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MENTAL COMPETENCY IN IMMIGRATION COURTS: PRESUMPTION, SAFEGUARDS, AND DUE PROCESS VIOLATIONS

Margot Lourdel†

CONSTITUTIONAL PROTECTIONS IN IMMIGRATION COURT HAVE HISTORICALLY BEEN LOWER THAN IN THE CRIMINAL LAW CONTEXT. THIS PAPER EXPLORES HOW THE UNITED STATES CONSTITUTION IS APPLIED TO NONCITIZENS, RECENT ATTEMPTS AT PROTECTING THE RIGHTS OF NONCITIZENS WITH MENTAL HEALTH ISSUES IN REMOVAL PROCEEDINGS, AND THE URGENT NEED FOR A COMPREHENSIVE FRAMEWORK IN IMMIGRATION COURT TO EFFECTIVELY PROTECT THESE RIGHTS.

INTRODUCTION

At a time when immigrants' rights are constantly under attack, this article highlights how the current deportation machine that is the U.S. immigration system fails to provide due process to people with mental and cognitive issues. Since 2011, federal regulations and the courts have attempted to create a framework to protect the rights of immigrants with mental health issues. This framework — requiring judges to engage in competency evaluations and respondents to fight for a fair process on their

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own — fails to provide respondents with a fair opportunity to present their case by not providing them with free legal representation, by asking immigration judges and lawyers to make determinations about respondents' mental health, and often by simply allowing removal proceedings to go forward.

I. CONSTITUTIONAL PROTECTIONS GENERALLY APPLY TO NONCITIZENS, BUT NONCITIZENS STILL HAVE TO FIGHT FOR DUE PROCESS IN IMMIGRATION COURT

The government is often reluctant to apply the Constitution to noncitizens. However, in 1886, the Supreme Court recognized that noncitizens may be protected by the Constitution when it applied the Equal Protection Clause of the Fourteenth Amendment to Chinese nationals who were discriminated against by unequal enforcement of a San Francisco ordinance that required a license to operate a laundry in the city. The Court held that the racially discriminatory application of a racially neutral statute violates the Equal Protection Clause, regardless of national origin.[1]

While the government sometimes argues that noncitizens are entitled to diminished due process, often in the name of "national security,"[2] the Supreme Court held in 1953 that the Due Process Clause does not "acknowledge[] any distinction between citizens and resident aliens."[3] In 1976, the Court established a balancing test for determining what process is due for any administrative action.[4] This test balances the individual's interest against the government's interest while considering whether the procedure under challenge is likely to produce erroneous results.[5] A court does not consider nationality. In 1982, the Court held that this balancing also governs what process is due in immigration proceedings.[6]

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[1] Yick Wo v. Hopkins, 118 U.S. 356 (1886).

[2] *See, e.g.*, *Secret Evidence Repeal Act of 1999: Hearing on H.R. 2121 Before the Subcomm. on Immigration & Claims of the H. Comm. on the Judiciary*, 106th Cong. 21 (2000) (statement of Larry R. Parkinson, General Counsel, Federal Bureau of Investigations) (arguing that foreign nationals are entitled to diminished due process protection); Elisabeth Bumiller & Steven Lee Myers, *Senior Administration Officials Defend Military Tribunals for Terrorist Suspects*, N.Y. TIMES (Nov. 15, 2001), https://perma.cc/3SPZ-467X; *see also* Boumediene v. Bush, 553 U.S. 723 (2008) (rejecting the government's argument that foreign nationals were not protected by the Constitution).

[3] Kwong Hai Chew v. Colding, 344 U.S. 590, 596 n.5 (1953) (quoting Bridges v. Wixon, 326 U.S. 135 (1945)) (holding that as a legal resident noncitizen, respondent was protected by the Fifth Amendment and could not be detained without being informed of the charges against him and given a hearing sufficient to satisfy due process requirements).

[4] *See* Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976).

[5] *Id.* at 348.

[6] *See* Landon v. Plasencia, 459 U.S. 21, 34 (1982).

Recently, the Court recognized that noncitizens could be awarded the protection of the Constitution when it acknowledged that a noncitizen has a liberty interest at least strong enough to raise the question of whether the Constitution permits detention that is indefinite and potentially permanent.[7] The Court found that the power of the political branches over immigration "is subject to important constitutional limitations."[8]

Still, due process rights for noncitizens are challenged to this day. In 2003, the Supreme Court in *Demore v. Kim* upheld a 1996 statute imposing mandatory detention on foreign nationals charged with deportation for having committed certain crimes, by relying on the fact that the defendant was not a U.S. citizen.[9] There, the Court denied the plaintiff any individualized assessment of the need for detention by precisely invoking that "Congress regularly makes rules that would be unacceptable if applied to citizens."[10]

In immigration proceedings, the Supreme Court has recognized that removal proceedings, while not subject to the full range of constitutional protections, must conform to the Fifth Amendment's Due Process Clause.[11] Regulations issued in 1997 reflect Congress' intent to provide a fair hearing to respondents in immigration court, such as 8 C.F.R. § 1240.10(a)(4), requiring immigration judges ("IJs") to inform respondents that they have a reasonable opportunity to present, examine, and object to evidence.[12] Yet there is no recognized right to counsel for noncitizens in immigration court under the Fifth Amendment's Due Process Clause. The Immigration and Nationality Act only provides that respondents shall have the privilege to be represented *at no cost to the government*.[13]

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[7] *See* Zadvydas v. Davis, 533 U.S. 678, 689 (2001) (holding that the government could not hold noncitizen in indefinite detention if the government was unable to remove the noncitizen).

[8] *Id.* at 695 (citing I.N.S. v. Chadha, 462 U.S. 919 (1983) and The Chinese Exclusion Case, 130 U.S. 581 (1889)); *see also* Boumediene v. Bush, 553 U.S. 723 (2008) (holding, *inter alia*, that detainees at Guantanamo Bay were entitled to the protection of the Fifth Amendment right not to be deprived of liberty without due process of law and of the Geneva Conventions).

[9] *See* Demore v. Kim, 538 U.S. 510, 513 (2003).

[10] *Id.* at 521 (quoting Mathews v. Diaz, 426 U.S. 67, 79-80 (1976)).

[11] *See* Reno v. Flores, 507 U.S. 292, 306-07 (1993).

[12] 8 C.F.R. § 1240.10(a)(4) (2018).

[13] INA § 240, 8 U.S.C. § 1229a(b)(4)(A) (2018).

II. SAFEGUARDS IN IMMIGRATION COURT: IN THEORY AND AS APPLIED

A. Establishing "Incompetency"

While persons who are deemed incompetent may not be tried in a criminal prosecution,[14] they may be subject to removal proceedings.[15] A respondent in immigration proceedings is presumed competent, and the respondent bears the burden of rebutting this presumption.[16] An inquiry into a respondent's competency is triggered by the presence of "indicia of incompetency," regardless of when they arise in the course of the proceedings.[17] An IJ's finding of mental incompetency is a legal determination. It is not a diagnosis and is not made by a mental health professional, although the input of a mental health professional may aid an IJ in making this determination.[18] If a respondent is found incompetent, the IJ must determine "appropriate safeguards" to the respondent's situation to ensure that the rights and privileges of the respondent are protected during removal proceedings. IJs must also articulate rationale for decisions regarding competency issues on the record, regardless of their ultimate determination, the purpose of which is to provide the respondent with a developed record in case they wish to appeal an unfavorable decision to the Board of Immigration Appeals ("BIA").[19] Yet, absent indicia of mental incompetency, an IJ is under no obligation to analyze respondent's competency.[20]

Indicia of mental incompetency include a broad range of observations and evidence such as mental health assessments, medical reports or assessments from past medical treatment, or criminal proceedings and testimony from medical health professionals. The record may also contain evidence such as reports or letters from teachers, social workers, or counselors; evidence of participation in programs for people with mental illness; evidence of applications for disability benefits; and affidavits or testimony from family members or friends.[21] Additionally, the IJ or the parties may help determine competency through direct observation of certain behaviors, such as the inability to understand and appropriately respond to questions, the inability to stay on topic, or a great deal of distraction.[22]

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[14] Cooper v. Oklahoma, 517 U.S. 348, 354 (1996).
[15] Brue v. Gonzales, 464 F.3d 1227, 1233 (10th Cir. 2006).
[16] Matter of M-A-M-, 25 I. & N. Dec. 474, 477 (B.I.A. 2011).
[17] *Id.* at 480.
[18] *Id.* at 480-81.
[19] *Id.* at 484.
[20] *Id.* at 477.
[21] *Id.* at 479-80.
[22] *Matter of M-A-M-*, 25 I. & N. Dec. at 479.

Once a judge finds indicia of mental incompetency, the IJ must then make a determination of whether the respondent is competent to proceed or not. The test devised in *Matter of M-A-M-* for determining whether a noncitizen is competent to participate in immigration proceedings is whether they: (1) have a rational and factual understanding of the nature and object of the proceedings; (2) can consult with the attorney or representative, if there is one; and (3) have a reasonable opportunity to examine and present evidence and cross-examine witnesses.[23]

This test is an imprecise standard. The BIA has recognized that the approach taken in each case will vary based on the circumstances of the case.[24] The BIA has suggested that the IJ may modify the questions posed to the respondent to make them very simple and direct, ask questions about where the hearing is taking place, the nature of the proceedings, the respondent's state of mind, whether he or she currently takes or has taken medication to treat a mental illness, and what the purpose and effects of that medication are. Another measure available to IJs is a mental competency evaluation.[25]

The requirement that respondents submit indicia of incompetency such as medical records and therefore be able to demonstrate their own inability to understand their own competency issues places a heavy burden on respondents, especially for those who appear *pro se*. Under this requirement, *pro se* respondents have, in theory, the insight sufficient in their condition and the resources available to reach out to medical professionals to obtain documentation of their condition. Judges must conduct a competency hearing if a respondent demonstrates behaviors by the respondent, such as the inability to understand and respond to questions, the inability to stay on topic, or a high level of distraction in court.[26] Yet, the reliance on (1) an IJ to be able to notice such symptoms and (2) visible symptoms of mental illness leaves out an array of mental health issues that may still affect the respondent's defense and rights.

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[23] *Id.*

[24] *Id.* at 480.

[25] *Id.* at 481; *see also* Matter of J-F-F-, 23 I. & N. Dec. 912, 915 (A.G. 2006) (noting that at the immigration judge's request, DHS arranged for a psychiatric evaluation of a detained noncitizen, which led the psychiatrist to conclude that the noncitizen understood the proceedings and wanted to proceed with the hearing).

[26] *Matter of M-A-M-*, 25 I. & N. Dec. at 479.

III. EXISTING STATUTORY AND CONSTITUTIONAL PROTECTION IN IMMIGRATION COURT FOR RESPONDENTS WITH MENTAL HEALTH ISSUES

Regulatory safeguards include that an IJ must not accept an admission of removability from an unrepresented respondent who is incompetent and is not accompanied by an attorney or legal representative, a near relative, legal guardian, or friend.[27] When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the attorney, legal representative, legal guardian, near relative, or friend who was served with a copy of the notice to appear must be permitted to appear on behalf of the respondent.[28]

Congress has enacted additional protections in immigration proceedings for noncitizens with mental health issues. INA § 240(b) requires that safeguards be implemented to protect the "rights and privileges" of a mentally incompetent respondent.[29] However, the ultimate determination of which safeguards to implement and whether they are adequate to ensure the fairness of proceedings is at the courts' discretion.[30]

A. Safeguards Found in Case Law

Federal regulations do not identify specific safeguards to be applied nor do they limit the alternatives available to ensure the procedural fairness of the hearing.[31] An IJ's identification of the relevant or available safeguards in a given case may involve fact-finding based on evidence in the record or the IJ's observations.[32]

The most common safeguard implemented by the IJ and consistently found to be adequate on review by the BIA is legal representation. In *Matter of M-J-K,* the Board held that the proper safeguard could be legal representation.[33] The participation of counsel would increase the likelihood of finding a means to proceed fairly, despite the respondent's refusal to appear in court since counsel could interact with the respondent, communicate with family, caregivers, and witnesses, or take other actions such as presenting legal arguments regarding removability and eligibility for relief from removal that are not dependent on the ability to communicate with the respondent.

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[27] 8 C.F.R. § 1240.10(c) (2018).

[28] 8 C.F.R. § 1240.4 (2018); *see also* 8 C.F.R. § 103.8(c)(2)(ii) (2018).

[29] INA § 240(b)(3), 8 U.S.C. § 1229a(b)(3) (2018).

[30] *See* Ridore v. Holder, 696 F.3d 907, 921-22 (9th Cir. 2012) (stating that the Board may weigh the facts underlying an IJ's discretionary determination de novo).

[31] *See* Matter of M-J-K-, 26 I. & N. Dec. 773, 775 (B.I.A. 2016) (finding that IJ has discretion to select and implement safeguards).

[32] *Id.* at 776.

[33] *Id.* at 777.

Another safeguard is the waiver of a respondent's presence if they are represented by an attorney, a legal representative, a near relative, legal guardian, or friend.[34] Because a major part of establishing one's eligibility for asylum is based on the respondent's credibility when testifying,[35] waiving the respondent's presence can actually protect them from contradicting themselves and hurting their case. Such a safeguard is of course dependent on the respondent being represented by counsel to advocate on their behalf.[36] Other safeguards available to the IJ may include refusal to accept an admission of removability from an unrepresented respondent; identification and appearance of a family member or close friend who can assist the respondent and provide the court with information; docketing or managing the case to facilitate the respondent's ability to obtain legal representation and/or medical treatment in an effort to restore competency; participation of a guardian in the proceedings; continuance of the case for good cause shown; closing the hearing to the public; actively aiding in the development of the record, including the examination and cross-examination of witnesses; and reserving appeal rights for the respondent.[37]

Finally, some safeguards have been established based on the specific relief requested, such as asylum. Where a mental illness may be affecting the reliability of an individual's testimony, as a safeguard, the IJ may accept their fear of harm as subjectively genuine based on the individual's perception of events, even if the testimony contained inconsistencies, implausibility, inaccuracy of details, inappropriate behavior, or non-responsiveness. The IJ may decide to accept the respondent's fear as genuine and focus on objective evidence.[38] In other words, the IJ can choose to accept that the individual believes what they have stated, even though this account may not be believable to others. The IJ may then concentrate on whether the respondent can satisfy their burden of proof,[39] based on the

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[34] *See* 8 C.F.R. § 1003.25(a) (2018).

[35] *See* 8 U.S.C. § 1158(b)(1)(B)(iii) (2018).

[36] The author is aware that representing respondents with mental illness raises serious ethical questions. For initial guidance on how to navigate such a complex attorney-client relationship, *see* Rule 1.14 of the American Bar Association's model rules of professional conduct. MODEL RULES OF PROF'L CONDUCT R. 1.14 (2014).

[37] Matter of M-A-M-, 25 I. & N. Dec. 474, 483 (B.I.A. 2011).

[38] Matter of J-R-R-A-, 26 I. & N. Dec. 609, 611 (B.I.A. 2015) (holding that the IJ should, as a safeguard, generally accept that the applicant believes what he has presented, even though his account may not be believable to others or otherwise sufficient to support the claim, and that the IJ should then focus on whether the applicant can meet his burden of proof based on the objective evidence of record and other relevant issues).

[39] 8 C.F.R. § 1208.13(a) (2018) (requiring that the applicant for asylum prove that he or she is a refugee as defined in section 101(a)(42) of the Immigration and Nationality Act).

objective evidence of record,[40] including evidence such as their background or country conditions (evidence routinely included by practitioners in an asylum application to support an asylum seeker's claim that it has become a *de facto* requirement),[41] to assist in adjudicating an application for relief.

The IJ has discretion to require corroborating evidence "unless the applicant does not have the evidence and cannot reasonably obtain the evidence."[42] Because the respondent's mental impairments may make locating and providing the corroborating evidence that an IJ requests difficult or impossible, the defense attorney could argue on the record that the respondent cannot reasonably obtain the evidence because of their mental health condition.[43] Since the requirement is discretionary, if the IJ finds that a respondent cannot reasonably provide objective evidence, the IJ may go forward and accept the defense without corroborating evidence.

B. Limitations of Safeguards

Existing safeguards fail to protect noncitizens' due process rights in removal proceedings. IJs have admitted that removal proceedings are similar to trying "death penalty cases" in "traffic court."[44] Because immigration removal proceedings have long been characterized as civil, rather than criminal in nature, respondents are allotted less protections.[45]

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[40] *See* Matter of M-J-K-, 26 I. & N. Dec. 773, 777 (B.I.A. 2016) (finding that counsel could provide relevant objective documentation, such as background or country conditions evidence, to assist in adjudicating an application for relief).

[41] 8 C.F.R. § 1208.16(c)(3)(iii)–(iv) (2018) (requiring that all evidence regarding conditions and human rights violations in country of removal shall be considered by the IJ).

[42] 8 U.S.C. § 1158(b)(1)(B)(ii) (2018).

[43] *See* Vera-Villegas v. Immigration & Naturalization Serv., 330 F.3d 1222, 1235 (9th Cir. 2003) (holding that petitioner who was homeless and had a mental illness was held to an unreasonable standard of having to provide evidence to corroborate credible testimony establishing his eligibility for relief from removal).

[44] *Executive Office for Immigration Review: Hearing before the Subcomm. on Immigration, Citizenship, Refugees, Border Sec. & Int'l Law of the H. Comm. on the Judiciary*, 111th Cong. 55 (2010) [hereinafter *Oversight Hearing*] (statement of Hon. Dana Leigh Marks, President, National Association of Immigration Judges).

[45] *See* Fong Yue Ting v. United States, 149 U.S. 698, 730 (1893) ("The order of deportation is not a punishment for crime."); *see also* Reno v. American-Arab Anti-Discrimination Comm., 525 U.S. 471, 491 (1999) (holding that removal is not punishment); Immigration & Naturalization Serv. v. Lopez-Mendoza, 468 U.S. 1032, 1038 (1984) ("A deportation proceeding is a purely civil action to determine eligibility to remain in this country, not to punish an unlawful entry, though entering or remaining unlawfully in this country is itself a crime."); Harisiades v. Shaughnessy, 342 U.S. 580, 594 (1952) ("Deportation, however severe its consequences, has been consistently classified as a civil rather than a criminal procedure.").

First, access to an attorney is extremely limited in immigration proceedings.[46] Pursuant to statute, individuals in immigration cases are entitled to representation by an attorney if they can afford one, but indigent people do not have a right to counsel at the government's expense, unlike criminal defendants.[47] In Fiscal Year 2016, only 61% of respondents in immigration court were represented.[48] While a successful immigration case in 2011 in the Ninth Circuit moved one step closer to a universal right to counsel in immigration cases by establishing such a right for individuals with mental disabilities,[49] this is only applicable to the people who are or have been detained in the states of Washington, California, Alaska, Montana, Idaho, Nevada, Arizona, and Oregon. Respondents with mental health issues who were not detained in these states will be left without representation in the preliminary stages of their case and required to proceed *pro se* until they can prove safeguards are warranted in their case.

Second, mental competency law requires defense attorneys and judges to play the roles of mental health experts, something they are not necessarily equipped to do. The absence of mental health experts' opinion and evaluations in immigration court further contributes to an environment that is not created to protect respondent's due process rights. Judges are solely responsible for evaluating a respondent's mental competency. The standard created by *Matter of M-A-M-* requires the judge to evaluate whether the respondent has a "rational and factual understanding of the nature and object of the proceedings."[50] This standard is vague and open to the interpretation and discretion of judges who may not have gone through trainings on mental health issues. Further, courts have been strict in applying the requirement that defense attorneys raise the competency

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[46] *See* Matter of Vidal Sanchez, 2006 WL 2008263, at *2 (B.I.A. May 24, 2006) ("The respondent was represented at the healing; therefore, his rights were adequately protected."); Matter of H-, 6 I. & N. Dec. 358, 358 (B.I.A. 1954) (holding that the requirements of a fair hearing had not been violated in deportation proceedings involving an alien of unsound mind, where notice of hearing has been served on the alien and his wife, arrangements were made to protect alien's interests by having a doctor in attendance at the hearing, and the alien was represented by legal counsel who was given the privilege of introducing evidence and cross-examining witnesses).

[47] INA § 240(b)(4)(A), 8 U.S.C. § 1229a(b)(4)(A) (2018).

[48] EXEC. OFFICE FOR IMMIGRATION REVIEW, U.S. DEP'T OF JUSTICE, FY 2016 STATISTICS YEARBOOK F1, fig.10 (2017), https://perma.cc/NDT4-WSMC.

[49] Franco-Gonzales v. Holder, 767 F. Supp. 2d 1034 (C.D. Cal. 2010) (holding under section 504 of the Rehabilitation Act that detained respondents with serious mental disabilities were entitled to "Qualified Representatives" as a necessary accommodation in immigration proceedings). The U.S. Court of Appeals for the Ninth Circuit refused to reach the constitutional issue of whether appointment of legal counsel was necessary under the Fifth Amendment's Due Process Clause to ensure that the hearing was fundamentally fair.

[50] Matter of M-A-M-, 25 I. & N. Dec. 474, 474 (B.I.A. 2011).

issue on the record and early in the proceedings, therefore putting a great amount of responsibility on the advocate who may not be equipped to identify their client's mental health problems.[51] Requiring counsel to raise the competency issue on the record relies on the presumption that the respondent is represented. However, we know that many respondents face removal proceedings without legal representation. If respondents are lucky enough to have one, their attorney can accurately present their client's mental health issues to the court.

Third, mental incompetence does not warrant termination of respondent's case. The BIA has held that removal proceedings may go forward against respondents with mental health issues.[52] In *Matter of M-A-M-*, the Board only lists administrative closure as a possible safeguard. While administrative closure — removing the case from the docket temporarily — can be a positive outcome for some respondents who have no other type of relief available to them, it does not provide a permanent visa or authorization to stay in the country and leaves a respondent vulnerable because their case can be reopened at any moment. The Executive Office for Immigration Review's (EOIR) *Immigration Judge Benchbook*, a resource created by EOIR to provide substantive and procedural guidance for immigration judges, does offer that termination can be appropriate for those noncitizens found to be mentally incompetent and for whom no other safeguards are sufficient.[53] However, the EOIR Benchbook is not binding legal authority and the Board has yet to issue a precedential decision upholding a case where proceedings were terminated based on the theory that the respondent's incompetency made the proceedings impossible to proceed fairly, in spite of safeguards.

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[51] *See, e.g.*, Muñoz-Monsalve v. Mukasey, 551 F.3d 1, 6 (1st Cir. 2008) (holding that immigration judge's failure to *sua sponte* order a competency evaluation of a represented noncitizen did not violate the noncitizen's due process rights as it is advocate's role to broach issue of mental competence as the noncitizen's incompetence was not evident from record of hearing); *see also* Matter of James, 2009 WL 2171712, at *2 (B.I.A. June 26, 2009) ("In this instance, however, the respondent's counsel failed to request that an evaluation of the respondent's competency be undertaken. The failure to raise the competency issue in a timely manner renders an ensuing appellate claim of error on this basis particularly weak.").

[52] *See* Sanchez-Salvador v. Immigration & Naturalization Serv., No. 92-70828, 1994 WL 441755, at *1 (9th Cir. Aug. 15, 1994) ("Lack of competency, however, does not prevent a judge from determining either deportability or whether to grant relief."); *see also* Matter of James, 2009 WL 2171712, at *2 (B.I.A. June 26, 2009) ("Moreover, contrary to the substantive due process protection from trial and conviction to which a mentally incompetent criminal defendant is entitled, removal proceedings may go forward against incompetent aliens.").

[53] *See Immigration Judge Benchbook*, U.S. DEP'T OF JUSTICE, https://perma.cc/9H2L-MATW (last updated Aug. 8, 2017).

CONCLUSION

In recent years, immigration law has seen the development of case law and agency guidelines purporting to protect the due process rights of respondents with mental health issues in removal proceedings. Although the Constitution applies to all, citizens and noncitizens alike, the government has argued that noncitizens are entitled to a lower due process standard. The BIA, in *Matter of M-A-M-*, established that the due process rights of noncitizens with mental health issues can be protected through a competency hearing and with the implementation of suggested safeguards decided on a case-by-case basis. Although the move towards recognizing that mental health issues can affect one's defense in immigration court is important and needed, a lot remains to be done, at least to guarantee that the due process rights of noncitizens in removal proceedings are protected.

First, the due process rights of respondents with mental health issues cannot be properly safeguarded until the right to counsel is afforded to all. Second, even if the presence of an attorney is crucial to the defense of a respondent with mental health issues, the emphasis on the roles of the defense attorney and the judge in evaluating a respondent's mental health forces judges and immigration law practitioners to take on a role that they are not equipped to play. It is necessary to introduce the opinions and mandatory evaluations of mental health experts' opinions in immigration court to adequately address respondents' needs. Finally, termination based on mental incompetency must be codified or issued to ensure that removal proceedings do not continue against respondents whose mental health render a hearing fundamentally unfair and run afoul of due process rights.