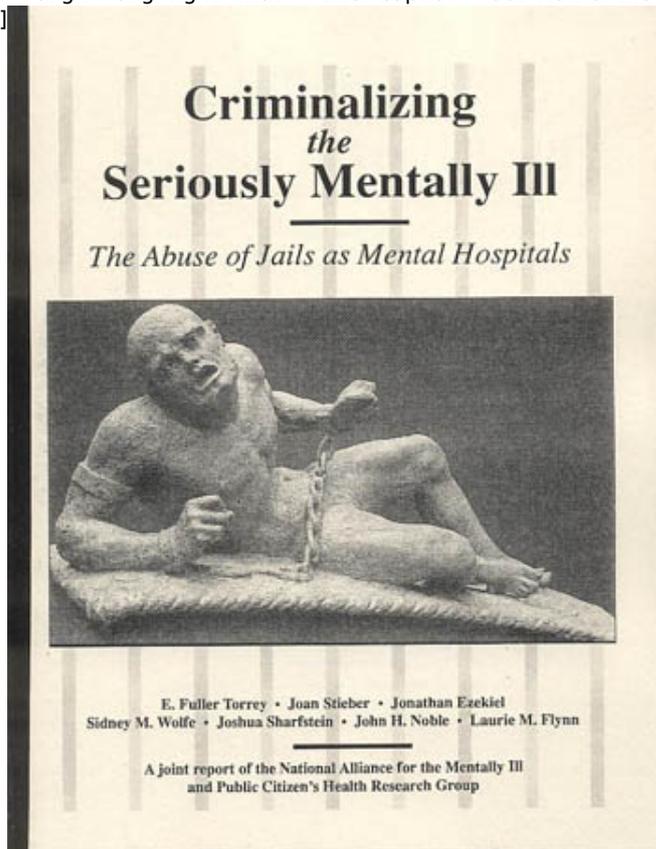


Amicus Brief on Protecting Mentally Disabled Respondents

[Human Rights Watch](#) and [Patterson Belknap Webb & Tyler LLP](#) recently filed an amicus brief with the Board of Immigration Appeals in the case of an alien with a mental disability. The brief is based on a year-long, joint investigation by HRW and the American Civil Liberties Union concerning violations of the rights of people with mental disabilities in the U.S. immigration system. The report is called [Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System](#)

[caption id="" align="alignright" width="245" caption="Our view of the mentally ill continues to evolve, but we've still got a way to go."]



[/caption]

In the [amicus brief](#) HRW argues that all respondents in immigration and removal proceedings, including those with mental disabilities, are entitled to a fair hearing and a chance to defend their rights. From the brief:

"The [incompetency] doctrine [where a defendant can not stand trial if he can't comprehend the charges against him, can't effectively consult with counsel, and can't assist in his defense] . . . has been characterized by the Supreme Court as 'fundamental to an adversary system of justice.'" Removal proceedings must respect human rights, honor U.S. human rights commitments, and ensure fair and accurate decision-making. A fair hearing is central to the protection of a person's rights and is the hallmark of a functioning justice system.

To meet the right to a fair hearing guaranteed under international human rights law, meaningful safeguards are necessary to ensure such a fair hearing and protect the rights of individuals with mental disabilities. Among these safeguards are (1) the respondent's right to counsel, (2) the Immigration Judge's ("IJ") ability to terminate proceedings, (3) the IJ's power to order a competency hearing, and (4) the right to be free from arbitrary and prolonged detention.

In order to comply with international human rights obligations, individuals with mental disabilities must be guaranteed the right to counsel in removal proceedings. Even then, in certain circumstances, if the IJ determines that a respondent with a

mental disability cannot explain the reasons against expulsion, even with counsel, the IJ must be empowered to terminate proceedings.

U.S. immigration law currently provides no right to appointed counsel for individuals with mental disabilities and remains confusingly unclear as to whether and under what circumstances an IJ may terminate proceedings or order a competency evaluation. Moreover, in the absence of these important safeguards to ensure a fair hearing, many immigration detainees with mental disabilities remain in prolonged detention during their immigration hearings. Accordingly, U.S. immigration law currently violates international human rights standards.

If this case is anything like the cases I've litigated in the BIA, we won't have an answer until late 2012, but it will be interesting to see whether the BIA responds in a positive way to the brief. The power of the BIA is limited, but at a minimum, it could issue guidance about terminating cases where a respondent is unable to defend himself due to a mental disability. However, my guess is that the laudable goals set out in the brief are above the pay grade of the BIA.