EXHIBIT A

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
PORT ISABEL IMMIGRATION COURT
LOS FRESNOS, TEXAS

IN THE MATTER OF: **KHALED SALAH ABU-HAMDAH A/K/A KHALED SALAH ABU-HAMDEH,** **Respondent**	**IN REMOVAL PROCEEDINGS— DETAINED** **FILE NO.:** A[redacted]

CHARGE: Section 241(a)(5) of the Immigration and Nationality Act ("INA" or "the Act"), reinstatement of a prior order of removal after removal and subsequent illegal reentry

ON BEHALF OF RESPONDENT:
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ON BEHALF OF THE GOVERNMENT:
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WRITTEN DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. FACTUAL AND PROCEDURAL HISTORY

Khaled Salah Abu Hamdah ("Respondent") is a 52-year-old male, who is a resident of the West Bank.[1] (*See* Ex. 1). In 1993, he was admitted to the United States as a lawful permanent resident. (*See* Ex. 10 at 14-21/43.) However, on June 3, 2009, Respondent was ordered removed to Jordan pursuant to a stipulated order of removal after he had been convicted of second-degree murder in Florida and served a 15-year prison sentence. (*Id.*; *see also id.* at 23, 27, 31-33/43.) He was removed on July 9, 2009. (Ex. 1 at 8/28.)

Fifteen years later, on July 13, 2024, Respondent illegally reentered the United States and was prosecuted for that offense. He was principally sentenced to time-served, a period of 88 days.

[1] The Department of Homeland Security's ("DHS" or "Department") Form I-863, Notice of Referral to Immigration Judge, and other relevant documents state that Respondent is a citizen of Jordan. However, during the February 24, 2025, individual hearing, DHS conceded that Respondent is not a citizen of Jordan. Respondent is a resident of the West Bank, which is Palestinian territory situated west of Jordan and east of Israel. Respondent does not have citizenship in any country.

(Ex. 5 at 6, 16/56.) The Department reinstated Respondent's prior order of removal pursuant to INA § 241(a)(5), and on October 24, 2024, in accordance with 8 C.F.R. § 208.31(e), DHS referred Respondent's case to this Court for withholding-only proceedings after an asylum officer determined that Respondent had a reasonable fear of persecution or torture if returned to the West Bank. (*See* Ex. 1.) Respondent filed his amended Form I-589 with the Court on February 12, 2025. (Ex. 2).

The Court conducted an individual hearing on the merits of Respondent's application for relief on February 24, 2025, and February 27, 2025. Respondent, his wife, his brother-in-law, and two opinion-testimony witnesses testified. Both parties were allowed the opportunity to present their case and any rebuttal or impeachment evidence. The evidentiary record consists of documentary evidence Exhibits 1 through 10 and the witness testimony.

The Court has considered all the documents admitted into the record and all testimony in full, whether or not specifically mentioned in this decision. The Court has familiarized itself with and reviewed the entire record of proceedings. 8 C.F.R. § 1240.1(b). The collective testimony and documentary evidence is summarized in the Court's summary of relevant facts.

II. EVIDENCE PRESENTED

A. Documentary Evidence

Exhibit 1: DHS Form I-863, Notice of Referral to Immigration Judge; DHS Form I-861, Notice of Intent/Decision to Reinstate Prior Order; DHS Form I-205, Warrant of Removal/Deportation; DHS Form I-899, Record of Determination/Reasonable Fear Worksheet; DHS Form I-215B, Record of Sworn Statement in Affidavit Form (28 pages) (filed October 28, 2024).

Exhibit 2: Respondent's Form I-589, Application for Asylum and for Withholding of Removal (14 pages) (filed February 12, 2025).

Exhibit 3: Respondent's First Documentary Submission in support of his Form I-589 (31 pages) (filed February 17, 2025).

Exhibit 4: Respondent's Second Documentary Submission in support of his Form I-589 (9 pages) (filed February 17, 2025).

Exhibit 5: Respondent's Third Documentary Submission in support of his Form I-589 (56 pages) (filed February 17, 2025).

Exhibit 6: Respondent's Fourth Documentary Submission in support of his Form I-589 (37 pages) (filed February 17, 2025).

Exhibit 7: Respondent's Fifth Documentary Submission in support of his Form I-589 (75 pages) (filed February 17, 2025).

Exhibit 8: Respondent's Sixth Documentary Submission in support of his Form I-589 (63 pages) (filed February 17, 2025).

Exhibit 9: Respondent's Expert Witness List; Curriculum Vitae for Expert Witnesses; Expert Report of Professor John B. Quigley (96 pages) (filed February 12, 2025).

Exhibit 10: DHS' Documentary Submission (43 pages) (filed February 13, 2025).

B. Summary of Relevant Witness Testimony and Record Evidence

1. Respondent's Conviction for Second-Degree Murder

On June 30, 1996, Respondent shot and killed Charles Nelson in Miami, Florida. (*See* Ex. 10 at 42/43). Immediately after the shooting, police questioned Respondent, who owned the store where the shooting occurred, and Respondent claimed self-defense. *Hamdeh v. State*, 762 So.2d 1030, 1031 (Fla. Dist. Ct. App. 2000). "The police released the defendant, which resulted in outrage in the African-American community with concomitant rioting in the neighborhood. This highly publicized shooting was featured on television and in a number of newspaper articles." *Id.* Respondent was then charged and convicted after trial. *Id.* After a successful appeal related to jury selection, *id.*, Respondent was convicted of second-degree murder on April 30, 2002, in violation of Florida Statutes sections 782.04(2) and 775.087 (*See* Ex. 10 at 23-24/43), and on September 10, 2003, sentenced to 15 years imprisonment. (Ex. 10 at 31-33/43.)

Referencing the Sentencing Order entered by the judge who presided over the first trial (Ex. 10 at 39-41/43), the United States Probation worksheet – provided to the judge who later sentenced Respondent to time-served (88 days) for illegal reentry – states that Respondent's victim, "brought a can of gasoline into the store and threatened to 'blow this shit up' (referring to the store). Witnesses also testified the victim threatened to take the defendant's [Respondent] firearm to shoot the defendant and threatened to assault the defendant with a bottle of a wine cooler. The sentencing order identified the victim as the aggressor in the initial incident . . . ." (Ex. 5 at 11/56.) Indeed, the Sentencing Order stated, "There is little question that Charles Nelson was the aggressor in the incident which resulted in his death. The defendant had a legal right to defend himself when attacked in his store . . . ." (Ex. 10 at 40/43.) Nelson "had a reputation for violence" and had been "convicted twice of armed robbery and was alleged to have threatened occupants of the grocery store where the killing took place with a sub-machine gun at an earlier date." (*Id.* at 39/43.) "There was also trial testimony that Mr. Nelson admitted to the defendant's brother-in-law that he had committed a murder for which he was never charged in South Carolina and this was communicated to the defendant." (*Id.*) Thus, the original sentencing judge imposed a non-guidelines sentence of 15 years (*id.* at 31), which was ultimately the same sentence Respondent received after his retrial. Respondent served 13 of the 15 years in prison before he was removed.

Respondent called Charles Short, a Florida criminal defense lawyer, to testify that in his opinion Respondent would not have been convicted of second-degree murder under Florida's current "Stand-Your-Ground" law. According to Mr. Short, the change in legislation, which occurred in stages between 2005 to 2017, got rid of the common law duty to retreat, and, therefore, there are strong reasons to think Respondent's defense would have prevailed under the present

state of the law. Nevertheless, Short confirmed that Respondent remains convicted of second-degree murder.

2. Respondent's Relevant Testimony

Respondent was born on [redacted]970, in Jerusalem. Respondent testified that he is a citizen of Palestine and is not a citizen of any other country. He is from the village of Beit Hanina. Respondent testified that half of the village is in Jerusalem, and the other half is in the West Bank. He is from the half of the village that is in the West Bank. He is married to Rime Abu-Hamdeh a/k/a Rime Asad, a United States citizen. They have four children together. The children are all United States citizens. Respondent's entire family is in the United States; he does not have any family in the West Bank. Respondent has never lived anywhere besides the United States and the West Bank.

Respondent lived in the West Bank from his birth until 1993 and then from 2009 to 2024. Respondent testified extensively about the hardship of living in the West Bank. He stated that Palestinians suffer punishment every day due to the Israeli occupation of the West Bank. He further stated Israeli Jews openly discriminate against Palestinian Muslims and consider them to be their enemy. Respondent testified that he has personally suffered harm at the hands of Israeli soldiers. According to Respondent, he was arrested in 1991 for raising a Palestinian flag in Jerusalem. He was detained for 18 months and was beaten and insulted while in detention. Respondent was also beaten by Israeli soldiers in 2014 and 2019 at Israeli checkpoints in the West Bank, although he was not jailed. Respondent needed stitches for the injury he sustained in 2014, and he has scars from both incidents.

Respondent testified that he can no longer live in the West Bank after the war between Israel and Hamas broke out in and near the Gaza Strip in October 2023. Respondent stated that there are no jobs, and it is not safe to live in the West Bank. Respondent fears being shot in a public place or arrested by Israeli soldiers if he leaves his home. He also fears attacks from Israeli settlers and being shot during a night raid on his home. Respondent believes that if an Israeli Jew were to attack him, they would not be punished and would receive the full protection of the Israeli government. Respondent also fears being killed by Palestinian resistance fighters because he does not want to take a side in the war and because he may also be considered a "collaborator" with the Israeli government due to his connections with his family members who are United States citizens. Respondent testified there is no place in the West Bank where he could relocate to and be safe.

When asked whether he had difficulty leaving the West Bank, Respondent stated that he had no problems because the Israelis make it easy for Palestinians to leave but difficult to reenter. Respondent believes that if he attempts to reenter the West Bank from Jordan, he would be thrown in jail. Respondent testified that he does not have a place to return to in the West Bank because he does not own any property, and his entire family is in the United States.

When Respondent was removed to Jordan in 2009, he stayed in Jordan for 19 days, during which he was questioned. Afterward, he was allowed to return to the West Bank, reentering through a land checkpoint from Jordan. From 2009 to 2024, Respondent travelled to Jordan twice to visit his family. Although Respondent has a Jordanian passport, it is only a temporary passport

that allows him to travel and is not the same passport that a Jordanian citizen would have. Respondent testified he would not be able to obtain citizenship or permanent residence in Jordan and cannot stay there for more than three months. He also would not be allowed to seek refuge in Jordan. He does not have any family members who remain in Jordan.

Respondent further testified that he is not allowed to live in Israel, and he could not become a citizen or permanent resident of Israel. According to Respondent, if he applied to become a citizen or permanent resident of Israel, the Israeli government would reject his application.

Respondent testified that although the last time he faced harm was in 2019, he had been attempting to leave the West Bank for a long time. Respondent stated he was denied permission to travel to the United States by the U.S. Embassy in Jerusalem in 2018. He also applied for a tourist visa with the American Embassy in Jordan in April 2023, and he was given an appointment date to return to the embassy on February 25, 2025. However, he decided not to wait for the appointment due to the ongoing conflict in the West Bank.

Respondent testified that he did not suffer any harm in the West Bank between 2019 and October 2023. Once the war erupted in October 2023, Respondent did not leave his home, and he stayed in his small village. He would not go into the city or to the checkpoints. Respondent testified that he tried his best to stay out of the conflict, so he did not have any encounters with Israeli soldiers or Hamas.

Respondent left the West Bank on July 10, 2024. He travelled through Jordan, Spain, and Mexico before entering the United States without authorization. According to Respondent, his family did not know of his decision to come to the United States.

3. Relevant Testimony of John B. Quigley

John B. Quigley ("Professor Quigley") is a Professor Emeritus at the Moritz College of Law at The Ohio State University. Professor Quigley did not interview Respondent or review his asylum application prior to providing testimony. Instead, his opinions and conclusions are based solely on information provided by Respondent's attorney, Ms. Ramos. Professor Quigley was paid to provide testimony in Respondent's case.

Professor Quigley testified that Respondent is at great risk of being detained and severely mistreated or killed by several different entities if he returns to the West Bank. On the Israeli side, there is the Israeli military and civil authorities. According to Professor Quigley, Israeli security forces are currently under the control of the Minister of National Security of Israel, who belongs to a political party that does not believe the Arab population has a right to be in the West Bank. Moreover, the civil authority that operates on behalf of the Israeli government in the West Bank is also under the control of an individual – the Minister of Finance – who belongs to a political party that does not believe the Arab population is entitled to be in the West Bank.

Professor Quigley stated the Israeli government controls all checkpoints in the West Bank, and the military personnel who operate these checkpoints are likely to have information in their systems if someone has history with the Israeli government. In Respondent's case, this would

include his detention in 1991 for carrying a Palestinian flag. At the checkpoints, Israeli soldiers check people's identification and can arbitrarily detain anyone who looks or acts suspicious.

Professor Quigley further testified Respondent is also at risk of harm from various entities on the Palestinian side. According to Professor Quigley, there is a quasi-governmental Palestinian apparatus that operates a police force in the West Bank. Professor Quigley stated that this police force reportedly mistreats, to the degree of torture, people in its detention. He further stated that several organizations, which some might refer to as militias, operate in the West Bank, with the largest two being Hamas and Islamic Jihad. These organizations have significant followings in the West Bank. According to Professor Quigley, these organizations are very suspicious of anyone who might be providing information to Israelis, and they have a practice of killing such people, branding them as collaborators. Professor Quigley stated that these organizations have been much more active in engaging in violence since October 2023, and the Israeli authorities in turn have been much more forceful in their efforts to counter the militias.

When asked what forms of torture are used in the West Bank, Professor Quigley stated that these different entities often detain people for little to no reason and are prepared to use physical force to obtain information. On the Israeli side, this would mainly involve interrogation methods. Conversely, if a person is considered a "collaborator" – someone who provides information to the Israeli government – by the one of the Palestinian organizations, they will be killed. According to Professor Quigley, being labelled a collaborator is one of the most serious things that an Arab can be called in the West Bank.

When asked if there is any place that Respondent could return to in the West Bank and not be subjected to torture, Professor Quigley testified that Respondent would not be permitted to live in Israel or in the Arab section of Jerusalem that has been annexed by Israel. He stated that Respondent would be confined to the West Bank, with the exclusion of East Jerusalem. According to Professor Quigley, Respondent would be confined to a limited geographical area where he could potentially reside, as the northern area of the West Bank has suffered displacement. Moreover, the Israeli government has placed tanks in that area of the West Bank and has indicated that it is not going to let people who have been displaced from that area to return for the foreseeable future.

Professor Quigley testified that if Respondent were removed to Jordan, the Jordanian government would have no obligation to let him remain in the country. He further testified that Respondent's Jordanian passport shows that he is not a citizen of Jordan, as it can be distinguished from the passports afforded to Jordanian citizens by the "T" in front of the passport letter, which shows it is a temporary passport, as well as there being no personal ID number that all Jordanian nationals have on their passports. When asked if the Jordanian government would allow Respondent to seek refuge in the country, Professor Quigley stated he is not certain what they would actually do, but the Jordanian government has been reluctant to accept new populations coming in as of late. Although Jordan accepted millions of refugees from Palestine in 1948 and 1967, the Jordanian government has not accepted many refugees from Palestine since then. Professor Quigley testified that Respondent would likely be forced to return to the West Bank and would not be allowed to remain in Jordan. However, Professor Quigley did not know that Respondent had travelled from the West Bank to Jordan on two occasions.

Professor Quigley opined that Respondent is at an extremely high risk of torture by one or more of the entities operating in the West Bank. Professor Quigley testified that Respondent is at great risk of being detained by Israeli authorities if he is stopped at a checkpoint, and if he is detained, it is highly likely that he would be tortured in ways that would constitute torture. He also stated that Respondent is likely to be deemed suspicious by Palestinian authorities due to his ties with the United States. Professor Quigley further stated that Respondent is at risk of extortion by Palestinian authorities, and if he does not comply, he is at risk of death.

While conceding the importance that Respondent had not been detained or tortured since his return to the West Bank in 2009, Professor Quigley opined that he nevertheless believes that Respondent is at a heightened risk because Israelis and Palestinians carry out arbitrary detentions and kill people. In sum, Professor Quigley opined that it is more likely than not that Respondent will be tortured or killed if returned to the West Bank, but he could not quantify the numbers of individuals who had been detained or had been tortured while in detention.

4. Relevant Testimony of Issa Asad

Issa Asad is Respondent's brother-in-law. Mr. Asad has known Respondent for approximately 35 years. Respondent married Mr. Asad's sister. While Mr. Asad was born and raised in the United States, his parents are from the same village as Respondent. Between the ages of 14 to 18, Mr. Asad would spend approximately three months in the West Bank during the summers. He last visited in 2023 before the recent troubles started. Mr. Asad has never been harmed or persecuted in the West Bank.

Mr. Asad was in the West Bank when Respondent was detained in 1991. Mr. Asad testified that Respondent was arrested when the Israeli Defense Forces ("IDF") were conducting a military sweep and showed up at his home. According to Mr. Asad, the IDF randomly conduct military raids or "sweeps" at the homes of Palestinians in the West Bank between 10 pm and 3 am. When asked what happens to people who were arrested during these military sweeps, Mr. Asad stated that it depends: sometimes people are taken in for questioning, sometimes they are detained, and sometimes they are let go.

According to Mr. Asad, there have always been problems in the West Bank, but conditions in the West Bank have worsened since October 2023. There are no shops or jobs, and it is extremely dangerous to live in the West Bank. Mr. Asad stated that the IDF have been conducting more house-to-house raids. Mr. Asad testified that living in the West Bank is a life-or-death situation every day, although he later testified that he would be "lying" if he said Respondent "is going to get a bullet in his head."

5. Relevant Testimony of Respondent's Wife

Rime Abu-Hamdeh a/k/a Rime Asad is married to Respondent. She was born and raised in Detroit, Michigan. Ms. Asad met Respondent in the West Bank in 1993, and they married the same year. They have four U.S. citizen children.

Ms. Asad testified that during her visit to the West Bank in 1993, Respondent was arrested and detained for a day shortly after they became newlyweds. She stated that soldiers took Respondent in a military truck, and she observed that he had been beaten when he was released the next day. She testified Respondent told her that he was detained and beaten because of his arrest when he was younger.

When asked whether Respondent had any problems in the West Bank between 2009 to 2023, Ms. Asad testified that Respondent was beaten in 2014. She stated that Respondent was on the way to buy groceries when he was beaten at an Israeli checkpoint. She stated that Respondent needed stitches on his head and shoulder due to his injuries. Ms. Asad also testified that Respondent was detained and beaten in 2016. She stated that she saw his injuries on Facetime while he was at the hospital.

Ms. Asad last visited Respondent with their children in the West Bank in 2018. Since then, they have had to meet in Amman, Jordan, where they are limited to 30-to-90-day visas once per year. She also testified about the challenges of travelling with her children to the West Bank. Two of her daughters have serious medical issues. Her oldest daughter was born without an ear and has metal hearing aids that ring as she goes through the checkpoint. She explained that Israeli soldiers took her oldest daughter into a room, took off her clothes, and searched her. Ms. Asad testified that she was not allowed to go into the room, that her daughter was in there for hours, and she does not know what they did to her in the room. She added that one time during a visit she went to buy food with her younger son, who was 7 at the time. She and her son were stopped at an Israeli checkpoint. Her son bent down to tie his shoe, and IDF soldiers immediately pointed guns at him, telling him to stand up. Her son peed in his pants because he was so scared. As a result, her son does not want to go back to the West Bank.

On another occasion in June 2018, the last time they visited the West Bank, her 14-year-old daughter, who has a rare form of Down syndrome, was sick while they were visiting the West Bank. At around 1 am, Ms. Asad went to find medical treatment with her daughter. On the way to the hospital, she and her daughter were stopped by IDF soldiers, and Ms. Asad was asked for her daughter's identification. Another person screamed at the IDF soldiers and told them that her daughter was sick and needed go to the hospital. This person was allegedly shot and killed in front of Ms. Asad and her daughter. This was the last time they visited Respondent in the West Bank because their children are too scared to go back. She believes that it is certain that Respondent would be dead if he had not left in 2024.

III. BURDEN OF PROOF, CREDIBILITY AND CORROBORATION

In all asylum and related protection cases, the Court must first determine whether an applicant's testimony is credible. *See Zhang v. Gonzales*, 432 F.3d 339, 345 (5th Cir. 2005); *see also Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). An applicant's own testimony may be adequate to establish credibility if it is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis of his or her fear. 8 C.F.R. § 1208.13(a); *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989); *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987). The REAL ID Act of 2005 established several factors that may be considered in the assessment of an applicant's credibility for asylum and related protection applications, and these

include demeanor, responsiveness, inherent plausibility of the claim, and the consistency between oral and written statements. *See* INA § 208(b)(1)(B)(iii). The applicant should satisfactorily explain any material discrepancies or omissions. *Id.* However, the Court is not required to accept the applicant's explanations, particularly when the record contains conflicting details. *Santos-Alvarado v. Barr*, 967 F.3d 428, 437–38 (5th Cir. 2020).

Unreasonable demands are not placed on an applicant to present evidence to corroborate particular experiences. *Matter of S-M-J-*, 21 I&N Dec. 722, 725 (BIA 1997). An applicant's own testimony may be adequate to establish eligibility for relief if it is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis of his fear. *Dass*, 20 I&N Dec. at 124; *Mogharrabi*, 19 I&N Dec. at 445; *see also* 8 C.F.R. § 1208.13(a). However, the BIA has held specific, detailed, and credible testimony or a combination of detailed testimony and corroborative background evidence is necessary to prove a case for asylum and the weaker an applicant's testimony, the greater the need for corroborative evidence. *In Re Y-B-*, 21 I&N. Dec. 1136 (BIA 1998); *see also Rui Yang v. Holder*, 664 F.3d 580 (5th Cir. 2011) (finding that an applicant's credible testimony alone may be sufficient to sustain his or her burden of proof "'*only if corroboration is not reasonably available*'") (quoting 8 C.F.R. § 1208.13(a)) (emphasis in original). The Court weighs the testimony along with other evidence of record and considers the totality of the circumstances and all relevant factors. INA § 240(c)(4)(B), (C).

After careful consideration of all testimony and the totality of the record, the Court finds that Respondent and his witnesses testified credibly except as noted below.

Respondent testified credibly. To the extent that Respondent's testimony conflicts with Issa Asad's or Ms. Asad's, the Court credits Respondent's testimony over their testimony. The Court also credits Charles Short's testimony but finds that it is not relevant. As he concedes, Respondent remains convicted of second-degree murder. This conviction is dispositive of the truth of the matter for purposes of these proceedings because immigration courts will not look behind criminal convictions for collateral purposes, such as, for example, to determine whether Respondent was innocent. *See Howard v. INS*, 930 F.2d 432, 435-36 (5th Cir. 1991); *Zinnanti v. INS*, 651 F.2d 420, 420 (5th Cir. 1981) (*per curiam*); *Matter of Thomas & Thompson*, 27 I&N Dec. 674, 686-88 (A.G. 2019) (requiring the Immigration Court to give full faith and credit to criminal court convictions with certain exceptions, inapplicable here, as it relates to certain forms of post-conviction relief); *Matter of Khalik*, 17 I&N Dec. 518, 519 (BIA 1980) ("It is well established that, insofar as deportation proceedings are concerned, an immigration judge cannot go behind the judicial record to determine the guilt or innocence of an alien.").

Professor Quigley's testimony was more problematic. While he demonstrated an understanding of current events and dynamic conditions surrounding the ongoing Israeli-Palestinian conflict, he did not have a strong factual understanding of Respondent's case. Professor Quigley did not review Respondent's Form I-589, and he did not interview Respondent before providing testimony. His understanding of Respondent's case came solely from information provided by Respondent's attorney. Professor Quigley did not know Respondent had previously travelled from the West Bank to Jordan on two occasions, and although he was informed that Respondent had previously been arrested for carrying a Palestinian flag, he did not know that the arrest occurred in 1991, more than 33 years ago. This is significant because Professor Quigley did

not account for the substantial length of time that had passed since Respondent's detention in assessing the likelihood of future harm to Respondent.

Professor Quigley testified that the Israeli military keeps good records and would thus know about Respondent's detention 33 years ago. However, Professor Quigley's report does not provide any substantive insight into Israeli recordkeeping. His report only contains a vague statement that "[s]urveillance by the Israeli military is quite sophisticated, so [Respondent's] prior detention would be known to military or civilian officials with whom Mr. Abu Hamdah might come in contact." (Ex. 9 at 89/96.) The report does not cite any evidence to support his conclusion that Israeli authorities at a military checkpoint would know that Respondent was arrested for raising a Palestinian flag more than 30 years ago.

Furthermore, Professor Quigley was unable to provide any sort of quantification regarding the number of individuals who have been detained by Israeli authorities or Palestinian authorities, or in the aggregate. He testified that arrests at military checkpoints can be arbitrary, and people who are detained after often interrogated in ways that constitute torture. However, he could not provide any specific figures to show how many people have been tortured while in detention, or at the very least, how many people have been detained. Without providing any quantifiable data, Professor Quigley was unable to present evidence that similarly-situated individuals were tortured to support his contention that Respondent would more likely than not be tortured if he were returned to Jordan and, presumably to the West Bank.

In sum, Professor Quigley's testimony was helpful to the extent that he provided an overview of general conditions in the West Bank and the state of the ongoing Israeli-Palestinian conflict. However, as he did not have a strong familiarity with the facts of Respondent's case and did not support his primary contentions with verifiable or quantitative evidence, the Court does not give weight to Professor Quigley's ultimate conclusion that it is more likely than not Respondent would be tortured if he is removed to Jordan and, presumably, returned to the West Bank.

IV. ELIGIBILITY FOR RELIEF

A. Withholding of Removal under the INA -- Particularly Serious Crime Bar

An applicant is ineligible for asylum and withholding of removal if he has been convicted of a particularly serious crime. INA § 208(b)(2)(A)(ii), 241(b)(3)(B)(ii). An aggravated felony is a *per se* particularly serious crime for purposes of asylum. INA § 208(b)(2)(B)(i). An aggravated felony accompanied by a term to confinement of 5 years or more is a *per se* particularly serious crime for purposes of withholding of removal. INA § 241(b)(3)(B).

A "crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment [is] at least one year" is an aggravated felony. INA § 101(a)(43)(F). Title 18 U.S.C. § 16(a) defines a "crime of violence" as "an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another." This is the identical definition used in both 18 U.S.C. §§ 924(c)(3)(A) and 924(e)(2)(B)(i). And second-degree murder in violation of Fla. Stat. § 782.04(2) is a crime of

violence within the meaning of both of those subsections. *See Thompson v. United States*, 924 F.3d 1153, 1157-59 (11th Cir. 2019) (§ 924(c)(3)(A)); *United States v. Jones*, 906 F.3d 1325 (11th Cir. 2018) (§ 924(e)(2)(B)(i)). Therefore, Respondent's conviction under Fla. Stat. § 782.04(2), for which he was sentenced to 15 years in prison, is an aggravated felony.

Murder is also an aggravated felony under INA § 101(a)(43)(A). To determine if Respondent's conviction for second-degree murder in Florida qualifies as an aggravated felony under the INA, the Court must employ the categorical approach. *See Mathis v. United States*, 579 U.S. 500 (2016). Under the categorical approach, the Court must "compare the elements of the statute forming the basis of the [alien]'s conviction with the elements of the [federal] 'generic' crime—i.e., the offense as commonly understood." *Descamps v. United States*, 570 U.S. 254, 257 (2013). The Court looks not to the specific details of a noncitizen's prior conviction, but rather to the state statute of conviction. *Moncrieffe v. Holder*, 569 U.S. 184, 190 (2013). The court "must presume that the conviction 'rested upon [nothing] more than the least of th[e] acts' criminalized, and then determine whether even those acts are encompassed by the generic federal offense." *Id.* at 190-191 (citing *Johnson v. United States*, 559 U.S. 133, 137 (2010)).

In *Matter of M-W-*, 25 I&N Dec. 748, 752-53 (BIA 2012), the Board of Immigration Appeals ("Board") defined murder as homicide with "malice aforethought," which "includes not only the intent to kill but also an intent to do serious bodily injury or an extreme recklessness and wanton disregard for human life ('depraved heart')." The Board explained that "[d]epraved heart killings or murders marked by extremely reckless conduct [are] precipitated by acts that carr[y] a high likelihood of death or serious bodily injury, but [are] not aimed at anyone in particular." *Id.* at 754.

Respondent was convicted of second-degree murder in Florida on April 30, 2002. At the time of Respondent's conviction in Florida, second-degree murder was defined as (1) "[t]he unlawful killing (2) of a human being, (3) when perpetrated by any act imminently dangerous to another and (4) evincing a depraved mind regardless of human life, (5) although without any premeditated design to effect the death of any particular individual." Fla. Stat. § 782.04(2) (2002). Under Florida law, "[c]onduct that is imminently dangerous to another and evincing a depraved mind is characterized by an act or series of acts that: (1) a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and (2) is done from ill will, hatred, spite or an evil intent, and (3) is of such a nature that the act itself indicates an indifference to human life." *Holmes v. State*, 278 So. 3d 301, 304 (Fla. Dist. Ct. App. 2019) (citing *State v. Montgomery*, 39 So. 3d 252, 255-56 (Fla. 2010)).

Both the generic offense and Florida's second-degree murder statute require the killing of a human being. The generic offense includes "acts that carr[y] a high likelihood of death or serious bodily injury." *Matter of M-W-*, 25 I&N Dec. at 754. The generic offense also includes "conduct that a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury," as required under Florida law. *Id.* (explaining that depraved heart murder involves "reckless and wanton conduct . . . which grossly deviated from a reasonable standard of care such that [the defendant] was aware of the serious risk of death."). The requirement of the statute of conviction that the killing occurs "by any act imminently dangerous to another" therefore fits within the broader generic offence. The generic definition of murder and the statute of conviction

also contain the same culpability requirement, malice. *See Turner v. State*, 298 So. 2d 559, 560 (Fla. Dist. Ct. App. 1974) (explaining that the "[d]epravity of mind necessary to convict an individual of second degree murder requires a showing of malice as it is commonly understood, that is a showing of ill will, hatred, spite or evil intent."); *Matter of M-W-*, 25 I&N Dec. at 752.

Under the generic offense, a depraved heart murder includes conduct that "disregards a 'very high degree' of risk that death or serious bodily injury will result from the defendant's conduct." *Id.* at 754 (citation omitted). This aligns with the requirement under Florida law that the nature of the act "indicates an indifference to human life." Finally, the statute of conviction requires that the killing be done "without any premediated design to effect the death of any particular individual." The generic offense includes conduct that carries a high likelihood of death or serious bodily injury but is "not aimed at anyone in particular." *Id.* The Court finds the elements of Florida's second-degree murder statute categorically match the elements of the generic offense. Therefore, Respondent's prior conviction for second-degree murder is an aggravated felony under § 101(a)(43)(A) of the Act.

Because Respondent was convicted of an aggravated felony under both INA § 101(a)(43)(F) and (A) and was sentenced to 15 years imprisonment for the offense, the particularly serious crime bar applies, and Respondent is statutorily ineligible for asylum and withholding of removal under the Act and withholding of removal under CAT. *See* INA §§ 208(b)(2)(A)(ii), 241(b)(3)(B)(ii); 8 C.F.R. § 1208.16(d)(2). Respondent is thus only eligible for deferral of removal under CAT. *See* 8 C.F.R. §§ 1208.16(c)(4), 1208.17(a).

B. DEFERRAL OF REMOVAL UNDER THE CONVENTION AGAINST TORTURE

1. Burden of Proof

In order to establish eligibility for protection under the Convention Against Torture, the applicant bears the burden of establishing it is more likely than not that he will be tortured if he is removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2) (2020). In the case of an applicant who is entitled to protection under the CAT but is subject to the grounds for mandatory denial of withholding of removal under 8 C.F.R. §§ 1208.16(d)(2) or (3), the applicant shall be granted deferral of removal to the country where he is more likely than not to be tortured. 8 C.F.R. § 1208.17(a). An applicant's criminal convictions, no matter how serious, are not a bar to deferral of removal under the CAT. *Matter of G-A-*, 23 I&N Dec. 366, 368 (BIA 2002).

Determining eligibility for relief under the CAT requires a two-part analysis: 1) whether it is more likely than not that the applicant will be tortured upon return to his homeland, and 2) whether there is sufficient state action involved in that torture. *Tamara-Gomez v. Gonzales*, 447 F.3d 343, 350-51 (5th Cir. 2006). An applicant must show that he is "personally at risk" of torture. *Matter of S-V-*, 22 I&N Dec. 1306 (BIA 2000). The existence of a consistent pattern of human rights violations in a particular country is not a sufficient ground for finding that a particular person would more likely than not be tortured upon return to that country. *See id.* at 1313; *Qorane v. Barr*, 919 F.3d 904, 911 (5th Cir. 2019) (holding that generalized country evidence "tells us little about the likelihood state actors will torture any particular person.").

The applicant must do more than string together a series of suppositions. *See Matter of J-F-F-*, 23 I&N Dec. 912, 917–18 (A.G. 2006). He bears the burden of establishing that each link in a casual chain is more likely than not to occur in leading to the conclusion that it is more likely than not that he would face torture upon return to his home country. *Id.* at 917–18; *see also Matter of J-R-G-P-*, 27 I&N Dec. 482, 484 (BIA 2018). In assessing whether it is more likely than not the applicant would be tortured in the country of removal, all relevant evidence shall be considered. 8 C.F.R. § 1208.16(c)(3). Examples of relevant evidence include, but are not limited to, evidence of (1) past torture inflicted upon the applicant; (2) his ability to relocate to a part of the country where future torture is not likely; (3) gross, flagrant, or mass violations of human rights within the country of removal; and (4) other relevant country conditions evidence. 8 C.F.R. § 1208.16(c)(3)(i)–(iv).

2. Torture Defined

Torture is defined as any act by which (1) severe pain or suffering, either physical or mental; (2) is intentionally inflicted on a person; (3) for an illicit purpose; (4) where such pain is inflicted by, at the instigation of, or with the consent or acquiescence of; (5) a public official or other person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1). Illicit purposes, as outlined in the applicable regulation, include (1) obtaining information or a confession from the respondent or a third party, (2) punishing the respondent for an act he or a third party has committed or is suspected of committing, (3) coercing or intimidating the respondent or a third party, or (4) for any reason based on discrimination of any kind. 8 C.F.R. § 1208.18(a)(1).

Torture involves extreme cruel and inhuman treatment and does not include lesser forms of cruel, inhuman, or degrading treatment or punishment. 8 C.F.R. § 1208.18(a)(2). The CAT standard of harm is a more stringent and higher bar than the standard for persecution. *Roy v. Ashcroft*, 389 F. 3d 132, 140 (5th Cir. 2004). Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. 8 C.F.R. § 1208.18(a)(3). Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture. *Id.*

"Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity." *Id.* § 1208.18(a)(7). "[B]oth actual knowledge and willful blindness fall within the definition of the term acquiescence." *Hakim v. Holder*, 628 F.3d 151, 156 (5th Cir. 2010). Torture requires specific intent to inflict severe physical or mental pain or suffering and does not include harm that is unanticipated or unintended in its severity. 8 C.F.R. § 1208.18(a)(5). The harm also must occur while the respondent is in the offender's custody or under the offender's physical control. 8 C.F.R. § 1208.18(a)(6).

3. Analysis

Respondent has not met his burden of proof to show it is more likely than not he will be tortured if he returns to the West Bank. 8 C.F.R. § 1208.16(c)(2). In reaching this determination, the Court has considered Respondent's risk of torture from all sources in the aggregate, including

Israeli authorities, Israeli settlers, Palestinian authorities, and militia groups operating in the West Bank. *See Tabora Gutierrez v. Garland*, 12 F.4th 496, 502–03 (5th Cir. 2021).

While Respondent has suffered past harm in the West Bank, he has not been subjected to torture in the past. The harm described by Respondent and his witnesses – consisting of an 18-month detention occurring more than 30 years ago, and two incidents over the last 10 years involving beatings and stitches, the last of which occurred five years before Respondent left the West Bank – fails to meet the threshold for persecution, much less for torture. *See M-B-A-*, 23 I&N Dec. at 488 ("sporadic light beatings with fists and sticks, and other acts fairly characterized as police brutality do not constitute torture") (citing *Matter of J-E-*, 23 I&N Dec. 291, 302 (BIA 2002)); *see also Morales v. Sessions*, 860 F.3d 812, 816 (5th Cir. 2017) ("Persecution . . . is an extreme concept that does not include every sort of treatment our society regards as offensive") (internal citation omitted); *Abdel-Mashieh v. INS*, 73 F.3d 579, 583-84 (5th Cir. 1996) (holding that an alien who was twice detained and beaten did not suffer harm rising to the level of persecution where the beatings were not "severe" and the detentions were not excessive or arbitrary).

One of Respondent's primary contentions is he will be detained and tortured at an Israeli checkpoint in the West Bank because Israeli records will reveal his 1991 arrest for raising the Palestinian flag in Jerusalem. But even if Israeli records would show this, because the incident occurred so long ago and Respondent lived in the West Bank for 15 years with relatively minor recriminations after that detention, the Court finds that Respondent has not shown it is more likely than not his purported arrest in 1991 will result in future torture.

Respondent also argues that he may be harmed by Israeli soldiers during a raid on his home. Mr. Asad testified these raids occur randomly; he did not testify that there is an effort to specifically target Respondent's home. There is no evidence in the record that Respondent is personally at risk of having his home raided or that he would be subjected to torture as a result of a raid. As the evidence is speculative at best, the Court finds it is unlikely Respondent would be tortured by Israeli soldiers due to a raid on his home.

Respondent and his witnesses also expressed concern that Respondent would be harmed by Israeli settlers who live in the West Bank. Respondent has not been harmed by Israeli settlers in the past, and there is no evidence that he is personally at risk of being tortured by Israeli settlers in the future. As such, the Court finds that Respondent has not demonstrated that he is likely to be tortured by Israeli settlers who live in the West Bank.

Respondent also expressed his fear of militia groups that operate in the West Bank. Respondent stated that these militia groups might harm him because he has refused to help them in the past and because they may view him as a "collaborator" with the Israeli government. Respondent testified that Hamas, in particular, has sent him 10 to 15 physical messages in the past, requesting that he support them, but he has refused to do so. Despite his refusal to aid Hamas, Respondent was never harmed during the many years he lived in the West Bank, and there is no evidence that any of the militia groups operating in the West Bank have any reason to harm him. These facts are key indicators that militia groups in the West Bank are unlikely to harm Respondent. Furthermore, although Respondent has ties to the United States, there is no evidence

that this information is known to militia groups, nor is there evidence that they would perceive Respondent as a collaborator with the Israeli government simply because he has family in the United States. Respondent has not previously assisted the Israeli government, so there is no reason why the militia groups would have any reason to view Respondent as a collaborator. For these reasons, the Court finds it is unlikely that Respondent would be tortured by militia groups operating in the West Bank.

Professor Quigley stated Respondent is at risk of torture by the police force that is under the control of Palestinian authorities in the West Bank because Respondent may be viewed as a collaborator with the Israeli government. Professor Quigley based this conclusion on Respondent's ties to the United States. There is no evidence that Respondent's ties to the United States are known to Palestinian authorities. More importantly, Respondent was able to live in the West Bank from 2009 to 2024 without being viewed as a collaborator by Palestinian authorities despite having ties to the United States during that period of time. Professor Quigley further stated that Respondent may be killed if he refuses to pay extortion to Palestinian authorities. There is no evidence that Palestinian authorities have attempted to extort Respondent in the past or that they would attempt to extort him in the future. Respondent has also refused to assist Hamas in the past, and he has not been retaliated against by Palestinian authorities. In addition, the Court finds it notable that neither Respondent, nor Ms. Asad, nor Mr. Asad claimed that Respondent is at substantial, if any, risk of harm from Palestinian authorities. For these reasons, the Court finds it is unlikely Respondent will be tortured by the police force that is under the control of Palestinian authorities.

Finally, Respondent and his witnesses testified that Respondent may be a casualty of the ongoing Israeli-Palestinian conflict if he returns to the West Bank. Respondent and his witnesses consistently described current conditions in the West Bank as plagued by death, destruction, economic hardship, and discrimination by Israeli authorities for the 3 million Palestinians living in the West Bank as of mid-2022. *See* West Bank and Gaza 2022 International Religious Freedom Report at 4 (https://www.state.gov/wp-content/uploads/2023/05/441219-WEST-BANK-AND-GAZA-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf). It is true that circumstances have deteriorated in the West Bank since October 7, 2023. According to the United Nations, 829 Palestinians were killed in the West Bank, including East Jerusalem, between October 7, 2023, and January 15, 2025. (Ex. 9 at 79/96.) As of the end of 2023, Israel held 3,291 Palestinians in administrative detention.[2] HRR at 26. And non-governmental organizations have reported that Israeli security forces "often employed torture and other ill-treatment of Palestinian detainees." HRR 12. Nevertheless, fewer than 3 in 10,000 West Bank Palestinians were killed in the 15 months subsequent to October 7, 2023, and slightly over 1 in 1,000 West Bank Palestinians are being detained. While not insignificant, these numbers fall far short of the "more likely than not" standard required before the Court could grant CAT relief. Moreover, Israeli authorities generally provide Palestinians held in detention with access to counsel. HRR at 21. And when abuses have occurred, Israeli authorities in the West Bank have taken steps to identify and punish officials accused of abuses. HRR at 5; 51-52, 54. Thus, while there is some pattern of human rights violations of West Bank Palestinians, that is not an adequate basis for finding that this Respondent

[2] *See* U.S. Department of State's "West Bank and Gaza 2023 Human Rights Report" ("HRR"). The Court finds that this report is better tailored to the conditions confronted by Respondent than the Israel 2023 Human Rights Report filed by Respondent. (Exs. 7-8.)

would more likely than not be tortured upon return to the West Bank. *See Matter of S-V-*, 22 I&N Dec. at 1313. The Court is not unsympathetic, but the evidence in this case is generalized and anecdotal in nature and therefore does not provide much insight into the likelihood that Respondent will be tortured. *See Qorane v. Barr*, 919 F.3d at 911 (holding that generalized country evidence "tells us little about the likelihood state actors will torture any particular person.")[3]; *see also Majd v. Gonzales*, 446 F.3d 590 (5th Cir. 2006) (denying petition for review of denial of West Bank Palestinian's asylum, withholding of removal, and CAT protection claims). The Court finds that Respondent's country conditions evidence is too speculative to establish it is more likely than not he would be tortured as a result of the ongoing Israeli-Palestinian conflict.

V. CONCLUSION

This case is tragic. Because of Respondent's conviction for killing a man 29 years ago under circumstances that now might well have yielded a different result, his path to relief is the narrowest possible. And in my view, he has not cleared that path.

If discretion played any part in this decision – which it does not – the Court would exercise that discretion in Respondent's favor. In fact, in my view, he poses no ongoing danger to the community even though the law unequivocally states that he does. And there can be no question that humanitarian factors overwhelmingly support relief. The individual hearing made manifest the love and dedication that Respondent's extended family has for him and one another despite the most trying of circumstances. But in the end, none of this is relevant to my decision.[4]

In sum, Respondent is only eligible for deferral of removal under the Convention Against Torture. The Court finds Respondent has not demonstrated it is more likely than not he will be tortured by Israeli authorities, Israeli settlers, Palestinian militia groups, or the police force under the control of Palestinian authorities if he returns to the West Bank. In reaching this determination, the Court has considered Respondent's risk of torture from all sources in the aggregate. *See Tabora Gutierrez*, 12 F.4th at 502–03.

ORDERS

IT IS HEREBY ORDERED that Respondent's application for withholding of removal under Section 241(b)(3) of the Act is DENIED.

IT IS FURTHER ORDERED that Respondent's applications for all relief under the Convention Against Torture are DENIED.

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[3] The Court has no doubt that Respondent, through counsel, is telling the truth in stating that when he "re-entered the United States, he did so solely for two reasons – escaping the violence in Israel and his native Palestine and to care for his family in the United States." (Ex. 5 at 46/56.) Unfortunately, these reasons do not justify a grant of relief under the Convention Against Torture.

[4] To the extent these factors may be relevant to other decision-makers outside of the Immigration Court system, I would posit that this case bears careful consideration of those factors.

KHALED SALAH ABU-HAMDAH

A [redacted]

IT IS FURTHER ORDERED that Respondent's case be remanded to the Department of Homeland Security for reinstatement of his prior order of removal.

FRANK PIMENTEL

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Date: 2025.03.24 16:17:37 -05'00'

Frank T. Pimentel
United States Immigration Judge

RE: ABU HAMDAH, KHALED SALAH

File: A[redacted]

CERTIFICATE OF SERVICE

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