[NAME] **DETAINED**

EOIR ID: **\*NQRP\***

Rocky Mountain Immigrant Advocacy Network

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*Qualified Representative for Respondent*

**EXECUTIVE OFFICE OF IMMIGRATION REVIEW**

**AURORA IMMIGRATION COURT**

**3130 N. OAKLAND STREET**

**AURORA, COLORADO 80010**

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In the Matter of: )

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LAST, First ) **File No.: A000-000-000**

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*In Removal Proceedings* )

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**RESPONDENT’S MOTION FOR SAFEGUARDS**

Immigration Judge: [Name] Individual Hearing Date: [Date]

Respondent, [Mr. A], by and through his qualified representative, hereby moves the Immigration Court to prescribe relevant safeguards as directed by *Matter of* *M-A-M-*. As grounds for this motion, [Mr. A] states the following:

1. The test for determining whether an individual is competent to participate in immigration proceedings is whether he or she has a rational and factual understanding of the nature and object of the proceedings, can consult with the attorney or representative if there is one, and has a reasonable opportunity to examine and present evidence and cross-examine witnesses. *Matter of M-A-M-*, 25 I&N Dec. 474, 484 (BIA 2011).
2. Moreover, EOIR is governed by Section 504 of the Rehabilitation Act (“Section 504”), which prohibits disability discrimination by any program or activity conducted by an executive agency. The regulations implementing Section 504 for EOIR define a person with disabilities as “any person who has a physical or mental impairment that substantially limits one or more major life activities . . .” 28 C.F.R. § 39.103. Regulations implementing Section 504 require that EOIR provides effective communication for individuals with disabilities, including “afford[ing] an individual with a disability an equal opportunity to participate in . . . a program or activity conducted by” EOIR. 28 C.F.R. § 39.160(a)(1) (DOJ Section 504 regulations, applicable to EOIR).
3. Individuals with known disabilities can request accommodations in order to remedy any discrimination they may experience on account of their disabilities. DHS Component Self-Evaluation and Planning Reference Guide ([https://www.dhs.gov/sites/ default/files/publications/disability-guide-component-self-evaluation.pdf](https://www.dhs.gov/sites/%20default/files/publications/disability-guide-component-self-evaluation.pdf)) at 18. Moreover,

[a] request for an accommodation or modification may be made by someone else on behalf of the qualified individual with a disability. The agency has an affirmative obligation to offer an accommodation or modification to someone with a known disability where that disability impairs the individual’s ability to know of, and effectively communicate the need for, an accommodation or modification that is obvious to the agency. The “failure to accommodate” form of discrimination includes the failure to notify a qualified individual with a disability of their right to request an accommodation or modification.

EOIR should similarly affirmatively offer an accommodation or modification to someone with an obvious disability. *Id.*

1. Once an Immigration Judge determines that a respondent lacks sufficient competency to proceed with immigration proceedings, the Judge “shall prescribe safeguards to protect the rights and privileges of the alien.” *Id.* at 481 (quoting INA § 240(b)(3)). Immigration Judges have discretion to determine which safeguards are appropriate, given the particular circumstances in a case before them. *Id.* at 481–82.
2. On [date], an Immigration Judge found Respondent was not competent to represent himself in his removal proceedings and appointed a Qualified Representative in this matter. That same day, the Rocky Mountain Immigrant Advocacy Network was assigned to represent Respondent through the National Qualified Representative Program (“NQRP”). *See* IJ Order appointing Qualified Representative.
3. Because an Immigration Judge deemed [Mr. A] unable to represent himself in removal proceedings, he should be afforded appropriate safeguards. *Matter of M-A-M-*, 25 I&N Dec. at 484. Examples of appropriate safeguards include, but are not limited to, refusal to accept an admission of removability from an unrepresented respondent; identification and appearance of a family member or close friend who can assist the respondent and provide the Court with information; docketing or managing the case to facilitate the respondent’s ability to obtain legal representation and/or medical treatment in an effort to restore competency; participation of a guardian in the proceedings; continuance of the case for good cause shown; closing the hearing to the public; waiving the respondent’s appearance; actively aiding in the development of the record, including the examination and cross-examination of witnesses; and reserving appeal rights for the respondent. *Matter of M-A-M-*, 25 I&N Dec. at 483. This list is not exhaustive, and an adjudicator should make an individualized assessment of what safeguards, if any, are able to uphold a respondent’s due process rights. *Id.*
4. EOIR records indicate that when [Mr. A] was previously in removal proceedings and at that time a Licensed Professional Counselor determined that he suffers from a “Psychotic Disorder, with possible Mild Mental Retardation” and recommended that [Mr. A] have his IQ tested. That hearing took place before the Board’s issuance of *Matter of M-A-M-* and appropriate safeguards were not afforded.
5. More recently and in conjunction with the underlying proceedings, an independent evaluator, Dr. [XXX] found the following:

Diagnostically [Mr. A] meets criteria for Unspecified Neurocognitive Disorder (331.83), due to Multiple Etiologies supported by his severely impaired performance on the SLUMS and MMSE and significant impairment in most realms of his overall cognitive functioning. He also meets criteria for Unspecified Schizophrenia Spectrum and Other Psychotic Disorder with a Depressed Mood (USS &OSD -298.9). He evidences memory impairment, decline in the ability to perform everyday activities and difficulties with language, perceptual-motor and social skills.

Tab A at 5.

1. Based on the evidence of [Mr. A] mental illness, he requests that the Court prescribe the necessary safeguards to ensure a fair hearing. *Matter of M-A-M-*, 25 I&N Dec. at 474; *Matter of M-J-K,* 26 I&N Dec. 773 (BIA 2016) (determining that the Immigration Judge has the discretion to select and implement appropriate safeguards). [Mr. A] respectfully requests that the Court consider as safeguards the following measures:
* Counsel be permitted to ask leading questions and that the scope of his direct testimony and cross-examination be limited in scope and duration.
* [Mr. A] seeks leave to sit at counsel’s table during his testimony in order to make the proceedings less adversarial and more conversational.
* Due to his cognitive impairments, [Mr. A] through counsel, requests that the Court afford great weight to the evidence, particularly expert statements, submitted in support of [Mr. A] application for relief.
* [Mr. A] asks the Court to consider his mental health diagnoses when rendering a credibility finding. *See Matter of J-R-R-A-*, 26 I&N Dec. 609, 612 (BIA 2015) (stating that “where a mental health concern may be affecting the reliability of the applicant’s testimony, the Immigration Judge should, as a safeguard, generally accept that the applicant believes what he has presented, even though his account may not be believable to others or otherwise sufficient to support the claim. The Immigration Judge should then focus on whether the applicant can meet his burden of proof based on the objective evidence of record and other relevant issues”).
* Limit [Mr. A’s] testimony in the event that his mental illness impairs his ability to communicate.
* Conduct cross examination in a manner sensitive to [Mr. A’s] cognitive impairment.
1. Based on all of the foregoing, [Mr. A] respectfully requests that the Court prescribe the above-named safeguards to ensure a fair hearing. *Matter of M-A-M-*, 25 I&N Dec. at 476 (stating that the Board’s “goal is to ensure that proceedings are as fair as possible in an unavoidably imperfect situation”).
2. [Mr. A] reserves the right to request additional safeguards, as needed, at the time of his individual merits hearing.

 Respectfully submitted,

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 [Name]

 Rocky Mountain Immigrant Advocacy Network

 *Qualified Representative for Respondent*

**EXECUTIVE OFFICE OF IMMIGRATION REVIEW**

**AURORA IMMIGRATION COURT**

**3130 N. OAKLAND STREET**

**AURORA, COLORADO 80010**

**In the Matter of: [First LAST], A000-000-000**

**ORDER OF THE IMMIGRATION JUDGE**

Upon consideration of **Respondent’s** **Motion for Safeguards**, it is HEREBY ORDERED that the motion be  **□ GRANTED □ DENIED** because:

* DHS does not oppose the motion.
* The Respondent does not oppose the motion.
* A response to the motion has not been filed with the court.
* Good cause has been established for the motion.
* The court agrees with the reasons states in the opposition to the motion.
* The motion is untimely per
* Other:

Deadlines:

* The applications(s) for relief must be filed by .
* The Respondent must comply with DHS biometrics instructions by .

Certificate of Service

This document was served by: [ ] Mail [ ] Personal Service

To: [ ] Alien [ ] Alien c/o Custodial Officer [ ] Alien’s Atty/Rep [ ] DHS

Date: By: Court Staff

**CERTIFICATE OF SERVICE**

I, [Name], hereby certify that on [Date], I served a true and correct copy of the foregoing RESPONDENT’S MOTION FOR SAFEGUARDS on the Department of Homeland Security via USPS service at:

Office of Chief Counsel

12445 East Caley Avenue

Centennial,  CO,  80111-6432

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Laura Lunn Date