

DHS and Mentally Ill Respondents: Why Is the Fox Guarding the Hen House?

I recently learned about the removal case of a mentally ill man from Africa. Several years ago, the man was granted Withholding of Removal from his country because he faced persecution there. His immigration case was recently re-opened after he committed a crime rendering him ineligible for Withholding. He might still be eligible for relief under the UN Convention Against Torture, if he demonstrates that it is more likely than not that he would be tortured in his country.

Based on an expert report, the Immigration Judge found that the man (who cannot be identified here) was not competent to represent himself. At the IJ's insistence, DHS appointed a custodian, an ICE Detention and Removal Officer. At the hearing, the ICE officer failed to appear, so the IJ dismissed the case. The IJ found that, because the alien could not represent himself, the absence of a custodian violated his right to due process of law. DHS appealed and the case is currently before the Board of Immigration Appeals.

What concerns me is not the failure of the custodian to appear for the hearing (it seemed to be an honest mistake), but the fact that the custodian was an ICE Detention and Removal Officer. Why is the person charged with physically detaining and removing the alien the same person who is supposed to represent the alien's interests in court? Clearly, something needs to be done.

According to the [Immigration Policy Center](#) over the last year or so, DHS has been working with stakeholders to improve the situation for mentally ill aliens in immigration court. Some issues are: (1) The absence of a formal mechanism to identify mentally ill aliens in immigration court; (2) Mentally disabled aliens are not appointed counsel in immigration court; (3) Aliens with mental disabilities cannot effectively represent themselves in court; and (4) Immigration judges have too many cases to effectively address the needs of aliens with mental disabilities. Perhaps DHS will issue some standards to protect mentally ill aliens, though it is unlikely that the standards currently under consideration would satisfy advocates for the mentally ill. (The [Legal Action Center](#) of the American Immigration Counsel has an informative website about this issue).

In the mean time, the BIA might take matters into its own hands. In the pending case of *Matter of L-T-*, the Board has requested briefing on issues related to mentally ill aliens in immigration court. An amicus brief filed in this case by the Legal Action Center (formerly AILF) is available [here](#)

Mentally ill aliens in immigration court face many difficulties. At the minimum, we should try to ensure that their due process rights are protected. As things stand now, that is not the case.