

INTRODUCTION

This pamphlet provides information to mental health providers assisting immigrants with mental illness and/or cognitive disabilities who are in removal proceedings before an Immigration Judge.

WHAT ARE REMOVAL PROCEEDINGS?

The Department of Homeland Security initiates removal proceedings against immigrants who they allege should be deported from the United States. These are immigrants who are not U.S. citizens and have to appear before an Immigration Judge to determine if they have a legal basis to remain in the United States.

Removal proceedings are very complex. Although immigrants have a right to attorney representation in removal proceedings, the government does not provide immigrants with attorneys. This means that many immigrants have to represent themselves in removal proceedings if they cannot afford to retain an attorney.

REFER CLIENTS IN REMOVAL PROCEEDINGS TO LOCAL LEGAL SERVICE PROVIDERS

If local mental health providers come across clients they believe may be in removal proceedings, please refer them to one of the following organizations which is equipped to handle such cases:



Asian Americans Advancing Justice –
Asian Law Caucus
55 Columbus Ave., San Francisco, CA 94111
Contact: Anoop Prasad, Staff Attorney
415-848-7722
anoopp@advancingjustice-alc.org



Dolores Street Community Services
938 Valencia Street, San Francisco, CA 94110
Contact: Ana Herrera, Immigration Attorney
(415)282-6209, ext. *130
aherrera@dscs.org

ENSURING PROPER SAFEGUARDS IN REMOVAL PROCEEDINGS FOR INDIVIDUALS WITH MENTAL AND BEHAVIORAL HEALTH ISSUES

Brochure provided by Asian Americans Advancing
Justice – Asian Law Caucus and
Dolores Street Community Services



Immigrants with mental health issues

Removal proceedings can be especially difficult for immigrants with mental health issues and/or cognitive disabilities. These immigrants may not be fully competent to understand or appreciate the removal proceedings against them, let alone to represent themselves or assist an attorney in their representation. Fortunately, recent immigration law provides guidance and safeguards for immigrants with mental health issues.

Under a legal decision, *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011), Immigration Judges should provide safeguards in removal proceedings for immigrants who demonstrate at least an “indicia on incompetency.” The Immigration Judge should assess incompetency using the following three-prong test, which considers whether the immigrant:

- Understands the nature and object of the removal proceedings;
- Can consult with the attorney or representative (if there is one); and
- Has a reasonable opportunity to examine adverse evidence, present favorable evidence, and cross-examine government witnesses.

If the Immigration Judge finds that the immigrant is incompetent to meaningfully participate in his/her removal hearing, safeguards must be provided to ensure fairness and due process.

How can mental health providers assist immigrants with mental illness facing deportation?

As professionals with experience in mental illness and disability, mental health providers can bring attention to their client’s mental illness, and highlight any indicia of incompetency to the Immigration Judge so that their client is afforded safeguards in removal proceedings.

Mental health providers can assist clients who suffer from mental illness in removal proceedings in several ways.

1. Conduct a mental health evaluation and written assessment, which may include:

- Reason for current evaluation
- History of any mental health treatment or evaluation
- Current use of any medication
- Estimate of current intellectual function
- History of mental health episodes or psychosis, including but not necessarily limited to delusions, hallucinations, or prior history of suicide attempts
- Prior history of physical, sexual, or emotional abuse
- Evidence of neuropsychological disorders or brain trauma
- Impact of any pertinent physical condition, such as head trauma
- Any memory impairment
- Any disorientation or altered sense of consciousness or wakefulness
- Evaluation of the impact of such disorders on the client’s daily life
- Overall observations of the client’s competency:
 - Can the client understand the proceedings and meaningfully represent themselves or assist their attorney?
 - Use the Immigration Judge’s three-prong test, stated above
- Recommendation of appropriate treatment and prognosis if treatment is continued or abandoned

2. Provide testimony before an Immigration Judge on the client’s evaluation and assessment

- Mental health evaluations will be provided more evidentiary weight, or rather, will be more helpful if providers can testify as to their mental health assessment of the client
- If there is an attorney representing the client, the mental health provider should prepare for testimony with the attorney
- If there is no attorney representing the client, the mental health evaluation and testimony can be especially beneficial because there is no one else advocating for the client
- If there is no attorney to assist in preparing for the testimony, mental health providers should be careful to not provide any testimony that may harm the client, or is irrelevant. Even if client is unrepresented, mental health providers should contact local legal service providers for assistance on potentially harmful testimony.

3. Work alongside the client’s immigration attorney

- Maintain communication with the immigration attorney
- Facilitate communication between the client and immigration attorney
- Provide recommendations for potential safeguards in removal proceedings:
 - Appearance of a friend or family member in court;
 - Obtaining in-patient and/or long-term treatment program for client;
 - Closing the removal hearing to the public;
 - Other recommendations suited to the client’s needs.