

“YOU SUFFER A LOT”

Immigrants with Disabilities Face
Barriers in Immigration Court

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Executive Summary

Immigrants with disabilities¹ face many barriers as they navigate deportation proceedings in U.S. immigration courts, where they must gather and submit evidence, testify, and present their case, often without a lawyer. These proceedings are adversarial, confusing, and terrifying for many immigrants, particularly people facing deportation to persecution or torture. As detailed in this report, the barriers that disabled immigrants face are exacerbated by a lack of resources and information about immigrants' rights under disability law in immigration court proceedings, absence of an established protocol for exercising those rights, denials of reasonable accommodations and safeguards to meaningfully participate in their proceedings, the use of detention to jail people during their immigration court cases, and disability discrimination in immigration court, including bias, stigma, and hostility from immigration judges. These barriers and harms violate federal disability law, Constitutional due process protections, and immigration law.

Federal laws and regulations, including the Rehabilitation Act and Department of Justice (DOJ) and Department of Homeland Security (DHS) agency regulations, prohibit disability discrimination. Under the Rehabilitation Act and its implementing regulations, immigrants with disabilities are entitled to reasonable accommodations in immigration court proceedings.² Case law binding on immigration courts separately requires judges to evaluate and provide safeguards to immigrants who are unable to participate in their proceedings due to mental disabilities. However, the Executive Office for Immigration Review (EOIR), the agency that oversees immigration court, does not have a comprehensive disability policy, process for requesting accommodations, or publicly identifiable EOIR staff who are available for disability-related questions and concerns.

Failures by immigration courts to comply with disability law and provide adequate accommodations underscore the urgent need for EOIR to develop public guidance on disability access and accommodations. President Biden issued a series of Executive Orders in January 2021 and February 2023, requiring federal agencies to take steps to advance equity, including for people with disabilities. Both Executive Orders instruct the head of each agency to identify potential barriers that underserved communities, including people with disabilities, may face in accessing agency programs, and to produce a plan to address those barriers. DOJ's 2022-2026 Strategic Plan identifies equal access to justice as a goal, and states that the Department will "strive to remove obstacles that prevent meaningful access to counsel and courts for members of underserved communities." These mandates provide EOIR with an important opportunity to develop necessary, and long overdue, disability access policy.

EOIR should, in consultation with disability rights and immigration rights stakeholders, develop comprehensive disability nondiscrimination and access policies, including by



¹ There is ongoing discussion within the disability community about using person-first language (e.g. person with autism) versus identify-first language (e.g. autistic person). This report alternates between both approaches.

² An appendix at the bottom of this report discusses disability law and the history of disability discrimination in the United States.

creating a simplified reasonable accommodation request and review process, appointing disability access coordinators, and instituting regular immigration judge training on disability law, nondiscrimination, and specific disability categories. Human Rights First's full recommendations are included below in this report's recommendations section.

This report is based on research conducted by Human Rights First between September 2022 and April 2023, including 49 interviews with attorneys, advocates, and people seeking asylum, and information on 123 immigrants with disabilities in Arizona, California, Colorado, Florida, Illinois, Louisiana, Maryland, Massachusetts, New Jersey, New York, North Carolina, Texas, Vermont, Washington D.C., and Virginia who underwent immigration court proceedings, data on complaints submitted to the DHS Office for Civil Rights and Civil Liberties (CRCL) received through a Freedom of Information Act (FOIA) request by Human Rights First, other publicly available government statistics, civil rights violations complaints, published investigations by other human rights organizations, and media reports.

Key Findings

- Though federal law and regulations prohibit disability discrimination in immigration court proceedings and require reasonable accommodations for immigrants with disabilities, **there are no public EOIR policy documents, directives, training materials, or instructions for requesting disability accommodations, or other documents on disability access in immigration court proceedings.** Lack of EOIR guidance on disability access has contributed to non-compliance with federal law and regulations guaranteeing disability access, depriving people with disabilities of a meaningful opportunity to participate in their immigration court proceedings.
- **d/Deaf³ and hard of hearing immigrants have been prevented from communicating effectively in immigration court or understanding their proceedings** due to immigration judges' lack of basic understanding of how being deaf impacts a person's ability to communicate, failure to grant accommodations, deficient interpretation, failure by Immigration and Customs Enforcement (ICE) to provide access to communication services for detained d/Deaf and hard of hearing people, and egregious medical and mental health neglect in ICE jails. Immigrants impacted by these rights violations include a young d/Deaf man denied communication accommodations because the judge stated he "had been able to speak" in a hearing ten years prior without addressing the man's ability to hear or the fact that the man had gradually become deaf due to brain tumors he developed the same year as his prior hearing; a d/Deaf Salvadoran asylum seeker who could not understand what was happening in court because the judge disregarded his, his



³ This report also generally uses [the term](#) "deaf and hard of hearing" or "deafness" when referring to the condition of not hearing, uppercase Deaf when referring to people who identify with Deaf culture and sign language, and d/Deaf where it is not clear how an individual identifies.

attorney's, and a deaf education expert's objections that the court's Salvadoran Sign Language interpreter did not sign competently; and a detained d/Deaf man who could not understand the sign language interpreter who was signing through video-teleconferencing on a small screen far from the man, with poor connection quality, but was forced to proceed even after the interpreter raised these issues to the court.

- **Blind and low vision people face barriers and discrimination throughout the immigration court process**, including inability to read written EOIR communications, difficulty arranging transportation to hearings, challenges navigating the courthouse, lack of EOIR resources on how to request accommodations for blind or low vision immigrants, and ICE's failure to provide basic vision services to blind and low vision immigrants in detention, such as prescription glasses, which has prevented immigrants in detention from being able to see who is speaking to them in court or read and complete applications for relief.
- **EOIR has failed to provide accommodations for some immigrants with physical disabilities**, such as by ensuring that all immigration courts are physically accessible or providing free transportation to hearings where free transportation programs for people with disabilities are not available. Lack of appropriate accommodations stigmatizes people with disabilities and compounds the difficulty and stress of preparing for and attending a hearing. Immigration court failures to inquire into competency issues and provide appropriate accommodations harms people with physical disabilities. One man with cerebral palsy, a condition which affects his ability to speak, endured a hearing where the judge made no inquiries into his disability. The man did not receive assistance until a legal organization intervened. Horrific medical neglect and discriminatory use of solitary confinement (sometimes referred to as "administrative segregation" or "disciplinary segregation") in ICE detention against immigrants with physical disabilities further deprives them of a fair opportunity to present their case.
- **Immigrants with cognitive, neurological, and mental health disabilities have been denied accommodations and safeguards, with some found not credible and denied protection due to failures by immigration judges to recognize the impacts of disabilities on memory and testimony or to take into account medical records submitted to the court.** These include a Venezuelan asylum seeker denied asylum in part due to inconsistencies that were related to memory issues arising from his traumatic brain injury (TBI) and an asylum seeker living with brain cancer that caused cognitive and memory issues who was found not credible due to an inability to recall certain dates, times, and the precise order of events in her claim.
- **Failure by judges to recognize the impact of TBIs and other trauma-related disabilities such as posttraumatic stress disorder (PTSD) inflicts severe trauma and harm on people seeking asylum who are denied safeguards and forced to testify about their persecution.** A judge denied a request to hold a competency hearing and institute safeguards for a Cuban asylum seeker who suffers seizures



when talking about past trauma, including being raped due to her political opinion. In another instance, an asylum seeker from the Central African Republic who was imprisoned and beaten on the head repeatedly for months in his home country, causing a TBI, was forced to testify despite a recommendation from a psychologist at the ICE detention center where he was jailed to waive testimony. This caused severe trauma and head pain throughout the four-hour hearing, during which the asylum seeker pressed and rubbed his temples repeatedly.

- **Immigrants with mental health disabilities face bias, stigma, and discrimination in immigration court. Judges have used disparaging language in cases involving people with mental disabilities, including referring to an asylum seeker's mind as "Swiss cheese" before ordering her deported and accusing another immigrant experiencing delusions and partial seizures of "faking it," claiming that his attorney may be "making a mountain of a molehill."** Immigration judge bias toward people with mental health disabilities endangers human lives and underscores the urgent need for training regarding identifying mental illness, communicating with people with mental health disabilities, and understanding how mental health disabilities may impact a person's ability to present their case.
- Though immigration law and Board of Immigration Appeals (BIA) case law requires immigration judges to assess a person's "competency" to participate in proceedings in any case where there is an indication that the immigrant might not be competent to proceed and further mandates that judges provide safeguards to enable them to participate in their proceedings, **immigration judges have failed to hold meaningful competency hearings and provide adequate safeguards for people with mental disabilities.** In some instances, judges have held truncated competency hearings or refused to hold competency hearings altogether, denying immigrants and their attorneys an opportunity to demonstrate the need for safeguards. Judges have also disregarded expert evidence such as psychological evaluations and relied on their own non-expert impressions to deny critical safeguards, including in a case where a judge ignored the recommendation of a detention center psychologist.
- **People in immigration detention, including those with mental health disabilities, experience additional trauma, isolation, worsening of their disabilities, medical and mental health neglect, solitary confinement, and challenges communicating with their attorneys, all of which prevent them from preparing and presenting their case to the immigration court.** These include a 17-year-old unaccompanied child from Honduras with PTSD, major depressive disorder, and a history of suicide attempts who was detained in a rural area of Virginia, exacerbating his mental health disabilities and his sense of isolation from his community and support systems; an asylum seeker with PTSD, depression, anxiety, and auditory hallucinations who struggled to share his story with the court during his detained immigration hearing because ICE had failed to provide him with his psychiatric medications and was denied protection; and an asylum seeker from Venezuela who was forced to appear for his final asylum hearing eight days into his stay in solitary and was denied asylum



Recommendations

To the Department of Justice and Executive Office for Immigration Review

EOIR must develop and publish disability policy, designate national and regional EOIR staff who can serve as disability coordinators, develop and issue updated disability nondiscrimination regulations, and institute regular immigration judge disability training:

- ***Develop and publish comprehensive disability policy for EOIR, in consultation with disabled immigrants and disability and immigration experts and advocates, including:***
 - **Create a Section 504 compliance division** with staff who are trained in EOIR's obligations under Section 504 of the Rehabilitation Act, and who can answer questions from advocates, the public, parties to proceedings, and other agencies. This compliance division should contain components similar to those of the Social Security Administration's (SSA) [Section 504 compliance center](#), which contains information regarding Section 504 compliance staff, a hotline, frequently asked questions, and notice of rights materials in one central landing page for people who interact with the SSA.
 - **Designate an EOIR disability access coordinator**, as part of the aforementioned compliance division, who will engage in policy advocacy on disability equity, as well as an **EOIR disability point of contact in each geographic region** whose contact information is public and who will be available to answer respondents' and their attorneys' questions and provide support regarding accommodations and disability access.
 - **Create a simple process for requesting accommodations** that does not require a formal filed motion (like the U.S. Citizenship and Immigration Services (USCIS) accommodations request [portal](#)), and provide a simple procedure for requesting review of a denial with an EOIR disability access coordinator that does not constitute a formal appeals process.
 - **Ensure meaningful review of accommodations requests**, including by requiring a written individualized explanation for a denial of the request.
 - **Clarify that immigration judges, disability coordinators, and other EOIR staff should consider accommodation requests made informally**, including those that do not invoke the term "reasonable accommodation" and those not submitted in writing, in accordance with ADA (Americans with Disabilities Act) [case law](#) regarding informal accommodations requests.



- **Provide guidance to immigration judges to grant continuances where an accommodation takes time to organize or secure**, in alignment with EOIR guidance on language access which states that there may be good cause to continue where an interpreter in the respondent's preferred language is not available.
- **Include sections on Section 504 compliance and reasonable accommodations in EOIR materials**, including the immigration court practice manual, which practitioners refer to for guidance on practicing before EOIR, the judicial bench book, which serves as a resource and guide for immigration judges, and other practitioner, respondent, and judge guidance and materials.
- **Develop and issue updated regulations** regarding nondiscrimination on the basis of disability in EOIR proceedings, in consultation with disability and immigration stakeholders. These regulations should affirmatively recognize EOIR obligations under Section 504 of the Rehabilitation Act, including the requirement to provide reasonable accommodations.
- **Institute regular training for immigration judges**, in consultation with the DOJ Civil Rights Disability division, on disability access, obligations under federal disability law, and specific disability categories.
- Work with the Biden administration **to advocate to secure funding from Congress for appointed counsel for those in immigration proceedings**, including individuals with disabilities.

Ensuring access and equity for d/Deaf and hard of hearing immigrants in immigration court proceedings

- **Include in the immigration judge training (recommended above), information on the impacts of deafness on communication**, use of home signs, the cognitive effects of acquiring language later in life, the necessity of working simultaneously with both Certified Deaf Interpreters (CDIs) and sign language interpreters in many situations, different forms of sign language, the government's obligations under DOJ effective communication regulations, and the importance of allowing a d/Deaf person to work with an interpreter with whom they have a pre-existing relationship, if requested and where possible.
- **Clarify that the court will honor the respondent's choice of communication method**, in accordance with DOJ regulations on effective communication, which state that in determining the type of auxiliary aid necessary, DOJ will give primary consideration to the requests of the disabled person. For example, if a d/Deaf person requests an American Sign Language (ASL) and Certified Deaf Interpreter (CDI) interpretation team, the immigration court should give primary consideration to that request.



- In line with federal court judiciary policy, **require each immigration court to publicly identify a specific office or individual on EOIR staff to serve as a d/Deaf access coordinator, who is trained in d/Deaf access services, interpreters, and the reasonable accommodation process** and who can advise EOIR on EOIR and other federal government policy and correspond with immigrants and immigration practitioners about accommodation requests. This could be the same person as the regional disability access coordinator if they have the necessary training.
- **Ensure that requests for d/Deaf and hard of hearing accommodations made through the aforementioned reasonable accommodations request process are routed through the publicly identified d/Deaf access coordinator.**
- In consultation with d/Deaf immigrants and d/Deaf advocates, **establish standards and verification of interpreter ability for EOIR's current roster of contract interpreters, as well as for future interpreters.** EOIR may also consult with the national certifying interpreter body, Registry of Interpreters for the Deaf, Inc. in developing these standards. If these standards already exist, EOIR should publicize them.
- **Clarify that respondents and other parties may bring and use their own qualified interpreters,** in place of a court-provided interpreter, if requested by the respondent in cases where the court is unable to secure a competent interpreter or relay team in the relevant sign language.

Providing accommodations for immigrants who are blind or low vision

- If EOIR or the immigration court is alerted that a party is blind or low vision, whether by the respondent, their attorney, a relative or other third party, or another government agency, **EOIR must send any written materials in the format requested by the party as an accommodation, including but not limited to Braille, large font or audio format, or any other format requested by the party, including for people in immigration detention.**
- **Ensure that digital communications like emails and the EOIR website are accessible for anyone using assistive technology,** including for blind and low vision people who use screen readers.
- **Provide training for all court reception, clerks, and security staff on offering assistance to blind and low vision people,** including but not limited to offering to provide a guide for navigating the court, if the person is not accompanied by a guide or other form of assistance.
- **Coordinate free transportation to and from immigration court** for blind or low vision immigrants who would have difficulty traveling to their hearings and who do not have access to ADA-compliant public transportation where requested, including, for example,



by issuing grants to local community-based organizations who can coordinate and provide transportation.

- **Instruct immigration judges to grant a remote hearing request as a reasonable accommodation where the request is related to the person's disability**, such as in the case of a blind or low vision person who cannot secure safe transportation and guidance at the hearing.

Ensuring that all EOIR facilities are physically accessible for people with disabilities

- **Engage physical structure accessibility experts to conduct surveys of federal buildings and detention centers which house immigration courts in each region and make recommendations for improving accessibility, in conjunction with other federal agencies housed in the same building where relevant.** While carrying out these surveys, EOIR and its partners should consult with users of these spaces including people in immigration court hearings and their relatives and should consider all forms of disability, including, for example, forms of disability that require a bathroom on a nearby floor.
- **Based on the results of the survey, make improvements to ensure that all physical sites are physically accessible.**
- **Coordinate free transportation services to hearings for disabled parties who request transportation and who do not have access to ADA-compliant public transportation**, for example by issuing grants to local community-based organizations who can coordinate and provide transportation.
- **Instruct immigration judges to grant a remote hearing request as a reasonable accommodation where the request is related to the person's physical disability.**
- **Work with each federal government building which houses EOIR sites to create a plan for reducing lines to enter the building and provide an accessible entrance or alternative to standing in a long line for disabled parties.**

Ensuring fair proceedings and provision of safeguards and accommodations for people with mental and cognitive disabilities

- **Include training on mental and cognitive disabilities in immigration judge disability training**, including training on:
 - Identifying people with mental and cognitive disabilities, communicating, and understanding how mental health challenges may impact a person's ability to present their case and work with their attorney.



- TBIs, their prevalence among people who appear in immigration court and in particular people seeking asylum who may have sustained TBIs due to the persecution they suffered, and the impact of TBIs on memory and cognition.
- Credibility assessments where an individual has mental or cognitive disabilities, including how to approach credibility determinations where a person has PTSD, TBI, and other disabilities and not to draw adverse inferences regarding inconsistencies or memory gaps where a person has memory loss associated with disability.
- **Include in EOIR disability guidance sections on competency hearings and safeguards** to ensure that immigrants with mental and cognitive disabilities receive a full and fair hearing, including providing that:
 - Immigration judges should **conduct competency hearings separately and in advance of individual merits hearings, where requested**, to ensure that competency hearings are fair and not rushed and to provide ample time for individuals to prepare for merits hearings after competency and proper safeguards have been determined.
 - When assessing competency where psychiatric records and mental health evaluations are available in the record, **judges should give primary weight to the expert opinions provided in the evaluation and records** and should not substitute their own impression of the respondent's behavior and mental health in the courtroom for the opinions and assessments of psychological experts.
 - In any case where there are indicia of incompetency and a respondent has not provided psychological records and mental health evaluations, particularly in cases where a respondent is unrepresented, **immigration judges should order mental health examinations** and rely on the results of those examinations in assessing competency and contemplating safeguards⁴.
 - Where judges determine that an individual is not competent, **they should give the safeguards requested by the person and their representative primary consideration**, in line with DOJ [regulations](#) on effective communication in the courtroom, which instruct the government to give primary consideration to the requestor's proposed accommodations when a respondent requires an accommodation, like a sign language interpreter, to communicate effectively with the judge and other court participants. Where a person doesn't know what accommodation to request, the judge should propose accommodations appropriate to the situation after consulting with the EOIR disability coordinator.



⁴ An EOIR PowerPoint obtained by Professor Amelia Wilson through a FOIA request [states](#) that an immigration judge cannot order a psychological evaluation under *M-A-M-*. Because nothing within the *M-A-M-* decision explicitly states this, EOIR should clarify that judges may order psychological evaluations when there are indicia of incompetency and there are no past evaluations upon which to rely.

- **Include in EOIR disability guidance sections on accommodation requests, trauma-informed communication, and complex mental disabilities, including providing:**
 - **Clarification that immigration judges must consider reasonable accommodation requests** brought under Section 504 of the Rehabilitation Act, regardless of whether the respondent has been determined to be competent and whether safeguards have been assigned pursuant to *Matter of M-A-M-*. This guidance should make clear that safeguards and accommodations are not limited to those described in *Matter of M-A-M-* and that Section 504 creates a separate binding obligation on immigration judges to provide disability accommodations.
 - Instructions, similar to procedures issued regarding cases with unaccompanied children, for **communicating with survivors of trauma in proceedings and limiting or waiving testimony that would retraumatize survivors**. In particular, EOIR should instruct immigration judges to consider granting motions to waive testimony in whole or in part due to severe trauma or PTSD and not to draw a negative inference on the basis of that waiver.
 - **Instruction that trial attorneys and judges should use their discretion, in collaboration with respondents and respondents' representatives, to terminate, administratively close, or continue cases and connect people with social services and mental health care in complex cases where significant mental health disabilities impede representation and communication.** However, cases should not be terminated or administratively closed over the objection of the respondent or their attorney.

Protecting the rights of immigrants with disabilities who are detained by ICE

- **Include in EOIR disability guidance sections on ensuring effective participation in proceedings from detention, including providing that:**
 - In bond hearings, **judges should consider disabilities and medical and psychological vulnerabilities as a strong factor in favor of granting release.**
 - When a disabled person appears in immigration court while detained, **the immigration judge should inquire as to whether an ICE custody review has been conducted and whether ICE has concluded that they must remain in detention while in proceedings.** Where the respondent requests a continuance because of an inability to effectively participate in proceedings or secure counsel due to being held in detention, the immigration judge should grant the request.
 - Where a detained person is being held in solitary confinement at the time of a hearing or was in solitary shortly before the hearing was scheduled to take place, **immigration judges should inquire into whether the respondent has been or is able to effectively participate in their proceedings and prepare their case with counsel, if any, from solitary confinement,** including by directly asking the



respondent or their attorney. Where the respondent requests a continuance because of an inability to effectively participate in their proceedings due to being held in solitary confinement, the immigration judge should grant the request.

To the Department of Homeland Security and Immigration and Customs Enforcement

- **Institute regular disability trainings for ICE trial attorneys** on disability law obligations and accommodations, identification of disability, and different disability categories, which should include periodic and updated training in addition to any initial trainings.
- **Issue guidance for ICE trial attorneys** on identifying and promptly notifying the judge of a person's disability needs when they become aware of those needs at any stage of immigration proceedings, stipulating to undisputed issues or agreeing to narrow the issues in cases — for example, to avoid requiring people seeking asylum to testify in detail about traumatic events — and joining motions for accommodations and safeguards including motions to continue, terminate, or administratively close cases based on disability.
- **Monitor and ensure compliance with ICE's disability detention standards**, including by ensuring that people in detention have access to physically accessible spaces, glasses, hearing aids, other aids, appropriate medical and mental health treatment, and an informal and interactive reasonable accommodation request process.
- **DHS should take immediate steps to avoid the incarceration, medical neglect, and abuse of people with disabilities, including:**
 - Issue regulations that include a strong presumption against detention including for any individual with a disability, requiring ICE in all custody determinations to establish by clear and convincing evidence why the detained person should remain detained.
 - Amend existing regulations to provide that release of any person with a physical or mental disability is in the public interest and justified by urgent humanitarian reasons.
 - Issue guidance requiring ICE to timely conduct a custody review whenever it becomes aware of a person's mental or physical disability, regardless of when it last conducted a custody review, and to strongly weigh the person's disability in favor of their release.
 - Issue guidance clarifying that where a person needs a high level of support (for example due to complex mental illness or chronic health conditions), ICE should, in consultation and with the consent of the individual (and in consultation with legal representatives and family where relevant), generally release and connect them



with available community supportive services where they plan to reside, rather than transfer them to ICE-contracted medical and psychiatric facilities.

- **ICE should take the following steps to avoid inflicting human rights and due process violations on immigrants with disabilities:**
 - Do not detain any persons with a significant mental or physical disability, who ICE has acknowledged are people with “special vulnerabilities,” as detention cuts many off from medical and psychological support, prevents them from preparing their case, and often exacerbates disabilities.
 - In consultation and with the consent of the individual, swiftly release any detained person with disabilities and connect them with any available voluntary community support programs.
 - End the use of solitary confinement, which can constitute torture, including for people with mental or physical disabilities.
 - Provide secure, stable, private, and consistent phone and video connection in all ICE prisons, including medical and psychiatric facilities, so that attorneys can effectively communicate with their clients. Ensure that confidential calls are available to people in solitary confinement, and that all calls are free, and available 24/7. For d/Deaf and hard of hearing people, ensure that video calls, interpretation relay services, and captioner services are available in compliance with ICE’s detention standards.
 - Provide prompt notification to representatives in all cases if their client is transferred, including transfers to ICE medical or psychiatric facilities, notify counsel of the client’s new location, and allow counsel to visit detained people in medical or psychiatric facilities.
 - Provide meaningful advance notification to legal representatives in all cases where a disabled client is being released, including the location and time of the release, and any release planning ICE has engaged in (particularly for individuals with serious mental illnesses, in accordance with the ICE directive regarding release planning for individuals with serious mental illnesses or conditions), so that representatives and loved ones can be prepared to receive and welcome the individual upon their release and avoid the possible deadly consequences of release from detention with no support and no plan.



To Customs and Border Protection⁵ (CBP)

- In compliance with the CBP [Disability Access Plan](#), which states that it is CBP policy to engage in an “interactive and individualized process to identify reasonable accommodations and modifications to allow participation in CBP’s programs and activities,” develop a screening process to identify individuals with disabilities and ensure that they are accommodated, and ensure that this identification is shared with other immigration agencies with which those individuals will be interacting, including ICE and EOIR.

Background

Barriers, dangers, and challenges migrants with disabilities face before reaching safety

People seeking asylum and other migrants with disabilities face unique challenges in their home countries, in their journeys to the United States, and upon arrival in the United States. Many disabled people fleeing persecution experience additional harm when they seek safety due to U.S. immigration policies that may further exacerbate mental and physical disabilities.

Studies have estimated that approximately [fifteen percent](#) of the global population has disabilities. The Centers for Disease Control and Prevention in the United States estimates that approximately 1 in 4, or [26 percent](#) of people in the United States have a disability. Among migrating people, including people seeking asylum, the percentage of people with disabilities globally may be [even higher](#) than these estimates due to the effects of persecution, torture, and trauma.

People with disabilities and their family members are often targeted for brutal violence in their home countries because of their disabilities, leading them to [flee](#) to seek safety. In 2022, a woman in Mexico was [set on fire and murdered](#) after reporting threats against her autistic son. In the Democratic Republic of Congo, some communities have labeled children with disabilities like speech impediments as [witches](#), which has sometimes resulted in violent “exorcisms” and abuse.

Disabled people who seek medical care, social services, and education in their home countries may also suffer discriminatory lack of access or horrific abuses, including forced institutionalization. For instance, the 2022 U.S. State Department human rights [report](#) for Mexico stated that children and adults with mental health disabilities in Mexican institutions and care facilities suffered abuses including physical and sexual violence; the use of physical and chemical restraints; human trafficking; disappearance; and the illegal adoption of institutionalized children. Human Rights Watch similarly [documented](#) the inhumane conditions in institutions for people with disabilities in Brazil. In Yemen, ongoing war has



⁵This report focuses on immigration court and how ICE and CBP impact immigration court proceedings; this recommendation is not meant to suggest that CBP has only one area of improvement in disability access.

caused 300 specialized education centers for students with disabilities to shut down. In Kyrgyzstan, thousands of disabled children are segregated in residential institutions or special schools where they experience neglect and discrimination.

Persecution in home countries can cause or exacerbate mental and physical disabilities. For example, people seeking asylum often suffer traumatic brain injuries, which may then go under-identified and untreated. A Ugandan asylum seeker who sought protection in the United States had endured years of physical and sexual abuse from her husband and sustained a TBI and PTSD because of the abuse, leaving her with memory problems and other cognitive issues. An asylum seeker from the Central African Republic developed a TBI when he was tortured, beaten on the head repeatedly, and imprisoned in a prison cell with no light for months, according to an attorney interviewed by Human Rights First. Other severe injuries and permanent disabilities arise from persecution. For instance, a bus driver in Guatemala was beaten so severely by a criminal group that his left leg had to be amputated, forcing him and his wife to flee the country

The migratory journey itself can be disabling. Across the world, migrants cross harsh and unsafe conditions including deserts, rivers, and oceans in pursuit of safety. Those who survive the journey sometimes have lasting physical or mental disabilities caused or exacerbated by the trauma they have suffered. Some migrants travelling north from Central America and other countries board fast-moving freight trains unsafe for passenger travel, colloquially referred to as “La Bestia” because of the extreme dangers of travelling on these trains. Hundreds of migrants have lost limbs and sustained other disabling injuries travelling on La Bestia.

At the U.S.-Mexico border, many migrants have drowned and died or been seriously injured crossing the Rio Grande River or trying to reach the United States by sea. Many suffer brutal attacks before they can reach safety in the United States; for instance, Human Rights First documented 13,480 reports of murder, kidnapping, rape, torture, and other violent attacks against people blocked in or expelled to Mexico under the U.S. government’s Title 42 policy from January 2021 through December 2022. Disabled migrants are often targeted for harm. A 15-year-old Central American boy with cognitive disabilities was found murdered and his body mutilated after attempting to cross the border alone to reach safety.

Challenges in immigration court

When an immigrant is placed in deportation (“removal”) proceedings, they must typically appear before an immigration judge to argue their case. Over two million immigrants in the United States currently have pending cases with the EOIR immigration court and may be ordered deported if they cannot prove to the judge that they qualify for protection from deportation or are otherwise eligible to remain in the United States.

Among them are many people seeking asylum who will be ordered deported by the immigration court if they cannot establish eligibility for asylum or other humanitarian protection. Depending on their circumstances, people seeking asylum may have their cases



decided by the immigration court or the USCIS asylum office. Many people seeking asylum, ranging from those who have just arrived to those who have grown up in the United States, end up in removal proceedings where they must recount their trauma and persecution to the immigration judge in an adversarial setting.

In many ways, the immigration court process is akin to a state or federal criminal trial. The government issues a charging document to place an immigrant in removal proceedings. The government's trial attorney (who is an attorney at ICE and plays a role similar to a prosecutor in a criminal case), may argue that the individual before the court is not eligible for protections and may cross-examine the individual and their witnesses. Immigrants are often imprisoned in ICE jails throughout their proceedings. Despite the resemblance of this process to a criminal trial, people in removal proceedings are not entitled to government-funded counsel if they cannot afford an attorney. They may submit evidence and legal arguments in support of their claim, but it is extremely difficult to do so without an attorney. All submitted evidence must be translated into English to be considered. People in removal proceedings may also present witnesses to testify in support of their story.

When an individual attends their final hearing in immigration court (referred to as an "individual calendar hearing" or a merits hearing), they must prove that they are eligible for protection from deportation. The process is complex, adversarial, and often confusing for many immigrants, especially those who are not able to secure legal representation. In asylum cases, trial attorneys conducting cross-examination often ask people seeking asylum invasive questions about their past traumas and reasons for seeking asylum. Based on this adversarial and stressful process, the immigration judge determines whether the asylum seeker is "credible" and denies protection if they are deemed not credible, a determination that may hinge on inconsistencies in testimony produced by stress, trauma, or disabilities.

For disabled immigrants, every stage of immigration court proceedings can be particularly arduous and stressful. People with disabilities face a range of barriers in understanding immigration court documents, attending their hearings, communicating with counsel, testifying in court, and presenting their case.

A blind Ethiopian refugee spoke with Human Rights First about the challenges of navigating immigration court proceedings with a disability: **"Persons with special needs face very serious hardship when here asking for asylum or when their case is pending....When you are applying you suffer a lot...The documents are a lot: hundreds of pages, it's very hard to go through those documents because they are not in Braille...when you are a person with a disability you are taking a greater risk than others, it's not easy for you to find a safe place...The risks are not easy."**

Disabled immigrants forced to present their cases while jailed by ICE in the world's largest immigration detention system face even greater barriers, which are often compounded by inability to access or communicate with attorneys and widespread human rights violations including medical and mental health neglect, discriminatory use of solitary confinement, and denial of basic necessities including food, water, and hygiene. People with disabilities are



likely overrepresented in immigration detention, as they are in other carceral settings in the United States. The Biden administration has continued to detain vulnerable people seeking asylum with physical and mental disabilities who have reported denial of access to medication or adequate healthcare.

Immigration detention can cause or exacerbate disabilities due to dangerous conditions, medical neglect, physical and sexual assault, isolation from loved ones, solitary confinement, and trauma of incarceration, especially for immigrants who were jailed by governments in their home countries. ICE routinely uses solitary confinement (referred to euphemistically as “segregation”) to jail people in a small cell under nearly 24-hour lockdown for weeks, months, or years, including for medical and mental health reasons, even though United Nations experts have stated that solitary confinement lasting more than 15 days constitutes torture. During the COVID-19 pandemic, ICE increased its use of solitary confinement by 215 percent. ICE officers have wielded solitary confinement as a threat and as retaliation for peaceful protests by people in detention. Detained people with physical and mental health disabilities are especially likely to be placed in solitary confinement, and some have even been forced to prepare for and appear for their immigration hearings while in solitary. Black immigrants are also disproportionately jailed in solitary confinement, according to government data obtained through a FOIA by the Black Alliance for Just Immigration.

Lack of EOIR policy and guidance regarding disability access and equity

Federal laws and regulations prohibit disability discrimination and require reasonable accommodations for people with disabilities in immigration court proceedings. However, the agency that oversees the immigration court has failed to issue public guidance, policy, training materials, and other resources **to ensure that immigration judges comply with their obligations and that disabled immigrants have a way to exercise their rights.**

Section 504 of the Rehabilitation Act prohibits federal agencies and organizations that receive federal financial assistance from excluding and discriminating against people with disabilities. Under the Rehabilitation Act, a person with disabilities is defined as anyone who has a physical or mental impairment that substantially limits one or more major life activities, has a history or record of such an impairment, or is perceived by others as having such an impairment. Regulations implementing the Rehabilitation Act explicitly require agencies to provide reasonable accommodations to people with disabilities unless the agency can demonstrate that the accommodation would impose an undue hardship on its operations. Section 504 applies to all people in the United States, regardless of their immigration status.

Immigration processing and adjudication in the United States is run by federal agencies, including DHS and its sub-agencies, and EOIR, a sub-agency of DOJ that oversees the immigration court. These agencies must comply with Section 504’s disability nondiscrimination mandate in all of their interactions, including in any immigration court proceedings.



Immigration [law](#) and international human rights [law](#) require that all immigrants, including people with disabilities, have a fair opportunity to argue against their deportation. Under the Immigration and Nationality [Act](#), immigrants must have a reasonable opportunity to examine evidence against them, to present evidence, and to cross-examine government witnesses in their immigration proceedings. The Supreme Court has [repeatedly](#) held that immigrants are entitled to due process protections. Additionally, the [Immigration and Nationality Act](#) and BIA [case law](#) require immigration judges to inquire into an immigrant's competency where there are "indicia" that they may not be competent to understand their proceedings, and assign appropriate safeguards if they are deemed incompetent.

Despite these guarantees, EOIR has **not developed any easily discoverable public-facing policy, guidance, or resources** on disability access or equity in its immigration proceedings, in contrast to actions taken by other federal agencies to ensure compliance with federal disability obligations. For instance:

- EOIR has no public disability access plan or directive detailing its current disability access measures and steps it will take to improve disability access in EOIR programs. In contrast, USCIS, which also adjudicates asylum claims, has a public disability access [plan](#), acknowledgement of its [obligations](#) towards immigrants under the Rehabilitation Act, and a disability [directive](#) from DHS, its parent agency.
- EOIR has no public written policy or established procedure for immigrants to request reasonable accommodations before the immigration court. This is in stark contrast to resources provided by USCIS, which has an accessible [landing page](#) entitled "Disability Accommodations for the Public" where those with cases before USCIS may request a disability accommodation and access resources regarding USCIS disability policies.
- EOIR has not created a disability compliance division or provided publicly available government contacts to ensure compliance with disability law or respond to questions about disability access, in contrast with other federal agencies. For example, the SSA has a 504 compliance [site](#) which clearly identifies SSA resources, including a 504 compliance hotline where compliance staff are available to answer questions and assist the public, advocates, and other agencies.
- EOIR has no publicly available immigration judge training [materials](#) or resources on disability access for people in immigration proceedings, advocates, or attorneys discoverable through searches of commonly used immigration court resources, including the Immigration Court Practice Manual, the Board of Immigration Appeals Practice Manual, and EOIR memoranda. Copies of previous immigration judge [bench books](#) reveal no disability access guidance for judges.

In the absence of EOIR disability policy and resources, there is no clear guidance for immigrants or their attorneys on how to request reasonable accommodations, report disability discrimination, or seek recourse if they have been discriminated against due to their disability in proceedings.



In order to ensure that the immigration court complies with its federal obligations to people with disabilities, **it is crucial to establish and publish a comprehensive disability policy that includes** guidance on compliance with Section 504 and reasonable accommodations in immigration court, a simple process for requesting reasonable accommodations, a Section 504 compliance division similar to the SSA's compliance center and other resources where immigrants and their attorneys can ask questions and receive support regarding disability access, and regular immigration judge disability training on disability access, obligations under federal disability law, and specific disability categories.

Deaf and hard of hearing immigrants

Deaf and hard of hearing immigrants face unique and pressing barriers in immigration court that impede their ability to communicate in court or understand their proceedings. **Immigration judges' failure to understand or acknowledge the communication challenges experienced by d/Deaf people, refusal to provide appropriate accommodations, and incompetent interpretation provided by the court in cases documented by Human Rights First violate the Rehabilitation Act and highlight the need for urgent action by EOIR to ensure equity for d/Deaf and hard of hearing immigrants.**

d/Deaf immigrants have a diverse array of experiences with deafness, sign language, communication, and language processing, which may present a range of challenges in immigration court. d/Deaf migrants may face isolation, discrimination, and minimal access to education in their home countries. Human Rights Watch has documented the ways in which many d/Deaf people around the world struggle to access basic resources, including access to sign language education. Many d/Deaf children, particularly those living in households where their parents and other relatives use spoken language, communicate through "home signs," a family-created sign language used within a family or small community. Language deprivation or limited access to language acquisition and formal education (including sign language) at a young age is linked to cognitive delays. According to the National Association of the Deaf, the effects can be "so severe as to result in serious health, education and quality of life issues." Many d/Deaf asylum seekers were raised in rural and/or low-income areas where access to sign language and other forms of communication was limited, sometimes resulting in cognitive delays or disabilities.

Persecution based on deafness may also compound the difficulties that d/Deaf people seeking asylum face. Some d/Deaf people have suffered persecution because of their deafness in their home countries, including exclusion from education and employment, leading them to flee and seek asylum. In some cases, persecution on the basis of deafness may intersect with persecution based on other vulnerabilities.

Despite these challenges, **immigration judges have in some cases displayed a lack of basic understanding of the communication barriers that d/Deaf people face in immigration court, revealed biases against d/Deaf people, and denied critical**



accommodations that would enable them to understand or participate in their proceedings, in violation of the Rehabilitation Act.

One immigration judge disparaged a woman in 2008 whose attorney requested a continuance to obtain a psychological evaluation, stating: **“I don’t care if she doesn’t meet her burden because she’s a deaf-mute, if she is Helen Keller, it doesn’t matter.”** Attorneys reported to Human Rights First that immigration judges continue to deny accommodations for d/Deaf and hard of hearing people, sometimes based on an egregious misunderstanding of what it means to be d/Deaf.

- **In 2022, an immigration judge denied an unopposed motion for real-time captioning for a d/Deaf person because the man “[had been] able to speak” at a hearing ten years prior, even though the motion detailed the circumstances of his hearing loss.** Ten years prior, the man had developed brain tumors while in ICE detention in Texas, leading him to become completely d/Deaf within a year. The judge’s refusal to grant accommodations and justification for the denial displayed extreme ignorance regarding the fact that a person can become d/Deaf later in life, as well as the reality that being “able to speak” does not equate with an ability to hear spoken language.

Immigration judges have also failed to grant accommodations or address Rehabilitation Act and due process violations in the context of sign language interpretation for d/Deaf immigrants in proceedings. Unrepresented d/Deaf immigrants face even greater challenges requesting accommodations and remedying rights violations.

Attorneys reported to Human Rights First that in some cases, court-provided interpreters did not competently speak the sign language that they were assigned to interpret, and that some judges failed to understand or acknowledge objections raised by immigrants or their attorneys about deficient interpretation. In detention, some d/Deaf immigrants must rely on sign language interpretation that appears on a small video, with connectivity issues.

Professional interpretation bodies have corroborated concerns about the quality of interpretation in immigration court. In 2015, DOJ awarded a contract to SOS International (SOSi) for immigration court interpretation, including sign language interpretation, leading one third of all court interpreters to refuse to work for EOIR due to unacceptably low pay and working conditions. Multiple professional bodies, including the American Translators Association and the National Association of Judiciary Interpreters & Translators wrote to EOIR to express their concern that vulnerable minorities would be underserved by unqualified and unprofessional interpreters as a result of the new contract. Yet EOIR renewed its contract with SOSi in 2020 for another five-year term.

Additional concerns about effective communication for d/Deaf immigrants may arise if judges deny requests to allow a Certified Deaf Interpreter (CDI) to participate in immigration court proceedings. In some instances, immigrants who are not fluent in sign language require assistance from a CDI who can work on a “relay team” with a sign language



interpreter if the immigrant is not fluent in sign language and communicates through home signs, writing, and gesturing.

CDIs are Deaf and have Deaf cultural and linguistic experiences that allow them to more effectively communicate in deaf forms of communication that people who do not have fluent sign language can understand. With relay interpretation, the immigrant communicates directly with the CDI, who translates to the sign language interpreter, who then translates into English for the court. The Deaf Interpreters Work Team, established by The National Consortium of Interpreter Education Center, recommends that courts work with CDIs where a d/Deaf or hard of hearing individual in the courtroom has factors like “underdeveloped ASL skills, limited socialization in the deaf community, limited education, cognitive challenges, delayed language,” and other vulnerabilities. In some situations, interpreters who have a pre-existing relationship with the immigrant in proceedings may be best able to communicate effectively with them.

Immigration court violations of the Rehabilitation Act in the context of d/Deaf interpretation have prevented immigrants from participating in their proceedings, including:

- **In 2019, an immigration judge in Louisiana insisted that an interpreter was signing in Cuban Sign Language (CSL) when a Cuban d/Deaf asylum seeker whose primary language is CSL informed the court that the court-provided interpreter was not, in fact, signing in CSL.** During multiple hearings, the asylum seeker was forced to proceed with an interpreter he could not understand. In the first hearing, the asylum seeker was unrepresented and could not even assert his rights: when he asked the interpreter to alert the judge that he could not understand the interpretation, the interpreter apparently did not communicate this to the court according to the asylum seeker, who reported the experience to an attorney who subsequently represented him. During the second hearing, the asylum seeker’s attorney alerted the court that the interpretation was in the wrong language, but the court and interpreter continued to insist that the interpreter was signing into CSL. Ultimately, the asylum seeker felt coerced into proceeding because he was detained and had already experienced significant delays and cancellations due to lack of interpretation. **He couldn’t communicate in his primary language throughout the hearing and was only able to communicate with the court and his attorney using a combination of lip-reading and writing back and forth in Spanish.**
- **In 2019, a d/Deaf asylum seeker from El Salvador who communicates through a combination of Salvadoran Sign Language (LESSA) and home signs did not understand his immigration court asylum proceedings — which were translated by an interpreter who was not competent to translate into LESSA according to a Deaf education expert observing the hearing — and was denied accommodations by the immigration judge to allow a competent interpreter to participate in the hearing or alternatively waive his testimony due to the communication issues.** The Deaf education expert observing the hearing reported to Human Rights First that the government-supplied contract interpreter, who claimed to speak or sign in 25



languages, did not sign LESSA competently and as a result the asylum seeker had to repeatedly ask the expert what the interpreter had signed. The expert told Human Rights First that it was clear that the asylum seeker “had absolutely no access to what was going on in the conversation.” The asylum seeker’s attorney requested permission to have the expert, who is also the asylum seeker’s former LESSA teacher, help interpret alongside a CDI as an interpretation team because the asylum seeker relies on a combination of LESSA and home signs to communicate. The judge denied this request as well as a request to waive testimony (even though DHS had agreed to waive testimony).

- **In 2021, an immigration judge ignored concerns raised by a sign language interpreter about an unrepresented d/Deaf man’s ability to understand the interpreter. The man, who was in his sixties, was forced to testify in his immigration court hearing by video teleconference while alone in a detention center, with a sign language interpreter on a small distant screen with poor video connection.** An attorney who subsequently reviewed the transcript informed Human Rights First that even though the interpreter alerted the judge to the communication issues, including the video freezing repeatedly and the fact that the man was at times not looking at the signed interpretation, the judge proceeded with the hearing. When he later secured representation, the immigrant told his attorney that he did not understand what happened during the hearing.

Failure to consistently grant accommodations for d/Deaf people in immigration court and lack of a simple process to request accommodations may also obstruct witness testimony. A meaningful opportunity to present witness testimony and other evidence in removal proceedings is a critical right guaranteed by immigration law.

- **In Spring 2020, the Chicago Immigration Court did not permit a d/Deaf expert who communicated via sign language to testify on behalf of a d/Deaf applicant regarding language acquisition and the experience of deaf immigrants.** Since the immigration court was exclusively conducting hearings via telephone conference, the d/Deaf expert was not allowed to testify in person and the court did not allow the expert to appear on video to communicate via sign language. Although the case was ultimately continued and the asylum seeker did not have to go forward without the expert’s testimony, the applicant’s attorney was concerned that the court was not technologically equipped to receive remote testimony from a d/Deaf person and that there was no clear mechanism to ensure an accommodation would be granted.

Where immigration judges have granted requested accommodations for d/Deaf people, these **accommodations were crucial in enabling them to fairly present their case to the court and further highlight the need for disability policy to ensure that such accommodations are provided to all d/Deaf immigrants who require them**, according to their particular circumstances. In cases documented by Human Rights First where the judge granted d/Deaf accommodations requested by an immigrant in proceedings, the immigrant was always represented by an attorney who submitted a formal, detailed motion that was



accompanied by supporting evidence. For unrepresented d/Deaf immigrants, lack of a simple process to submit an accommodations request and inability to seek assistance from a d/Deaf access coordinator in each immigration court makes it nearly impossible for many to assert their rights and obtain the accommodations they need.

- **In 2016, an immigration judge granted a motion to waive testimony for a d/Deaf young man from Honduras who communicated using basic home signs. His lawyers had submitted a detailed motion to waive testimony with an affidavit by a Deaf expert and lawyer who concluded that the asylum seeker's limited ability to communicate meant that he could not participate in his proceedings by testifying.** The asylum seeker, who grew up in a rural region of Honduras, had almost no formal education, never learned to communicate using formal sign language, and had developed a basic form of sign language that he uses with close family members. The attorney submitted multiple affidavits from family members and experts to corroborate the asylum seeker's claim and the judge granted asylum without subjecting the asylum seeker to the trauma, difficulty, and confusion of testifying.
- **A Guatemalan woman who is deaf in one ear and hard of hearing was granted several accommodations to enable her to participate in her 2020 immigration court hearing, which resulted in a grant of withholding of removal.** Her attorney submitted a motion for reasonable accommodations, invoking the Rehabilitation Act, which included a request that the interpreter be positioned on the side from which the asylum seeker hears better, that only consecutive interpretation be used, that the court provide the woman with periodic breaks because she exerts a lot of energy trying to understand what is being said, and that everyone in the courtroom speak clearly and at a moderate speed. These accommodations were granted, and the court additionally provided the woman with a headset through which she could listen to the interpreter.

Deaf in detention

Abuse, medical neglect, and failure to provide interpretation in immigration detention further deprive d/Deaf people of a fair opportunity to present their case in immigration court. For years, d/Deaf immigrants and advocates have documented and fought against egregious due process and human rights violations committed against d/Deaf people in ICE detention and other prisons and jails. However, ICE continues to detain and inflict harms against d/Deaf immigrants, in violation of the Rehabilitation Act and its own detention standards.

ICE's failure to provide detained d/Deaf immigrants with access to communication services in cases identified by Human Rights First's research affects their ability to learn about the immigration court process, secure representation, communicate with counsel, and participate in immigration court proceedings. It also prevents individuals from accessing medical and mental health treatment, leading to the deterioration of their health which also impedes them from meaningfully participating in their proceedings. This conduct violates ICE's detention standards, which require ICE to ensure that deaf people in detention have access to communication services, including interpretation of announcements or written versions of detention center announcements and communications. For instance:



- **A detained d/Deaf asylum seeker from Cuba was deprived of access to the detention center’s Legal Orientation Program (LOP) because he did not receive any form of deaf interpretation for communications while detained in Louisiana, even though the detention center staff knew he was d/Deaf.** An attorney who later represented him reported to Human Rights First that as a result, he did not know that there was an organization that visited the detention center to provide LOP or how to meet with them about his case. Inability to speak with LOP prevented him from learning basic information about his case, the immigration court process, and his rights.
- **ICE has deprived another d/Deaf man — who remains detained as of April 2023 — of access to adequate mental health treatment because it failed to provide sign language interpretation to communicate with a mental health provider at a California detention center.** His attorney reported to Human Rights First that the man has been forced to write back and forth with the provider by hand in order to communicate.
- **A woman with hearing loss who was detained by ICE in Louisiana reported to CRCL in 2021 that she had received deficient hearing aids in detention that do not work well and often run out of battery, leading to difficulty hearing the fire alarms, wake up calls, meal announcements, and general communications, according to records obtained by Human Rights First through a FOIA request. She had been beaten in her home country, which led to loss of hearing. She reported that while jailed by ICE she has been waiting for someone to help her and that she feels extremely isolated because she cannot hear anything, worsening her anxiety and depression.**
- In 2015, Rosario Maciel Avitia, a d/Deaf woman who signs in American Sign Language (ASL), did not receive ASL interpretation or any other auxiliary aid the entire time she was jailed by ICE for over five months. As a result, she did not know she was eligible for bond, did not have interpretation during her medical appointments — leading to a worsening of her back and knee pain and inability to communicate effectively about her treatment for depression — and could not communicate with family or disability advocates while incarcerated.

Medical neglect in detention, including instances where ICE refuses to provide hearing aids, has severely affected immigrants' ability to communicate with counsel and participate in their proceedings. These include:

- **In 2022, an immigrant’s multiple requests for hearing aids were ignored by medical staff in detention, hindering his ability to communicate in immigration court.** He reported to The Florence Immigration & Refugee Rights Project (FIRRP) that despite his requests to get fitted for hearing aids, the medical staff at the detention center in Arizona where he was jailed never contacted him. He explained that as a result it was difficult for him to hear and understand the Spanish interpreter in immigration court.



- **A 63-year-old immigrant with severe hearing loss, schizophrenia, and dementia was jailed for almost eight months at Eloy Detention Center without hearing aids, preventing him from understanding his court proceedings and communicating with his attorneys.** Medical records reviewed by FIRRP indicate that medical staff at the jail were aware of the man's hearing loss. The man, who was unrepresented, had a difficult time advocating for himself, especially due to his disabilities. Even after FIRRP began representing him in March 2020 and requested that ICE urgently provide hearing aids given his inability to communicate effectively with counsel or understand his court proceedings, ICE ignored the communication for weeks, and later — when FIRRP contacted ICE again — claimed that he would be scheduled for an appointment to be examined for hearing aids, which he was not. He spent almost eight months in detention without hearing aids before he was released in May 2020.

Blind and low vision Immigrants

Blind and low vision immigrants also experience **barriers and discrimination in the immigration court process, including inability to read or understand immigration court and legal materials as well as difficulty attending and navigating immigration court.** Detention in ICE jails further exacerbates the barriers faced by blind and low vision individuals, who have difficulty obtaining even basic vision services while jailed by ICE and as a result **cannot see, read documents, complete applications, or ascertain who is speaking to them in immigration court.**

Lack of public EOIR policy regarding the provision of official communications in Braille or other accessible formats for blind and low vision immigrants — and absence of a simple process for immigrants to request these accommodations — is discriminatory and may interfere with their ability to attend immigration court hearings and understand what is happening in their case. Immigrants who do not attend their scheduled court hearings are generally ordered deported for not appearing in court (“in absentia” deportation order). As a result, the government’s failure to provide all written materials in an accessible format for blind and low vision immigrants may inflict dire consequences, including deportation. It is extremely challenging for immigrants — particularly those who are unrepresented — to reopen immigration court proceedings once they have been ordered deported in absentia.

- **A journalist from Ethiopia who is blind and was granted asylum in 2017 told Human Rights First that he could not understand communications from DHS and EOIR because they were not provided in Braille.** Before he secured legal representation, he had to ask his friend to read aloud all official communications, which he reported made him uncomfortable because the communications are personal and sensitive. He was also nervous that his friend did not speak or read English fluently, which could result in an inadvertent error that would affect his immigration case.

Throughout his case, he was not aware whether there was disability law in the United States that could protect him or how he could request accommodations. The journalist



said: **“Disability is not part of the political discourse in Ethiopia. Here, I was not sure if the law includes those without status.”** He was also not aware of any method to request materials in Braille. He told Human Rights First that he believes the government should tell disabled people about laws that protect them in their immigration court proceedings.

EOIR has also not taken crucial steps to ensure that blind and low vision immigrants are able to attend and navigate their immigration court hearings. People with disabilities who would have difficulty traveling to their immigration court hearings due to disabilities, including blind immigrants, are not offered free and safe transportation by EOIR.

- **The blind journalist from Ethiopia also reported to Human Rights First that he was only able to reach and navigate the immigration court in Baltimore, Maryland during his hearing in 2017 because he had an attorney.** He had to rely on his attorney to drive him and guide him through the process of parking, entering the court, and navigating to the courtroom. The asylum seeker, who uses a cane and is fully blind, was surprised that no one from the court staff offered him assistance navigating the court. He expressed concern to Human Rights First that if a blind person was alone, they would have trouble traveling to and finding the court, navigating the courthouse, and finding their courtroom. He stated that if he had been alone, he did not know how he would have traveled to the court or navigated the building.

Blind in detention

In detention, blind and low vision people experience discrimination and additional barriers, including lack of access to adequate medical care and necessary vision services like prescription glasses, in violation of ICE detention standards. Medical neglect in ICE detention has also caused loss of vision. These violations further cut off immigrants' ability to prepare for immigration court, complete applications, and effectively communicate during their hearings.

- **In 2022, a detained immigrant who has low vision could not see or fill out his applications for relief, understand who was speaking to him in court, or distinguish between the judge, ICE trial attorney, and others in the room because he was not provided necessary glasses while jailed by ICE in Arizona.** He reported to FIRR that in order to complete applications for relief by the deadline imposed by the court, he had to rely on other detained individuals to read the applications to him and then transcribe his responses. He was not able to review the application due to his vision issues. Months later, the jail provided him with glasses, but they were the wrong prescription, and they did not enable him to see at a close distance.
- **Another immigrant jailed by ICE in 2022 could not read immigration court papers, see applications for relief, or see who was speaking to him in his court hearings because the detention center refused to provide him with necessary glasses and forced him instead to buy glasses from the facility commissary that were the wrong**



prescription. He reported to FIRRP that other detained people had to read his court papers and applications to him.

- **A Haitian asylum seeker detained by ICE in September 2021 was unable to secure medical attention when he suspected that his eye — which he had lost in a politically-motivated stabbing in Haiti — became infected** and he began to lose vision in his other eye, despite submitting at least 15 requests to see a doctor.
- In 2021, an immigrant detained at Winn Correctional Center in Louisiana who had keratitis, an eye condition that can cause permanent vision loss if untreated, reported to CRCL that **he had not received necessary medical eye care for five months despite requesting care weekly, putting him at risk for permanent vision loss**, according to records obtained by Human Rights First through a FOIA request.
- In 2021, a person detained at Plymouth County Correctional Facility in Massachusetts reported to CRCL that **his eyeglasses were confiscated one month prior, and that he was now at risk of falling every time he navigates the facility, including when climbing stairs and showering**, according to records obtained through a FOIA request.
- An immigrant jailed by ICE at a Nevada detention center reported to CRCL in 2021 that he did not have access to working glasses, and that he **“wishes for the facility to provide him glasses so that he can fight his case,”** according to records obtained through a FOIA request.
- In September 2021, a Uruguayan man detained by ICE at Krome Detention Facility in Florida reported to CRCL that he had been without glasses since his glasses were confiscated upon his arrival in July 2021, and that **without his glasses he cannot read and do legal research and preparation for his case**, according to records obtained through a FOIA request.
- **In 2018, Gonzalo Chavez went blind in one eye while in detention because an ICE agent didn’t believe him when he informed them that he had diabetes.** While at the DeKalb County Detention Center and the ICE center in Pine Prairie, Louisiana, Mr. Chavez did not receive his diabetes medication. He said **“I lost everything. I can’t see. I can’t drive. I feel like a burden . . . I’ve been independent for 20 years.”**

Immigrants with physical disabilities

EOIR has also failed to consistently treat immigrants with physical disabilities with dignity and respect and to provide accommodations that enable them to participate in their hearings. As outlined above with respect to barriers faced by blind immigrants, EOIR does not provide free accessible transportation for people who cannot safely travel to their hearings due to physical and other disabilities. Some immigrants are required to travel long distances, including up to seven hours, to attend immigration court in regions with no affordable and readily accessible public transportation options. **These challenges are even**



greater for many immigrants with disabilities who may have to put their physical safety at risk to attend their hearings.

While immigrants may file formal motions to the immigration court to request a remote hearing in situations where they cannot travel to court due to disabilities, they may experience significant delays in adjudication of their motions, and many unrepresented immigrants are unable to file a formal motion or unaware that they can do so. EOIR does not have a clear protocol for people with disabilities to request such accommodations outside of a motion. People with physical disabilities should not be deprived of the option to attend their immigration court hearing in person where they choose to do so and could safely attend if provided with transportation.

Some people with physical disabilities encounter additional barriers when they reach immigration court, which is not always physically accessible for them. This can be stigmatizing for people with disabilities while they are already experiencing the stress of deportation proceedings. For example, numerous news outlets have reported on long lines outside of New York immigration court, which has led hundreds of immigrants, including families with small children, to line up in freezing cold temperatures the night before their ICE check-ins and immigration court hearings. This system is particularly inaccessible for disabled immigrants who cannot stand for hours.

Additionally, as described throughout this report, some immigration judges have proceeded with court hearings even where it is apparent that people have disabilities and require accommodations. These failures to inquire into disabilities and the need for accommodations harm people with physical disabilities and prevent them from meaningfully participating in their court proceedings.

Examples of the barriers faced by immigrants with physical disabilities include:

- **In 2023, an asylum seeker from El Salvador who has end-stage renal disease and has to undergo dialysis multiple times a week was forced to wait for around a month for a response to her attorney's formal motion for a remote hearing as an accommodation for her disabilities,** which was ultimately granted a week before the hearing but caused severe anxiety and uncertainty. While waiting, the asylum seeker, who also has PTSD, reported to her attorney that her mental health deteriorated as the hearing date approached and she did not know whether she would have to make arrangements to attend in person. Though she had an attorney to file a formal motion to the immigration court, there would have been no clear and simple procedure for her to request a remote hearing on her own if she were unrepresented.
- **In 2009, a Ugandan asylum seeker who uses a wheelchair was forced to enter an immigration court in Boston through the wider security exit because the security entrance was too narrow to accommodate her wheelchair** and the court did not have an alternative means of scanning her. She reported to her attorney that having to enter through the exit of the immigration court, rather than the entrance, was deeply



stigmatizing. The attorney reported to Human Rights First that the **security entrance at the Boston immigration court remains inaccessible to people using wheelchairs as of 2023.**

- **An immigrant who has disabilities including cerebral palsy, which affects his ability to speak, was forced to proceed with a remote hearing from detention in 2019 even though it was apparent that he had difficulty speaking due to his disabilities.** The judge did not inquire into his disabilities, and it was not until FIRRP later intervened in his case that the immigration court evaluated his disabilities and assigned him an attorney pursuant to a federal court order that requires counsel for detained individuals who cannot represent themselves due to mental disabilities.

Physical disabilities in detention

Immigrants with physical disabilities experience additional barriers and discrimination in immigration detention in violation of the Rehabilitation Act and ICE detention standards. Abuses include discriminatory use of solitary confinement and egregious medical neglect, which endanger immigrants' health and safety and prevent them from preparing their cases.

Documents obtained by NBC in 2019 revealed that more than 60 disabled individuals were placed in solitary confinement solely because they required a wheelchair or some other aid. Jailing immigrants in solitary confinement — which can amount to torture — to avoid providing wheelchairs and other accommodations is an appalling human rights violation and contravenes ICE's obligation under federal law and detention standards, which explicitly state that a person's disability or need for accommodations may not serve as the reason that they are separated from the general population. These documents also revealed that the vast majority of detained people in solitary were unrepresented (only 11 percent had lawyers), making it even more difficult to report discriminatory and unlawful use of solitary. Those in solitary who do have lawyers are often unable to work with counsel to prepare their case while in solitary due to lack of consistent access to legal calls and psychological and physical harm caused by conditions in solitary, according to attorneys who spoke with Human Rights First. In more than 270 cases included in the records obtained by NBC, ICE did not even notify attorneys of record that their clients were placed in solitary, including six occasions where detained people were in solitary for more than six months.

People with physical disabilities and medical conditions experience rampant medical neglect and abuse by medical staff in ICE detention centers, which has led to tragic deaths. A Venezuelan asylum seeker, who died of complications from AIDS in 2021, was detained in ICE custody for five months after seeking protection at the border and suffered medical neglect while incarcerated. A July 2021 DHS Office of Inspector General report confirmed that a man with a history of hypertension died at the Adams County Detention Center in December 2020 due to medical neglect after receiving inadequate care following his request for medical attention due to chest pains.

Human Rights First has documented numerous cases during the Biden administration where immigrants were denied access to medical and mental care, suffered abuse by



medical staff, and experienced extremely long wait times for medical appointments, denial of specialized care, lack of timely responses to repeated requests for medical attention, denial of needed medication by medical staff with instructions to purchase it from commissary, and failure to provide a diet that meets their medical needs.

It is in these abusive conditions that disabled people are forced to prepare for and participate in their immigration court hearings. Detained immigrants also suffer verbal abuse and discrimination by ICE officers, including on the basis of their disabilities. For instance, one detained individual in Henderson, Nevada reported to CRCL that an ICE officer who accompanied him to his immigration court hearing twice mocked his speech impediment, including on the way to the hearing in 2020, where he was subsequently denied protection in the United States, according to records obtained by Human Rights First through a FOIA request.

In some instances, ICE detention conditions have been so horrific that people seeking asylum have given up on their claims for protection.

- CRCL data received through a FOIA request by Human Rights First that contains complaints filed from October 1, 2020 to May 4, 2022 regarding immigration detention includes hundreds of complaints about medical and mental healthcare. **These include a case where an immigrant who had previously managed his medical conditions and disabilities, including arthritis, and was able to regularly exercise outside detention, was denied regular access to medication after being jailed at the Otay Mesa Detention Center and within two months could not walk and required a wheelchair.** Due to the medical neglect he suffered and disabling effects of detention, he waived his right to appeal his immigration case.
- **A Colombian asylum seeker stopped pursuing his claim for U.S. protection in 2021 because he was desperate to seek adequate care for severe medical conditions that were untreated by ICE.** As a result, he was deported in December 2021, separating him from his wife and two children in the United States.

Immigrants with mental, cognitive, neurological and other disabilities

People with mental, cognitive, and other disabilities are covered by a range of legal protections guaranteed by federal disability and immigration laws to ensure that they have a fair and meaningful opportunity to participate in their immigration case. **However, many experience egregious discrimination, physical and psychological harm, denial of accommodations and safeguards, and stigma and bias throughout the immigration court process.**

The Rehabilitation Act requires immigration judges to provide reasonable accommodations for people with disabilities in their immigration court proceedings to ensure they have a meaningful opportunity to present their case. Additional protections arise where a person



may be “incompetent” to participate in their proceedings due to mental, cognitive, intellectual, or other disabilities. The [Immigration and Nationality Act](#) and BIA case law, including a 2011 decision in [Matter of M-A-M-](#), require immigration judges to inquire into an immigrant’s competency where there are “indicia” that they may not be competent to understand their proceedings, and assign appropriate safeguards if they are deemed incompetent.

Under *Matter of M-A-M-*, an individual is not competent if they do not have a “rational and factual understanding of the nature and object of the proceedings,” cannot “consult with the attorney or representative if there is one,” or would not have “a reasonable opportunity to examine and present evidence and cross-examine witnesses.” *M-A-M-* provides a non-exhaustive list of potential safeguards for judges to consider, including waiving the immigrant’s presence in court, administrative closure, postponing the case to allow a person to obtain legal representation or medical treatment, and identifying a family member or close friend to assist in communicating information to the court. Judges must articulate their reasoning for determinations regarding competency and safeguards.

When individuals with mental, cognitive, or intellectual disabilities are placed in immigration court proceedings, accommodations under the Rehabilitation Act and safeguards under the INA and BIA case law may in some instances intersect, but in other cases may require separate protections. For instance, people who are deemed competent or have not had a competency hearing may still require accommodations under the Rehabilitation Act because they have a disability as defined under federal law. Similarly, people who have been deemed incompetent and assigned (or denied) safeguards may nonetheless invoke the Rehabilitation Act to request accommodations to enable them to participate in their proceedings.

Detained unrepresented immigrants who are deemed incompetent by an immigration judge are guaranteed additional protections. In 2013, EOIR created the [National Qualified Representative Program \(NQRP\)](#), which provides attorneys to detained unrepresented immigrants who are not competent to represent themselves due to serious mental disabilities. The government initiated this program in the wake of a 2013 federal district court ruling in [Franco-Gonzalez v. Holder](#), which relied on the Rehabilitation Act to order the government to provide legal representation in removal proceedings for immigrants in detention who have mental disabilities and are unable to represent themselves. The court [held](#) that Section 504 of the Rehabilitation Act requires legal representation as a reasonable accommodation. While this holding only applies to detained immigrants in Arizona, California, and Washington, the NQRP program applies to detained immigrants nationwide.

However, many immigration judges outside Arizona, California, and Washington (the states covered by Franco) have received [little to no](#) training on identifying mental disabilities and communicating with people with mental disabilities, while immigration judges in the Franco states receive “additional, detailed training.”



Data obtained through a FOIA request in 2021 by Professor Amelia Wilson, who previously ran the NQRP program, revealed that only 49 percent of active judges who adjudicate detained cases outside of the Franco states had even received an initial competency training and only 5 percent received a “refresher” training. This disparity in training on mental disabilities creates a bifurcated system where judges in non-Franco states are likely far less equipped to identify and ensure protections for people with mental disabilities. Indeed, judges in Franco states assigned more than twice as many qualified representatives from September 2018 to April 2021 compared to judges in non-Franco states — even though the majority of people are detained in non-Franco states.

The data also revealed that judges who adjudicate non-detained cases and must comply with M-A-M- (but are not covered by Franco and NQRP, which is only for individuals in detention) do not receive adequate training: of the 252 immigration judges with non-detained dockets, 165 (65 percent) were identified as needing mental competency training.

Failures to comply with M-A-M-, Franco, NQRP, and Rehabilitation Act

Immigration judges have failed to meaningfully assess competency and grant appropriate safeguards and accommodations as required by M-A-M- and the Rehabilitation Act, or assign counsel under Franco and the NQRP program, in cases identified by Human Rights First. These failures include:

- **Immigration judges have ignored strong evidence of indicia of incompetency and refused to hold competency hearings or assign safeguards, in violation of M-A-M-.** Attorneys reported to Human Rights First that judges have denied motions for competency hearings and safeguards containing medical records and psychological evaluations demonstrating the need for a competency hearing and appropriate safeguards, relying instead on their own brief, non-expert impressions in the courtroom. In one case, a judge ignored the recommendation of an ICE detention center psychologist that an asylum seeker should not be required to testify due to a traumatic brain injury and psychological trauma. Attorneys reported that motions for competency hearings are often denied without explanation, even though M-A-M- requires the judge to articulate their reasoning. Unrepresented people with mental disabilities have an even more difficult time advocating for themselves. For instance, **an immigration judge did not evaluate competency or provide safeguards for an immigrant who explained that he had a history of hearing voices and was taking psychiatric medications, and repeatedly asked the court for protection under Franco**, according to transcripts reviewed by an attorney who later represented him in an appeal. The judge informed the immigrant that he would receive a psychological evaluation but ordered him removed without providing one or assessing competency at any point. Immigration judges have also misunderstood or misapplied the legal standards for assessing competency and Franco class membership, in some instances applying a more rigorous standard, according to a report by a court-appointed Monitor charged with assessing compliance with Franco.



- **In other instances, judges have held truncated competency hearings without any meaningful assessment of a person’s competency.** These truncated competency inquiries sometimes occur moments before a full hearing on the person’s case, causing confusion and uncertainty, forcing attorneys and clients to prepare for a range of outcomes, and leaving no time to meaningfully evaluate and institute safeguards. For instance, in response to an attorney’s motion for a competency hearing, which included medical records, a psychological evaluation, and evidence of a prior hospitalization for suicidality, the immigration judge declined to hold a competency hearing for years even though the asylum seeker had multiple preliminary hearings. The judge eventually decided to hold a “mini competency hearing” in the several minutes before the asylum seeker’s final hearing, where the asylum seeker would need to present her entire case after the brief competency inquiry. Years later, the asylum seeker is still waiting for a final hearing without knowing whether any safeguards will be implemented or whether she will have to testify without safeguards. Another attorney reported to Human Rights First that she had requested a competency hearing for her client repeatedly for three years through written motions and orally at status hearings. Despite these requests and two psychiatric reports confirming that the client, who has schizophrenia, does not understand the nature of his proceedings, the judge has only agreed to hold a competency hearing immediately before the individual merits hearing, scheduled for 2024.
- **Some immigration judges have refused to assign safeguards where a person is already represented, stating that the person already has an attorney and therefore does not require additional protections.** NQRP providers in Louisiana, California, and Arizona reported to Human Rights First that judges often insist that the lawyer’s presence is a sufficient safeguard despite evidence in the record that additional safeguards — such as waiving testimony and cross-examination or releasing the person from detention — are necessary. Practitioners interviewed by Professor Sarah Sherman-Stokes similarly reported that some judges view appointment of counsel as adequate and are unwilling to grant additional safeguards. In one case, an attorney reported to Human Rights First that a Guatemalan asylum seeker who has intellectual and speech disabilities was found not competent by a California judge, but the judge decided that no additional safeguards, like waiving testimony, were required because the woman was represented. These decisions reflect a misapplication of *M-A-M-*, which requires judges to consider safeguards based on a person’s unique circumstances and makes clear that a range of safeguards may be appropriate. People who have an attorney may still require additional safeguards to enable them to meaningfully present their case, such as waiving testimony in whole or in part, asking short and simplified questions, and periodic breaks.
- Though *M-A-M-* makes clear that in some cases safeguards may be insufficient and directs judges to consider postponing or closing immigration court cases to facilitate medical treatment, further guidance is required to ensure that immigration judges do not force people with severe mental health disabilities — including paranoia, hallucinations, and psychosis — to undergo proceedings where it is



challenging or impossible for them to prepare, participate, or work with an attorney.

In the criminal law context, a person who is not competent cannot be forced to undergo a trial — in stark contrast to the immigration context. Attorneys reported to Human Rights First that it is extremely challenging to provide competent and ethical representation in some situations where client have severe mental health disabilities, and that termination or administrative closure is critical to allow the person to access social services and psychological treatment. For instance, in 2019, an immigration judge refused to terminate the proceedings of a Chinese asylum seeker in detention who experienced delusions and psychosis during her hearing and whose lawyer submitted a motion to terminate accompanied by a psychological evaluation and an explanation of the lawyer’s inability to effectively represent the case. The client refused to share facts about her life with her attorney, such as her marital status and whether she had relatives in the United States, sign waivers or releases, or aid in information-gathering. Even after the asylum seeker stated during her hearing that her attorney is the daughter of Hillary Clinton (which she is not) and a psychological expert testified that the asylum seeker’s perception of reality was skewed by delusion and that she did not have an accurate understanding of her legal situation, the judge refused to terminate and instead ordered her deportation. Ensuring that judges use their authority — and that trial attorneys join motions — to terminate, administratively close, or continue cases where a person cannot meaningfully participate in proceedings is crucial to protecting the rights of people with disabilities under the Rehabilitation Act and the INA. In another instance, an immigrant who has schizophrenia and refused to speak with her attorney, express why she had fled her home country or whether she wanted to apply for protection, or sign any documents, was not forced to proceed with her case because an ICE attorney agreed to dismiss the proceedings.

Lack of EOIR disability policy and procedures for requesting accommodations under the Rehabilitation Act exacerbates barriers to securing necessary safeguards and accommodations.

Though many immigrants seeking safeguards due to mental health or cognitive disabilities who are denied a competency hearing or safeguards may also be legally entitled to accommodations under the Rehabilitation Act — which may in some instances overlap with requested safeguards under M-A-M- — there is no established procedure to invoke the Rehabilitation Act or request accommodations.

Attorneys reported to Human Rights First that they felt compelled to file competency motions for immigrants who were competent but suffering from PTSD and other mental health conditions because judges are most receptive to and familiar with requirements under Matter of M-A-M- and the attorneys feared that the judge would not meaningfully engage with a Rehabilitation Act request given the lack of policy or recognition by the immigration court of obligations under the Act. In one case, an attorney requested a competency hearing for a transgender Mexican asylum seeker who had PTSD and depression because the judge would not otherwise consider accommodations such as waiving testimony about traumatic incidents of persecution, but the judge deemed the person competent and refused to consider accommodations.



Denial of safeguards and accommodations leads to physical and psychological harm, negative credibility findings, and deportation orders, particularly for asylum seekers with trauma- and persecution- related disabilities

Failures to meaningfully assess competency and assign appropriate safeguards and accommodations violate legal protections for people with disabilities and inflict terrible harms on asylum seekers and other immigrants, including those whose disabilities stem from persecution and trauma. Immigration judges have rejected requests for accommodations and safeguards and instead forced immigrants to risk their own safety or endure severe re-traumatization in order to testify. In some cases, this has resulted in deportation orders against immigrants with cognitive, mental health, and other disabilities due to inconsistencies in their testimony.

Many people seeking asylum have disabilities arising from physical and psychological trauma that causes memory problems or other cognitive issues. For instance, traumatic brain injuries are particularly prevalent among refugees and people seeking asylum, who may require accommodations in immigration court under the Rehabilitation Act as well as safeguards under the INA and Matter of M-A-M- due to their disabilities. Depending on how it impacts a person's major life activities, a TBI may qualify as a disability under the Rehabilitation Act and other federal law. Traumatic brain injury is one of the most common injuries sustained by asylum seekers. Studies have confirmed that asylum seekers often suffer repeated head trauma and sustain TBIs due to torture, abuse, and other violence in their home countries, as well as further persecution and violence during the migration journey. Many people fleeing gender-based violence, including domestic or intimate partner violence, have suffered TBIs as a result of their persecution.

Traumatic brain injuries can cause memory lapses, difficulty recalling traumatic events such as incidents of persecution, difficulty remembering dates, names, and other details, and inconsistencies in testimony. Forcing asylum seekers with TBIs to endure stressful and adversarial immigration court proceedings and relive traumatic experiences can exacerbate these symptoms and in some instances cause severe physical pain, especially when they are required to testify in detail about their persecution. Many people suffer the impacts of TBIs for years or longer and some may have permanent cognitive disabilities resulting from the injury.

People seeking asylum may also suffer from PTSD and other mental health disabilities, which also cause memory issues and difficulty testifying and may qualify as federal disabilities under the Rehabilitation Act. Researchers have consistently found that people seeking asylum and refugees have trauma-related psychosocial diagnoses at a higher rate than the general public, particularly PTSD. People with PTSD experience symptoms including memory issues, avoidance of traumatic reminders, and trouble sequencing events, which may be further exacerbated when they are required to testify and relive their trauma. However, judges who do not understand the impact of PTSD or fail to provide appropriate accommodations might instead attribute these symptoms to a lack of credibility.



Immigration judges may implement a range of accommodations and safeguards depending on a person's circumstances. For instance, judges can waive testimony in whole or in part and rely on written declarations and other documentation. They also have broad authority to determine the format of questions, types of questions asked, length of the hearing, breaks provided, and other accommodations that can mitigate the impacts of a disability. For instance, an asylum seeker from Haiti who was diagnosed with an unspecified trauma and stressor disorder was granted asylum after receiving accommodations to participate in her immigration court hearing in 2021, including instructions to all parties to use simplified language, avoid compound questions, and provide period breaks.

Assigning diminished weight to inconsistencies and issues with testimony that arise from disabilities is another critical accommodation and safeguard. Immigration law requires judges to consider the totality of the circumstances when determining if an applicant is credible; in evaluating any inconsistencies or memory issues during testimony, judges should take into account and give strong weight to the impact of disabilities on memory when assessing credibility.

Additionally, in 2015, the BIA held in Matter of J-R-R-A- that where an asylum seeker has competency issues that affect the reliability of their testimony, the immigration judge should generally, as a safeguard, "generally accept that the applicant believes what he has presented, even though his account may not be believable to others."

Despite judges' legal obligations under the Rehabilitation Act, INA, and BIA caselaw and their broad authority to adjust how hearings are conducted based on a person's circumstances and disabilities, attorneys have reported appalling denials of accommodations and safeguards, deportation orders based on negative credibility assessments that stem from memory issues associated with disabilities, and other harms. For instance:

- **In 2019, an immigration judge denied safeguards and accommodations for a detained refugee from the Central African Republic who had a TBI, finding he was not "deserving" of these protections and forcing him to testify despite the recommendation of an ICE detention center psychologist that the judge waive testimony.** The refugee sustained a TBI in his home country when he was jailed in a cell with no light and beaten on the head repeatedly for months. His attorney submitted a motion to waive testimony that included the recommendation of the psychologist at the Otay Mesa Detention Center, where the asylum seeker was jailed, but the judge refused to even hold a competency hearing or implement any safeguards. His attorney reported to Human Rights First that during the hearing, which lasted four hours, the asylum seeker visibly suffered severe head pain due to his TBI and having to relive his persecution: he pressed and rubbed his temples repeatedly while testifying but the judge required him to proceed. The judge then further prolonged his detention by requiring him to return for a later hearing date to receive her decision. Though he was ultimately granted asylum, he could have been spared the physical and psychological



harm of testifying had the judge provided safeguards in line with the psychologist's recommendation.

- **An unrepresented Venezuelan asylum seeker with a TBI and associated memory problems was ordered removed because the judge found that he was not credible in part due to inconsistencies that were related to his memory issues**, according to an attorney who later represented him. Though the judge acknowledged the severity of the documented TBI during the hearing and even told the asylum seeker that he needed to seek medical care for the TBI, he then relied on the memory issues resulting from the TBI to find him not credible and deny asylum.
- **In 2022, an immigration judge in California denied a request for a competency hearing and safeguards for a Cuban asylum seeker who has epilepsy and PTSD even though she has seizures when speaking about traumatic events in her life, including being raped in her home country because of her political opinion.** Her attorney filed a motion for a competency hearing that included medical and psychological evaluations detailing the risk that she would have a seizure if required to testify. The immigration judge denied the motion and advised the asylum seeker that she should be prepared to testify in her case. While waiting for her final hearing, she experienced extreme anxiety for a year about having to testify in immigration court, which could put her safety at risk. In 2023, her case was dismissed before the final hearing took place because she became eligible to apply for a green card on other grounds. Rather than refusing to consider safeguards and forcing her to testify, the judge could have limited testimony to the less traumatizing aspects of the case, limited cross examination, or decided the asylum case based on her written declaration, which was prepared in a less adversarial and stressful context, as well as other evidence including testimony or declarations from medical and psychological experts.
- **In 2020, an immigration judge ordered the deportation of a Salvadoran asylum seeker living with brain cancer and associated cognitive and memory problems, noting that he was “hard pressed” to find the woman credible given her inability to consistently recall dates, times, and the precise order of events.** The asylum seeker's attorney had submitted a motion for a competency hearing and safeguards that contained medical records of her years-long battle with brain cancer and evidence of how brain cancer and its treatment may affect memory. Though the immigration judge acknowledged that the cancer may impact her cognition and indicated that he would give greater weight to her affidavit than her oral testimony if needed, he subsequently denied all protection based on a negative credibility determination, noting that she was inconsistent in testifying about certain dates.
- **In 2013, an immigration judge did not explore competency issues or assign safeguards despite acknowledging that an asylum seeker from Honduras — who had testified that the prior year was 2006 — likely had cognitive issues, and then found him not credible on the basis that his testimony was “disjoined, confusing, and self-serving.”** The judge denied asylum and stated that cognitive disabilities are



“not a license to give incredible testimony.” In 2015, the BIA reversed the judge’s decision in the landmark case *Matter of J-R-R-A-*, which held that the immigration judge should have taken measures to determine competency under *Matter of M-A-M-*.

Bias, stigma, and discrimination against people with severe mental illness

Attorneys reported to Human Rights First that in addition to dismissing competency concerns and denying accommodations and safeguards, immigration judges have also expressed blatant bias and made disparaging remarks toward people with severe mental illness. For instance:

- **In 2019, an immigration judge pejoratively described a detained Chinese asylum seeker’s mind as “Swiss cheese” while she was experiencing active delusions and psychosis during her hearing and subsequently ordered her removed, according to court transcripts reviewed by Human Rights First.** The asylum seeker had been found incompetent and appointed counsel, but the attorney was unable to effectively represent her and gather information due to her mental disabilities. The woman could not share whether she had relatives in the United States, contact information for friends who could provide information about her case, or whether she had been married or had children. Nonetheless, the judge forced her to proceed with her hearing while she was detained and cut off from supportive community care and social services. The judge revealed the extent of his bias when, after the woman stated that she is the current spouse of a prominent former politician, that her attorney is the daughter of Hillary Clinton, and that the judge should speak with the United Nations, he addressed her attorney and said: “It’s just Swiss cheese.” The judge then denied her claim for asylum, withholding of removal, and Convention Against Torture protection, and ordered her removed. The woman’s claim for protection had been based in part on her membership in a particular social group of people with severe mental disabilities.
- An immigration judge in Louisiana suggested that a detained person who has mental health issues that cause delusions, stutters, and partial seizures may be **“faking it,”** referring to his mental health issues, and that his attorney may be **“making a mountain out of a molehill,”** despite evidence of the man’s medical records, which included treatment for these mental health issues by ICE medical staff. According to an attorney who spoke with Human Rights First, the judge also stigmatized the immigrant by ordering a guard to be posted near the attorney to “protect” her from her client during the hearing, ignoring the attorney’s protests that she felt comfortable with her client and that his partial seizures were not dangerous.

Mental and cognitive disabilities in detention

People in immigration detention with mental health and cognitive disabilities experience additional trauma, isolation, worsening of their disabilities, medical and mental health neglect, discriminatory solitary confinement, and communication challenges with their attorneys, all of which prevent them from preparing and presenting their case to the immigration court. Incarcerating people seeking protection severely impacts their mental



health. Studies have found that detained refugees and migrants experience more severe symptoms of anxiety, depression, and PTSD than non-detained refugees and migrants.

- **A 17-year-old unaccompanied child in Honduras with PTSD, major depressive disorder, and a history of suicide attempts was detained in a rural area of Virginia, exacerbating his mental health disabilities and his sense of isolation from his community and support systems**, according to an attorney who spoke with Human Rights First. He faced enormous obstacles communicating with his attorneys and preparing for his immigration court asylum hearing while detained. Phone communication in detention was intermittent and unreliable and his attorneys had to drive five hours round-trip to prepare him for his hearing in person. It was also extremely difficult to coordinate and conduct psychological evaluations and provide mental health treatment because of the unreliability of connecting with him by phone or video.

Widespread medical neglect and abuse in ICE jails violates the human rights of asylum seekers and other immigrants and prevents them from participating in their immigration court proceedings. People jailed by ICE often experience inadequate mental health care, verbal abuse by detention center psychologists, and denials and disruptions of psychiatric medications — which are often confiscated when people are jailed by ICE, and either not replaced at all or replaced with less effective medications. Lack of access to necessary health care compounds the barriers immigrants already face to articulate their stories, answer adversarial questions under cross-examination, and argue their case in detention. For instance:

- **A detained asylum seeker who has PTSD, depression, anxiety, and auditory hallucinations and was denied protection struggled to share his story with the court during his immigration hearing because ICE had failed to provide him with his psychiatric medications.** The man, who had previously been on medication that helped him manage his conditions, struggled to testify clearly and became emotionally distressed when questioned about a traumatic instance of past persecution. According to his attorney, he would have been better prepared to participate in the immigration proceedings had he not been detained and had access to supportive therapies and better medical care.
- CRCL data received through a FOIA request by Human Rights First that includes complaints filed from October 1, 2020 to May 4, 2022 regarding immigration detention contains numerous complaints regarding the **disruption or failure to provide necessary psychiatric medications in ICE detention**, including complaints filed by or on behalf of:
 - A man from Somalia jailed at Eloy Detention Center who did not receive medication necessary to treat his anxiety and depression.
 - A woman jailed at Glades Detention Center who was abruptly taken off her prescription depression and PTSD medications because the facility did not have the prescribed medication and did not provide a suitable replacement.



- A man with depression jailed at Glades Detention Center who did not receive his psychiatric medications while in solitary confinement.
- A man who has PTSD and depression because of past traumas and was taking specific mental health medications before detention, but was given alternatives at Krome Detention Center that did not work.
- A man jailed at Orange County Jail in New York who did not receive necessary psychiatric medication and reported that psychiatric staff expressed disbelief regarding his suicidal ideation.
- A woman jailed at Baker County Detention Center who did not receive her medication to treat bipolar disorder and reported that she was scared her symptoms would be aggravated.

Abusive use of solitary confinement in ICE detention further escalates these challenges. People with mental health disabilities are often targeted for solitary, which in turn leads to worsening of their symptoms and challenges communicating with attorneys to prepare for their cases, according to [psychological experts](#) and attorneys who spoke with Human Rights First. Records obtained by the Project on Government Oversight through a FOIA request [found](#) that from 2016-2018, about **forty percent of people placed into solitary confinement were people who have a mental illness.**

At some detention centers, this figure was even higher. The [records](#) also reflected prolonged periods of solitary confinement for people with mental health disabilities that in some instances even exceeded a year. These include a woman who had a trauma and stressor related disorder who was in solitary confinement for 454 days and another woman who was diagnosed with PTSD and major depressive disorder who was in solitary confinement for 372 days. As noted above, United Nations experts have confirmed that solitary confinement lasting more than 15 days constitutes [torture](#).

Human Rights First has previously [documented](#) devastating accounts of the horrors of solitary, including a Brazilian journalist seeking asylum who was jailed for 21 days in a solitary confinement cell after a suicide attempt in early 2021, and was not allowed to shower or given toilet paper, a toothbrush, sheets, or blankets. He attempted suicide again while in the solitary cell by slamming his head against the floor. He told Human Rights First **“I think about ending my life every day, but I can’t tell the psychologist because I will be taken back to that room . . . I feel like if I attempt suicide again, I have to be certain it will work.”**

Another asylum seeker from an African country suffered abuse in solitary confinement in the medical unit, where he was held naked in a cold cell without a bed for five days in May 2021. He had to sleep on the floor of cell for five days and only received a sheet to place on the ground on the second day.



Immigrants forced to endure these horrors experience severe psychological and physical harm and face heightened challenges communicating with attorneys, preparing for their immigration case, and presenting their case in court.

An asylum seeker from Venezuela who has depression was forced to appear for his final asylum hearing eight days into his stay in solitary and was denied asylum. He was incarcerated in solitary solely because a detention center staff worker communicated with him in a way that other staff members thought was inappropriate, including by giving the man a romantic letter. His attorney told Human Rights First that the man's depression became more severe in solitary confinement.

Attorneys also reported to Human Rights First that people with severe mental disabilities suffer prolonged detention when they are hospitalized or placed in in-patient facilities for psychiatric care, resulting in postponement of their hearings that in turn extends their detention and causes their mental health to further deteriorate. ICE often fails to even notify attorneys or other individuals about transfers to hospitals or in-patient facilities, exacerbating isolation from their attorneys, communities, and loved ones and making it even more difficult for attorneys to communicate with their clients.

An immigrant from Somalia reported that his court dates were repeatedly postponed and his detention prolonged because he was in a psychiatric facility in Florida while jailed by ICE, causing his mental health to deteriorate because he was isolated from family and society, according to a CRCL complaint filed in 2022 that was obtained by Human Rights First through a FOIA request.

Conclusion

To address the disability access deficiencies and gaps identified in this report, DOJ, EOIR, DHS, ICE, and CBP should take the steps outlined in the report's recommendations above. Human Rights First deeply appreciates the insights and input of people with disabilities who shared their experiences in immigration court and immigration detention and looks forward to improvements in access for people with disabilities in the immigration courts.

Appendix: Disability discrimination in immigration law and disability law today

History of disability discrimination in immigration law

The United States has a varied history of disability exclusion and discrimination and disability justice movements that have led to increased protections for disabled people. Disability discrimination, ableism, and exclusion are foundational to the United States immigration system. Lydia X. Z. Brown, a disability activist, attorney, and educator, has defined ableism as "oppression, prejudice, stereotyping, or discrimination against disabled people on the basis of actual or presumed disability, and the belief that people are superior or inferior, have better quality of life, or have lives more valuable or worth living on the basis



of actual or perceived disability.” The U.S. government has a long history of ableism and discrimination against people with disabilities and medical vulnerabilities. For example, the public charge provision of the Immigration and Nationality Act, first introduced as part of the Immigration Act of 1882 and still in effect today, makes inadmissible to the United States any person who is, or is likely at any time, to become a “public charge.”

Historically, this has permitted government officials wide discretion to deny entry to a variety of people whom they deemed either disabled or likely to become reliant on public resources in some way. The original language of the law made clear its intent to discriminate against and exclude people with disabilities, excluding from entry into the United States any “convict, lunatic, idiot or any person unable to take care of himself or herself...” In the early 1900s, eugenics was used to justify discriminatory immigration laws that excluded broad categories of people, including based on disability. The U.S. government, influenced by eugenics (the erroneous theory that humans could be “perfected” through forced sterilization, selective breeding, and murder), inspected those entering the United States for conditions as varied as flat feet, bunions, varicose veins, mental illness, and poor eyesight.

While the public charge language and other laws and regulations have been modified, disability discrimination and exclusion are part of the foundation of United States immigration law and continue to be wielded against people with disabilities. In 2018, the Trump administration promulgated a regulation to greatly expand the definition of public charge, which was formally rescinded by the Biden administration in 2021. The Trump administration rule broadened the definition of public charge substantially, providing that certain immigrants who received public benefits like food assistance and health insurance would be disqualified from becoming lawful permanent residents (green card holders). This regulation forced immigrants, including many disabled immigrants, to choose between, for example, forgoing essential affordable medical care or securing permanent status in this country. Asylum seekers and asylees are not subject to the public charge ground of inadmissibility, but misinformation about the regulation also caused people seeking asylum to forego public benefits. Although the rule was rescinded, the public charge law that has remained in effect since 1882 explicitly directs the government to consider an immigrant’s health as a factor when assessing their admissibility, a broad term which includes an assessment of a person’s disabilities.

Disability law today

Advocates, domestic lawmakers, and international bodies have made strides in recent decades in expanding legal protections for people with disabilities. As a result of sustained advocacy by disability rights and other civil rights movements, the Rehabilitation Act was signed into law in the United States in 1973. Several years later, the government promulgated regulations implementing the Rehabilitation Act, which despite political attempts to weaken them, contained strong nondiscrimination mandates as a result of activist sit-ins and other advocacy.



The Rehabilitation Act was the first United States legislation that addressed and attempted to remedy disability discrimination. It was modeled on the 1964 Civil Rights Act, which prohibits discrimination on the basis of race, color, religion, sex, and national origin. The Rehabilitation Act prohibits federal agencies and organizations that receive federal financial assistance from excluding and discriminating against people with disabilities. The Act's implementing regulations explicitly require agencies to provide reasonable accommodations to people with disabilities unless the agency can demonstrate that the accommodation would impose an undue hardship on its operations. In 1990, the Americans with Disabilities Act (ADA) was signed into law as a result of advocacy and collaboration between the disability rights movement and legislators. The ADA expanded disability protections in areas not covered by the Rehabilitation Act, including employment, transportation, state and local government services, and public accommodations.

The Rehabilitation Act and the ADA cover people who have a physical or mental impairment that substantially limits one or more major life activities, have a history or record of such an impairment, or are perceived by others as having such an impairment. This definition is not limited to a discrete list of disabilities or major life activities.

At the international level, in 2007, the United Nations ratified the Convention on the Rights of Persons with Disabilities. The CRPD is the first treaty specifically aimed at supporting and affirming the human rights of people with disabilities. Article 11 of the CRPD requires states to take all necessary measures to ensure the protection of disabled people in situations of risk and humanitarian emergencies. Article 13 requires states to ensure access to justice for disabled people, including through procedural accommodations in order to facilitate participation in all legal proceedings. The United States is a signatory to the CRPD, which was in part modeled on the ADA, but the U.S. Senate has not yet ratified the treaty. The Rehabilitation Act and the ADA work in tandem to protect individuals, including immigrants present in the United States, against disability discrimination. Yet despite these protections, major gaps exist between the guarantees of these laws and the reality for immigrants in the United States.



Mission Statement

Human Rights First works to create a just world in which every person's intrinsic human rights are respected and protected, to build societies that value and invest in all their people. To reach that goal demands assisting victims of injustice, bringing perpetrators of abuse to justice, and building institutions that ensure universal rights.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in Los Angeles, New York, and Washington D.C.

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