

Many of Respondent's arguments are laid out in his prehearing brief, so I won't reiterate them here. But, I do want to draw the Court's attention to a few key issues, and a new legal development on the particularly serious crime analysis that has arisen since the filing of our brief.

The core of this case is this – if Mr. LAST is deported to Somalia, he will face persecution, torture, or, more likely, death.

Because of his father's position as police chief under the dictator, Siad Barre, he will face persecution, torture, or death at the hands of the Hawiye militia – parts of which act with impunity and other parts of which are enmeshed in the Somali government itself. Because Mr. LAST carries his father's name, he will be easily identified. And, as our country conditions expert, EXPERT points out, the current political climate has opened old wounds from the Barre regime – including a president who explicitly tied himself to Barre and his tactics – all of which puts Mr. LAST at increased risk. He will be targeted out of vengeance because he is the son of his father and because they will impute the same pro-Barre political opinion to him as they did to his father.

Because of his significant addiction to alcohol, he will face persecution, torture, and possibly death at the hands of Al Shabaab, who has both extensively infiltrated the government and acts as a quasi-governmental body themselves – more highly functioning and effective than the 'actual' Somali government. It is well-documented that Al-Shabaab deals brutally with 'apostates,' or those who do not follow their strict interpretation of Islam. Mr. LAST has no choice – without treatment he will not be able to stay sober meaning he will physically unable to follow Al Shabaab's rules, and they will punish him for it.

It is clear that Mr. LAST's alcoholism – his way of dealing with the trauma of his past – has been an enormous problem in his life. He has an undeniably long arrest, and the police reports and conviction records show the major role alcohol played in his arrests. He often blew far over the legal limit and showed signs of incredible intoxication. His alcoholism does not excuse his criminal record, but it does go a long way to help explain it.

Both his chemical dependency evaluator and his mental health evaluator spoke to the connection between Mr. LAST's trauma and his abuse of

alcohol. What he experienced as a young child deeply affected him and his mental state. When he had no therapy and no way to treat his undiagnosed PTSD, he turned to alcohol to numb the pain and help him forget. He never used alcohol to have fun, as so many do. He only ever used it to self-medicate. Unfortunately, with disastrous side-effects.

While his criminal history is significant, as we argued in our brief, his crimes do not rise to the level of particularly serious crimes. I won't rehash that now, but I do want to draw the Court's attention to the 8th circuit's recent decision *Shazi v Wilkinson* dated February 11, 2021. The citation for that case is still pending, so I have provided a printed copy to both the Court and DHS.

Respondent was initially granted withholding of removal when the judge found his convictions for malicious punishment of a child and felony domestic assault were not particularly serious crimes. He was later also convicted of making terroristic threats and domestic abuse. DHS requested and the judge agreed to reopen proceedings and terming his status, finding his conviction for terroristic threats was a particularly serious crime and a bar to withholding of removal. While Respondent argued his mental health – specifically his PTSD, anxiety, and depression. – should be considered in the PSC determination, the judge disagreed, citing to the Board's decision in *Matter of GGS*, which was controlling at the time. The Board affirmed and Respondent appealed to the 8th circuit, arguing in part that the IJ and the BIA erred in concluding his terroristic threats conviction was a particularly serious crime, barring withholding, by refusing to consider his mental illness as a factor. He pointed out that the 9th circuit had reversed *Matter of GGS*, finding it was likely “antagonistic to Congress's intent and was inconsistent with *In re N-A-M-*.”

After considering the argument, including statutory language and the BIA's own precedent, the 8th circuit held that a flat-out ban on evidence of mental health issues was arbitrary and capricious. That is, if the Board states in one decision that *all reliable evidence* can be considered, it is unreasonable to later make an outright ban on an entire category of evidence. In essence, through this decision, the 8th circuit is bringing the Board back in line with its own precedent in *Matter of NAM*. The court also importantly recognizes that the criminal court *may not have considered* Respondent's mental health, and we cannot assume they have.

In this case, for example, Mr. LAST was first diagnosed while in immigration custody. Similarly to Mr. Shazi, he was diagnosed with Post-Traumatic Stress Disorder, Major Depressive Disorder, and, uniquely, Alcohol Abuse. His mental health – namely his PTSD which he self-medicated with alcoholism – clearly affected his ability to stay on the right side of the law. Alcohol is mentioned in nearly every police report and probable cause statement for his arrests as well as separate instances where the police had to intervene not to arrest him, but to send him to detox. His diagnosis *now* helps explain his actions *then*. Even though the courts at the time were unaware of that underling issue and didn't address it, it mattered. It never came up before because he wasn't diagnosed. He wasn't getting help. He didn't know.

As both the BIA and the circuit have acknowledged, mental illness can have a great impact on a person's behavior. Respondent's undiagnosed and untreated PTSD devolved into self-medication and a significant addiction to alcohol. His alcoholism and inability to stay sober greatly impacted his behavior and ability to make decisions in his life. It is clear from the police reports that he was incredibly impacted by his alcohol, making choices no one would make in their right mind, like running through the snow shoeless. While his alcoholism does not excuse his criminal history, it certainly helps us understand it, and his PTSD/alcoholism combo must be considered in his PSC analysis.

Mr. LAST clearly has a problem with alcohol. Alcohol did not and cannot cure his PTSD. But neither should it be a reason this country deports him back to the country that started this vicious cycle in the first place. He is eligible for asylum, withholding, and CAT protection, and it is our duty as a country to recognize that the reason he is back in this court is in large part due to the negative effects of the trauma he experienced in Somalia. Sending him back would be a dereliction of our duties under international law and under our own ratification of those treaties. The focus should be on ensuring he gets the help he need – help he now knows about and can access – not on returning him to likely persecution, torture, or death.