



Detail

Complaint Number: 704

Immigration Judge: (b)(6)

Complaint Received Date: 11/16/12

Current ACIJ
Bartolomei, Richard J.

Base City
(b)(6)

Status
CLOSED

Final Action
Complaint dismissed as merits-
related

Final Action Date
12/11/12

Past ACJIS:

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Due process Legal	Respondent Atty (b)(6) (b)(6)

Complaint Narrative: IJ asked the parties whether representation of a respondent in removal proceedings by a federally funded public defender violates the Immigration and Nationality Act. The complainant alleges that it was improper for the IJ to issue an Interim Order to raise that issue.

Complaint History

12/11/12 Complaint dismissed as merits-related
12/21/12 Database entry created

Sep 11, 2013

1 of 1

(b) (6)

RE: (b) (6)

OFFICE FOR
IMMIGRATION REVIEW
NOV 16 2011
(b) (6)

(b) (6)

Dear Assistant Chief Judge Bartolomei:

I write regarding a recent action taken by Immigration Judge (b) (6) that I believe warrants your attention. I am a trial attorney with the (b) (6) and I represent (b) (6) in a federal criminal case. In addition, I represent (b) (6) in a pending matter before the (b) (6) Immigration Court.

(b) (6) was ordered removed by Immigration Judge (b) (6) on September 29, 2005. On October 4, 2012, I filed a motion to reopen removal proceedings based on the fact that (b) (6) suffers from schizophrenia, had been an lawful permanent resident for 26 years at the time of his removal hearing, and was eligible for cancellation of removal for lawful permanent residents. (b) (6) appeared pro se and because of his mental illness, he failed to apply for relief from removal. Although there was an indicia of incompetency during the hearing (b) (6) exhibited rambling speech, illogical thinking and he began taking off his clothing), Judge (b) (6) failed to employ appropriate safeguards to ensure that the proceeding was conducted fairly and that (b) (6) due process rights were protected. See *Matter of M-A-M*, 25 I&N Dec. 474 (BIA 2011).

(b) (6) is appointed to represent indigent criminal defendants charged with violating federal law in the (b) (6). As you are probably aware, many of our clients are charged with immigration felonies, most commonly a violation of 8 U.S.C. §1326 - illegal reentry after deportation.

On June 1, 2012 (b) (6) was charged with violating 8 U.S.C. §1326. My office was appointed by the U.S. District Court for the (b) (6) to represent (b) (6). The crime of illegally reentering the United States after deportation consists of the following elements: (1) "the defendant is an alien;" (2) he "was deported and removed from the United States;" (3) he thereafter "voluntarily reentered and remained in the United States without the consent of the attorney general." *United States v. Espinoza-Baza*, 647 F.3d 1182 (9th Cir. 2011); see also 8 U.S.C. §1326. Because a valid deportation is one of the elements of the offense against (b) (6) the validity of the prior removal was germane to the federal criminal case. Thus, I did a FOIA request and obtained copies of the audio recordings of (b) (6) removal proceedings and copies of documents contained in his A-File. After reviewing his immigration documents and the audio recordings, it was my belief that the immigration hearing violated his due process rights and that he had a meritorious motion to reopen. For this reason, I sought and obtained permission from (b) (6) to file the motion to reopen removal proceedings.

hers). I have attached a copy of the motion to reopen, a copy of Judge (b) (6) Interim Order, and a copy of my response for your review.

(b) (6) is a non-profit organization and is therefore not subject to the same restrictions as other Federal Defenders Organizations around the country.

(b) (6) we have received permission from the District Court to handle immigration matters on behalf of §1326 clients. For example, in a letter to Chief Judge (b) (6) (b) (6) the Administrative Office has approved the filing of N-600 applications on behalf of clients facing §1326 prosecution, and approved covering the cost of filing fees. In my response to Judge (b) (6), I provided the court with a copy of a letter to Chief Judge (b) (6), authorizing the use of Criminal Justice Act funds to cover costs associated with filing immigration documents on behalf of our clients.

I believe that I am eligible to represent (b) (6) in immigration proceedings and I am concerned about Judge (b) (6) response to what I believe is a meritorious motion to reopen. I am unclear as to what legal basis an immigration judge has to challenge my representation, given that I am licensed to practice law in the State of (b) (6). I am also concerned that such a request touches upon attorney-client privilege.

For these reasons, I felt compelled to alert you to Judge (b) (6) Interim Order. I anticipate litigating matters on behalf of §1326 clients in the (b) (6) Immigration Court in the future and hope to have a professional and amicable relationship with the court.

Please do not hesitate to contact me if you have additional questions.

Sincerely,

²
(b) (6)

Trial Attorney

Immigration Judge Complaint Intake Form

HQ Use Only:
complaint #: _____
source: first / subsequent

Date Received at OCIJ: _____

complaint source type	
<input type="checkbox"/> anonymous	<input type="checkbox"/> BIA
<input checked="" type="checkbox"/> respondent's attorney	<input type="checkbox"/> respondent
<input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.)	<input type="checkbox"/> other: _____
<input type="checkbox"/> ___ Circuit	<input type="checkbox"/> EOIR
<input type="checkbox"/> OIL	<input type="checkbox"/> OPR
<input type="checkbox"/> DHS	<input type="checkbox"/> Main Justice
<input type="checkbox"/> OIG	<input type="checkbox"/> media
complaint receipt method	
<input checked="" type="checkbox"/> letter	<input type="checkbox"/> IJC memo (BIA)
<input type="checkbox"/> fax	<input type="checkbox"/> unknown
<input type="checkbox"/> email	<input type="checkbox"/> phone (incl. voicemail)
<input type="checkbox"/> other: _____	<input type="checkbox"/> in-person
date of complaint source	complaint source contact information
(i.e., date on letter, date of appellate body's decision) November 16, 2012	name: _____
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number)	address: (b) (6)
	email: _____
	phone: _____
	fax: _____

IJ name	base city	ACIJ
Immigration Judge (b) (6)	(b) (6)	Rico J. Bartolomei
relevant A-number(s)	date of incident	
A (b) (6)	October 31, 2012	
allegations		
On October 31, 2012, Immigration Judge (b) (6) asked the parties whether representation of a respondent in removal proceedings by a federally funded public defender violates section 240(b)(4) of the Immigration and Nationality Act. The Complainant alleges that it was improper for the Immigration Judge to issue an Interim Order to raise that issue.		
nature of complaint		
<input type="checkbox"/> in-court conduct	<input type="checkbox"/> out-of-court conduct	<input checked="" type="checkbox"/> due process
<input type="checkbox"/> incapacity	<input checked="" type="checkbox"/> other: Issuance of an Interim Order	<input type="checkbox"/> bias
		<input checked="" type="checkbox"/> legal
		<input type="checkbox"/> criminal



U.S. Department of Justice

Executive Office for Immigration Review

Immigration Court

401 West A Street, Suite 800
San Diego, California 92101

December 11, 2012

(b) (6)

Dear **(b) (6)**

This is to acknowledge your letter received by me on November 16, 2012, bringing to my attention Immigration Judge **(b) (6)** Interim Order in the **(b) (6)**

(b) (6)

I have reviewed your letter carefully and the Interim Order of the Immigration Judge. As I read the Immigration Judge's Order, **(b) (6)** has made no decision on the matter to date. . The Interim Order of the Immigration Judge invites both parties to respond to a legal issue of concern to the Judge. Your concerns reflect a future decision which will be made by an Immigration Judge with respect to a pending motion to reopen. When the Immigration Judge makes **(b) (6)** decision, the appropriate forum to challenge such a decision will be to the Board of Immigration Appeals.

In sum, while you challenge the authority of Judge **(b) (6)** to issue an Interim Order, the case remains pending. Any legal challenges to **(b) (6)** determinations can only be addressed by the Board of Immigration Appeals.

Sincerely,

Rico J. Bartolomei
Assistant Chief Immigration Judge

Matter of

(b) (6)

Respondent.

File Number: A(b) (6)

In Removal Proceedings

On Behalf of Respondent:

(b) (6)

On Behalf of the Service:

(b)(6) & (b)(7)(C)

**INTERIM ORDER OF THE IMMIGRATION JUDGE REGARDING ELIGIBILITY OF
RESPONDENT'S COUNSEL TO REPRESENT RESPONDENT IN IMMIGRATION
COURT**

On October 4, 2012, Respondent filed a Motion to Reopen Removal Proceedings, which included a Form EOIR-28, "Notice of Appearance as Attorney or Representative Before the Immigration Court", for an attorney (b) (6), who lists her address as (b) (6) and the same address appears on the caption in the Motion to Reopen filed with the Immigration Court.

The Immigration Court is aware that the (b) (6), according to the "who we are" statement on their webpage, is:

"....a private, non-profit corporation (b) (6)

(b) (6)

(b) (6)

The historical section on their webpage, states:

(b) (6)

Clearly, the Federal Defenders of (b) (6) Inc. is a non-profit corporation, whose mission is to provide defense legal services for indigent criminal defendants in U.S. District Court. They are funded by a federal grant approved by Congress under the Criminal Justice Act.

As stated in §240(b)(4) of Immigration and Nationality Act:

“In proceedings under this section, under regulations of the Attorney General-

(A) The alien shall have the privileged of being represented, *at no expense to the Government*, by counsel of the alien’s choosing who is authorized to practice in such proceedings.” [Emphasis added.]

Given that: (1) the exclusive practice of the Federal Defenders, a federally funded corporation, is to represent individuals in criminal proceedings in the U.S. District Court; and (2) the law does not allow an individual in immigration removal proceedings, a federal administrative court, to be represented by counsel at government expense; this Court is concerned about the Respondent’s representation by an attorney employed by Federal Defenders of (b) (6)

The Court would request that Respondent’s counsel provide a brief on the issue of her eligibility to represent the Respondent in Immigration Court under §240(b)(4) of the Act, given the fact that Federal Defenders of (b) (6) is funded by Government funds, and her ability to represent an individual in immigration proceedings while employed by Federal Defenders of (b) (6) (b) (6) given the Federal Defenders corporate charter and by-laws on whom they are

or until **November 13, 2012**.

... days from the date of this order to respond to this order,

Date: October 31, 2012

(b) (6)

Immigration Judge