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I. INTRODUCTION

In the United States, a non-citizen facing removal to his or her native country may seek a withdrawal or deferral of removal if the individual believes that he or she will be subjected to torture upon return.[1] This legal right stems from the international obligations set forth in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Convention" or "CAT"), which obligates Member States to outlaw the use of torture both at home and abroad.[2] As a signatory to the Convention, the United States agrees to, among other things, not "expel, return, or extradite" aliens to another country where they would be tortured.[3]

CAT has been in effect in the United States since 1994 and, since that time, has been the subject of a litany of judicial decisions.[4] Only recently, however, have courts been forced to grapple with the concept of volition—*i.e.*, free will (or lack thereof)—in determining whether to grant CAT relief to a particular applicant. By and large,

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[1] *See* discussion *infra* Part II.C.

[2] MICHAEL J. GARCIA, CONG. RESEARCH. SERV., RL 32276, THE U.N. CONVENTION AGAINST TORTURE: OVERVIEW OF U.S. IMPLEMENTATION POLICY CONCERNING THE REMOVAL OF ALIENS 1 (2009).

[3] *Id.*

[4] Comm. Against Torture, *Considerations of Reports Submitted by States Parties Under Article 19 of the Convention: United States of America,* ¶3 U.N. Doc. CAT/C/28/Add.5 (Feb. 9, 2000).

these cases revolve around applicants who allege that they will be tortured for (1) exercising their political rights; (2) openly identifying as LGBTQ; or (3) exhibiting drug-addictive behavior.[5] In each scenario, courts must grapple with the elusive question of free will, and specifically whether a person should be denied CAT relief on the ground that he or she could simply refrain from conduct that will likely elicit a torturous response.

Broadly speaking, courts in the United States have granted CAT relief to petitioners who fall within either of the first two categories. It remains to be seen, however, whether courts will be as willing to grant CAT relief to individuals who submit credible evidence that they will be tortured upon removal to a foreign territory due to a drug addiction. To date, the only federal court to have been presented with the latter question is the U.S. Court of Appeals for the Third Circuit. Although the court never reached the merits of the case at issue, it signaled a willingness to grant CAT relief to an application afflicted by drug addiction.[6]

In this Article, I explore the ramifications of the Third Circuit's decision, and offer an analysis as to why federal courts should not hesitate to grant CAT relief to those who suffer from drug addiction so long as the requisite legal standards are satisfied. I begin first with an overview of the events that led to the United Nations' promulgation of CAT in 1984. I then turn to the manner in which CAT is applied in the United States, focusing specifically on how appellate courts have interpreted its various prescriptions in cases concerning political speech, sexual orientation, and drug addiction. Finally, I use the Third Circuit's decision as a starting point for a broader discussion of free will and freedom of choice.

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[5] *See* discussion *infra* Part III.A.

[6] *See* discussion *infra* Part III.B.

II. BACKGROUND

A. Predating the Convention Against Torture and Other Cruel, Inhuman, or Degrading Punishment

i. Post-World War II Developments

On September 2, 1945, Japanese representatives signed the official Instrument of Surrender, marking the formal capitulation of Japan to the Allied Powers and, consequently, the end of World War II.[7] Weeks later, on October 24, 1945, the Charter of the United Nations ("Charter") was ceremoniously enacted, and, along with it, the inauguration of the world's largest intergovernmental alliance.[8] The United Nations ("UN")—avowing to "save succeeding generations from the scourge of war"[9]—dedicated itself to the goal of achieving "international co-operation in solving international problems of an economic, social, cultural, or humanitarian character."[10]

In the immediate wake of the deadliest conflict in human history,[11] the UN proceeded expeditiously, and, within two months of its inception, promulgated the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide

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[7] Instrument of Surrender, Sept. 2, 1945, 3 U.S.T. 1251, 139 U.N.T.S. 387, https://www.archives.gov/exhibits/featured-documents/japanese-surrender-document (last visited Feb. 23, 2019).

[8] *International Organizations on the Web*, THE WASHINGTON POST, http://www.washingtonpost.com/wp-srv/inatl/longterm/intorgs.htm (last visited Oct. 4, 2015).

[9] U.N. Charter pmbl., http://www.un.org/en/sections/un-charter/un-charter-full-text/ (last visited Feb. 21, 2019).

[10] *Id.* at art. 1, para. 3.

[11] *World War II History*, THE NATIONAL WORLD WAR II MUSEUM, http://www.nationalww2museum.org/learn/education/for-students/ww2-history/ (last visited October 15, 2015).

Convention").[12] As the first human rights treaty adopted by the UN,[13] the legally-binding Genocide Convention focused on the universal protection of "national, ethnical, racial [and] religious" groups,[14] and further underscored the importance of international cooperation in order to "liberate mankind from [the] odious scourge" of genocide.[15]

As the first treaty to explicitly define genocide as an "international crime,"[16] the Genocide Convention was a monumental achievement. Yet for many scholars, the Genocide Convention is not the UN's most significant enactment; instead, scholars bestow that honor upon the Universal Declaration of Human Rights ("UDHR") of 1948. Famously characterized by Eleanor Roosevelt as the "international Magna Carta for all mankind,"[17] the UDHR represents the first "occasion on which the organized community of nations had made a declaration of human rights and fundamental freedoms."[18] Perhaps most significantly, the UDHR was the first international edict to specifically outlaw the use of torture: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[19]

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[12] Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277 [hereinafter Genocide Convention].

[13] William Schabas, Convention on the Prevention and Punishment of the Crime of Genocide, AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW (2008), http://legal.un.org/avl/ha/cppcg/cppcg.html.

[14] Genocide Convention, *supra* note 12, art. 2.

[15] *Id.* pmbl.

[16] RALPH A. WEISHEIT & FRANK MORN, PURSUING JUSTICE: TRADITIONAL AND CONTEMPORARY ISSUES IN OUR COMMUNITIES AND THE WORLD 148 (2014).

[17] Press Release, Amnesty International UK, Hampton Court Garden Celebrates Magna Carta as Human Rights Act Under Threat (June 8, 2015) (on file with author).

[18] JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING AND INTENT 12 (1999) (quoting H.V. Evatt in the United Nations General Assembly Record, December 10, 1948, 934).

[19] G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

A groundbreaking enactment, the UDHR has paved the way for the adoption of more than seventy human rights treaties worldwide.[20]

ii. Use of Torture During the Cold War Era

Unfortunately, however, the germinal phase of the UN's human rights movement did little to combat the practice of governmentally-authorized torture; indeed, nations around the world, from the authoritarian to the democratic, continued to "view torture as a mechanism for maintaining political control."[21]

One such country was the United States. Fueled by the hyper-competitive atmosphere of the Cold War era, the Central Intelligence Agency ("CIA"), in 1963, went so far as to adopt the practice of torture as an official intelligence-gathering tool—a decision that stemmed from the government's belief that "Russian and Chinese intelligence services had developed sophisticated tactics that could undermine U.S. intelligence-gathering efforts."[22] As set forth in the KUBARK Counterintelligence Interrogation Manual (the "KUBARK Manual"), the CIA took the position that the goal of coercion was not to inflict pain, but instead "to induce regression" and break down prisoners' defenses.[23] To that end, interrogators were taught to employ "coercive techniques of interrogation," including: "arrest, detention, deprivation of sensory stimuli through solitary confinement or similar methods, threats and fear, debility, pain, heightened suggestibility and hypnosis,

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[20] Antônio Augusto Cançado Trindade, *Universal Declaration of Human Rights*, AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW (2008), http://legal.un.org/avl/ha/udhr/udhr.html

[21] Matthew Lipman, *The Development and Drafting of the United Nations Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*, 17 B.C. INT'L & COMP. L. REV. 275, 290 (1994).

[22] JOAN HOFF, A FAUSTIAN FOREIGN POLICY FROM WOODROW WILSON TO GEORGE W. BUSH: DREAMS OF PERFECTIBILITY 116 (2007); Jamie Mayerfield, *Playing by Our Own Rules: How U.S. Marginalization of International Human Rights Law Led to Torture*, 20 HARV. HUM. RTS. J. 89, 98 (2007).

[23] CIA, KUBARK COUNTERINTELLIGENCE INTERROGATION 1-2 (1963), http://nsarchive.gwu.edu/NSAEBB/NSAEBB122/#kubark nsarchiv/NSAEBB/NSAEBB122/index.htm#kubark [hereinafter KUBARK Manual]

narcosis and induced regression."[24] According to the KUBARK Manual, these methods would generate "feelings of guilt and dependence in the prisoner as part of a relationship with the interrogator."[25] Once this relationship was established, the Manual instructed, the vulnerable prisoner would reveal valuable information.[26]

iii. The United Nations Declaration on Torture

On December 9, 1975, the UN General Assembly took a historic step toward the eradication of torture when it adopted the first international condemnation of torture:[27] The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Declaration on Torture").[28] Although the Declaration on Torture is non-binding, the UN called upon Member States to make "unilateral declarations expressing their intent to comply with the United Nations Declaration on Torture."[29]

Despite the UN's efforts, however, the non-binding Declaration on Torture was largely ineffective. While it is true that it led to a few notable achievements—*e.g.*, the establishment of the United Nations Voluntary Fund for Victims of Torture, which assisted

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[24] Linda Qiu, *Haspel Says C.I.A. 'Historically' Has Not Interrogated Subjects. History Shows Otherwise*, N.Y. TIMES (May 9, 2018).

[25] *Id.* KUBARK Manual, *supra* note 23, at 85.

[26] John Parry, *Torture Nation, Torture Law*, 97 GEO. L.J. 1001, 1010 (2009) (citing KUBARK Manual, *supra* note 23, at 83). The practice of torture was certainly not limited to the United States. In 1954, for example, French forces tortured Algerian detainees to gather information about the Algerian National Liberation Front's organization, membership, and use of the guerilla forces. *See* PIERRE VIDAL-NAQUET, TORTURE: CANCER OF DEMOCRACY–FRANCE AND ALGERIA 1954-1962 80-82 (1963).

[27] Lipman, *supra* note 21, at 303.

[28] G.A. Res. 3452 (XXX), The Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, at 91 (Dec. 9, 1975) [hereinafter Declaration Against Torture]

[29] *See* G.A. Res. 32/64, at 137 (Dec. 8, 1977).

the victims of governmental abuse[30]—the fact remained that, as of 1980, "more than a third of the world's governments . . . used or tolerated torture or ill-treatment of prisoners."[31]

In 1984, the UN's axiomatic failure in this regard was revealed when Amnesty International released a report (the "Amnesty Report") detailing more than 3,500 individual allegations of torture across ninety-eight countries between 1974 and 1983.[32] Damningly, the Amnesty Report categorized torture as being "part of the state-controlled machinery to suppress dissent,"[33] a practice that affected "all social classes, age groups, trades and professions."[34] Citing the Genocide Convention's success in "outlawing genocide for all time," Amnesty International strongly urged the UN to adopt the then-draft Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Amnesty believed would be "a truly effective weapon against torture."[35]

B. Critical Provisions of the UN's Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The UN General Assembly formally adopted the Convention Against Torture on December 10, 1984—just a few months after the publication of the Amnesty Report.[36] After ratification by the requisite twenty States, the Convention entered into force on June 26, 1987.[37]

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30 By February 1990, the Fund had accumulated contributions and pledges of roughly *$350,000. See* United Nations Voluntary Fund for Victims of Torture, Note by the Secretary-General*,* U.N. Doc. E/CN.4/1990/16 (Feb. 26, 1990).

31 AMNESTY INTERNATIONAL, TORTURE IN THE EIGHTIES 2-3 (1984) [hereinafter Amnesty Report].

32 *Id.*

33 Lipman, *supra* note 21, at 309.

34 Amnesty Report, *supra* note 31, at 9.

35 *Id.* at 3.

36 Hans Danelius, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**,** AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW (2008), http://legal.un.org/avl/ha/catcidtp/catcidtp.html

37 *Id.*

The following sections provide an overview of the Convention's principal provisions.

i. Definition of Torture

Article 1 of CAT defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person . . . by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."[38] This definition does not include "pain or suffering arising only from, inherent in or incidental to lawful sanctions."[39] CAT Article 2 further makes clear that "no exceptional circumstances whatsoever," including a state of war or any other public emergency, may be invoked to justify torture.[40]

ii. Jurisdiction

With regard to jurisdiction, the issue prior to CAT's official adoption was whether "each State should undertake, in respect of torture, to assume jurisdiction not only based on territory or the offender's nationality but also over acts of torture committed outside its territory by persons not being its nationals."[41] Ultimately, the UN General Assembly embraced the principle of universal jurisdiction,[42] pursuant to which each State is obligated to retain jurisdiction over

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[38] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. TREATY DOC. NO. 100-20, 1465 U.N.T.S. 85 [hereinafter CAT].

[39] *Id.* art. 1.

[40] *Id.* art. 2. Article 2 states, in full:

(1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction;

(2) No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

(3) An order from a superior officer or a public authority may not be invoked as a justification of torture.

[41] Danelius, *supra* note 36.

[42] *Id.*

cases in which the "alleged offender is present in [its] territory[,]" lest there be cause for extradition under Article 8.[43]

iii. International Implementation

Because the effectiveness of CAT was largely dependent upon its implementation at the international level, the General Assembly decided to implement, through Article 17, a Committee Against Torture to be responsible for performing a number of essential duties.[44] Among other things, these duties included: commenting on states parties' periodic reports on the measures taken to ensure compliance with the Convention;[45] initiating an investigation when reliable information indicates that torture is being "systematically practi[c]ed in the territory of a [s]tate [p]arty[;]"[46] examining complaints by one state party alleging violations of the Convention by another state party;[47] and examining applications by individuals claiming to be victims of a violation of the Convention by a state party.[48]

iv. State Party Responsibilities

While several provisions delineate State Party responsibilities under CAT,[49] two Articles are particularly salient for purposes of this discussion. First, Article 14 unequivocally and unambiguously requires each State Party to ensure that any victim of an act of torture is provided with a legal right to obtain redress as well as fair and adequate compensation.[50] In contrast to other CAT provisions, Article 14 applies extraterritorially, meaning that all victims—regardless of their nationality—must be afforded legal protection from torture.[51]

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43 CAT art. 5, para. 2.

44 Danelius, *supra* note 36.

45 CAT art. 19.

46 *Id.* art. 20.

47 *Id.* art. 21.

48 *Id.* art. 22.

49 *See generally id.* arts. 2, 5, 8, 9, 11, 12, 13, 16, 20, 21, 22.

50 *Id.* art. 14.

51 Christopher K. Hall, *The Duty of States Parties to the Convention against Torture to Provide Procedures Permitting Victims to Recover Reparations for Torture Committed Abroad*, 18 EUROPEAN J. INT'L L. 921, 923 (2007).

Second, Article 3, which operates via the domestic procedural obligations imposed under Article 14, is especially relevant because it prohibits the expulsion, return, or extradition of "a person *to another State* where there are substantial grounds for believing that he [or she] would be in danger of being subjected to torture."[52] Article 3(1) is of paramount importance because it is the only CAT provision that *expressly* obliges a state party to address torture committed abroad.[53] Additionally, in determining whether there is sufficient evidence to conclude that an individual would be in danger of being subjected to torture in a foreign country, Article 3(2) requires state parties to examine "all relevant considerations including, where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights."[54]

As will be explored in detail below, courts in the United States most often apply Article 3's provisions in situations where an alien or temporary permanent resident has committed certain crimes that subject the individual to removal to his or her native country.

C. The Convention Against Torture as applied in the United States

i. The United States' Implementation of CAT

The United States, under the authority of President Ronald Reagan, signed CAT on April 18, 1988; however, it did not become legally binding until the Senate ratified the Treaty six years later, on October 21, 1994.[55] Notably, the ratified version contained certain provisions that differed from language contained in the original UN Convention, "including a declaration that CAT Articles 1 through 16 were not self-executing, and therefore required domestic

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[52] CAT art. 3, para. 1 (emphasis added).

[53] Hall, *supra* note 51, at 925.

[54] CAT art. 3, para. 2.

[55] Office of the Press Secretary, Message to the Senate Transmitting the Convention Against Torture and Inhuman Treatment or Punishment, May 20, 1988, RONALD REAGAN PRESIDENTIAL LIBRARY PUBLIC PAPERS OF THE PRESIDENT: RONALD REAGAN (1981–1989) *https://www.reaganlibrary.gov/research/speeches/052088f*(last visited February 23, 2019); Garcia, *supra* note 2, at 3.

implementing legislation."[56] As such, the United States' implementation of CAT differs in several important respects from the criterions initially set forth by the UN.

ii. CAT Principles as Set Forth Under U.S. Law

Under U.S. law, "torture" is defined, in part, as "severe pain or suffering (physical or mental) that is intentionally inflicted by or at the instigation of or with the consent or acquiescence of a public official, or other person acting in an official capacity."[57] This articulation is essentially the same as that prescribed in CAT Article 1, although, in practice, the definition has come to connote an "extreme" form of cruel and inhumane punishment that "does not include lesser forms of cruel, inhumane, or degrading treatment . . . ."[58] Under this interpretation, "police brutality," for example, does not amount to torture for purposes of the Convention.[59]

Generally speaking, CAT-based regulations concerning the removal of aliens from the United States are covered under §§ 208.16-208.18 and 1208.16-1208.18 of title 8 of the Code of Federal Regulations ("C.F.R."). Notably, CAT Article 3 is codified in 8 C.F.R. § 208.18(a)(1), which states that torture includes, *inter alia*, acts committed by or *at the acquiescence of* a public official or other person acting in an official capacity.[60] This section is vital because, in order to obtain CAT relief in the United States, individuals subject to removal need not show that foreign persons operating under the color of

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[56] A "non-self-executing agreement will not be given effect as law in the absence of necessary implementation"). See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 111 (1987).

[57] OFFICE OF LEGISLATIVE AND PUBLIC AFFAIRS, U.S. DEPT. OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, FACT SHEET: ASYLUM AND WITHHOLDING OF REMOVAL RELIEF CONVENTION AGAINST TORTURE PROTECTIONS, (2009), http://www.justice.gov/sites/default/files/eoir/legacy/2009/01/23/AsylumWithholdingCATProtections.pdf [hereinafter "DOJ Fact Sheet"].

[58] 8 C.F.R. § 208.18(a). *See also* Garcia, *supra* note 2, at 2.

[59] Garcia, *supra* note 2, at 2.

[60] 8 C.F.R. § 208.18(a)(1). *See also* SEN. EXEC. RPT. 101-30, Resolution of Advice and Consent to Ratification, Art. II(1)(b) (1990) [*hereinafter* "Sen. Resolution"].

extraterritorial law directly engaged in tortuous conduct; rather, it is sufficient for CAT purposes to proffer evidence that a public official had "*awareness* of such activity and thereafter breached his or her legal responsibility to intervene [and] prevent" it from occurring.[61] This understanding is echoed in an array of federal and administrative decisions, which state that, in order to demonstrate "acquiescence" on the part of state officials, an individual seeking CAT relief must demonstrate "willful blindness" by foreign officials with regard to tortuous conduct.[62]

In terms of applying CAT Article 3 to petitions for relief, the Senate decided that reprieve is justified under circumstances in which it would be "more likely than not" that an alien would be tortured upon removal to a foreign country.[63] To obtain CAT relief, an applicant bears the burden of proffering sufficient evidence to allow an immigration judge ("IJ") to find that "a greater than fifty percent chance of torture" will occur upon removal.[64] This undertaking often requires the claimant to not only tender testimony on his or her own behalf, but to further proffer supplementary evidence—generally in the form of expert testimony—regarding the use of torture in his or her native country.

In assessing whether it is "more likely than not" that an applicant would be tortured upon removal to the proposed country, courts are required to consider all evidence relevant to the possibility of future torture, including: (1) evidence of past torture inflicted upon the applicant; (2) a pattern or practice of gross human rights violations

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61 *Id.*

62 *See, e.g.*, Silva-Rengifo v. Atty. Gen. of United States, 473 F.3d 58, 70 (3d Cir. 2007) ("[A]cquisence to torture requires only that the government remain willfully blind to tortuous conduct and breach their legal responsibility to prevent it."); *Rodriguez Morales v. United States Atty. Gen.,* 488 F.3d 884 (11th Cir. 2007)(explaining that "acquiescence" to torture means that the government was aware of the torture, yet breached its responsibility to intervene).

63 Sen. Resolution, *supra* note 60 at Art. II(2).

64 Edu v. Holder, 624 F.3d 1137, 1145 n. 16 (9th Cir. 2010)(citing *Wakkary v. Holder*, 558 F.3d 1049, 1067–68 (9th Cir.2009); *Khup v. Ashcroft*, 376 F.3d 898, 907 (9th Cir.2004)).

within the proposed country of removal; and (3) other relevant information regarding conditions in the country of removal.[65]

iii. Grounds for Removal

Broadly speaking, aliens may be subject to removal from the United States in two primary scenarios, namely where the applicant: (1) is deemed in admissible at the time of entry to the United States or (2) has committed certain criminal offenses, *i.e.,* crimes involving moral turpitude, controlled substance violations, firearm offenses, aggravated felonies, or crimes of domestic violence.[66]

iv. CAT Protections

CAT provides two types of protections—(i) withholding of removal and (ii) deferral of removal—both of which ensure that aliens

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[65] 8 C.F.R. § 1208.16(c)(3). "In assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to:
(i)§ 1208.16(c)(3)(i) Evidence of past torture inflicted upon the applicant;
(ii)§ 1208.16(c)(3)(ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;
(iii)§ 1208.16(c)(3)(iii) Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and
(iv)§ 1208.16(c)(3)(iv) Other relevant information regarding conditions in the country of removal."

[66] *See* 8 U.S.C.A. § 1227(a), which states, in full: Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:
1)Is deemed inadmissible at time of entry or is found to have violated adjustment of status conditions;
(2)Committed certain criminal offenses, *i.e.,* crimes involving moral turpitude, controlled substance violations, firearm offenses, aggravated felonies, or crimes of domestic violence;
(3)Failed to register a change in address or criminal conviction or falsified documents;
(4)Is found to be a national security threat;
(5)Has become a public charge subsequent to entry; and
(6)Violated voting laws

are not to be returned to a country where they would face torture.[67] The former represents a more secure form of CAT protection compared to the second because the IJ's decision to withhold (as opposed to merely defer) removal signifies that the petitioner will not, at any time, be returned to his or her native country.[68]

Deferral of removal also prohibits the removal of aliens to a specific country where they would face torture, but, as the name suggests, constitutes a temporary form of protection in that relief can be terminated if it is later determined that an alien is no longer likely to be tortured in the country of removal.[69] In a similar vein, relief may be withdrawn if the U.S. government receives diplomatic assurances that the alien will not be tortured upon removal.[70] Oftentimes, deferral of removal is granted to aliens whose crimes fall under the provisions requiring mandatory denial of withholding of removal, *e.g.*, certain criminals and persecutors.[71]

v. Immigration Judge Standard of Review

Because the very nature of CAT relief is prognostic, claimants petitioning for relief must submit a presumptive chain of events that carry a high likelihood of occurring upon removal. Under the standard set forth in *In Re J.F.F.*, 23 I. & N. Dec. 912 (A.G. 2006), an immigration judge must assess the probability that the proffered chain of events—taken together—will more likely than not result in torture. As set out below, such an undertaking is, by its very nature, speculative, as it calls for a prediction as to what is likely to happen if a petitioner is removed.

First, the IJ must conduct an inquiry into whether the evidence supports a finding that "*each step* in [the [proposed] hypothetical chain of events is more likely than not to happen."[72] If the IJ determines that the totality of evidence supports such a finding, then the IJ proceeds

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67 *See* DOJ Fact Sheet, *supra* note 57.
68 *See id.*
69 *See* 8 C.F.R. § 208.17(d)(3).
70 *See* 8 C.F.R. § 208.17(f).
71 DOJ Fact Sheet, *supra* note 57; 8 C.F.R. § 208.16(d)(2)–(3).
72 *In Re J.F.F.*, 23 I. & N. Dec. 912, 912 (A.G. 2006).

to the second prong of the analysis. It is essential to recognize, however, that while this first step connotes a *necessary* condition for granting CAT relief, it is not, in and of itself, sufficient for doing so.[73]

The IJ's calculation under the second prong of the *JFF* standard essentially effectuates the IJ's ultimate conclusion to either grant or deny CAT relief, as this analysis requires the IJ to determine whether the "likelihood *of all necessary events coming together*" is "more likely than not [to] lead to torture. . . ."[74] In this regard, the IJ must view the entire causal chain in the aggregate and determine whether the likelihood of an alien being subjected to torture is greater than fifty percent.[75] Thus, if the IJ concludes that each individual link is more likely than not to occur, and the likelihood of these links coming together and leading to torture is greater than fifty percent, then CAT relief may be granted.[76]

vi. Appellate Standard of Review

In essence, an IJ's inquiry regarding the likelihood of torture is a mixed inquiry of fact and law.[77] When the IJ makes a determination as to what is *likely to happen* if a petitioner is removed, the court is resolving a factual question.[78] On the other hand, if the IJ concludes that, based upon the evidence presented, what is likely to happen if removal occurs *amounts to a form of torture*, then the IJ is resolving a legal question.[79]

Upon review, the Board of Immigration Appeals ("BIA") must evaluate the IJ's factual determination for clear error, but may review

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[73] *See id.* at 918 n. 4 ("An alien will never be able to show that he faces a more likely than not chance of torture if one link in the chain cannot be shown to be more likely than not to occur. It is the likelihood of all necessary events coming together that must more likely than not lead to torture, and a chain of events cannot be more likely than its least likely link.").

[74] *Id.* (emphasis added).

[75] *See id.*

[76] *See id.*

[77] *See, e.g.,* Kaplun v. Att'y Gen. of the U.S., 602 F.3d 260, 271 (3d Cir. 2010).

[78] *See id.*

[79] *See id.*

the IJ's legal conclusion *de novo*.[80] A Court of Appeals, meanwhile, retains jurisdiction over constitutional claims and questions of law only.[81]

III. ANALYSIS

A. Case Law Discussion: Torture on the Basis of Exercising Individual Rights

As a general rule, courts tend to grant CAT relief to aliens who present sufficient evidence that, upon removal, they will be unable to refrain from certain conduct and thereby be subjected to torture. Cases in this category center on instances in which an individual claims (1) that he or she will be tortured for exercising a certain fundamental right—*e.g.*, freedom of speech—or (2) will be subjected to torture due to his or her sexual predisposition.

In *Edu v. Holder*, for example, a woman named Edu faced removal to her native country of Nigeria after being convicted of assault with a deadly weapon in California.[82] During her hearing before the IJ, Edu stated that, prior to coming to the United States, she had been "detained, raped and beaten by [Nigerian] police or military in response" to protesting the Nigerian government's failure to, among other things, provide roads and drinking water, as well as schooling and jobs to minority graduates.[83] In seeking CAT relief, Edu maintained that she would continue to engage in similar political protests if removed to Nigeria, and, as a result, would be subjected to further torture because "anybody who is associated with demonstrating, regardless of location, will be tortured or killed."[84]

The IJ granted Edu's request for CAT protection, but the Board of Immigration Appeals ("BIA") reversed that decision and ordered her removed to Nigeria. According to the BIA, Edu could

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80 *See id.*
81 *See* 8 U.S.C. § 1252(a)(2)(C)-(D).
82 *See Edu v. Holder*, *supra* note 64, at 1139 n. 2.
83 *Id.* at 1139.
84 *Id.* at 1140-41.

avoid subjecting herself to torture by simply refraining from engaging in government protests.[85] The U.S. Court of Appeals for the Ninth Circuit, however, found such logic to be "an aberration . . . so antithetical to the intent of [CAT] law that it [could not] stand," and accordingly reversed the BIA's ruling.[86] In so doing, the court held that "CAT's precepts" afforded protection to "individuals like Edu who are unwilling, as a matter of conscience, to give up acting on their political beliefs."[87]

In a similar vein, the U.S. Court of Appeals for the Second Circuit held in Ali v. Mukasey that Ali, a forty-two year old Guyanese native and citizen, was entitled to CAT relief on the ground that it was more likely than not that he would be tortured in his native country due to his homosexuality.[88] At his trial before the IJ, Ali testified that the punishment in Guyana for sodomy is life in prison, and that he would be tortured if imprisoned for that crime.[89] The IJ, however, denied Ali's request for CAT relief, reasoning that no one "in Guyana would even know that Ali was a homosexual" unless Ali did something "explicitly homosexual," such as find a "partner or cooperating person . . . ."[90] Resolving that Ali failed to present evidence that he was "likely to form such a close relationship within a foreseeable period of time," the IJ accordingly denied his petition for CAT relief.[91]

On appeal before the Second Circuit, Ali argued that the IJ violated his due process rights "by failing to consider all the evidence in support of his sexual orientation-based claim."[92] The court agreed with Ali's contention, opining that the IJ's "comments reflect[ed] an impermissible reliance on preconceived assumptions about homosexuality and homosexuals" that intolerably amounted to "the appearance of bias or hostility."[93] In fact, the Second Circuit took the

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85 *See id.* at 1141.

86 *Id.*

87 *See* Edu v. Holder*, supra* note 64, at 1146.

88 *See* Ali v. Mukasey*,* 529 F.3d 478, 482 (2nd Cir. 2008).

89 *See id.* at 486.

90 *Id.* at 487 (internal quotation marks omitted).

91 *Id.*

92 *Id.* at 488.

93 Ali v. Mukasey*, supra* note 88, at 492.

remarkable step of ordering that Immigration Judge Alan Vomacka be removed from the case altogether —as the court explained, Judge Vomacka "clearly abrogated his responsibility to function as a neutral, impartial arbiter" by voicing "stereotypes about homosexual orientation and the way in which homosexuals are perceived, both in the United States and Guyana," without "reference to any support in the record."[94]

As these cases and others make clear,[95] courts are progressively apprehending the importance of safeguarding aliens from the possibility of being tortured in foreign countries for exercising of certain rights. Underlying this trend is the notion that free will, or, at the very least, freedom of choice, embodies a virtue so sacrosanct that courts must take it upon themselves to ensure its protection.

B. A Look to the Future: CAT Relief and Autonomy

That said, it remains to be seen whether courts will be willing to uphold the principle of volitional independence in the context of drug addiction. To date, only one federal court has encountered the question of whether a drug addiction may serve as a basis for CAT relief—*i.e.*, that the inability to combat addictive impulses will lead to torture upon removal. In my view, addiction should be afforded the same protection as the exercise of political rights or adherence to an innate sexual predisposition; as a matter of principle, it falls within the realm of cognitive volition, which, per recent judicial opinions, merits protection.

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[94] *Id.* at 491.

[95] *See, e.g.*, Jean-Pierre v. AG of the United States, 500 F.3d 1315 (11th Cir. 2007) (remanding to the BIA on the grounds that "the undisputed evidence seemed to show that [the appellant] likely would be singled out for crawl-space confinement . . . and beatings with metal rods due to his AIDS-related mental illness and prior felony convictions"); Avendano-Hernandez v. Lynch, 800 F.3d 1072, 1081 (9th Cir. 2015) (holding that, because violence "continues to plague transgender women in Mexico," Avendano-Hernandez, a self-identified transgender woman, was entitled to CAT protection); Doe v. Holder, 736 F.3d 871 (9th Cir. 2013) (holding that the claimant seeking CAT relief "met his burden of presenting evidence that the Russian government was unable or unwilling to control the nongovernmental actors who persecuted him because he was a homosexual.").

Thus far, the only case addressing CAT relief within the context of drug addiction that has made its way to the federal circuit is *Kamal Jamai v. Atty. Gen*. This case has its genesis in October 2013, when the government served Kamal Jamai ("Jamai"), a 32-year-old native and citizen of Morocco, with a notice to appear, charging him, *inter alia*, as removable in light of his multiple criminal convictions.[96] Jamai conceded the charges and sought deferral of removal under CAT.[97]

Jamai has been a heroin addict since 2004.[98] At his hearing before the IJ, Jamai argued that, because of his addiction, he would almost certainly relapse into using heroin upon removal, which would lead to his arrest and torture by law enforcement in Morocco.[99]

To support his claim, Jamai proffered testimony summarizing his decade-long battle with a heroin addiction, which originated out of an opiate dependence that he developed following a dental procedure

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[96] *See generally* Jamai v. AG of the United States, No. 15-1116, 2015 U.S. App. LEXIS 22933 (3d Cir. 2015) [herein after "*Jamai"*]. *See also* U.S.C. § 1227(a)(2)(A)(i)-(iii) dealing with "Classes of Deportable Aliens: "Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(2) Criminal offenses:

(i) Crimes of moral turpitude. Any alien who--

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 245(j) [8 USCS § 1255(j)]) after the date of admission, and

(II) is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable.

(ii) Multiple criminal convictions. Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

(iii) Aggravated felony. Any alien who is convicted of an aggravated felony at any time after admission is deportable."

[97] *See Jamai*, supra note 96 at *3.

[98] *See id.*

[99] *See id.*

in 2004.[100] Shortly after he began abusing opiates, Jamai graduated to using heroin and, since then, has engaged in a cyclical pattern of heroin use, theft, temporary sobriety, and eventual relapse.[101]

According to Jamai, his relapses have been triggered mainly by stress, which he emphasized would be compounded if he were removed to Morocco.[102] To further bolster this contention, Jamai submitted documentary evidence describing the manner in which heroin addiction chemically alters the brain, as well as evidence supporting his contention that relapse is often triggered by stress.[103]

An expert on Moroccan political institutions from Duke University testified on Jamai's behalf as well, explaining that drug treatment resources in Morocco are not only limited and deprioritized, but that Moroccan authorities "would more likely than not torture Jamai" if he were to relapse into heroin use, as "the use of torture to secure confessions for unsolved crimes . . . is prevalent in Morocco."[104]

At the conclusion of the hearing, the IJ granted Jamai's petition for CAT relief, finding that Jamai had demonstrated by a preponderance of the evidence that he would be tortured if removed to Morocco.[105] Specifically, the IJ concluded that Jamai is a heroin addict and that each link in Jamai's proposed chain of events was more likely than not to occur, namely:

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[100] Oral Argument at 4:00, *Jamai v. Atty. Gen.* (No. 15-1116). Moreover, for further reference, opioids are medications that relieve pain. Specifically, "[t]hey reduce the intensity of pain signals reaching the brain and affect those brain areas controlling emotion, which diminishes the effects of a painful stimulus. Medications that fall within this class include hydrocodone (e.g., Vicodin), oxycodone (e.g., OxyContin, Percocet), morphine (e.g., Kadian, Avinza), codeine, and related drugs." *See* NATIONAL INSTITUTE ON DRUG ABUSE, available at http://www.drugabuse.gov/publications/research-reports/prescription-drugs/opioids/what-are-opioids

[101] *See Jamai*, supra note 96 at *7.

[102] *See Jamai*, supra note 96 at *3.

[103] *See id.* at *4.

[104] *Id.*

[105] *Id.*

(1) Jamai will relapse if removed to Morocco;

(2) Jamai will not seek or receive adequate treatment for his addiction in Morocco;

(3) as a result of his addiction and lack of adequate treatment, Jamai will be arrested by Moroccan authorities; and

(4) Jamai will be subjected to torture by the police.[106]

The BIA, however, reversed the IJ's determination, finding Jamai's chain of events to be "based on a string of suppositions which are unproven on [the] record."[107] In accordance with this conclusion, the BIA ruled that the IJ committed "clear error" in finding it to be "more likely than not that [Jamai] will be tortured if removed to Morocco."[108]

Jamai subsequently petitioned the Third Circuit for review of the BIA's decision, arguing that the IJ's decision to grant him CAT relief should be reinstated.[109] On December 31, 2015, the Third Circuit vacated the BIA's decision and remanded the case for further proceedings "[b]ecause the BIA did not adequately explain the

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106 *Id.* at *4-5.

107 *Id.* at *5. The BIA's reasoning for its conclusion is explained in a single paragraph:

[T]he [IJ] determined, without adequate documentary or qualified expert witness evidence on the issue, that it is more likely than not that [Jamai] will relapse and use heroin in Morocco. While there is some evidence in the record concerning the frequent relapse of heroin addicts, the record lacks testimony from a qualified expert or documentation assessing the likelihood that a person in [Jamai's] specific circumstances is likely to relapse. [Jamai] has been able to refrain from using heroin for more than 2 years and claims to fear severe consequences should he resume its use in Morocco. Furthermore, the [IJ] assumed that [Jamai] would not seek out any treatment that may be available to prevent such a relapse. [Jamai's] evidence also does not prove each step in the hypothetical chain concerning whether the authorities would become aware of any future heroin use and arrest him, that he would then refuse to confess his guilt, and that he thus would be tortured for the purpose of procuring his confession.

108 *Jamai, supra* note 96, at *5.

109 *Id.* at *1.

reasoning underlying its decision."[110] Specifically, the court found itself "unable to meaningfully review the BIA's decision" because the BIA "effectively discredited" certain evidence "without explanation."[111] Accordingly, the court remanded Jamai's case with instructions to the BIA to more thoroughly explicate its analysis.[112]

Unfortunately, however, the Third Circuit refrained from opining on the merits of Jamai's claim. Nevertheless, the three-judge panel assigned to the case offered insight during oral argument on the question of whether Jamai's addiction could serve as a basis for obtaining CAT relief.[113]

In a spirited back-and-forth with counsel for the Department of Justice, Judge Dolores Sloviter took issue with the notion that Jamai's drug addiction may entitle him to relief under CAT:

> What is the position of the Justice Department as to whether somebody can purposely, and of his or her *own volition* get into CAT? In other words, we're not talking about . . . a medical condition. This is heroin, and [Jamai] steals. These are all voluntary actions by the

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110 *Id.*

111 *Id.* at *8.

112 *See id.*

113 For information about the assignment of judges and panels are the appellate level, see 28 U.S. Code § 46 (b), which states:
(b) In each circuit the court may authorize the hearing and determination of cases and controversies by separate panels, each consisting of three judges, at least a majority of whom shall be judges of that court, unless such judges cannot sit because recused or disqualified, or unless the chief judge of that court certifies that there is an emergency including, but not limited to, the unavailability of a judge of the court because of illness. Such panels shall sit at the times and places and hear the cases and controversies assigned as the court directs. The United States Court of Appeals for the Federal Circuit shall determine by rule a procedure for the rotation of judges from panel to panel to ensure that all of the judges sit on a representative cross section of the cases heard and, notwithstanding the first sentence of this subsection, may determine by rule the number of judges, not less than three, who constitute a panel.

> individual. So, is a person who voluntarily does these things entitled to CAT?[114]

Shortly thereafter—after the government respectfully declined to speculate as to the Justice Department's official position on the matter of volition and drug addiction—Judge Sloviter again posited whether drug addiction was indeed a medical issue or, contrarily, simply a matter of volition: "Enough about calling it a disease. I'm not sure that we can accept the fact that voluntary drug-taking is a disease . . . This is a *voluntary addict*."[115]

As her statements suggest, Judge Sloviter—at least for the sake of argument—pushed back against the notion that a criminal could obtain CAT relief on the basis that, by engaging in criminal behavior both willfully and voluntarily, he would consequently be tortured.

Judge Marjorie Rendell, on other hand, seemed sympathetic to Jamai's claim; responding to the government's contention that "there's something perverse . . . about an individual's claim for CAT protection based on the fact that [he] is a heroin addict, steal[s], and refuses to get treatment," Judge Rendell countered, "we have a policy that underlies CAT. You can be the worst criminal, and if it's shown that you're going to be tortured, we will not send you to a place where you're going to be tortured."[116]

Here, Judge Rendell's initial inclination seems to be that, if the IJ finds an alien's testimony to be credible, then the court is not in the position to espouse its own moral judgment as to whether drug addiction should serve as a basis for relief. Put differently, Judge Rendell seems to be of the view that if the IJ makes a credible finding that an individual's medical condition may lead to he or she being tortured upon removal, the protection afforded under CAT should not be curtailed.

Even still, the most interesting comment made during oral argument was that made by Judge Thomas Vanaskie. Delving into the

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114 Oral Argument, *supra* note 100 at 33:14.

115 *Id.* at 38:19.Check.

116 *Id.* at 18:00.

logic and seemingly philosophical rationale underlying Jamai's claim, Judge Vanaksie queried: "If [Jamai] were to say, '[when] I go back to Morocco, there's this person that I'm under compulsion to kill, and, after I kill that person, I'm going to be tortured,' would he be entitled to Convention Against Torture relief then?"[117] Jamai's counsel shrewdly dodged a direct answer to the question, but nevertheless acknowledged that "there is a volition[al]" element to Jamai's case.[118]

This statement scratches the surface of an interesting thought experiment: what are the potential consequences of allowing a criminal to rely upon neurological impulses and compulsions as a basis for arguing against removal? If the court were to grant Jamai CAT relief on the premise that, because of his prolonged heroin addiction, he will be unable to refrain from similar addictive behavior in Morocco, then to what extent will the court view addictions to other drugs—like prescription painkillers, cocaine, or methamphetamine—as similarly being an insurmountable curtailment on volition? Put differently, at what point does one's ability to consciously and freely decide to either refrain from, or engage in, the use of drugs cross the threshold from mere choice to physiological compulsion?

Or, digging even deeper, what if a case arose where an alien purported to be, for example, a pedophile, and was being subjected to removal to Saudi Arabia, where the government has openly authorized public beheadings for the crime of "inciting pedophilia."[119] Pedophilia, like addiction, is a disease rooted in the mind.[120] Thus, if we adhere to

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117 *Id.* at 24:15.

118 *Id.* at 25:00.

119 *Saudi Arabia: The situation of homosexuals, including treatment by authorities and legal penalties*, 16 August 2002, THE UN REFUGEE AGENCY, available at: http://www.refworld.org/docid/3f7d4e1238.html (last visited February 28, 2017).

120 *See, e.g.*, Ryan C.W. Hall & Richard C.W. Hall, *A Profile of Pedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic Issues*, 82 MAYO CLINIC PROCEEDINGS 457, 463 (2007) ("A high comorbidity of impulse control disorders (e.g., explosive personality disorder, kleptomania, pyromania, pathological gambling) has been noted in pedophiles (30%-55%). These factors have been postulated to indicate that pedophiles may have neurodevelopmental perturbations."); Colleen M. Berryessa, *Potential Implications of Research on Genetic or Heritable Contributions to Pedophilia for the Objectives of Criminal Law*, 8 RECENT ADVANCES DNA & GENE SEQUENCES 65, 68 (2014) ("Even though the biological

the line of logic endorsed in Jamai's case—*i.e.*, an identifiable cognitive condition is a reliable indicator of future conduct—then the hypothetical case of the pedophile being subjected to torture should, logically speaking, be assessed under the same approach.

But this is where things get tricky. Although the logic holds true, the legal and moral knock-on effects of granting CAT relief to a drug addict like Jamai are not the same as those concomitant with granting relief to a murderer or pedophile. Nevertheless, courts can sidestep this logical conundrum altogether by focusing solely on the evidence in the case at issue, and whether the "more likely than not" standard is satisfied.

C. Recommendation to the Third Circuit

If and when the BIA reexamines Jamai's case and makes its decision, it is likely that the Third Circuit's subsequent decision to affirm or deny Jamai's request for CAT relief will carry significant ramifications. Thus, while other issues in Jamai's case will impact the court's ultimate decision—including whether the legal standard of torture being "more likely than not" is deemed satisfied—it would be in the court's best interest to refrain from making any ill-advised assertions on drug addiction.

At the core of this question is the notion of free will, and specifically the extent to which a heroin addiction impedes autonomy. In this day and age, there is an abundance of evidence demonstrating that repeated heroin use changes the physical structure of the brain, thereby creating "long-term imbalances in neuronal and hormonal systems that are not easily reversed."[121] In this sense, developing an

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facets of the disorder are still not principally determined and very few researchers study the causes of pedophilia, most scientists now consider the disorder as a complex deep-rooted predisposition and, over the last few decades, have correspondingly begun to study possible biological associations to the etiology and presence of the disorder, such as abnormal brain structure and function [26-31], irregular hormone levels [32-34], biological vulnerabilities to environmental factors [35, 36], and . . . genetic influences.").

[121] *See What Are the Long-term Effects of Heroin Use?*, NATIONAL INSTITUTE ON DRUG ABUSE, http://www.drugabuse.gov/publications/research-reports/heroin/what-are-long-term-effects-heroin-use (last updated June 2018).

addiction to heroin parallels a gradual loss in one's ability to choose freely, as seeking and using the drug becomes a primary purpose in life. This understanding sheds light on Jamai's contention that he will "always be an addict," and hence will always have an urge to use heroin.

Today, the scientific community has, by and large, accepted the "disease model" of addiction.[122] In classifying addiction as a disease as opposed to a mere habit or craving, this model provides a framework for exploring "the neurobiological processes associated with the loss of control, compulsive drug taking, inflexible behaviour, and negative emotional states associated with addiction."[123]

The upshot of accepting this scientifically-endorsed view of addiction is that "deeply ingrained values about self-determination and personal responsibility" that tend to "frame drug use as a voluntary, hedonistic act" must give way to the understanding that "changes in the brain can ultimately erode a person's ability to control the impulse to take addictive drugs."[124] Yet, despite a plethora of scientific evidence, many individuals seem reluctant to accept such a view. Some scholars have hypothesized that this difficulty may lie in "accepting as a bona fide disease one that erodes the neuronal circuits that enable us to exert free will."[125]

This proposition perhaps explains why Judge Sloviter, for example, insinuated multiple times during oral argument that Jamai could simply refrain from using drugs in Morocco, and thereby avoid being subjected to torture. To be sure, Judge Sloviter is correct insofar as drug *use*, as opposed to drug *addiction*, does not necessarily impede autonomy. But it could also be argued that Judge Sloviter's position, in light of the evidence presented in Jamai's case, parallels Judge Vomacka's alarming rationale in the Ali case discussed above, as it was

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122 Nora D. Volkow & George Koob, *Brain Disease Model of Addiction: Why Is It So Controversial?* THE LANCET PSYCHIATRY 677, 678 (2015).

123 *Id.* at 677.

124 Nora D. Volkow et al., *Neurobiologic Advances from the Brain Disease Model of Addiction*, 374 N. Engl. J. Med. 363, 364 (2016).

125 Volkow, *supra* note 122, at 680.

Judge Vomacka who advanced the idea that Ali could avoid torture simply by abstaining from homosexual behavior.

Fortunately, the Second Circuit recognized that Judge Vomacka's line of reasoning was grounded in baseless stereotypes about homosexuality, and, in overruling his decision, engaged in a progressive-minded discussion on the innate nature of sexual identification. In due time, the Third Circuit many be confronted with an opportunity to follow in its sister court's progressive footsteps and dispel disconcerting public attitudes and policies toward the addict. For the court, Jamai's case represents an ideal vehicle for jumpstarting a reformist judicial movement in the realm of drug addiction.

IV. CONCLUSION

Sparked by the U.N.'s promulgation of the Genocide Convention in 1948,[126] the international community has made great strides over the course of the past several decades in combatting the practice of torture. Today, the effects of this significant human rights movement can be seen on a global scale, a movement that is due in large part to the United States' unwavering adherence to CAT principles. In particular, American courts have increasingly adhered to the philosophy that each and every person, regardless of their personal history, political beliefs, or sexual orientation, deserves to be protected from being tortured in a foreign land.

Eventually, the Third Circuit may have the opportunity to revisit Jamai's case and engage in a meaningful dialogue about the accepted medical views regarding drug addiction and its curtailment on volition, and whether drug addicts can refrain from addictive behavior simply as a matter of choice. If history is any indication, the Third Circuit—if afforded the opportunity—will apply modern understandings of autonomy, and, in doing so, uphold the values that CAT seeks to protect.

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[126] Genocide Convention, *supra* note 12.