

**DETAINED**

American Gateways  
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San Antonio TX 78207  
**PRO BONO**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
PEARSALL, TEXAS**

\_\_\_\_\_  
**In re:** )  
 )  
**XXXXXX** )  
 )  
**In Removal Proceedings** )  
\_\_\_\_\_ )

**File No.: A**

**Immigration Judge:**

**Individual Hearing:**

**MOTION TO REQUEST SAFEGUARDS**

## I. INTRODUCTION

NOW COMES Respondent, XXX, who through undersigned counsel, moves the Immigration Court to grant safeguards to ensure fundamental fairness of the removal proceeding which is set for an Individual Calendar Hearing on September 7, 2018 at 8:30 p.m. in Pearsall, Texas. In support of this motion, Respondent states the following:

1. Ms. XXX has a diagnosed mental illness. Ms. XXX suffers from Posttraumatic Stress Disorder (DSM-V Code 309.81), Other Psychotic Disorder (DSM-V Code 298.8) and Opioid Use Disorder (DSM-V Code 304.00). *See Respondent's Supporting Documents* at 146. Ms. Lopez has also been diagnosed with "Psychosis with Paranoia" by Nix Behavioral staff. *Id.* at 143, and "Brief Psychotic Disorder," "Adjustment Disorder with Anxiety and Depressive Mood," and "Post Traumatic Stress Disorder," by medical staff at the South Texas Detention Center. *Id.* at 144. Additionally, Ms. XXX has been receiving several medications to stem symptoms of her mental illness. The full list of Ms. XXX's current medication and their side effects are detailed in her supporting documents, simultaneously filed with the court. If unaccommodated, mental illness such as Ms. XXX's can infringe on her right to have a fair immigration proceeding.
2. Appropriate safeguards are required to ensure that Immigration Court proceedings remain fair for Ms. XXX. 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); *United States v. Fernandez-Antonia*, 278 F.3d 150, 156 (2d Cir. 2002) ("Although the Supreme Court has not specifically

delineated the procedural safeguards to be accorded to aliens in deportation or removal hearings, it is well settled that the procedures employed must satisfy due process.”).

3. Because of Ms. XXX’s mental health conditions, the Court should allow the case to proceed without Ms. XXX’s testimony. Federal law guarantees to 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 relevant 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).
4. People with Posttraumatic Stress Disorder and Psychotic Disorder vary in their ability to communicate effectively in the courtroom environment. Ms.XXX’s inability to testify reflects only the complexity of developing evidence in light of Ms. XXX’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.”).
5. This Motion is not filed for the purpose of delay but in the interests of justice and due process.

6. The Department would not suffer any prejudice as a result of safeguards being implemented but appropriate safeguards will ensure fundamental fairness and due process.

WHEREFORE, Respondent respectfully requests that the Court GRANT her Motion to Request Safeguards.

Respectfully submitted,

Dated: August 24, 2018

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**ORDER OF THE IMMIGRATION JUDGE**

Upon consideration of the Respondent's Motion to Request Safeguards is GRANTED as:

- Good cause has been established for the motion;
- DHS does not oppose the motion;
- A response to the motion has not been filed with the court;
- The court agrees with the reasons stated in the opposition to the motion;
- Other:

Deadlines:

- All other applications for relief must be filed by \_\_\_\_\_.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Immigration Judge

**XXXX**

A

**PROOF OF SERVICE**

On August 24, 2018, I, \_\_\_\_\_, served a copy of the:

**MOTION TO REQUEST SAFEGUARDS**

and any attached pages to Department of Homeland Security, (U.S. Immigration and Customs Enforcement – ICE), at the following address:

**by ICE eService**

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\_\_\_\_\_

Date