In December 2017, security forces demolished dozens of informal settlements, including humanitarian infrastructure, without sufficient warning or providing residents with alternative settlements, leaving around 30,000 people homeless"), 523 (Over 14,000 people were forcibly evicted in January [2017] alone. The majority of those evicted moved to insecure and isolated locations on the outskirts of the capital, where social services were limited or non-existent and living conditions were deplorable."), 573 ("Forced evictions increased over 2017, with over 200,000 reported evictions, according to the United Nations. Forced evictions continue in 2018..."), 631.

When IDPs are evicted and pushed to other areas outside major cities, they run a significant risk of harm by al-Shabaab. *Id.* at 221, 475-476, 478, 481-483, 490. Particularly, individuals with Respondent's profile – returning from a lengthy stay abroad, English speaking, and no familial support – are vulnerable to identification and severe abuses by al-Shabaab members. *Id.* at 221, 301, 403, 404, 490. Finally, Respondent's mental illness and the resultant acts of violence and criminal behavior leave the Court with very little confidence that Respondent can conform his behavior to al-Shabaab's strict application of Sharia law. *Id.* at 313. As a result, Respondent faces a significant risk of harsh punishment by al-Shabaab, including executions, floggings and amputations. *Id.* at 313, 403, 482, 532.

The Somali government's conscious indifference to the risk of harm faced by IDPs and the severely mentally ill, as well as its active role in said harm, is repeatedly reinforced throughout the evidentiary record. Unlike those instances in which a government is merely "less than successful" at preventing the torture of its citizens by private actors, such that said failing alone does not establish the government is willfully blind toward the torture, *see Juarez Chilel v. Holder*, 779 F.3d 850, 856 (8th Cir. 2015), here the Somali government is engaged in the active destruction of IDP shelters, the forcible eviction of IDPs to insecure areas widely understood to be controlled by al-Shabaab, and inhumane treatment of institutionalized mentally ill persons. The government's actions demonstrates a willful blindness to the very real risk of torture faced by IDP individuals, particularly the severely mentally ill, and the treatment that those same individuals experience in institutions and IDP camps, such that the government is unlikely to intervene to prevent said torture. *See Mouawad v. Gonzales*, 485 F.3d 405, 413 (8th Cir. 2007) (finding the inquiry into a government's acquiescence to an applicant's torture centers upon the willfulness of a government's non-intervention); 8 C.F.R. § 1208.18(a); *Gallimore v. Holder*, 715 F.3d at 689.

As noted by the Eighth Circuit Court of Appeals, "Whether a government acquiesces in torture inflicted by a private actor is a question of fact that must be resolved based on the record as a whole." *Fuentes-Erazo v. Sessions*, 848 F.3d 847, 852 (8th Cir. 2017) (citing *Saldana v. Lynch*, 820 F.3d 970, 978 (8th Cir. 2016)). Given that Respondent has established it is more likely than not he will become internally displaced and/or institutionalized if removed to Somalia, and therefore likely to be subject to a myriad of inhumane treatment such as forceful eviction, caging, chaining, prolonged isolation and seclusion, verbal, physical and sexual abuse, and death, the Court finds the Respondent has met his burden to establish the torture he fears will be inflicted with the acquiescence of the government of Somalia. 8 C.F.R. § 1208.18(a); *Gallimore v. Holder*, 715 F.3d at 689; *Mouawad v. Gonzales*, 485 F.3d at 413.

In order to meet his burden of proof, Respondent must demonstrate that each step in the hypothetical chain of events presented above is more likely than not to happen. *Matter of J-F-F-*, 23 I&N Dec. 912, 917-918 (AG 2006). Here, the Court is presented with a particular set of facts, wherein Respondent has established a sufficient likelihood exists that he will fall within a narrow subset of individuals to whom the Somali government would acquiesce to torture. Pursuant to the Court's preceding analysis of Respondent's claim, Respondent has established that if he is removed to Somalia, it is more likely than not: he will become internally displaced or institutionalize, in each context Respondent faces a significant risk of torture and, the government of Somalia will acquiesce to his torture in each context either directly or through indifference and inaction.

Therefore, because Respondent has met his burden of proof to establish it is more likely than not he would be tortured if removed to Somalia, the Court grants Respondent's application for relief under Article III of the Convention Against Torture in the alternative to the grant of Respondent's application for adjustment of status under INA § 209(a). *See* 8 C.F.R. § 1208.16(c)(2).

Accordingly, the Court enters the following orders:

**ORDERS:**

**IT IS HEREBY ORDERED** that Respondent's application for asylum under INA § 208 be **DENIED**.

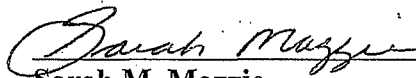
**IT IS FURTHER ORDERED** that Respondent's application for withholding of removal under INA § 241(b)(3) of the Act be **DENIED**.

**IT IS FURTHER ORDERED** that Respondent be ordered removed from the United States to any country other than Somalia that will accept him.

**NOTICE TO ALIEN GRANTED DEFERRAL OF REMOVAL**  
**(8 C.F.R. § 1208.17(b))**

Your removal to **SOMALIA** shall be deferred until such time as the deferral is terminated. This grant of deferral of removal:

1. Does not confer upon you any lawful or permanent immigration status in the United States;
2. Will not necessarily result in you being released from the custody of the DHS if you are subject to such custody;
3. Is effective only until terminated;
4. Is subject to review and termination based on a DHS motion if the Immigration Judge determines that it is not likely that you would be tortured in the country to which removal has been deferred, or upon your request; and
5. Defers removal only to **SOMALIA** and does not preclude the DHS from removing you to another country where it is not likely you would be tortured.

  
Sarah M. Mazzie  
Immigration Judge