

*For Immediate Release*

**Board of Immigration Appeals Provides Important  
but Incomplete Guidance on Mental Competency**

May 9, 2011

**Washington, D.C.**—The American Immigration Council’s Legal Action Center (LAC) cautiously applauds last week’s [decision](#) of the Board of Immigration Appeals concerning the rights of immigrants with mental disabilities in removal proceedings. Echoing concerns expressed in [amicus briefs](#) filed by the LAC in other Board cases, the decision acknowledged the need for a framework to ensure that immigrants with mental competency issues are not deported without fair hearings.

“While the Board’s decision is a welcome first step, more comprehensive guidance will be necessary to protect the due process rights of immigrants who lack mental competency,” said Melissa Crow, director of the Legal Action Center (LAC). “A rulemaking process, with outreach to a broad spectrum of stakeholders and an opportunity for discussion and formal comments, would be the ideal mechanism for establishing procedures in this context.”

In cases where there are “indicia of incompetency,” the Board adopted a test for Immigration Judges to assess an immigrant’s capacity to participate in a removal hearing. The decisive factors are whether the immigrant understands the nature and object of the proceedings, can consult with an 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 there is good cause to believe that an immigrant lacks sufficient competency to proceed, the Immigration Judge must evaluate and implement appropriate procedural safeguards to ensure a fair hearing. Of critical importance, the Board confirmed that the Department of Homeland Security has an obligation to provide Immigration Judges with any relevant materials in its possession regarding an immigrant’s mental competency.

While helpful, the Board’s decision leaves many important questions unanswered. Notably, the decision does not acknowledge that legal representation is indispensable to help immigrants who lack mental competency navigate the complex maze of immigration law. Nor does it address Immigration Judges’ lack of expertise in conducting competency assessments. Finally, the decision provides only a cursory discussion of how to proceed in cases involving immigrants whose mental disabilities are so severe that no procedural safeguards would ensure a fair hearing.

The Board’s decision is *Matter of M-A-M*, 25 I&N Dec. 474 (BIA 2011). The respondent was represented by the University of Houston Law Center.

- [Amicus brief of American Immigration Council, American Immigration Lawyers Association, and Pennsylvania Immigration Resource Center in \*Matter of L-T\*](#)
- [Amicus brief of American Immigration Council and Texas Appleseed in \*Matter of B-Z\*](#)
- LAC Litigation Issue Page: [Immigrants with Mental Disabilities in Removal Proceedings](#)

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