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NON-DETAINED

Pro bono attorney for the Respondent

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA**

In the Matter of:)
LAST NAME, First Name,) File No.: A#: xxx xxx xxx
In removal proceedings)
)
)
)
)
)

Immigration Judge xxxxx

Next Hearing: DATE/TIME

RESPONDENT'S MOTION FOR SAFEGUARDS AND SUPPORTING DOCUMENTS

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RESPONDENT’S MOTION FOR SAFEGUARDS AND SUPPORTING DOCUMENTS

I. INTRODUCTION

Respondent Ms. X is a ## year old with severe complex post-traumatic stress disorder (PTSD), anorexia nervosa, and borderline personality disorder. *See* Letter from [Mental Health Services Provider], Tab A at 1. PTSD affects how people process and retrieve information, and how they respond to the environment in which they are placed. Because of this disability, Ms. X cannot receive a fair hearing without safeguards. In light of this fact, Ms. X respectfully requests that the Court provide the accommodations requested by this motion to ensure that her proceedings remain fundamentally fair.

II. PROCEDURAL HISTORY AND BACKGROUND

A. Background on Procedural Posture of Case

Respondent Ms. X is a ## year-old citizen of Country. *Notice to Appear*, Immigration Court Exh 1. On DATE, the Ninth Circuit granted her petition for review and remanded the case for the Immigration Judge to apply *Matter of M-A-M-*. 25 I.&N. Dec 474 (BIA 2011); *Ninth Circuit Memorandum* dated DATE. The Ninth Circuit agreed with Respondent that because she presented, “indicia of incompetency,” the BIA abused its discretion by not granting a remand for the Immigration Judge to conduct a competency hearing. *Id.* The Ninth Circuit found that, “in spite of some indications that X was suffering from severe depression and may have recently discontinued her psychiatric medication, the IJ did not ‘make further inquiry to determine whether [she was] competent for purposes of immigration proceedings,’ as *In re M-A-M-* requires.” *Id.*

Ms. X has been diagnosed with a mental illness: severe complex post-traumatic stress disorder (PTSD), anorexia nervosa, and borderline personality disorder. *See* Letter from [Mental Health Services Provider], Tab A at 1. Ms. X has a long history of severe trauma due to sexual abuse by her father at a young age and physical abuse by her family in Country. In addition, Respondent has been the victim of domestic violence in the United States. *See* Letter from [Mental Health Services Provider] filed with Motion to Reopen, dated DATE. Respondent’s symptoms include, hypervigilance, avoidance (socially isolates), anxiousness, persistent negative affective states, emotional numbing, chronic anhedonia, intrusive recollections, difficulty sleeping, and impaired ability to register and retain new information. *See* Letter from [Mental Health Services Provider], Tab A at 1. Her psychiatrist notes, “Ms. X feels overwhelmed and paralyzed under what would be normal stressors for others.” *Id.* She has been prescribed Mirtazapine, an antidepressant and sleep medication. *Id.* Furthermore, Ms. X’s providers state, “[h]er medications

should not impair her memory, but her psychiatric disorders do affect her ability to concentrate and retain new information.” *Id.* In addition, “testifying may bring up feelings of victimization, extreme anxiety, loss, sadness, depression, and insecurity.” *Id.*

B. Background on Post-Traumatic Stress Disorder

Post-traumatic stress disorder is “a delayed or protracted response to a stressful event or situation of an exceptionally threatening or catastrophic nature, which is likely to cause pervasive distress in almost anyone.” World Health Organization, *Int’l Statistical Classification of Diseases and Related Health Problems*, 10th Revision (2016), <http://apps.who.int/classifications/icd10/browse/2016/en#/F40-F48>. An estimated 360 million people in the world have either depression or bipolar disorder. *Mental Health Disorders*, World Health Organization (2017), <http://www.who.int/mediacentre/factsheets/fs396/en/>. Additionally, between two to ten percent of the population in surveyed countries currently has PTSD. Lukoye Atwoli et al., *Epidemiology of Posttraumatic Stress Disorder: Prevalence, Correlates and Consequences*, 28 *Current Opinion Psychiatry* 307 (2015). PTSD lead to two difficulties relevant to court proceedings: flat affect and overgeneral memory.

People with PTSD tend to suffer from emotional numbing, which is characterized by diminished or blunted emotional response, including flat affect. Richard L. Amdur et al., *Emotional Processing in Combat-Related Posttraumatic Stress Disorder: A Comparison with Traumatized and Normal Controls*, 14 *J. Anxiety Disorders* 219, 220 (2000); Howard Berenbaum & Thomas F. Oltmanns, *Emotional Experience and Expression in Schizophrenia and Depression*, 101 *J. Abnormal Psych.* 37 (1992). A person with a flat affect may speak with a monotonous voice, have limited emotional expressions, and may generally appear very apathetic. Flat affects, common in people with PTSD, are best understood as coping mechanisms and may not reflect how

a person actually feels about what they have experienced. *See generally* John W. Mason et al., *Psychogenic Lowering of Urinary Cortisol Levels Linked to Increased Emotional Numbing and a Shame-Depressive Syndrome in Combat-Related Posttraumatic Stress Disorder*, 63 *Psychosomatic Medicine* 387 (2001) (describing how people with PTSD initially have lower levels of the stress hormone cortisol because of extensive use of dissociative techniques, including emotional numbing and flat affect).

People with PTSD may also develop coping mechanisms that affect how they recall memories. A common assumption is that people are more likely to remember particular events that recall a heightened emotional state or that occurred during a period of emotional intensity. This is true, but only to a certain extent. *See* Anne E. Van Giezen et al., *Consistency of Memory for Emotionally Arousing Events: A Review of Prospective and Experimental Studies*, 25 *Clinical Psych. Rev.* 935, 936 (2005) (describing how memories of emotionally arousing events are both more vividly remembered but also subject to incomplete recall); *cf.* Shamsul Haque, *Autobiographical Memory and Hierarchical Search Strategies in Depressed and Non-Depressed Participants*, 14 *BMC Psychiatry* 310, 310 (2014) (describing how depressed patients retrieved memories more quickly but had less specific recall than non-depressed people). What actually happens, particularly for traumatic events, is that while people may recall the event, they forget many peripheral details, an example of what cognitive psychologists call “overgeneral memory.” *See* Haque, *supra*, at 310. Studies indicate that people with PTSD and depression are more likely to have overgeneral memory. *See, e.g.*, Birgit Kleim, et al., *The Impact of Imprisonment on Overgeneral Autobiographical Memory in Former Political Prisoners*, 26 *J. of Traumatic Stress* 626, 626 (2013) (describing this phenomenon). Psychologists theorize that because retrieval of

detailed negative experiences may cause distress, the person retrieving the memory subconsciously avoids these negative feelings by forgetting specific details. *See* Haque, *supra*, at 310.

Because of overgeneral memory, people with PTSD are more likely to confuse names and dates. Their ability to remember details and tell a full-fledged narrative may also suffer. They may have a flat affect that makes them appear cold or unaffected by traumatic or violent events they may have witnessed or experienced. All of these difficulties are manifestations of the person's mental health conditions. As a result, providing accommodations is crucial to ensure that people such as Ms. X have a fair opportunity to present their cases in court.

III. ARGUMENT

A. The Court Must Adopt Appropriate Safeguards to Ensure that Immigration Court Proceedings Remain Fair for People with Mental Health Conditions like Ms. X

Pursuant to the INA and BIA caselaw, immigration judges have a responsibility to ensure that immigration proceedings are fundamentally fair. *See* INA § 240(b)(4)(B) (requiring that respondents have a “reasonable opportunity” to examine and rebut evidence against them); *Matter of Tomas*, 19 I. & N. Dec. 464, 465 (BIA 1987) (describing importance of fundamental fairness of immigration proceedings); *Matter of Exame*, 18 I. & N. Dec. 303 (BIA 1982) (same).

In pursuit of fundamental fairness, accommodations may sometimes be necessary to ensure that all respondents have a full and fair opportunity to be heard in immigration court. For example, the BIA requires noncitizens who do not speak English to have access to a “competent interpreter,” so that respondents and immigration judges alike may understand each other. *Matter of Tomas*, 19 I. & N. Dec. 464 (BIA 1987). Accommodations for people with mental health issues function in a similar way. Absent such safeguards, a person with a mental health disability may testify in a

way that confuses rather than clarifies the record. *See Matter of J-R-R-A*, 26 I. & N. Dec. 609, 611–12 (BIA 2015) (describing importance of safeguards for person with cognitive limitations).

Federal law and regulations require IJs to prescribe safeguards when necessary to ensure that each respondent has an “adequate opportunity to present his or her case during a hearing.” *Matter of M-A-M*, 25 I. & N. Dec. 474, 477–78 (BIA 2011) (“The Act’s invocation of safeguards presumes that proceedings can go forward . . . provided the proceeding is conducted fairly.”); INA § 240(b)(3); 8 C.F.R. §§ 1240.4, 1240.43 (2016). The BIA requires immigration courts to make these accommodations for people with mental health conditions regardless of whether the disability rises to the level of incompetency. *See Matter of J-R-R-A*, 26 I. & N. Dec. 609, 610–12 (BIA 2015); *Matter of M-A-M*, 25 I. & N. Dec. 474, 480 (BIA 2011).

Federal regulations guarantee to every noncitizen in removal proceedings a reasonable opportunity to examine and present evidence, including in the form of testimony from the respondent. 8 C.F.R. § 1240.10. If unaccommodated, Ms. X’s PTSD can infringe on her right to have a fair immigration proceeding. Such accommodations are also required by federal laws that require public entities to accommodate people with PTSD. Section 504 of the Rehabilitation Act compels all executive agencies to provide “reasonable accommodations” for individuals with disabilities. *See* 29 U.S.C. § 794(a); 28 C.F.R. § 39.130 (applying the Rehabilitation Act to the Department of Justice). Under the Act, this Court has an affirmative obligation to make reasonable modifications in “policies, practices, and procedures” to ensure people with disabilities have meaningful access to services and programs. *See, e.g., Franco-Gonzales v. Holder*, 767 F. Supp. 2d 1034, 1051 (C.D. Cal. 2010) (granting safeguards for mentally ill detainees in immigration court under the Rehabilitation Act). The Supreme Court also recognized this duty in *Tennessee v. Lane*, where the Court emphasized that accommodations may be required for disabled individuals

in courts as a guarantee of their fundamental right of access to the courts under due process protections. 541 U.S. 509 (2014).¹

Providing accommodations will also ensure efficient development of the record. Immigration judges have an “affirmative obligation to help establish and develop the record.” *Secaida-Rosales v. Immigration and Naturalization Service*, 331 F.3d 297, 306 (2d Cir. 2003). Many of the safeguards requested in this motion originated in civil or criminal courts, where there has long been recognition of the usefulness of such safeguards in promoting more efficient and fair development of the record. *See, e.g., United States v. Salameh*, 152 F.3d 88, 127 (2d Cir. 1998) (allowing accommodations in order to develop testimony); *United States v. Archdale*, 229 F.3d 861 (9th Cir. 2000) (permitting leading questions when the subject matter of the questioning was traumatic for witness being questioned). Prescribing these safeguards will enhance, rather than detract, from the Court’s aim of ensuring sufficient development of the record in a fundamentally fair proceeding.

B. Because of Ms. X’s Mental Health Conditions, The Court Should Allow the Case to Proceed Without Ms. X’s Testimony and Should Allow Ms. X’s [family member] to testify in support of her claim

Federal law guarantees immigrant respondents a reasonable opportunity to examine the evidence against them, present evidence on their own behalf, and cross-examine witnesses presented by the government. INA § 240 (b)(4). This reasonable opportunity may include, but does not require the respondent to testify on his or her own behalf. This is the case particularly when the respondent may have other people available to testify in his or her stead, or when relevant

¹ In *Lane*, the Court considered court-provided accommodations under Title II of the Americans with Disabilities Act (ADA). Although the ADA does not apply to federal entities, both Acts prescribe the exact same obligations and courts generally consider both provisions interchangeably. *See Harris v. Mills*, 572 F.3d 66, 73 (2d Cir. 2009) (“[I]n most cases, the standards are the same for actions under both statutes.”).

evidence can be procured in a way that is not contingent on the respondent's oral testimony. *See Matter of Carillo*, 17 I. & N. Dec. 30 (BIA 1979) (respondents not required to testify); *Matter of M-A-M*, 25 I. & N. Dec. 474, 483 (BIA 2011) (suggesting use of close friend or family member to testify and provide court with information as a safeguard).

People with PTSD vary in their ability to communicate effectively in the courtroom environment. If, upon counsel's advice, Ms. X does not testify, the Court should not draw any adverse inference from this decision. Ms. X's inability to testify reflects only the complexity of developing evidence in light of Ms. X's mental health limitations, rather than an invocation of the privilege against self-incrimination. Silence alone is never enough to establish removability. *See Matter of Guevara*, 20 I. & N. Dec. 238, 243 (BIA 1990) (respondent's silence not enough to establish deportability); *Matter of J-*, 8 I. & N. Dec. 568, 572 (BIA 1960) ("Suspicion cannot be solidified into proof by the mere silence of respondent."). Additionally, the Court should allow Ms. X's [family member, Name] to testify in support of Ms. X. The BIA already recognizes that such an accommodation may sometimes be necessary in *Matter of M-A-M*. 25 I. & N. Dec. 474, 482 (BIA 2011).

C. Alternatively, The Court Should Impose the Following Safeguards to Ensure That Ms. X Has a Fair Proceeding

As explained *supra*, people with PTSD such as Ms. X have difficulty recalling narratives in a way that can infringe on their right to a fundamentally fair proceeding. Granting permission to ask leading questions on direct examination, closely monitoring the tone and form of questioning during cross-examination, and making changes to the courtroom environment can all play an integral role in protecting Ms. X's right to make her case in immigration court.

D. Appropriate Safeguards Should Include Granting Permission to Ask Leading Questions During Direct Examination

To allow Ms. X the opportunity to provide testimony despite her disability, the Court should permit Ms. X's counsel to ask leading questions during direct examination. Courts have long recognized an exception to the bar on use of leading questions during direct-examination when such questions are "necessary to develop the witness's testimony," Fed. R. Evid. 611(c). People with mood disorders or PTSD frequently struggle to remember things like dates, places and times. See Jane Herlihy et al., *Discrepancies in Autobiographical Memories: Implications for the Assessment of Asylum Seekers*, 324 *BMJ* 324 (2002). Their difficulties with dates and times only increase in times of anxiety or distress. See *id.*

Direct examination allows respondent's counsel to present the legal elements of a claim in an orderly fashion, and to build a case narrative through testimony for the court. Although a familiar person conducts direct examination, the formalized style of questioning and the unfamiliar, high-pressure setting may be jarring even for witnesses without the mental health limitations of Ms. X. Most attorneys address this by spending extensive time preparing their client for direct-examination. However, for an individual with PTSD, even substantial preparation may not fully prepare the person for questioning. Allowing respondent's counsel to ask foundational/leading questions regarding certain uncontested facts (e.g., "Did you arrive in the United States on April 3?" or "Is it true that you worked at the post office for fifteen years?") could help alleviate this problem.

Permitting leading questions on direct also expedites the proceedings and leads to more efficient development of the record. Courts frequently employ this exception for adults with communication difficulties, children, witnesses with disabilities, survivors of traumatic events, and witnesses who are "nervous" or "confused." See *United States v. Archdale*, 229 *F.3d* 861, 865 (9th Cir. 2000) (permitting use of leading questions on direct examination of a child witness);

United States v. Salameh, 152 F.3d 88, 128 (2d Cir. 1998) (permitting use of leading questions for nervous witness during direct examination); *United States v. Vazquez-Larrauri*, 778 F.3d 276, 290 (1st Cir. 2015) (allowing use of leading questions to develop foundational testimony); *United States v. Cisneros-Gutierrez*, 517 F.3d 751 (5th Cir. 2008) (permitting leading questions on direct for witness with extensive “memory problems”); *Jordan v. Hurley*, 397 F.3d 360, 363 (6th Cir. 2005) (leading questions on direct examination permissible for person with cognitive limitations).

Use of leading questions in Ms. X’s case merely reaffirms this longstanding principle and helps to ensure the fundamental fairness of Ms. X’s immigration proceedings. An additional and related safeguard would require the Court to defer to the established documentary record when there is an inconsistency between that record and the respondent’s hearing testimony. If the respondent has previously submitted documentary evidence that clearly establishes a particular fact, but on the day of the hearing respondent omits or forget that foundational fact (for example, his or her address or last place of employment), the Court should not penalize the respondent for the discrepancy, but defer to the documentary evidence instead.

E. Appropriate Safeguards Should Include Permitting Short Breaks Between Questioning and Closely Monitoring the Tone and Form During Cross-Examination

The default structure of cross-examination is currently not conducive to yielding cogent and accurate testimony from people who have PTSD. The brusque manner of many cross-examiners and the time pressured environment may increase anxiety in people with PTSD that is more likely to elicit inconsistent or inaccurate answers. Such results detract from, rather than enhance, the ability of the Court to discern the validity of the testimony at issue.

Generally, cross-examination proves especially difficult for individuals with PTSD. *See* Adrian Keane, *Cross-Examination of Vulnerable Witnesses—Towards A Blueprint for Re-Professionalisation*, 16 Int’l J. Evid. & Proof 175, 176 (2012) (describing the difficulties that

“vulnerable witnesses,” including witnesses who have survived traumatic events, have with cross-examination). Difficulties with cross-examination for individuals with PTSD come up for several reasons. Individuals with these conditions are typically more prone to anxiety than other witnesses, which can adversely affect their recall. *Id.* For these reasons, careful monitoring of the tone of cross-examination can be vital to ensuring that respondents answer truthfully. Counsel also requests that the court allow Ms. X to take breaks after questioning if she appears agitated or hesitant.

F. Courtroom Environment Accommodations

As the Executive Office of Immigration Review (EOIR) has acknowledged in the context of unaccompanied minors, members of vulnerable populations like Ms. X benefit greatly from accommodations to the courtroom environment. In its guidelines for accommodations for unaccompanied minors, EOIR noted that such modifications “need not alter the serious nature of the proceedings,” but can actually help foster an atmosphere in which a person is better able to present a claim and participate more fully in the proceedings. *See Memorandum to All Immigration Judges et al., from David L. Neal, Chief Immigration Judge, Operating Policies and Procedures Memorandum 07-01: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children, May 22, 2007, at 5.* Many of the recommendations for unaccompanied minors are readily applicable to adults with PTSD. These accommodations include: closing courtrooms and scheduling hearings consistent with medication schedules or so that a person is first on the docket.

1. Closed Courtrooms

People with PTSD can be very sensitive to their environments. For people who had traumatic experiences with authority figures in their home countries, for example, being in a courtroom can be particularly re-traumatizing. *See Ctr. L. & Court Tech.,*

Accommodating PTSD in Our Courts (2014),

<http://www.legaltechcenter.net/download/whitepapers/Accommodating%20PTSD%20in%20our%20Courts.pdf>. Closing the courtroom will not only protect Ms. X's privacy as sensitive issues may be discussed but will reduce distractions that stem from having other people in the courtroom that could further inhibit Ms. X's ability to testify. Such accommodations are also consistent with what immigration courts already do with unaccompanied minors. *See Memorandum to All Immigration Judges et al., from David L. Neal, Chief Immigration Judge, Operating Policies and Procedures Memorandum 07-01: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children, May 22, 2007, at 8.*

2. Scheduling of Ms. X's case

Ms. X takes medication that causes side effects that may influence her alertness over the course of the day. Ms. X has been prescribed Mirtazapine, an antidepressant. *See* Letter from [Mental Health Services Provider], Tab A at 1. Common side effects of Mirtazapine include, drowsiness, dizziness, anxiousness and confusion. *See* Medication Guides, Tab B at 6, 12. In light of this fact, the Court should ensure that scheduling of Ms. X's case is consistent with any medication schedule and might also consider scheduling Ms. X last on the docket so as to reduce any possible agitation.

G. When Evaluating Ms. X's Testimony as a Whole for Credibility and Other Discretionary Determinations, the Court Must Consider Ms. X's Mental Health Limitations

When assessing Ms. X's testimony, the Court must consider Ms. X's mental health conditions in its assessments. This includes factoring in Ms. X's mental health conditions in the Court's "totality of the circumstances" analysis, and taking into account Ms. X's mental health

conditions when assessing discretionary factors like Ms. X's rehabilitation or expressions of remorse.

The Immigration & Nationality Act requires the Court to consider the "totality of the circumstances" when evaluating a petitioner's credibility. INA § 208(b)(1)(B)(iii) ("Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on [list of factors]."). When evaluating Ms. X's credibility, the Court must include Ms. X's mental health conditions in its "totality of the circumstances" analysis.

The BIA requires this in *Matter of J-R-R-A*, 26 I. & N. Dec. 609, 612 (BIA 2015). In *J-R-R-A*, the Board remanded an IJ for failing to consider the respondent's cognitive limitations in his finding that the respondent's testimony regarding his asylum claim was not credible. *Id.* at 609. The respondent's attorney had mentioned his suspicions that his client may have had cognitive limitations, and the IJ had noted during the hearing that the respondent often appeared confused during the proceedings and was at times nonresponsive. Yet in his decision the IJ did not mention these concerns.

The BIA, in ordering the remand, recognized that there may be instances where, "inconsistencies, implausibility, inaccuracy of details, inappropriate demeanor, and nonresponsiveness—may be reflective of a mental illness or disability, rather than an attempt to deceive the Immigration Judge." *Id.* at 611. In the case, the respondent had incorrectly stated that 2006 was "last year" when it was actually seven years ago, confused the year in which he first arrive in the United States, and laughed inappropriately. In response to these indicia of cognitive limitations, the Board created an accommodation appropriate for the respondent, stating that "where a mental health concern may be affecting the reliability of the applicant's testimony, the

Immigration Judge should, as a safeguard, generally accept that the applicant believes what he has presented.” *Id.*

The logic of *J-R-R-A* should sensibly extend to that of people suffering from PTSD. Ms. X’s PTSD is also a mental health concern that may affect how the Court perceives her testimony. As discussed *infra*, people such as Ms. X who suffer from PTSD may also forget details like dates and names, and in addition could have a flat affect or be easily re-traumatized by the subject matter of certain questions. The Ninth Circuit and other federal courts already recognize that inconsistencies in testimony must be considered in light of conditions like PTSD. *See Kasongo v. Gonzales*, 161 Fed. Appx. 147, 148–49 (2d Cir. 2006) (remanding case where IJ used minor inconsistencies in testimony as unwarranted given respondent’s “extremely emotionally fragile” state and his “classic presentation of posttraumatic stress disorder.”); *see also Cordova-Manzanarez v. Holder*, 429 Fed. Appx. 659 (9th Cir. 2011) (remanding case in which IJ failed to take into account expert testimony regarding petitioner’s mental health impairments); *Zubeda v. Ashcroft*, 333 F.3d 463, 476–77 (3d Cir. 2003) (cautioning against placing too much weight on inconsistencies in testimony in light of petitioner’s mental health conditions).

Like the respondent in *Matter of J-R-R-A*, individuals with PTSD are often unable to remember peripheral details of events, including dates and names. They may also suffer from a flat affect that may limit their range of emotional expression. Such deficits are common in people suffering from PTSD like Ms. X. As the BIA itself acknowledges, such lapses are not indicative of malevolent intent, but rather reflect the reality of her symptoms. *Matter of J-R-RA*, at 611 (“factors that would otherwise point to a lack of honesty in a witness—maybe be reflective of an illness or disability, rather than an attempt to deceive the Immigration Judge.”). Because failure to consider Ms. X’s disability may unduly prejudice the Court’s credibility determination and undermine the

fundamental fairness of the proceeding, counsel respectfully requests that the Court include consideration of Ms. X's mental health issues when evaluating her testimony.

Similarly, the Court must also consider Ms. X's mental health conditions when evaluating discretionary factors such as the extent of rehabilitation and remorse. An immigration judge's evaluation of Ms. X's demeanor and responsiveness factors into the "totality of the circumstances" analysis the Court must adopt when assessing credibility. *See* INA § 208(b)(1)(B)(iii) (listing demeanor and responsiveness as two of many factors immigration judges can consider when assessing credibility). Demeanor and responsiveness are also factors the IJ considers when determining whether someone has expressed genuine rehabilitation or remorse. *See, e.g., In Re Mendez-Morales*, 21 I. & N. Dec. 296 (BIA 1996).

However, as discussed extensively *supra*, Ms. X suffers from PTSD that directly affects both Ms. X's demeanor and responsiveness—specifically, Ms. X's mental health conditions diminish and flatten her range of emotional responses. To comply with procedural fairness, the Court must take into account Ms. X's mental health conditions when using demeanor and responsiveness to evaluate discretionary determinations like rehabilitation and remorse.

IV. CONCLUSION

Accommodating Ms. X's mental health conditions is an important part of ensuring that Ms. X's proceedings are fundamentally fair. Such accommodations will also assist in the further development of the record, and are simply good practice given the circumstances.

Dated: DATE

[Attorney of Record]
Pro Bono Attorney for Respondent

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA**

In the Matter of RESPONDENT X

A#: XXX XXX XXX

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of **MOTION FOR SAFEGUARDS**, it is HEREBY ORDERED that the

motion be **GRANTED** **DENIED** because:

- DHS does not oppose the motion.
- The respondent does not oppose the motion.
- A response to the motion has not been filed with the court.
- Good cause has been established for the motion.
- The court agrees with the reasons stated in the opposition to the motion.
- The motion is untimely per _____.
- Other:

Deadlines:

- The application(s) for relief must be filed by _____.
- The respondent must comply with DHS biometrics instructions by _____.

Date

Immigration Judge

CERTIFICATE OF SERVICE

This document was served by: Mail Personal Service

To: Alien Alien c/o Custodial Officer Alien's Atty/Rep DHS

Date: _____

By: Court Staff _____

RESPONDENT X
A#: XXX XXX XXX

PROOF OF SERVICE

On _____, I _____ mailed or
(date) (name of person signing)

delivered a copy of this **RESPONDENT'S MOTION FOR SAFEGUARDS** and any attached pages to the DHS/ICE – Office of Chief Counsel at the following address: 606 S. Olive St., 8th Floor, Los Angeles, CA 90014.

by _____
(method of delivery)

Signature

Date