APPENDICES

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 17-13105

Agency No. A089-427-907

NIDAL KHALID NASRALLAH,
Petitioner,

versus

U.S. ATTORNEY GENERAL,
Respondent.

Petition for Review of a Decision of the Board of Immigration Appeals

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(FEBRUARY 14, 2019)

Before TJOFLAT, WILLIAM PRYOR, and GILMAN,* Circuit Judges.

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* Honorable Ronald Lee Gilman, United States Circuit Judge for the Sixth Circuit, sitting by designation.

GILMAN, Circuit Judge:

Petitioner Nidal Khalid Nasrallah, a native and citizen of Lebanon, pleaded guilty to two counts of receiving stolen property in interstate commerce. An immigration judge (IJ) determined that one of those convictions made Nasrallah subject to removal as an alien convicted of a crime involving moral turpitude, but granted him a deferral of removal under the Convention Against Torture (CAT). On appeal, the Board of Immigration Appeals (BIA) held that the IJ erred by granting Nasrallah a deferral and ordered his removal.

Nasrallah filed a timely petition for review, arguing that (1) the IJ acted with prejudicial bias, (2) the BIA erred in determining that Nasrallah's conviction constituted a "crime involving moral turpitude," (3) the BIA erred in concluding that Nasrallah committed a "particularly serious crime," and (4) the BIA erred in overturning the IJ's determination that Nasrallah was eligible for a deferral of removal under the CAT. For the reasons set forth below, we DENY IN PART AND DISMISS IN PART Nasrallah's petition for review.

I. BACKGROUND

Nasrallah was 17 years old when he entered the United States on a tourist visa in 2006. He became a lawful permanent resident the following year.

On November 11, 2011, the United States government filed an indictment against Nasrallah, charging him under 18 U.S.C. § 2315 with eight felony counts of receiving stolen property in interstate commerce. The indictment alleged that Nasrallah knowingly purchased and received stolen cigarettes for the purpose of resale. He allegedly purchased at least 273 cases of

cigarettes, with a total wholesale value of $587,096, in the course of eight separate transactions between December 2010 and August 2011.

Pursuant to a plea bargain agreement, Nasrallah pleaded guilty to two of the eight counts, and the government dismissed the others. Nasrallah was then sentenced to 12 months' imprisonment on each count, to be served concurrently. He was also ordered to forfeit all monetary proceeds from the resale of the stolen property. Nasrallah began his sentence in August 2014 after the district court permitted him to defer his sentence for one year so that Nasrallah could complete his college degree.

While Nasrallah was incarcerated, U.S. Immigration and Customs Enforcement (ICE) determined that Nasrallah's convictions under 18 U.S.C. § 2315 rendered him removable as an alien convicted of an "aggravated felony." The relevant statute defines an "aggravated felony" to include "a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year." 8 U.S.C. § 1101(a)(43)(G). This prompted Nasrallah to request the district court to reduce his prison sentence from one year to 364 days, which the court did. As a result, Nasrallah was not classified as an aggravated felon under 8 U.S.C. § 1101(a)(43)(G).

The government subsequently sought to remove Nasrallah under 8 U.S.C. § 1227(a)(2)(A)(i), which permits the removal of any alien convicted of a "crime involving moral turpitude" committed within five years after the date of admission for which a sentence of one year or longer may be imposed. Nasrallah then applied for withholding of removal and CAT protection because these forms of relief allow an individual convicted of a crime involving moral turpitude to

avoid removal. In Nasrallah's application, he alleged that he would be tortured and persecuted in Lebanon by groups such as Hezbollah and ISIS because of his Druze religion and western ties.

Nasrallah claimed that, while living in Lebanon, he and a friend encountered members of Hezbollah on a mountain. The Hezbollah members shot guns in the air and shouted for Nasrallah and his friend to stop. Nasrallah ran away and jumped off a cliff to escape, severely injuring his back.

The government also contended that Nasrallah had been convicted of a particularly serious crime, making him ineligible for withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(B)(ii). Nasrallah argued that his conviction under 18 U.S.C. § 2315 neither involved moral turpitude nor was a particularly serious crime. According to the indictment, however, Nasrallah knowingly purchased the cigarettes in question believing that they were obtained from violent thefts in which individuals hijacked trucks and robbed guarded storage facilities. Nasrallah also procured $249,500 in cash to purchase the cigarettes, which the government contends is an indication of a significant level of criminal sophistication and organization.

The IJ concluded that Nasrallah could be removed both because he had committed a crime involving moral turpitude and because he had committed a particularly serious crime. In explaining her reasoning, the IJ noted that cigarette trafficking is connected to organized crime and terrorist groups. Although nothing in the record suggests that Nasrallah was directly involved with such organizations, the IJ reasoned that "all participation in the black market runs the risk of supporting these entities" and "motivating their dangerous criminal activities."

The IJ nevertheless determined that Nasrallah was eligible for deferral of removal under the CAT because he had established a clear probability of torture in Lebanon. She relied on Nasrallah's chance encounter with Hezbollah, background evidence that the Lebanese government acquiesces in Hezbollah activity, and information that ISIS targets the Druze in Syria and Lebanon. Moreover, the IJ found that Nasrallah's "western ties" could subject him to torture if he were removed.

Both the government and Nasrallah appealed the IJ's decision to the BIA. On appeal, the BIA agreed with the IJ's conclusion that Nasrallah's convictions involved moral turpitude and were particularly serious crimes, but reversed the IJ's grant of CAT protection. The BIA determined that Nasrallah's single encounter with Hezbollah did not constitute past torture and that generalized civil strife in Lebanon did not show that Nasrallah would "personally be targeted for harm rising to the level of torture if removed to Lebanon." This timely petition for review followed.

II. ANALYSIS

A. Standard of review

"We review only the [BIA]'s decision, except to the extent that it expressly adopts the IJ's opinion." *Najjar v. Ashcroft,* 257 F.3d 1262, 1284 (11th Cir. 2001). "This court reviews administrative fact findings under the highly deferential substantial evidence test." *Adefemi v. Ashcroft,* 386 F.3d 1022, 1026-27 (11th Cir. 2004) (en banc). "In sum, findings of fact made by administrative agencies, such as the BIA, may be reversed by this court only when the record compels a reversal; the mere fact that the record may support a contrary conclusion is not enough to justify a reversal

of the administrative findings." *Id.* at 1027. We review conclusions of law de novo. *Rivera v. U.S. Att'y Gen.,* 487 F.3d 815, 820 (11th Cir. 2007).

B. Alleged prejudicial bias

Nasrallah alleges that the IJ exhibited prejudicial bias by suggesting a potential connection between Nasrallah's black-market transactions and organized crime or terrorist activity. The IJ asked Nasrallah's counsel for background evidence about these organizations and the black market and then justified her decision by using the evidence produced. Nasrallah further alleges that the IJ prejudicially connected him to terrorism because of his Middle Eastern origins.

The BIA concluded that the IJ did not exhibit bias. It noted that an IJ must evaluate "the overall level of harm to the community" arising from any crimes committed by an immigrant. The IJ found no evidence that Nasrallah was personally involved in organized crime or terrorism, but she noted that illicit cigarette trafficking often supports such activities. As stated by the IJ, "all participation in the black market runs the risk of supporting these entities."

Nasrallah has failed to demonstrate that the IJ's decision exhibits bias or that her request for background information was based on Nasrallah's race, religion, or national origin. IJs have broad discretion to conduct their hearings, although an IJ may violate a petitioner's due process rights by failing to act as "an impartial trier of fact." *Matter of Lam,* 14 I. & N. Dec. 168, 171 (B.I.A. 1972); *see also Bi Qing Zheng v. Lynch,* 819 F.3d 287, 297 (6th Cir. 2016) (noting that IJs must "ensure that their positions as neutral arbiters do not take on that of advocates"). We conclude

that Nasrallah has failed to identify any prejudicial bias or impermissible advocacy by the IJ.

C. Crime involving moral turpitude

Nasrallah next argues that the BIA erred in classifying his conviction as a crime involving moral turpitude. We review questions of statutory interpretation, such as whether an offense involves a crime of moral turpitude, *"de novo,* but defer to the interpretation of the BIA if it is reasonable." *Cano v. U.S. Att'y Gen.,* 709 F.3d 1052, 1053 (11th Cir. 2013).

The term "crime involving moral turpitude" is not defined by statute. But this court in *Cano* stated that it involves "[a]n act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *Id.* (alteration in original) (quoting *United States v. Gloria,* 494 F.2d 477, 481 (5th Cir. 1974)). "Whether a crime involves the depravity or fraud necessary to be one of moral turpitude depends upon the inherent nature of the offense, as defined in the relevant statute, rather than the circumstances surrounding a defendant's particular conduct." *Itani v. Ashcroft,* 298 F.3d 1213, 1215-16 (11th Cir. 2002). To decide whether an offense constitutes a crime involving moral turpitude, we apply a categorical approach and look to the statutory definition of the crime rather than to the underlying facts of the conviction. *Cano,* 709 F.3d at 1053. Any conviction under a statute categorically involves moral turpitude when "the least culpable conduct necessary to sustain a conviction under the statute meets the standard of a crime involving moral turpitude." *Gelin v. U.S. Att'y Gen.,* 837 F.3d 1236, 1241 (11th Cir. 2016) (citation omitted).

Nasrallah was convicted of receiving stolen property, in violation of 18 U.S.C. § 2315. A defendant violates this provision when he "receives, possesses, conceals, stores, . . . sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of $5,000 or more . . . which have crossed a State or United States boundary . . . , knowing the same to have been stolen, unlawfully converted, or taken." *Id.* The Board and our sister circuits have consistently held that a crime involving the receipt of stolen property involves moral turpitude if it "specifically requires knowledge of the stolen nature of the goods." *See Matter of Salvail*, 17 I. & N. Dec. 19, 20 (B.I.A. 1979); *accord De Leon v. Lynch,* 808 F.3d 1224, 1232 (10th Cir. 2015); *Hashish v. Gonzales,* 442 F.3d 572, 576 n.4 (7th Cir. 2006); *De Leon-Reynoso v. Ashcroft,* 293 F.3d 633, 637 (3d Cir. 2002); *Michel v. I.N.S.,* 206 F.3d 253, 263 (2d Cir. 2000); *United States v. Castro,* 26 F.3d 557, 558 n.1 (5th Cir. 1994).

Nasrallah argues, however, that receiving stolen property in interstate commerce in violation of 18 U.S.C. § 2315 is not categorically a crime of moral turpitude because that section lacks a separate element of unlawful or fraudulent intent. But there is no requirement that a crime of moral turpitude have a separate intent element. Punishment under 18 U.S.C. § 2315 requires that the defendant have knowledge that the items were stolen, unlawfully converted, or taken. That is enough to qualify as a crime involving moral turpitude and thus bar Nasrallah from withholding of removal. *See Matter of Salvail,* 17 I. & N. Dec. at 20.

D. Particularly serious crime

Binding precedent holds that "[t]his Court lacks jurisdiction to review a final order of removal if the

alien is removable under 8 U.S.C. § 1227(a)(2)(A)(i) for being convicted of a crime involving moral turpitude within five years of admission for which a sentence of one year or longer may be imposed." *Keungne v. U.S. Att'y Gen.,* 561 F.3d 1281, 1283 (11th Cir. 2009) (citing 8 U.S.C. § 1252(a)(2)(C); *Vuksanovic v. U.S. Att'y Gen.,* 439 F.3d 1308, 1310 (11th Cir. 2006)). A petitioner so convicted is subject to what this court has referred to as the "criminal-alien jurisdictional bar." *See Jeune v. U.S. Att'y Gen.,* 810 F.3d 792, 806 n.12 (11th Cir. 2016).

Nasrallah is subject to this jurisdictional bar because of his conviction. We therefore lack jurisdiction to review whether Nasrallah's conviction involved a particularly serious crime. *See Keungne,* 561 F.3d at 1283. Our review is limited to "constitutional claims or questions of law." *See* 8 U.S.C. § 1252(a)(2)(D).

Nasrallah contends that the IJ and the BIA misapplied factors used to determine whether he committed a particularly serious crime because he was convicted of a crime "solely against property." He argues that crimes against property are less likely to be considered a particularly serious crime. *But see Matter of Frentescu,* 18 I. & N. Dec. 244, 247 (B.I.A. 1982) (recognizing that "there may be instances where crimes (or a crime) against property will be considered" particularly serious crimes), *superseded in part by amendment to* 8 U.S.C. § 1253(h)(2), *as recognized in Matter of C-,* 20 I. & N. Dec. 529, 533 (B.I.A. 1992).

Nasrallah's challenge, which asks us to reweigh the factors involved in that discretionary determination, does not involve a constitutional claim or a question of law. *See Fynn v. U.S. Att'y Gen.,* 752 F.3d 1250, 1252 (11th Cir. 2014) ("Argument that the IJ or BIA abused its discretion by improperly weighing evidence

is . . . insufficient to state a legal or constitutional claim."). This court therefore lacks jurisdiction to review the BIA's particularly-serious-crime determination regarding Nasrallah.

E. Deferral of removal

Nasrallah's final argument is that the BIA should have granted him a deferral of removal under the CAT. To qualify for such a deferral of removal, an applicant must demonstrate that he or she will more likely than not be tortured in the country of removal. Torture is defined as:

> (1) [A]n act causing severe physical or mental pain or suffering;
>
> (2) [that is] intentionally inflicted; (3) for a proscribed purpose; (4) by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim; and (5) not arising from lawful sanctions.

Matter of V-X-, 26 I. & N. Dec. 147, 153 (B.I.A. 2013) (citing 8 C.F.R. § 1208.18(a)). Under the relevant CAT regulations, the perpetrator must have specifically intended to inflict severe physical or mental pain or suffering. 8 C.F.R. § 1208.18(a)(5).

The BIA determined that Nasrallah's isolated chance encounter with the members of Hezbollah on a mountain in Lebanon did not constitute torture under the CAT. Although the incident was undoubtedly traumatizing for Nasrallah and his friend, the BIA reached this conclusion because there is no evidence that the Hezbollah members "specifically intended to inflict such severe pain or suffering." *See Jean-Pierre*

v. Att'y Gen., 500 F.3d 1315, 1323 (11th Cir. 2007) (citing 8 C.F.R. § 1208.18(a)(5)); *see also Cole v. Holder,* 659 F.3d 762, 773 (9th Cir. 2011) ("Acts that merely have the foreseeable result of inflicting harm are not sufficient; the actor [must] intend the actual consequences of his conduct." (alteration in original) (internal quotation marks and citation omitted)). Because Nasrallah presented no other instances of alleged past torture, the BIA found as a matter of law that he had not been tortured in Lebanon. We agree with the BIA's determination.

Nasrallah also contends that the BIA erred in determining that he would not likely be singled out for torture if he was removed. A determination about the likelihood of future harm, however, is a finding of fact, not a question of law. *See Cole v. U.S. Att'y Gen.,* 712 F.3d 517, 533 (11th Cir. 2013) (holding that "we cannot review the BIA's decision that [petitioner] would not be tortured" because "[t]he likelihood of harm is a factual question" and the criminal-alien jurisdictional bar applies). This restricts our review of the BIA's CAT determination to Nasrallah's legal and constitutional claims. *See id.; Keungne,* 561 F.3d at 1283. We therefore lack jurisdiction to review Nasrallah's argument about the likelihood of future harm in Lebanon.

III. CONCLUSION

For all the reasons set forth above, we DENY IN PART AND DISMISS IN PART Nasrallah's petition for review.

APPENDIX B

U.S. DEPARTMENT OF JUSTICE

DECISION OF THE BOARD OF IMMIGRATION APPEALS

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

FALLS CHURCH, VIRGINIA 22041

File: A089 427 907 — Lumpkin, GA

Date: Jun 23, 2017

In re: NIDAL KHALID NASRALLAH

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:
Helen Parsonage, Esquire

ON BEHALF OF DHS:
Cassondra Bly
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)]—Convicted of aggravated felony (withdrawn)

Lodged: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)]—Convicted of crime involving moral turpitude

APPLICATION: Termination; asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Lebanon, appeals from the Immigration Judge's decision denying his applications for asylum pursuant to section

208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A), withholding of removal pursuant to section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A), and withholding of removal under the Convention Against Torture pursuant to 8 C.F.R. §§ 1208.16(c)-1208.18, but granting his application for deferral of removal under the Convention Against Torture. The Department of Homeland Security (DHS) has also filed an appeal from the Immigration Judge's decision. The respondent's appeal will be dismissed. The DHS's appeal will be sustained.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent argues that the Immigration Judge erred in sustaining the charge of removability under section 237(a)(2)(A)(i) of the Act, 8 U.S.C. § 1227(a)(2)(A)(i). The respondent also argues that the Immigration Judge erred in finding that he has been convicted of a particularly serious crime. The DHS argues that the Immigration Judge erred in granting the respondent's application for deferral of removal under the Convention Against Torture.

We affirm the Immigration Judge's determination that the respondent is removable under section 237(a)(2)(A)(i) of the Act, as an alien who has been convicted of a crime involving moral turpitude committed within 5 years of admission, for which a sentence of imprisonment of 1 year or longer may be imposed (I.J. at 6-8). The record reflects that the re-

spondent was admitted to the United States as a temporary visitor on or about July 24, 2006, and that he adjusted his status to that of a lawful permanent resident on July 19, 2007 (Exh. 1). It is undisputed that the respondent was convicted on July 30, 2013, of two counts of receiving property stolen in interstate commerce, in violation of 18 U.S.C. §§ 21 and 2135, for offenses that concluded on April 7, 2011, and July 29, 2011 (I.J. at 2; Exhs. 1, 3). It is also undisputed that a sentence of imprisonment of 1 year or longer may be imposed for a conviction under 18 U.S.C. § 2135 (I.J. at 6).

A violation of 18 U.S.C. § 2315 occurs where an individual (1) receives, possesses, conceals, stores, barters, sells, or disposes of, (2) any goods, wares, or merchandise, securities, or money of the value of $5000 or more, (3) which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, (4) knowing the same to have been stolen, unlawfully converted, or taken (I.J. at 7; Respondent's Br. at 18). Pursuant to 18 U.S.C. § 21, the defendant's knowledge that the property in question has been stolen, converted, or taken may be established by proof that he or she, after or as a result of an official representation as to the nature of the property, believed the property to be stolen, converted, or taken.

We are not persuaded by the respondent's argument that a conviction under 18 U.S.C. § 2315 is not for a crime involving moral turpitude because the statute does not require the defendant to have an intent to commit a fraudulent act in addition to the elements already discussed. A conviction for possession of stolen goods is a conviction for a crime involving moral turpitude where the statute requires knowledge of the stolen nature of the goods. *Matter of*

Serna, 20 I&N Dec. 579, 585 n.10 (BIA 1992); *see also Matter of Salvail,* 17 I&N Dec. 19 (BIA 1979) (holding that a conviction under Article 296 of the Criminal Code of Canada for possession of stolen goods is a conviction for a crime involving moral turpitude, as it specifically requires knowledge of the stolen nature of the goods). Because 18 U.S.C. § 2315 requires the defendant to know that the property in question has been stolen, unlawfully converted, or taken, the offense is categorically a crime involving moral turpitude. Accordingly, we affirm the Immigration Judge's conclusion that the respondent is removable under section 237(a)(2)(A)(i) of the Act.

We also affirm the Immigration Judge's determination that the respondent is ineligible for asylum, withholding of removal under the Act, and withholding of removal under the Convention Against Torture, as an alien who has been convicted of a particularly serious crime (I.J. at 8-11). *See* sections 208(b)(2)(A)(ii) and 241(b)(3)(B)(ii) of the Act; 8 C.F.R. §§ 1208.16(c)(4) and 1208.16(d)(2). In assessing whether an offense that is not an aggravated felony constitutes a particularly serious crime, we examine the nature of the conviction, the type of sentence imposed, and the circumstances and underlying facts of the conviction. *See Matter of N-A-M-,* 24 I&N Dec. 336, 342 (BIA 2007); *see also Matter of Frentescu,* 18 I&N Dec. 244 (BIA 1982).

The record reflects that, in multiple transactions over the course of 9 months, the respondent paid undercover law enforcement agents over $387,000 for at least 273 cases of cigarettes, which he believed to be stolen (I.J. at 9; Exh. 3). The respondent was told that the cigarettes were stolen from trucks and storage fa-

cilities (I.J. at 9; Exh. 3). On one occasion, the respondent was told by an undercover agent that he and his crew were shot at by a security guard when they broke into a storage facility to steal cigarettes (I.J. at 9; Exh. 3).

According to the Bill of Indictment, the illegal sale of cigarettes is a recognized law enforcement problem because criminal organizations are known to obtain cigarettes by theft and fraud, including hijacking tractor trailer loads of cigarettes (Exh. 3). In addition, the record contains evidence showing that organized criminal groups, including those with ties to terrorist organizations, have increasingly engaged in the illegal trafficking of tobacco products and that illicit cigarette trafficking rivals drug trafficking as the method of choice to fill bank accounts of terrorists and terrorist groups (I.J. at 10; Exh. 8(d), Tabs MM-OO).

The record does not support the respondent's claim that the Immigration Judge was prejudiced, biased, or relied on extra-judicial facts in assessing whether his offense constitutes a particularly serious crime. The Immigration Judge's request for evidence concerning connections between illicit cigarette trafficking and organized crime or terrorist organizations fell within her duty to develop the record and such evidence is relevant to the respondent's case as the overall level of harm to the community arising from certain forms of criminal conduct is a factor to be considered in assessing whether the conduct constitutes a particularly serious crime. *See Matter of Q-T-M-T-,* 21 I&N Dec. 639, 654 (BIA 1996); *see also Matter of Y-L-, A-G-, & R-S-R-,* 23 I&N Dec. 270, 275 (A.G. 2002) (discussing the "harmful effect to society from drug offenses," including "the considerable number of people in this country who die of overdoses of narcotics or

who become the victims of homicides related to the unlawful traffic of drugs" and the individuals "who suffer crimes against their persons and property at the hands of drug addicts and criminals who use the proceeds of their crimes to support their drug needs" in concluding that aggravated felonies involving unlawful trafficking in controlled substances presumptively constitute particularly serious crimes). Moreover, the Immigration Judge found that there was no reason to believe that the respondent personally supports the goals of terrorism or organized crime (I.J. at 10). We are satisfied the Immigration Judge properly weighed and considered the relevant evidence in assessing whether the respondent has been convicted of a particularly serious crime. Based on this record, we cannot conclude that the proceedings lacked fundamental fairness. *See Matter of G-,* 20 I&N Dec. 764 (BIA 1993); *Matter of Exame,* 18 I&N Dec. 303 (BIA 1982); *Matter of Exilus,* 18 I&N Dec. 276 (BIA 1982).

As discussed by the Immigration Judge, the respondent was sentenced to a modified term of 364 days of imprisonment despite the fact that 18 U.S.C. § 2315 carries a maximum sentence of 10 years (I.J. at 6, 10). However, the respondent repeatedly transacted with individuals he believed to be engaging in a pattern of dangerous and violent crimes, with the understanding that he was motivating their dangerous criminal activities (I.J. at 10). Moreover, as noted by the Immigration Judge, all participation in the black market runs the risk of supporting organized criminal groups and terrorist organizations (I.J. at 10). Considering all relevant factors and evidence, we agree that the respondent's conviction for receiving property stolen in interstate commerce was for a particularly serious crime. Accordingly, we affirm the Immigration Judge's denial of the respondent's applications for

asylum, withholding of removal under the Act, and withholding of removal under the Convention Against Torture.

Turning to the DHS's appellate arguments, we agree that the respondent did not meet his burden of demonstrating his eligibility for application for deferral of removal under the Convention Against Torture (I.J. at 11-14). To qualify for protection under the Convention Against Torture, an applicant must demonstrate that it is more likely than not that he or she will be tortured in the country of removal. The term torture means (1) an act causing severe physical or mental pain or suffering; (2) intentionally inflicted; (3) for a proscribed purpose; (4) by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim; and (5) not arising from lawful sanctions. 8 C.F.R. § 1208.18(a); *see also Matter of V-X-,* 26 I&N Dec. 147, 153 (BIA 2013) (citing *Matter of J-E-,* 23 I&N Dec. 291 (BIA 2002)). To constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering. 8 C.F.R. § 1208.18(a)(5); *see also Jean-Pierre v. U.S. Att'y Gen.,* 500 F.3d 1315, 1323 (11th Cir. 2007).

Assessing the likelihood that an applicant would be tortured requires consideration of all relevant evidence, including evidence of past torture inflicted on the applicant in the proposed country of removal; evidence that the applicant could relocate to a part of the country 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; and other relevant information regarding conditions in the country of removal. 8 C.F.R. § 1208.16(c)(3). Acquies-

cence "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." 8 C.F.R. § 1208.18(a)(7).

The respondent claims that he will be tortured in Lebanon by members of Hizballah because he is Druze and because he has Western ties. The Immigration Judge found that the respondent was previously tortured in Lebanon (I.J. at 12). The Immigration Judge further found that it is more likely than not that the respondent would personally be targeted for harm rising to the level of torture if removed to Lebanon (I.J. at 14).

The record does not support the Immigration Judge's finding that the respondent was tortured in Lebanon. The respondent testified that he and a friend were confronted by two Hizballah militants in 2005, while climbing a mountain (Tr. at 36). He testified that he and his friend ran away when the militants shouted and fired their guns in the air (Tr. at 36). While running away, the respondent jumped off of a cliff and broke his back (Tr. at 36). The conduct of the militants, which was limited to shouting and firing their guns in the air, does not constitute torture, and the record does not reflect that the respondent's back injury was intentionally inflicted. On the contrary, the fact that the militants fired their guns in the air and not at the respondent suggests that they did not intend to physically harm him. In the absence of evidence that the militants specifically intended to inflict severe physical or mental pain or suffering on the respondent, we cannot conclude that the respondent was tortured in Lebanon.

The record also does not support the Immigration Judge's finding that it is more likely than not that the respondent would personally be targeted for harm rising to the level of torture if removed to Lebanon. The respondent does not claim that he was or would be tortured by a public official or an individual acting in an official capacity. Apart from a single incident in 2005, the respondent was never threatened or harmed in Lebanon. There is evidence of widespread civil strife and various human rights abuses in Lebanon, including crimes against members of the Druze community in Hizballah-controlled areas of the country and anti-Western terrorist activity (I.J. at 13; Exh. 7, Tabs G-Y; Exh. 8, Tabs DD-LL). However this generalized evidence, without more, is insufficient to demonstrate a clear probability that the respondent would be personally tortured if removed to Lebanon. *See Jean-Pierre v. U.S. Att'y Gen., supra,* at 1324 (noting that applicants who provided evidence of generalized mistreatment and some isolated instances of torture did not meet their burden to show that they were individually more likely than not to be tortured). Considering all of the relevant evidence, we agree with the DHS that the respondent has not met his burden to show that it is more likely than not that he would be tortured in Lebanon 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. *See* 8 C.F.R. §§ 1208.16(c)-.18.

In light of the foregoing, the respondent's appeal will be dismissed, the DHS's appeal will be sustained, the Immigration Judge's order granting the respondent's application for deferral of removal under the Convention Against Torture will be vacated, and the respondent will be ordered removed from the United

States pursuant to the Immigration Judge's order. The following orders will be entered.

ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: The DHS's appeal is sustained.

FURTHER ORDER: The Immigration Judge's order granting the respondent's application for deferral of removal under the Convention Against Torture is vacated.

FURTHER ORDER: The respondent is ordered removed from the United States to Lebanon pursuant to the Immigration Judge's August 11, 2016, order.

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FOR THE BOARD

APPENDIX C

UNITED STATES DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW

UNITED STATES IMMIGRATION COURT

LUMPKIN, GEORGIA

IN THE MATTER OF:
KHALID NASRALLAH, NIDAL,
Respondent

In Removal Proceedings

File No.: A089-427-907

DETAINED

CHARGES: Section 237(a)(2)(A)(i) of the Immigration and Nationality Act ("INA" or "Act"), as amended, in that Respondent is an alien who has been convicted of a crime involving moral turpitude committed within five years after admission and for which a sentence of one year or longer may be imposed.

APPLICATION: Termination.

Asylum under INA § 208; withholding of removal under INA § 241(b)(3); withholding or deferral of removal under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 3, S. Treaty Doc. No. 100-20, p. 20, 1465 U.N.T.S. 85 ("CAT") (implemented by 8 C.F.R. §§ 1208.16-1208.18).

ON BEHALF OF THE RESPONDENT:

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ON BEHALF OF THE GOVERNMENT:
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WRITTEN DECISION AND
ORDER OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

The Department of Homeland Security ("DHS") served Respondent a Form 1-862, Notice to Appear ("NTA"), on July 9, 2015, and filed it with the Immigration Court on August 31, 2015. *See* Exh. 1(a). DHS also filed conviction records. *See* Exh. 2(a).

On September 3, 2015, Respondent appeared, through counsel, for a master calendar hearing.[1] As Respondent proceeded to enter pleadings, it became apparent that he was served a subsequent NTA based on a sentence modification, but it was not filed with the Court. *See* Exh. 4. The Court accordingly adjourned the case.

On or about September 4, 2015, DHS filed, inter alia, a superseding Form 1-261, Additional Charges of Inadmissibility/Deportability, dated September 4, 2015, with the following allegations of fact: (1) Respondent is not a citizen or national of the United States; (2) he is a native and citizen of Lebanon; (3) he was admitted to the United States at Atlanta, Georgia, on or about July 24, 2006, as a temporary visitor for pleasure (B2); (4) his status was adjusted to that

[1] Unless otherwise noted in this decision, all other appearances and filings by Respondent were through counsel.

of a lawful permanent resident (IR7) on July 19, 2007, under section 245 of the Act; (5) he was, on July 30, 2013, convicted in the U.S. District Court for the Western District of North Carolina for the offense of receiving property stolen in in interstate commerce, an offense that concluded on April 7, 2011, in violation of 18 U.S.C. §§ 21 and 2315; (6) he was on, July 30, 2013, convicted in the same U.S. District Court for the offense of receiving property stolen in interstate commerce, an offense that concluded on July 29, 2011, in violation of 18 U.S.C. §§ 21 and 2315. *See* Exh. 1; *see also* Exhs. 2-5. DHS charged Respondent with removability under INA § 237(a)(2)(A)(i), as amended, as an alien who has been convicted of a crime involving moral turpitude committed within five years after admission and for which a sentence of one year or longer may be imposed. Exh. 1.

On September 30, 2015, Respondent appeared for a master calendar hearing. He filed his Form 1-589, Application for Asylum and for Withholding of Removal, supporting documentation, and a legal memorandum. Exhs. 6-7. Respondent denied the charge of removability in the Form 1-261. The Court scheduled filing deadlines, and continued the case.

On October 23, 2015, Respondent submitted a motion to terminate proceedings with a Ninth Circuit opinion attached thereto, a witness list, a bench brief in support of relief, and a notice of filing with various documents. *See* Exhs. 8, 8(b), 8(c), 8(d).

On or about October 28, 2015, the Court denied Respondent's motion to terminate proceedings. *See* Exh. 8(a).

On November 20, 2015, DHS filed legal memoranda. *See* Exhs. 7(a)-7(b).

On December 9, 2015, Respondent appeared for the merits hearing. Among other things, the Court stated its intent to find Respondent's conviction to be for a particularly serious crime, and the Court reserved decision.

On February 25,2016, Respondent appeared for a master calendar hearing. The Court reviewed the following pleadings: Respondent admitted the allegations of fact numbered (1) through (4) in the superseding Form 1-261, and denied the remaining allegations along with the charge. The Court stated its finding that the allegations and the charge were sustained by clear and convincing evidence. The Court reset the case.

On March 14, 2016, Respondent appeared for a master calendar hearing. Respondent indicated that DHS was unwilling to stipulate to any form of relief. The Court reset the case.

On July 27, 2016, Respondent appeared for a master calendar hearing. The Court indicated it had a decision prepared to grant deferral of removal under the Convention Against Torture. DHS reserved appeal. Respondent's counsel stated she had anticipated DHS waiving appeal based on discussions therewith, but she accordingly reserved appeal. The Court adjourned the case for a time to issue the oral decision.

On August 9, 2016, Respondent appeared for a master calendar hearing. The Court issued an order of removal, and granted deferral of removal under the Convention Against Torture.

Upon review of the record, the Court deems it to issue a written decision in this matter. The Court has considered the arguments presented and the entire record carefully. All evidence has been considered,

even if not specifically discussed further in this decision. For the reasons set forth below, the Court has found Respondent removable as charged and granted Respondent's request for deferral of removal.

II. EVIDENCE CONSIDERED

A. Documentary Evidence

The Court considered the following exhibits:

Exhibit 1:	Superseding Form 1-261, Additional Charges of Inadmissibility/Deportability, dated September 4, 2015.
Exhibit 1(a):	Form 1-862, Notice to Appear, filed August 31, 2015.
Exhibit 2:	Judgement in a Criminal Case, dated August 12, 2013.
Exhibit 2(a):	Judgement in a Criminal Case, dated August 12, 2013; Indictment, dated November 15, 2011.
Exhibit 3:	Indictment, dated November 15, 2011.
Exhibit 4:	Cancelled Form 1-862, Notice to Appear, dated August 17, 2015.
Exhibit 5:	Form 1-213, Record of Deportable/Inadmissible Alien, dated June 19, 2015.
Exhibit 6:	Respondent's Memo on Particularly Serious Crime, filed in open Court on September 30, 2015.
Exhibit 7:	Respondent's packet regarding his application for relief, filed in open Court on September 30, 2015, includ-

ing Form 1-589, Application for Asylum and for Withholding of Removal, and the following:

Tab A: Respondent's Permanent Resident Card.

Tab B: Respondent's Diploma.

Tab C: Confirmation of Membership in the American Druze Society.

Tab D: Letter from Saad Abdel Samad

Tab E: Letter from Hady Abu Shacra

Tab F: Medical Records

Tab G: U.S. Department of State, Country Reports on Terrorism 2014: Lebanon

Tab H: CIA World Factbook: Lebanon

Tab I: U .S. Department of State, International Religious Freedom Report: Lebanon 2013

Tab J: U.S. Department of State, Human Rights Report: Lebanon 2014

Tab K: Counterterrorism Guide: Hizballah, National Counterterrorism Center (www.nctc.goc)

Tab M: Travel Warning - Lebanon (May 29, 2015), Embassy of the United States, Beirut Lebanon

Tab N: Refworld, *Assessment for Druze in Lebanon,* March 25, 2005

Tab O: Refworld, *Global Overview 2015: People internally displaced by conflict*

and violence-Middle East and North Africa

Tab P: *When region's minorities are used as buffers,* Gulf News, August 13, 2015

Tab Q: *Lebanon's Druze fear JS, Hezbollah,* Al-Monitor, October 30, 2014

Tab R: Op-Ed: *Islamic State is Heading for Lebanon Next,* Israel National News, August 19, 2015

Tab S: *Don't bruise the Druze,* The Economist, June 20 2015

Tab T: *Druze caught up in 'game of nations,* Al-Monitor, July 17, 2015

Tab U: *In new sign of Assad's troubles, Syria's Druze turn away from president,* The Washington Post, July 20, 2015

Tab V: *Lebanon's Druze, unhappily, are being dragged into Syria's war,* Christian Science Monitor, November 16, 2015

Tab W: *Islamic State 2.5 Kilometers From Lebanese Border, Reportedly Planning Attack on Jordan,* August 18, 2015, Western Journalism.

Tab X: *The Druze: Latest Minority to Suffer from Sunni Extremists,* Emile Nakhieh

Tab Y: *Hezbollah Battles Druze East of Beirut,* Reuters, May 11, 2008.

Tab Z: Reference Letters.

Exhibit 7(a): DHS's Memorandum of Law on Crime Involving Moral Turpitude, filed November 20, 2015.

Exhibit 7(b): DHS's Memorandum of Law on Particularly Serious Crime, filed November 20, 2015.

Exhibit 8: Respondent's Motion to Terminate Proceedings, filed October 23, 2015.

Exhibit 8(a): Court's Order Denying Respondent's Motion to Terminate Proceedings, dated October 28, 2015.

Exhibit 8(b): Respondent's Witness List, filed October 23, 2015.

Exhibit 8(c): Respondent's Brief in Support of Relief, filed October 23, 2015.

Exhibit 8(d): Respondent's Notice of Filing filed October 23, 2015, including the following:

Tab AA: Respondent's Affidavit.

Tab BB: Receipt Notice for 1-589 Application for Asylum.

Tab CC: Map of Lebanon

Tab DD: U.S. Department of State, International Religious Freedom Report, 2014 (UPDATED).

Tab EE: *Religious minorities face increased threats, US. report finds,* Associated Press, October 14, 2015.

Tab FF: Statement by David Saperstein, Ambassador-at-Large for International

Religious Freedom, Senate Appropriations Committee, Subcommittee on Foreign Operations, March 11, 2015.

Tab GG: *Abouayash v. Gonzales,* 233 Fed. Appx 732 (9th Cir. 2007).

Tab HH: *In re: [redacted],* 2008 Immig. Rptr. LEXIS 17581 (Administrative Appeals Office 2008).

Tab II: *Resolution condemning violence against religious minorities in the Middle East and any actions that limit the free expression and practice of faith by these minorities,* 114 H. Res. 139 (House of Representatives, March 3, 2015).

Tab JJ: *Lebanon: Druze Take On Hezbollah, Because They Must,* Inter Press Service News Agency, May 2008.

Tab KK: *Analysis: Dramatic Developments in Syria Could Endanger Future of Israel,* Western Journalism, October 19, 2015.

Tab LL: *Lebanon's Self-Defeating Survival Strategies,* International Crisis Group, July 2015.

Tab MM: *Tobacco Enforcement,* ATF Fact Sheet (Bureau of Alcohol, Tobacco, Firearms and Explosives, May 2014).

Tab NN: *Illicit Cigarette Trafficking and the Funding of Terrorism,* William Billingslea, Senior Intelligence Analyst, ATF, February 2004.

Tab OO: *Terrorism and tobacco,* International Consortium of Investigative Journalists, June 2009.

III. DISCUSSION

A. Removability and Motion to Terminate

Respondent has admitted the allegations (1)-(4) in the superseding Form 1-261, but denied the remaining allegations and the charge of removal lodged therein. *See* Exh. 1. However, the Court reaffirms its finding that removability has been established by clear, convincing, and unequivocal evidence in the record. *See* Exhs. 1, 2, 5, 8(d), Tab AA.

Respondent is charged as removable under INA § 237(a)(2)(A)(i) for having been convicted of a crime involving moral turpitude committed within five years after admission for which a sentence of one year or longer may be imposed. Exh. 1. Respondent was admitted to the U.S. on July 24, 2006, and one of the violations of 18 U.S.C. §§ 21 and 2315 for which Respondent was convicted concluded on April 7, 2011. *See* Exhs. 1-2. The Court will focus its decision on 18 U.S.C. § 2315, titled as "Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps," because § 21 is merely a definitional provision. *See* 18 U.S.C. § 21 (defining stolen and other such property to include property which was represented by law enforcement officials and persons under their direction to be stolen and which a defendant believed to be stolen). If a § 2315 violation entails certain objects valued at less than $1,000 in value, the maximum sentence is one year of imprisonment. Otherwise, it is ten years. Respondent does not appear to dispute that he was convicted of a crime committed within five years after admission for which a sentence

of one year or longer may be imposed, as required under INA § 237(a)(2)(A)(i).

In his motion to terminate proceedings, Respondent contends that he is not removable as charged because his crimes of conviction do not involve moral turpitude and that INA § 237(a)(2)(A)(i) is constitutionally void for vagueness. *See* Exh. 8. As a threshold matter, it is beyond the administrative authority of the Court to review the constitutionality of the INA. *Matter of Rodriguez-Carrillo,* 22 I&N Dec. 1031, 1036 (BIA 1999). However, the Court notes that the United States Court of Appeals for the Eleventh Circuit, the jurisdiction where this case arises, has recently rejected a vagueness challenge to the term "crime involving moral turpitude" used in the INA. *See Villeda v. U.S. Att'y Gen.,* 532 F. App'x 897, 897 n.1 (11th Cir. 2013) (citing *Jordan v. De George,* 341 U.S. 223, 229-30 (1951)).

Turning to the question of whether Respondent's conviction involves moral turpitude, the Court finds the greater weight of legal authority supports a finding of removability in this case. The substantive offenses in § 2315 entail the receiving, possessing, concealing, storing, bartering, selling, disposing, or pledging or accepting as security for a loan an instrument or property such as goods, securities, or tax stamps, while "knowing the same" has "been stolen, unlawfully converted, or taken"; or has "been falsely made, forged, altered, or counterfeited"; or "is fitted to be used, or has been used, in falsely making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof."

For the following reasons, the Court finds that the conduct criminalized under 18 U.S.C. § 2315 categor-

ically involves moral turpitude. The categorical approach requires this Court to determine whether the range of acts prohibited by the statute of conviction falls within the meaning of a crime involving moral turpitude. *Mellouli v. Lynch,* 135 S. Ct. 1980 (2015). The Eleventh Circuit has stated that moral turpitude inheres within an act of "baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between a man and man." *Itani v. Ashcroft,* 298 F.3d 1213, 1215 (11th Cir. 2002). It has also noted that "[g]enerally, a crime involving dishonesty ... is considered to be one involving moral turpitude." *Id.*

The Court finds that the least of the acts criminalized under 18 U.S.C. § 2315—receiving or possessing property such as goods or merchandise while knowing the same to be stolen, unlawfully converted, or taken—qualifies as a crime involving moral turpitude under the categorical approach. As the Board of Immigration Appeals has stated, "[i]t has repeatedly been held that the offense of receiving stolen property is an offense involving moral turpitude, if (as in the instant case) knowledge of the character of the goods is present." *Matter of L-,* 6 I&N Dec. 666, 668 (BIA 1955). Just as receiving property under 18 U.S.C. § 2315 involves moral turpitude because one must know of its stolen, unlawfully converted, or taken nature, possessing property under the statute involves moral turpitude because it entails the same scienter. *See Matter of Salvail,* 17 I&N Dec. 19 (BIA 1979); *Matter of K-,* 2 I&N Dec. 90 (BIA 1944) ("possessing stolen property will not be found to involve moral turpitude where the evidence of record indicates property was acquired without guilty knowledge and without wrongful intent").

The Court is also persuaded by the conclusion of the Eleventh Circuit that conduct under a similar statute, 18 U.S.C. § 2314, involves moral turpitude because transporting property "once one knows it is stolen is an affirmative act of dishonest behavior that 'runs contrary to accepted societal duties.'" *Machado-Zuniga v. U.S. Att'y Gen.,* 564 F. App'x 982, 986 (11th Cir. 2014). A conviction under 18 U.S.C. § 2315 necessarily involves moral turpitude. *Id; Matter of Kochlani,* 24 I&N Dec. 128, 129-31 (BIA 2007); *Matter of Serna,* 20 I&N Dec. 579, 585 n.10 (BIA 1992).

The foregoing discussion is not affected by the fact that 18 U.S.C. § 21 allows for the knowledge requirement of § 2315 to be satisfied by "proof that [a] defendant, after or as a result of an official representation as to the nature of the property, believed the property to be embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated." *De Leon-Reynoso v. Ashcroft,* 293 F.3d 633, 637 (3d Cir. 2002) ("possessing stolen property" that one "believes probably was stolen" is "barely removed from possessing stolen property with knowledge that it is stolen" as "both crimes speak with equal force to the honesty of a person").

Thus, the Court finds Respondent is removable as charged under INA § 237(a)(2)(A)(i), and his motion to terminate proceedings has been denied.

B. Particularly Serious Crime Determination

Although Respondent's conviction is not for an aggravated felony as the result of a sentence modification, the Court finds him ineligible for asylum and withholding of removal under the Act as well as under the Convention Against torture because he has "been

convicted by a final judgment of a particularly serious crime." INA § 208(b)(2)(A)(ii); *see also* INA § 241(b)(3)(B); 8 C.F.R. § 1208.16(d)(2).

Where a conviction is not for an aggravated felony, an Immigration Judge must examine the nature of the conviction, the type of sentence imposed, and the circumstances and underlying facts of the conviction. *Matter of N-A-M-,* 24 I&N Dec. 336, 342 (BIA 2007). If the elements are found to potentially bring the offense within the ambit of a particularly serious crime, all reliable information, including but not limited to the record of conviction, may be considered in making a particularly serious crime determination. *See id.; see also Lapaix v. U.S. Att'y Gen.,* 605 F.3d 1138 (11th Cir. 2010). Once an offense has been determined to be a particularly serious crime, "no separate determination of danger to the community is required." *Matter of G-G-S-,* 26 I&N Dec. 339 (BIA 2014).

As the Board has stated, the "language of the statute provides the 'essential key' to determining whether a crime is particularly serious, which is 'whether the nature of the crime is one which indicates that the alien poses a danger to the community.'" *Matter of G-G-S-,* 26 I&N Dec. 339, 344 (BIA 2014) (quoting *Matter of Carballe,* 19 I&N Dec. 357, 360 (BIA 1986)). However, once an offense has been determined to be a particularly serious crime, "no separate determination of danger to the community is required." *Id.* The Board has also noted that "one must give significant weight to the decision of Congress to include that particular category of crime in the aggravated felony definition," and consider "domestic problems confronting the United States and the overall level of harm to the community arising from certain

forms of criminal conduct." *Matter of Q-T-M-T-,* 21 I&N Dec. 639, 654 (BIA 1996).

Regardless of the modification of Respondent's sentence of imprisonment to 364 days, the substantive offense of Respondent's conviction is in the vein of aggravated felonies as they are defined by INA § 101(a)(43)(G) and (R) as "theft offense[s] (including receipt of stolen property" and "offense[s] relating to . . . counterfeiting, [or] forgery," respectively. *See, e.g., Matter of Bahta,* 22 I&N Dec. 1381 (BIA 2000) (finding that attempted possession of stolen property is an attempted "theft offense (including receipt of stolen property)" within the definition of an aggravated felony set forth in INA § 101(a)(43)(G)); *Magasouba v. Mukasey,* 543 F.3d 13, 15 (1st Cir. 2008) (citing cases from three other circuits for the principle that INA § 101(a)(43)(R)'s "use of the term 'relating to'" evidences Congress's 'intent to define [the listed offenses] in [their] broadest sense'"). Therefore, the Court finds that the elements of Respondent's offense potentially bring it within the ambit of a particularly serious crime. *See Matter of N-A-M-,* 24 I&N Dec. at 342 (noting that the term "particularly serious crime" has been historically tied to aggravated felony definitions in varying degrees but declining to read the particularly serious crime bar as "creating a gap or loophole for particularly serious crimes that happen to escape classification as aggravated felony). Accordingly, all reliable information may be considered in making a particularly serious crime determination, including information presented by either party and not limited to the record of conviction. *See id.*

The federal indictment in Respondent's criminal case provides that, beginning no later than December

9, 2010, Respondent received at least 273 cases of cigarettes "he believed to have been stolen and taken by fraud by persons in the States of New York and Virginia." Exh. 3. Respondent paid undercover law enforcement agents and officers ("UCs") "over $387,000 dollars in cash for the purportedly stolen cigarettes, which such prices were far below their wholesale price." *Id.* In or around November 2010, federal authorities learned that Respondent "was interested in purchasing cigarettes at prices far below market wholesale value for resale in local stores." *Id.* The "illegal sale of cigarettes was a recognized law enforcement problem because criminal organizations were known to obtain cigarettes by theft and fraud, including hijacking tractor trailer loads of cigarettes." *Id.* The "stolen cigarettes would then be sold to retailers at a considerable discount and then sold to consumers for huge profits." *Id.*

Respondent was originally indicted for eight counts, each representing a separate transaction over a nine-month period where Respondent "did receive, possess, conceal, store, barter, sell, and dispose of certain goods he then believed to have been stolen." *Id.* The indictment makes clear that Respondent engaged in each of these transactions between December 2010 and August 2011 while under the impression that his "illicit" supplier and his associates stole the cigarettes by robbing trucks and breaking into at least one storage facility where a purported encounter with a security guard resulted in gunfire. Respondent agreed to pay a lower price due to bullet holes in the contraband. At one point, Respondent reportedly requested even more cigarettes and later said he would "check with his people" about future dealings. *Id.* Respondent also allegedly accepted a thirty-two-inch HDTV that the UC suggested was among the various things, besides

cigarettes, that his associates robbed from a UPS truck. *Id.*

Respondent ultimately pleaded guilty to counts 6 and 7, relating to his receipt of stolen cigarettes on or about April 7, 2011, and July 29, 2011. Exh. 2. These counts pertain to the times Respondent, inter alia, received the HDTV from a UPS truck and cigarettes from the storage facility with the security guard, respectively. *See* Exh. 3. In the first transaction to which Respondent pleaded guilty, Respondent paid the UC $100,500 in cash for sixty-seven cases of cigarettes, at $62.846% of the wholesale market price. In the second transaction, Respondent paid $149,000 in cash for 102 cases of cigarettes. *Id.* Respondent pleaded guilty to paying just shy of a quarter of a million dollars in cash for cigarettes he believed to be obtained by burglary and robbery, so that he could turn "huge profits." Exhs. 2-3.

The Court is disturbed by Respondent's willingness, as evidenced by the record, to participate in a criminal enterprise with others he believed were engaging in a pattern of dangerous and violent crimes to steal cigarettes. Respondent was prepared to fuel this dangerous activity with at least $249,500 in cash, just so that he could make presumably six figures or more in profits. *Id.* The Court notes that a violation of § 2315 can result in a sentence of up to a decade in prison. The fact that Respondent's criminal enterprise was actually a sting operation is of no moment. It does not change the fact that Respondent acted subjectively in utter disregard for the laws of the United States and the safety of the community when he remitted a quarter of a million dollars to someone he believed to be the representative of a criminal organization. *See id.*

As mentioned above, the indictment indicates that the seemingly innocuous yet "illegal sale of cigarettes was a recognized law enforcement problem because criminal organizations were known to obtain cigarettes by theft and fraud, including hijacking tractor trailer loads of cigarettes." Exh. 3. Moreover, a May 2014 Fact Sheet prepared by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") reports that the profit potential in the tobacco products black market is immediately apparent and [o]rganized criminal groups, including those with ties to terrorist organizations, have increasingly engaged in the illegal trafficking of tobacco products." Exh. 8(d), Tab MM. According to an article authored by an ATF senior intelligence analyst, "[b]ecause of the immense profits in the illicit cigarette trade, as well as the potentially low penalties for getting caught, illicit cigarette trafficking now rivals drug trafficking as the method of choice to fill the bank accounts of terrorists and terrorist groups." *Id.,* Tab NN. Terrorists found to benefit from this criminal activity include associates of Hizballah, al Qaeda, and Hamas. *See id.; see also id.,* Tab OO (confirming that terrorist, insurgent and criminal groups profit from illicit cigarette sales). In sum, the Court finds that it is for a particularly serious crime, especially based on the knowingly dishonest nature of the conviction itself and the apparently dangerous circumstances attendant to Respondent's particular violations of the law. *See Matter of N-A-M-,* 24 I&N Dec. at 342. As mentioned above, the Court finds that the very nature of the crime makes it a particularly serious crime. Moreover, the Board has held the type of sentence is not the dominant factor in a particularly serious crime determination. *See id.* at 343. That is, a crime resulting in a sentence with no term of confinement can still be deemed particularly

serious. *See id.* (citing *Matter of Y-L-, A-G-, & R-S-R-,* 23 I&N Dec. 270, 273-74, 277-78 (A.G. 2002)). Nevertheless, in this case, the Court notes that Respondent was sentenced to a modified term of 364 days in prison. *See* Exh. 1. Respondent argues that there is "nothing in the record to suggest that any nefarious activity such as money laundering or fundraising for criminal or terrorist organizations" was involved. Exh. 6. However, Respondent sought to participate in a black market, which reliable information in the record indicates helps fund organized crime and terrorism. Exh. 8(d), Tabs MM-OO. And, while the Court has no reason to believe Respondent supports the goals of terrorism or organized crime, all participation in the black market runs the risk of supporting these entities. Moreover, Respondent made dealings with those he understood to be criminals on more than one occasion, and with the understanding that he was motivating their dangerous criminal activities by furnishing at least $249,500 in cash. Exh. 3. These facts support a finding that Respondent committed a particularly serious crime. *Matter of N-A-M-,* 24 I&N Dec. at 343.

In a written statement to the Court, Respondent suggests a guiltless entry into the illicit cigarette trade where he did not know it was illegal for an acquaintance who owned a distribution center to obtain cigarettes at wholesale price for Respondent to make "about 50% profit." Exh. 8(d), Tab AA. Assuming *arguendo* Respondent was initially unaware of the criminality of his activities, he was eventually introduced to "some other guys" who were able to obtain larger quantities of cigarettes and who told Respondent they were stolen. *Id.* As mentioned above, Respondent was also told how his multiple putative criminals supplied him cigarettes by robbing trucks and burglarizing a

storage facility. Exh. 3. Respondent "didn't listen," and "was hooked on the easy money and was looking forward to using it to go to graduate school, open a business or buy a house." Exh. 8(d), Tab AA. Respondent characterizes his actions as "stupid." *Id.* However, Respondent did not simply engage in this conduct one time. The indictment shows he participated in a series of these transactions over nine months, while fully aware at worst and willfully ignorant at best of the dangers the scheme posed to others. Exh. 3. Respondent was convicted for attempting to fuel this dangerous activity with at least $249,500 in cash, just so that he could make presumably six figures or more in profits.

The Court is deeply troubled by Respondent's indifference and willingness to promote lawlessness and impose danger upon the American community for his own profit. In light of the evidence as a whole, Respondent was convicted for a particularly serious crime, and is consequently ineligible for asylum, withholding of removal under the Act, and withholding of removal under the Convention Against Torture. *See* INA §§ 208(b)(2), 241(b)(3)(B); 8 C.F.R. § 1208.16 (d)(2).

C. Deferral of Removal

Pursuant to the REAL ID Act, the Court finds Respondent credible. Exh. 8(d), Tab AA.

To be eligible for relief under the CAT, an applicant must show that it is "more likely than not" that he or she will be tortured if removed to the country designated for removal. *See* 8 C.F.R. § 1208.16(c)(2); *see also Najjar v. Ashcroft,* 257 F.3d 1262 (11th Cir. 2001).

In assessing whether or not a person is more likely than not to be tortured in the future, all evidence shall be considered, including: (1) evidence of past torture inflicted upon the applicant; (2) evidence that the applicant could relocate to another part of the country where he would not likely be tortured; (3) evidence of gross, flagrant, or mass violations of human rights within the country; and (4) other relevant information regarding country conditions. *See* 8 C.F.R. § 1208.16 (c)(3).

In Respondent's application for relief and his statement, he claims fear of harm in Lebanon at the hands of Hizballah based on his religious minority status as a Druze and his Western ties. *See* Exhs. 7, 8(d), Tab AA. 5.6% of the population is Druze. Exh. 7, Tab H.

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 from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind." 8 C.F.R. § 1208(a)(1).

Respondent suffered a severe back injury while being pursued by Hizballah militants near his home in the el-Chouf region of Lebanon. Respondent alleges that the Hizballah militants spotted Respondent and a friend, demanded that the two men approach the militants, then fired shots into the air and began pursuing Respondent and his acquaintance when the two did not approach. Respondent claims that if he had acquiesced to the demands of the militants, he would

likely have been kidnapped, severely injured, or killed. Respondent claims that faced with the option of surrendering to the militants, or jumping off of the cliff, Respondent felt safer jumping off of the cliff. Respondent and his accomplice both suffered severe injuries as the result of the fall. Respondent's evidence notes that Hizballah is known to kidnap and harm Lebanese Druze. *See* Exh. 7, Tab D. Respondent suffered a broken back as a result of the fall. Medical reports corroborate the severity of the injury. *See* Exh. 7, Tab F. While Respondent has not indicated whether Hizballah targeted him because he is Druze, there is a clear indication that the Hizballah militants pursued Respondent with the intent to harm him and his acquaintance. The militants initially shot into the air when Respondent attempted to flee, and continued firing their weapons as Respondent fled. Although it is unclear whether the militants were actually firing *at* Respondent, it is clear that the shots were fired to at least scare or intimidate Respondent.

Respondent appears to have been subject to severe pain and suffering, both physical and mental, intentionally inflicted by Hizballah militants for the purpose of intimidation, coercion, or possible discrimination based on Respondent's religious affiliation. It is clear that Respondent's pain and suffering rises to the level of torture under INA §§ 208(a)(1), 1208(a)(1). However, because members of Hizballah were the perpetrators of the attack on Respondent, and there is no evidence in the record to indicate that Hizballah acted on government orders, the Court must determine whether the Lebanese government acquiesced to Hizballah's actions in assessing the issue of past torture. *See* INA §§ 208.18(a)(1), 1208.18(a)(1).

To qualify as torture, the act must be done "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". *Id.* The Court takes administrative notice of the State Department's 2005 Human Rights Report, as Respondent's past incident took place in 2005. According to the 2005 Human Rights Report "[t]rial delays were aggravated by the government's inability to conduct investigations in areas outside of its control, specifically in the Hizballah-controlled areas in the south[.]" The Report further notes that "the [Lebanese] government had not taken steps to disarm extra-legal armed groups or to disarm Hizballah." The Lebanese government has shown an unwillingness to interfere with Hizballah control of certain regions of the country. Respondent has provided evidence indicating that Lebanese police forces are unwilling to address crimes committed against Druze citizens at the hands of Hizballah. *See* Exh. 7, Tab E; *see also* State Department's 2005 Human Rights Report. Thus, the prior harm against Respondent by agents of Hizballah was acquiesced to by the Lebanese government. Therefore, Respondent's past harm at the hands of Hizballah constitutes torture as defined in 8 C.F.R. § 1208(a)(1).

The Court turns its attention to the possibility of internal relocation within Lebanon as a factor in determining whether to grant deferral of removal. Since this case began, the Department of State issued the 2015 Human Rights Report which the Court administratively notices. According to the 2015 Human Rights Report: "[t]he law [in Lebanon] provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights for citizens." However, the Lebanese gov-

ernment does not exercise exclusive control over internal movement throughout the country. The 2015 Human Rights Report notes: "Hizballah also maintained checkpoints in certain Shia-majority areas. Government forces were usually unable to enforce the law in the predominantly Hizballah-controlled southern suburbs of Beirut and did not typically enter Palestinian refugee camps."

Determining the possibility of relocation as well as the overall likelihood of Respondent suffering severe harm, torture, or death may be further complicated by Respondent's connection to the United States. The State Department's most recent travel advisory for Lebanon, updated on December 11, 2015, which the Court administratively notices, warns that "U.S. citizens have been the target of terrorist attacks in Lebanon in the past, and the threat of anti-Western terrorist activity remains," and that "Hizballah and other groups have at times detained and extensively interrogated U.S. citizens or other foreigners for political motivations." Although Respondent is not a U.S. citizen, he may be a target because of his "Western" ties, in addition to his status as a Druze. Respondent has resided in the United State for nearly a decade, and his immediate family resides lawfully in the U.S., making him particularly susceptible.

The record is not clear as to whether internal relocation is possible for Respondent. However, even assuming that relocation within Lebanon is possible, based upon the foregoing discussion, the Court is not convinced that Respondent relocating within Lebanon would reduce the likelihood of Respondent being individually targeted for torture upon his return to Lebanon.

Evidence provided by Respondent shows a worsening state of affairs for the Druze in Lebanon due to the political instability in the region. Terrorist organizations including the Islamic State, and the al-Nusra Front, have targeted a number of ethnic and religious groups, including the Druze, for extermination in neighboring Iraq and Syria. *See* Exh. 8, Tab EE; *see also* Exh. 8, Tab FF. The State Department's 2015 Human Rights Report notes that the Islamic State is operating close to the Lebanese border, resulting in spillover violence. Additionally, as mentioned above, Islamic militant groups including Hizballah, specifically target westerners, and those with pro-Western ties. Additionally, the State Department's 2015 Human Rights Report notes that: "[f]ollowing the influx of refugees since the start of the crisis in Syria in 2011, Lebanon experienced increased spillover violence, including several rounds of fighting initiated by the extremist groups the [Islamic State] and al-Nusra Front (Nusra)."

Moreover, the 2015 Report (as well as the 2014 Report in the record) states that Hizballah retained significant influence over parts of the country, and the Lebanese government made no tangible progress toward disbanding and disarming armed militia groups, including Hizballah. *See* Exh. 7, Tab J.

Due to Respondent's past experience, the civil strife within Lebanon, the destabilization of surrounding countries, and the violent activities of Hizballah and other violent groups Respondent, as a religious minority with strong western connections, will more likely than not be targeted personally for harm rising to the level of torture if he was removed to Lebanon.

IV. CONCLUSION

Accordingly, the Court enters the following Order:

ORDER OF THE IMMIGRATION JUDGE

IT IS ORDERED THAT Respondent's MOTION TO TERMINATE is DENIED.

IT IS ORDERED THAT Respondent's requests asylum, withholding of removal under the Act, and withholding of removal under the CAT are hereby DENIED.

IT IS ORDERED THAT Respondent be REMOVED from the United States to LEBANON based on the charge contained in the superseding Form 1-261.

IT IS ORDERED THAT Respondent's request for deferral of removal under the CAT is GRANTED; thus, Respondent's removal to Lebanon shall be deferred until such time as the deferral is terminated under 8 C.F.R. §1208.17, Respondent's removal has been deferred only to Lebanon, and Respondent may therefore be removed at any time to another country where he is not likely to be tortured.

RESPONDENT IS ADVISED THAT, pursuant to 8 C.F.R. § 1208.17(b)(1), deferral (i) does not confer upon Respondent any lawful or permanent immigration status in the United States; (ii) will not necessarily result in Respondent's being released from the custody of DHS if Respondent is subject to such custody; (iii) is effective only until terminated; and (iv) is subject to review and termination if the [I]mmigration [J]udge determines that it is not likely that the alien would be tortured in the country to which removal has been deferred, or if the alien requests that deferral be terminated.

Date	Honorable Saundra Arrington-Dempsey United States Immigration Judge Lumpkin, Georgia
Appeal Due	