



judge and to DHS counsel on May 22, 2008, and on June 10, 2008, respectively. In his letter to the immigration judge, the respondent asked to be granted another chance in the United States and detailed his and what he perceived to be his family's difficulties with his prolonged detention. In his letter to DHS counsel, the respondent again described his pain and suffering during his five years in custody, noting that he was repeatedly subject to drug injections, and requested that he be released. The immigration judge re-calendared the case.

At the re-calendared hearing, on June 26, 2008, the immigration judge again administratively closed the case, noting that the respondent remained institutionalized at Columbia Care Center in South Carolina and that the case would be rescheduled when the DHS had a competency determination and the respondent was available for removal proceedings. On September 2, 2009, the DHS filed another motion to re-calendar, noting that it had received a psychological evaluation regarding the respondent, who—though still hospitalized at Columbia Care Center in South Carolina—would be available via televideo for a hearing. On October 19, 2009, the immigration judge issued an order holding the DHS motion in abeyance until a copy of the competency determination was filed to support the motion to re-calendar. On November 10, 2009, the DHS filed a supplemental motion to re-calendar, which included a copy of a written competency evaluation pertaining to the respondent. In the written competency evaluation, [REDACTED], M.D., concluded: “The patient is not able to understand the nature of his legal charges. Unable to understand the legal proceedings against him. He does not know the activity of the judge, jury, and unable to help counsel on his own behalf.” Dr. [REDACTED] noted the respondent's history of mental illness and his chronic delusions and hallucinations, and indicated a diagnosis of chronic paranoid schizophrenia. On November 17, 2009, the immigration judge granted the motion to re-calendar and transferred the case to the televideo calendar.

The respondent then appeared via televideo at a January 19, 2010 hearing. The Court, noting the competency evaluation, asked DHS counsel whether she intended to proceed. DHS counsel responded that, under the regulations, the Court could go forward on the removability charge based on the conviction documents in the record. The Court explained to the respondent his right to an attorney and his hearing rights, but the respondent indicated that he would decline to seek counsel, stating repeatedly: “I don't want to wait.” The DHS filed documents related to the respondent's October 25, 2005 conviction, which were faxed to the South Carolina facility, and the Court continued the case to February 18, 2010. The Court continued the February 18, 2010 hearing when the respondent—who is still hospitalized at Columbia Care Center in South Carolina—was unable to appear via televideo.

The competency evaluation in this case indicates that the respondent is not competent to understand the nature of the charges against him and/or to participate in these removal proceedings. The Court finds that safeguards are necessary to protect the rights and privileges of the respondent. *See* INA § 240(b)(3). The regulations governing the proceedings provide that, “[w]hen it is impracticable for the respondent to be present at the hearing because of mental incompetency, the attorney, legal representative, legal guardian, near relative, or friend who was served with a copy of the notice to appear shall be permitted to appear on behalf of the respondent,” 8 C.F.R. § 1240.4; and, moreover, that “[t]he immigration judge shall not accept an admission of removability from an unrepresented respondent who is incompetent . . . and is not accompanied by an attorney or legal

[REDACTED]

representative, a near relative, legal guardian, or friend,” *id.* § 1240.10(c). Similarly, Rule 17(c) of the Federal Rules of Civil Procedure requires that litigants deemed incompetent have counsel and/or a guardian ad litem.

Safeguards being necessary to protect the respondent’s rights and privileges, including that the regulations may require that the respondent’s representative be served with a copy of the NTA, pursuant to its authority under 8 C.F.R. § 1003.10(b), the Court requests that the DHS provide the respondent with assistance in securing the appearance of an attorney, legal representative, legal guardian, near relative, friend, or treating physician at the next hearing in this case, to be held on **April 29, 2010, at 8:00 a.m. (PDT).**<sup>2</sup>

**SO ORDERED.**

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[Redacted]  
Immigration Judge

cc: The Respondent.  
Ms. Stuever for the DHS.

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<sup>2</sup> It appears that, in previous proceedings, the respondent was represented by Attorney [Redacted]. The competency evaluation indicates that the respondent has a brother living in the United States. Finally, the GEO Group, Inc.’s description of its Columbia Regional Care Center suggests the respondent may have been assigned a social worker or case manager.