

# **Appendix 17**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
United States Immigration Court  
901 North Stuart Street, Suite 1300  
Arlington, Virginia 22203**

**IN THE MATTER OF:**

**IN REMOVAL PROCEEDINGS**

Respondent

**CHARGE:**

Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act ("INA" or "Act"), as amended, as an alien who has been convicted of, or who admits having committed, or who admits committing acts that constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.

**APPEARANCES**

**FOR THE RESPONDENT:**

Jackie Bliss, Esq., Amicus Curiae  
CAIR Coalition  
1612 K Street, NW, Suite 204  
Washington, DC 20006

**FOR THE DHS:**

Adam L. Goldman, Esq.  
Acting Deputy Chief Counsel  
Department of Homeland Security  
901 North Stuart Street, Suite 1307  
Arlington, Virginia 22203

**INTERIM ORDER OF THE IMMIGRATION JUDGE**

**I. INTRODUCTION**

Respondent, a native and citizen of Vietnam, entered the United States as a refugee in 193. Immigration authorities detained him at Dulles International Airport on April 10, 2007, when, after stowing away on a flight to Japan, he entered the United States without proper documentation. The Respondent appears *pro se*. Proposing to appear as *amicus curiae*, representatives from CAIR Coalition indicate that Respondent's behavior during and after his detention raises questions as to whether he is competent to understand and participate in removal proceedings. The Department of Homeland Security ("DHS") also has noted that he is mentally "unstable."

The DHS contends that the next step for the Respondent is not a competency hearing, but an order by the Court for DHS to locate Respondent's nearest relative or friend. The DHS has offered to take this step. The Government adds that the Respondent is subject to the Health Insurance

Portability and Accountability Act of 1996 ("HIPAA"), which requires that the Court take steps to protect Respondent's private health information. See 45 C.F.R. § 164.512(e)(1). As a means to protect this information, the DHS also moves that the Court accept its brief under seal.

## II. APPLICABLE LAW

An alien's mental incompetency does not preclude his or her placement in removal proceedings. See, e.g., *Matter of Stoytcheff*, 11 I&N Dec. 329 (BIA 1965). However, when it is impracticable for a respondent to be present at a hearing because of mental incompetency, the Court "shall prescribe safeguards to protect the rights and privileges of the alien." INA § 240(b)(3). 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 his behalf. 8 C.F.R. § 1240.4. If such a person cannot reasonably be found or fails or refuses to appear, the respondent's custodian shall be requested to appear on behalf of the Respondent. See *id.*

*Amicus curiae* may be granted permission to appear, on a case-by case basis, to an attorney or organization represented by an attorney, "if the public interest will be served thereby." 8 C.F.R. § 1292.2. The Board has clarified that an *amicus curiae* is "not a party to the proceedings," but "a participant only for the benefit of the Board in cases of general public interest." *Matter of Dejong*, 16 I&N Dec. 739 (BIA 1979). Its role is to provide "supplemental assistance to existing parties" and to ensure a "complete presentation of difficult issues" so the Board may reach a proper decision. *Id.*

HIPAA laws indicate that disclosure of protected health information without an individual's written authorization is permitted "in the course of any judicial or administrative proceeding" in response to a court order, "provided that the covered entity discloses only the protected health information expressly authorized by such order." 45 C.F.R. § 164.512(e)(1)(i).

The order must: (A) "[Prohibit] the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which the information was requested"; and (B) "[Require] the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding." 45 C.F.R. § 164.512(e)(1)(v).

The DHS may file documents under seal by including a cover sheet identifying the contents of the submission as containing information that is filed under seal. 8 C.F.R. § 1003.31(d). "Documents filed under seal shall not be examined by any person except pursuant to authorized access to the administrative record." *Id.*

Based on these legal standards, I will enter the following order:

**ORDER**

**It Is Ordered that:** The Department of Homeland Security attempt to locate a near relative or friend for Respondent, pursuant to 8 C.F.R. § 1240.4.

**It Is Further Ordered that:** CAIR Coalition be recognized as *amicus curiae* in this case.

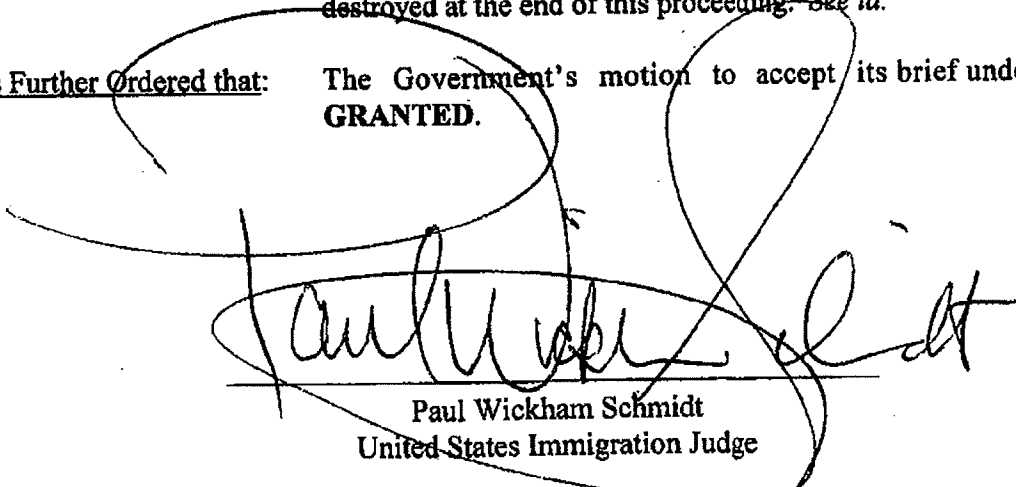
**It Is Further Ordered that:** Because of the unique circumstances and public interest of this case, and the limited role of *amicus* representatives under *Matter of Dejong, supra*, CAIR shall participate in this proceeding as a party until (a) an attorney, legal representative, legal guardian, near relative, or friend is located for the Respondent; or (b), if such a person is not found, for the limited purpose of determining the Respondent's competency.

**It Is Further Ordered that:** Only the health information necessary to adjudicate Respondent's competency be disclosed in this case. See 45 C.F.R. § 164.512(e)(1)(i).

**It Is Further Ordered that:** The parties in this proceeding shall not use or disclose this protected health information for any purpose other than the litigation or proceeding for which the information was requested. See 45 C.F.R. § 164.512(e)(1)(v).

**It Is Further Ordered that:** All protected health information (including all copies made) be destroyed at the end of this proceeding. See *id.*

**It Is Further Ordered that:** The Government's motion to accept its brief under seal be **GRANTED.**

  
Paul Wickham Schmidt  
United States Immigration Judge

4-2-08

Date