

## Competency Hearings for Aliens During Deportation Proceedings

**Michael C. Harlow, MD, JD**  
Resident in Psychiatry  
The University of South Dakota Department of Psychiatry  
Sanford School of Medicine  
Sioux Falls, SD

**H. W. LeBourgeois, III, MD**  
Assistant Professor of Psychiatry  
Director, Forensic Psychiatry Fellowship  
Department of Psychiatry and Neurology  
Tulane University School of Medicine  
New Orleans, LA

### Alien's Right to Competency Hearing During Deportation Hearings Limited to Determining Need for Representation According to U.S. Sixth Circuit Court of Appeals

In the case of *Jaadan v. Gonzales*, 211 Fed.Appx. 422 (6th Cir. 2006), the Sixth Circuit Court of Appeals considered whether an alien subject to deportation proceedings had a due process right to a competency hearing before deportation. The Sixth Circuit held that an alien involved in deportation proceedings had a right to a competency hearing only to determine whether the alien required representation by either an attorney or guardian. The court further ruled that a determination of mental incompetence does not preclude alien deportation.

#### Facts of the Case

Husam Jaadan was an Iraqi citizen who entered the United States in 1976. He was convicted in 1982 of breaking and entering an occupied dwelling with the intent to commit larceny. He received a second conviction in 1993 on felony assault charges after he threatened and physically injured his sister with a knife. Mr. Jaadan pleaded guilty to the charges in both criminal cases. In 1994, the Immigration and Naturalization Service (INS; now part of the Department of Homeland Security) issued a show cause order charging Mr. Jaadan with violating the Immi-

gration and Naturalization Act based on his two criminal convictions, and an immigration judge (IJ) ordered Mr. Jaadan deported in 1997. In 2001, Mr. Jaadan appealed the IJ ruling to the Board of Immigration Appeals (BIA) which remanded the case for a second IJ hearing.

During Mr. Jaadan's 2004 IJ hearing, the judge noted that Mr. Jaadan was uncommunicative and displayed signs of possible mental illness. The judge recommended to Mr. Jaadan's mother that she consider involuntarily committing Mr. Jaadan to a mental health facility. The IJ noted that although Mr. Jaadan had been "given numerous opportunities to obtain information, seek counseling, or present evidence of his incompetency," he had failed to do so (*Jaadan*, p 425).

At the conclusion of the hearing, the judge denied Mr. Jaadan's application for relief and ordered him deported, despite his lack of communication, stating that Mr. Jaadan could not "avoid the consequences of his actions and his criminal activities by refusing to testify" (*Jaadan*, p 425). In 2005, Mr. Jaadan appealed his second IJ decision to the BIA, which affirmed the decision without opinion. He then filed petition for relief with the U.S. Sixth Circuit Court of Appeals.

Mr. Jaadan sought relief from deportation claiming, among other things, that his lack of a competency hearing violated his due process rights, given that he displayed overt signs of mental illness at the time of his 2004 IJ hearing. He also argued that his previous lack of competency invalidated his prior guilty plea convictions that formed the nexus of his deportation.

#### Ruling and Reasoning

The Sixth Circuit concluded that Mr. Jaadan did not have a right to a competency hearing during his deportation proceedings. The court reasoned that since a deportation proceeding is a civil action to determine an alien's continued residence in the United States, not a criminal proceeding (for instance, to punish unlawful entry) an alien subject to deportation is not afforded the level of competency determination under the Due Process Clause granted a criminal defendant. Accordingly, "various protections that apply in the context of a criminal trial do not apply in a deportation hearing" (*Jaadan*, p 430).

In applying the standard of review established in *Mohamed v. TeBrake*, 371 F.Supp.2d 1043 (D. Minn. 2005), the Sixth Circuit Court of Appeals reasoned that a competency hearing is necessary during deportation proceedings if it is possible that an alien will need representation from either an attorney or guardian. The court noted that the only time a competency hearing may be required in the immigration context is to determine whether an unrepresented alien shows sufficient evidence of incompetency to require an attorney or guardian to represent the alien's interests at the proceedings. In applying this standard to Mr. Jaadan's case, the court concluded that, since he was afforded counsel throughout his deportation proceedings, he was not entitled to a competency hearing.

The court rejected Mr. Jaadan's assertion that he was prejudiced by a lack of a competency hearing, determining that "Mr. Jaadan failed to establish that he could not understand or appreciate the nature of his deportation proceedings" (*Jaadan*, p 431). In its analysis of due process rights provided aliens deemed incompetent during deportation proceedings, the court asserted the U.S. Ninth Circuit Court of Appeals decision in *Nee Hao Wong v. INS*, 550 F.2d 521 (9th Cir. 1977), that the law allows deportation proceedings to continue against aliens determined to be incompetent and that a determination of incompetency does not preclude deportation. In applying this standard to Mr. Jaadan's case, the Sixth Circuit concluded that even if he had been deemed incompetent, he still could be deported.

Regarding Mr. Jaadan's claim that his alleged incompetency invalidated his guilty pleas to the underlying criminal offenses that served the basis for deportation, the court succinctly noted that they had no authority to question the validity of those previous guilty pleas.

#### Discussion

This case highlights some interesting parallels between deportation proceedings and other types of civil proceedings, such as civil commitment hearings, in which, for the proceedings to continue, it is unnecessary for the court to find the person whose liberty is at stake competent to stand trial. In civil commitment hearings, it is understandable that there is no need for trial competency, because of the *quid pro quo* nature of such proceedings, in that treatment is provided at the cost of liberty if commitment is or-

dered. While there is no apparent *quid pro quo* for a potential deportee, there may be security problems facing immigration judges who favor proceeding with deportation of a dangerous individual, despite the incompetence of the deported person.

On the other hand, the narrow scope of competency hearing requirements for aliens who face the prospect of deportation may curtail mentally ill aliens' ability to contest deportation effectively. This prospect is reflected in the *Jaadan* case, in which the petitioner was mute throughout his second IJ hearing and exhibited signs of mental illness to the point that the IJ recommended to the petitioner's family that they involuntarily commit him to a mental health facility. Whether a broader standard for competency hearings (more akin to that in criminal proceedings) is indicated for deportation proceedings is a balancing act for the courts and is likely to remain so.

## Deliberate Indifference Revisited on the Question of Denial of Psychiatric Medication

**Damon Tohtz, MD**  
Fellow in Forensic Psychiatry

**John W. Thompson, Jr, MD**  
Chief, Section of Adult Psychiatry  
Vice-Chairman, Department of Psychiatry and Neurology

Tulane University School of Medicine  
New Orleans, LA

### Was the Pennsylvania District Court's Granting of Summary Judgment and Denial of Counsel Appropriate in a Case Involving Allegations of Denial of Psychiatric Medication?

In *Goodrich v. Clinton County Prison*, 214 Fed.Appx. 105 (3rd Cir. 2007), a case involving allegations of deliberate indifference on the part of jail staff to an inmate's request for psychiatric medication, the Third Circuit Court of Appeals considered whether a Pennsylvania district court's granting of a