

## Ruling and Reasoning

The U.S. Court of Appeals for the Eighth Circuit upheld the district court's ruling and affirmed the denial of Mr. Camacho's petition for *habeas* relief. The court applied the two-pronged *Strickland* test to address whether Mr. Camacho's legal counsel was deficient and, if so, whether said counsel "prejudiced the defense such that it deprived the defendant of a fair trial" (*Camacho*, p 394).

In applying the first prong of *Strickland*, the court noted that their review was highly deferential to the professional conduct of counsel with the strong presumption that "counsel's conduct falls within a wide range of reasonable professional assistance" (*Camacho*, p 394, citing *Strickland*, p 689). The court stated that Mr. Camacho had not shown that his counsel's initial performance was deficient, and it determined that foregoing a mental health evaluation was a reasonable strategy, given concerns about Mr. Camacho making remarks damaging to his defense. Additionally, the court did not find compelling Mr. Camacho's argument that his lawyers were deficient in failing to have a competency evaluation performed prior to entry of his plea. The court noted that nothing in the report of three clinicians who evaluated him would have caused a reasonably professional counsel to conclude that Mr. Camacho was incompetent to stand trial or to enter a plea. The court concluded that the forensic evaluation, at most, supported a diminished capacity defense and that, in its observations, Mr. Camacho consistently demonstrated awareness and understanding of the legal proceedings throughout his repeated interactions with counsel and Judge Keith, leaving no evidence to suggest a lack of competence to enter a plea deal.

Applying the second prong of the *Strickland* test, the court determined that Mr. Camacho did not demonstrate that his counsel's performance prejudiced the defense such that he was deprived of a fair trial. The court acknowledged that a few factors favored Mr. Camacho, but that taken as a whole, the facts did not support his argument that he would have been found incompetent had a competency evaluation been performed. The court opined that Dr. Stewart's testimony (i.e., that Mr. Camacho was incompetent to enter a plea) was both eight years removed from his initial evaluation of Mr. Camacho and could easily have been confirmed through a competency assessment that Dr. Stewart elected not to perform. In addition, the court cited Judge Keith's testimony that his observations of Mr.

Camacho's behavior during trial led him to believe that Mr. Camacho was competent. Moreover, Mr. Camacho appeared to act reasonably in pleading guilty to avoid capital punishment, further precluding a finding of incompetence. Therefore, the court concluded that the evidence reflected that Mr. Camacho was, in fact, competent and not deprived of a fair trial, even though his counsel did not request a competency evaluation.

## Discussion

In *Pate v. Robinson*, 383 U.S. 375 (1966), the Supreme Court held that a trial court's failure to raise the issue of competency in the presence of a "bona fide doubt" about the defendant's competency to stand trial is a violation of due process. Subsequently, in *Drope v. Missouri*, 420 U.S. 162 (1975), the Court elaborated on this "bona fide doubt" standard, stating, "evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of those factors standing alone may, in some circumstances, be sufficient" (*Drope*, p 180).

In the present case, none of the involved parties in the trial, including three mental health evaluators, questioned Mr. Camacho's ability to comprehend or participate in legal proceedings at the time of his trial. Witnesses testified that he appeared competent based on his interactions with counsel and court, and in his submission of a guilty plea to avoid capital punishment. Even though Mr. Camacho's mental health evaluations identified the diagnoses of major depressive disorder, PTSD, poly-substance abuse, and "frontal lobe impairment," the court recognized that the mere presence of a diagnosis of mental illness did not, by itself, raise a *bona fide* doubt regarding his competency to proceed.

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## Mental Health Factors in Immigration Court

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**The Ninth Circuit Holds That Immigration Judges Must Consider Mental Health Factors in “Serious Crime” Analysis and Deportation Decisions**

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In *Gomez-Sanchez v. Sessions*, 892 F.3d 985 (9th Cir. 2018), Guillermo Gomez-Sanchez was a legal permanent resident of the United States. He had been diagnosed with schizophrenia. While possibly experiencing psychiatric symptoms, he attacked a storeowner with a weightlifting bell. He pleaded guilty to assault with a deadly non-firearm weapon. After proceedings in immigration court, the judge held Mr. Gomez-Sanchez’s conviction was serious enough to warrant deportation to Mexico. The Board of Immigration Appeals upheld the decision, concluding that mental health evidence is always irrelevant in serious crime analysis and the nature of his conviction was serious enough that he posed a significant threat to the United States community. As such, he was barred from withholding of removal status from the United States. On appeal to the Ninth Circuit, the court held the Board of Immigration Appeals’ interpretation of statutory law was unreasonable and that mental health evidence must be considered when determining dangerousness.

**Facts of the Case**

Mr. Gomez-Sanchez was a citizen of Mexico who had lived in the United States as a lawful permanent resident since 1990. He started to exhibit symptoms of a serious mental illness as an adolescent and was later diagnosed with schizophrenia, for which he received treatment and took medication for the majority of his life. In 2004, Mr. Gomez-Sanchez pleaded guilty to violation of Cal. Penal Code § 245(a)(1)(2004), assault with a deadly non-firearm weapon. He had used a weightlifting bell to physically assault a storeowner, who had required “several stitches.” The storeowner described Mr. Gomez-Sanchez as “not all there.”

Mr. Gomez-Sanchez was sentenced to the two-year statutory minimum penalty for this conviction. This sentence was followed by a charge of removability from the United States under the Immigration and Nationality Act (INA) (8 U.S.C. § 1227(a)(2)(A)(iii)(2001)). He filed an application for withholding of removal and relief. He argued that he would face persecution in Mexico due to his mental illness and would receive inadequate treatment in deplor-

able conditions if he were to be deported. The immigration judge found Mr. Gomez-Sanchez was not eligible for withholding of removal because the nature of his action resulting in his conviction had enough potential lethality to make the crime “particularly serious,” which made him subject to deportation to Mexico.

Mr. Gomez-Sanchez appealed the decision to the Board of Immigration Appeals (BIA), but its decision held that, as a blanket rule, mental health factors are always irrelevant in serious crime analysis in immigration court. The BIA reasoned that, because there had been opportunities to raise mental health concerns during Mr. Gomez-Sanchez’s criminal proceedings, to revisit such concerns during immigration proceedings would “go behind” the criminal judge’s decision and “reassess . . . criminal culpability” rulings that had already been adjudicated. In the BIA’s reasoning, a violent act resulting from a mental illness or without intent to injure another person is no less dangerous than any other violent act. Thus, mental health factors and criminal intent are not relevant to determining a crime’s seriousness. Mr. Gomez-Sanchez appealed to the Court of Appeals for the Ninth Circuit.

**Ruling and Reasoning**

The Ninth Circuit Court of Appeals vacated the BIA’s decision and remanded it back to the BIA for reconsideration consistent with the Ninth Circuit’s decision. The court ruled that the BIA incorrectly interpreted the INA in establishing a categorical rule that mental health can never be considered when determining if a conviction meets criteria for a particularly serious crime.

In its reasoning, the court noted that, per the INA, withholding of removal is “mandatory” if, after deportation to the designated country, an individual’s “life or freedom” would be threatened because of “the alien’s race, religion, nationality, membership in a particular social group, or political opinion” (8 U.S.C. § 1231(b)(3)(A)(2006)). The INA explicitly states this protection is not extended to persons who have been convicted of a “particularly serious crime” and who pose a danger to the people of the United States. The court noted that statutory law does not otherwise define the term “particularly serious crime,” but the INA does define aggravated felonies accompanied by a sentence of five or more years imprisonment as “particularly serious.” The court

cited a previous decision that articulated a standard for determining seriousness. This decision held that an offense is particularly serious if the nature of the crime and imposed sentence “justify the presumption that the convicted immigrant is a danger to the community” (*Gomez-Sanchez*, p 991, quoting *Delgado v. Holder*, 648 F.3d 1095, 1107 (9th Cir. 2011)). The court described dangerousness as the “essential key” to serious crime analysis. The seriousness of sentences with less than five years of imprisonment must, therefore, be determined on a case-by-case basis.

The Ninth Circuit held that a *Chevron* deference, as described in *Chevron, U.S.A., Inc. v. N.R.D.C., Inc.*, 467 U.S. 837 (1984), did not apply to the BIA’s interpretation of the INA statute. The two-pronged *Chevron* legal test is applied when determining whether an administrative agency shall be granted deference to its interpretation of a statute it administers. The court explained that deference is granted if the statute’s intent is unclear and if the agency’s interpretation is reasonable. The court held that, in this instance, Congress had clearly expressed the intent that serious crime analysis required the agency “to conduct case-by-case analysis of convictions falling outside the category established by Congress” (*Gomez-Sanchez*, p 992, quoting *Blandino-Medina v. Holder*, 712 F.3d 1338, 1345 (9th Cir. 2013)). Thus, the BIA’s decision did not pass the first prong of the *Chevron* test.

The court went on to analyze the BIA’s decision under the second prong of the *Chevron* test as well. The court held the BIA’s interpretation of the INA statute was unreasonable. The court disagreed with the BIA that determination of whether a crime is particularly serious did not require a re-assessment of criminal culpability. The court also rejected the BIA’s position that mental health factors relevant to the assessment of whether a crime was particularly serious could have been brought up at multiple points in the criminal proceedings. The court discussed reasons such matters might not be raised during criminal proceedings. Further, it held the BIA had been inconsistent with its earlier decision to allow the introduction of “all reliable information” during serious crime analysis in immigration court proceedings. This was reason to find that the BIA’s inconstancy was “arbitrary and capricious,” and thus not eligible for *Chevron* deference. Finally, the court found the BIA’s decision that mental health factors

are always irrelevant in serious crime analysis to be inconsistent with the BIA’s precedent of recognizing that motivation and intent are relevant to serious crime determination.

#### Discussion

This case highlights multiple concerns for the practicing psychiatrist. First, psychiatrists must understand that the immigration courts are separate from the federal criminal and civil courts. It is important to recognize that appeals of immigration court decisions are heard by the BIA, the highest arbiter in the immigration system. Appeals of BIA decisions go directly to a circuit court of appeals. Next, this case demonstrates the implications of dangerousness and violence risk assessment in asylum and deportation decisions. The court’s decision in this case emphasized the necessity of a case-by-case analysis to determine whether an offense is particularly serious for the purpose of immigration proceedings. Moreover, the court’s decision demonstrated the need for a violence risk assessment in evaluating an individual’s potential threat to the community. Finally, the court’s decision articulated the potential relevance of mental health factors in serious crime analysis.

The Ninth Circuit remanded the present case to the BIA for reconsideration. While the court’s decision provided some guidance on factors that should be considered, it did not delineate how immigration judges should assess dangerousness. When adjudicating asylum claims, immigration judges (and the BIA) must assess the petitioner’s potential risk of danger to the community if allowed to remain in the United States. Officials must also consider the potential risk to the petitioner if removed from the United States. Psychiatrists can play a valuable role in helping officials assess these considerations. They can employ evidence-based methods to determine the risk of dangerousness if petitioners are allowed to remain in the United States. Moreover, psychiatrists can help officials understand the possible role of mental illness in the petitioner’s actions as well as the individual’s treatment needs. Psychiatrists with relevant knowledge may be able to assist in examining the likelihood of persecution if a person is removed. Psychiatrists with appropriate expertise can help assess the treatment a petitioner is likely to receive if removed and the implications for the person’s mental health. Therefore, psychiatrists could facilitate

officials' making just and ethical determinations on asylum and deportation.

## The Right to Self-Representation in Civil Commitment Proceedings

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***A Montana Statute Prohibiting a Waiver of Right to Counsel in Civil Commitment Proceedings Is Constitutional***

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The Montana Supreme Court, in *In re S.M.*, 403 P.3d 324 (Mont. 2017), affirmed the lower court's refusal to allow S.M., a defendant against a petition for involuntary commitment, to waive his right to counsel. The court ruled that the relevant Montana statute does not violate the claimant's Sixth or Fourteenth Amendment rights.

### Facts of the Case

In early November 2015, S.M. told his friend that he intended to commit suicide and asked his friend to watch his dog. In response, his friend called 9-1-1. When the police arrived at S.M.'s residence, they found a chair with a noose suspended above it. S.M. told the officers he intended to commit suicide. The police brought S.M. to the hospital. There, S.M. denied any self-harm intent but stated "that he does have a rope long enough and has been looking for someone to look after his dog when he is gone" (*S.M.*, p 325). He agreed to consider outpatient treatment. The mental health professional who assessed S.M. believed outpatient treatment would be inadequate. Thus, the state petitioned to involuntarily commit S.M. The Montana District Court determined there was probable cause for the petition and appointed a public defender for S.M.

During the initial hearing, S.M. requested that the district court dismiss his appointed counsel and in-

stead allow him to represent himself with the assistance of "shadow" or "standby" counsel only. The court acquiesced to S.M.'s request, but S.M.'s standby counsel filed a notice with the court that, pursuant to Mont. Code Ann. § 53-21-119(1) (1977), there was no right to waive counsel in involuntary commitment proceedings. The district court informed S.M. that he could not, in fact, represent himself, but added that the hearing would proceed "in a fashion that doesn't walk all over the top of your ability to represent yourself" (*S.M.*, p 326). S.M. contended that he had a right to self-representation but agreed that he needed mental health treatment. During a recess, S.M. met with his counsel and the prosecutor. Together, the parties arrived at a stipulation in which S.M. agreed to placement in an outpatient mental health treatment facility. All parties (the state, S.M., and S.M.'s appointed counsel) signed this agreement, which the district court approved. S.M. subsequently appealed to the Montana Supreme Court, challenging the order and the prohibition against waiving counsel in civil commitment proceedings as a violation of his rights under the Sixth and Fourteenth Amendments.

### Ruling and Reasoning

The Montana Supreme Court affirmed the district court's order of commitment and upheld the constitutionality of Mont. Code Ann. § 53-21-119(1) (1977). The court highlighted multiple provisions in Montana statutes protecting defendants in civil commitment proceedings, including the right to be represented by counsel per Mont. Code Ann. § 53-21-115(5) (1977). Further, the court agreed with the district court that the U.S. Constitution's Sixth Amendment right to waive appointed counsel pertains to criminal prosecutions, not civil commitment proceedings. Quoting the opinion in *Addington v. Texas*, 441 U.S. 418 (1979), however, the court also acknowledged that civil commitment represents "a significant deprivation of liberty that requires due process protection" (*Addington*, p 425). Therefore, "a constitutional right to self-representation in civil commitment proceedings, if any exists, must be found in the Fourteenth Amendment Due Process Clause [ . . . ], not in the Sixth Amendment" (*S.M.*, p 327).

The court proceeded to examine S.M.'s claim that his Fourteenth Amendment due process rights had been violated by Montana's statute prohibiting self-