Supreme Court of the United States

Dated: NOV 4th 2019

Re: Richard Anyiam Anyanwu

V.

William P. Barr, Attorney General

No. 19-5211

PETITION FOR REHEARING

Petitioner moves the court for a review of case.

1.) Due Process Clause;

2.) Deficiency pursuant to mental illness;

3.) Constitutional Rights:

Immigrants with Mental Disabilities May Reopen Deportation Cases: Franco-Gonzalez v. Holder

ACLU So. Cal. Sept. 25, 2015 – "Hundreds of immigrants with mental disabilities who were ordered deported after being forced to represent themselves in court may be able to return to the U.S. under terms of a settlement approved today in a landmark class action lawsuit.

U.S. District Court Judge Dolly M. Gee granted final approval of the settlement in Franco v. Holder, clearing the way for the immigrants with serious mental disabilities to request to reopen their cases and if approved, return to this country.

"Today's ruling is a victory for due process," said Hector Villagra, executive director of the ACLU of Southern California. "For too long, individuals with mental disabilities were forced to represent themselves in deportation proceedings or allowed to languish in immigration jails.

"Ultimately, all were denied a fair day in court. This settlement ensures that individuals who were ordered deported in violation of the law will finally have an opportunity to obtain benefits of the court's landmark ruling."

It was originally filed on behalf of Jose Antonio Franco-Gonzalez and Guillermo Gomez-Sanchez, two immigrants with mental disabilities who had been locked up for years in immigration jails after being determined to be mentally incompetent to represent themselves in their immigration proceedings.

After more than five years of litigation, and the major reforms ordered by the court, an independent monitor was appointed to ensure that the federal government complies with the plan.

The BIA decision correctly identifies Anyanwu's "mental illness" as a "threshold matter" in this case. Indeed, paranoid schizophrenic Anyanwu has been living at St. Peter Minnesota Security Hospital for more than a decade after being found not guilty of the violent crime of attempted murder because of mental insanity. As the State government website explains, "St. Peter's Minnesota Security Hospital . . . (MSH) is the only secure facility in the state designed to provide assessment and treatment of individuals with **severe mental health disorders** who are **also considered dangerous." (1)** (Emphasis added). Each element emphasized here, namely a "severe mental health disorder" and being "considered dangerous" is relevant in the instant case. Anyanwu was subject to dangerous behavior as a result of his severe mental health disorder; currently, however, because of regular treatment and administration of antipsychotic medications, Anyanwu is now "psychologically stable: and is no longer considered dangerous and therefore is "ready for discharge".

The preceding quotations are highlighted in the BIA decision which notes that "respondent

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1 https://mn.gov/bms/ocdr/projects/st-peter-minnesota-security-hospital.jsp

provided a letter from a psychiatric nurse practitioner . . . indicating that the respondent is currently psychologically stable and ready for discharge". But the BIA, citing Matter of M-A-M, 25 I&N Dec. 474 (BIA 2011), is in serious error when it takes this letter to mean that the respondent is mentally competent and excludes the possibility of "further finding on the respondent's competency". The letter was submitted to show that the respondent was "psychologically stable" in the sense that he was not dangerous, it was not a mental health evaluation for the purposes of mental competency. Under M-A-M immigration judges have been instructed to consider "indicia of incompetency" throughout the duration of removal proceedings. Id. At 480 (*citing Indiana v. Edwards, 554 U.S. 164, 175 (2008)*). During these proceedings Respondent wrote numerous personal letters to the judges appointed to his case where he relied on the authority of the landmark *Franco-Gonzalez v. Holder* cases in the Central District of California where a federal district judge has ordered the U.S. Immigration and Customs Enforcement, the Attorney General, and the Executive Office of Immigration Review to provide legal representation to immigrant detainees with mental disabilities who are facing deportation and who are unable to adequately represent themselves in immigration hearings. **(2)**

The BIA writes "respondent does not argue that he presently is, or previously was, incompetent to participate in deportation proceedings" but, again, the respondent sent numerous personal letters to judges doing just that. M-A-M warns immigration judges to be on the lookout for "indicia of incompetency" and here the red flags fly. Id. At 480. Under M-A-M, the BIA should have ordered a "mental competency evaluation" as such was clearly indicated in this case. Id at

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2 Franco-Gonzalez v. Holder, CV 10-02211, slip op. (C.D. Cal. Apr. 23, 2013), available at https://www.aclu.org/cases/franco-gonzalez-v-holder; Franco-Gonzalez et al. v. Holder, CV 10-02211 DMG (DTBx), First Amended Class Action Complaint (C.D. Cal., Aug. 2, 2010), available at https://www.aclu.org/files/assets/2010-8-2-GonzalezvHolder-AmendedComplaint.pdf

481. Respondent submitted a copy of the *Franco-Gonzalez v. Holder* decision to the judges in his letters thereby alerting both the BIA and this court to respondent's rights under Section 504 of the Rehabilitation Act and his rights of due process under the Fifth Amendment. In both cases, however, this authority was summarily dismissed without discussion, analysis or comment. Under M-A-M, immigration judges need to determine whether the respondent understands the nature and object of the proceedings and here where there is clear indication that he does not a competency hearing is appropriate. Id at 481. The record shows a long history of severe mental illness. In one indicator of respondent's incompetence, the BIA notes that "contrary to the respondent's assertion [that he was ordered in absentia], he was not ordered in absentia." The procedural history of this case also shows that respondent, having no understanding of the nature and object of the proceedings, brought a writ of habeas corpus against federal authorities when no federal authorities held him. M-A-M obligates the Department of Homeland Security (DHS) to provide the court with any evidence in its possession bearing on the respondent's mental competency and no such evidence has been provided in this case. Id at 480. (A written request has been sent to DHS, copy with the court). A competency hearing will provide the chance to examine such evidence. Chief Immigration Judge O'Leary has issued an EOIR Directive to "All Immigration Judges" concerning the new *"Nationwide Policy to Provide Enhanced Procedural Protections to Unrepresented Detained Aliens with Serious Mental Disorders or Conditions".* **(3)** In keeping with the rights recognized in *Franco-Gonzalez v. Holder,* Chief Judge O'Leary outlines the importance of "competency hearings", "mental competency examinations" and where necessary the "EOIR will

3 http://nwirp.org/Documents/ImpactLitigation/EOIRDirective04-22-2013.pdf

make available a qualified legal representative to represent the alien in all future detained removal . . . proceedings," Id. The immigration Judge Benchbook indicates that an immigration judge may ask DHS to take other affirmative steps to gather evidence regarding a respondent's competency, including "contact[ing] those involved in prior criminal, civil, or administrative proceedings at which the respondent's mental health was at issue." IMMIGRATION JUDGE BENCHBOOK at 121. Nevertheless, no such safeguards were present in the respondent's case.

The U.S. Department of Homeland Security Immigration and Customs Enforcement branch should have better followed their own policy as outlined in *"Civil Immigration Detention: Guidance for New Identification and Information-Sharing Procedures Related to Unrepresented Detainees with Serious Mental Disorders or Conditions*". **(4)** This document requires "procedures to ensure that documents related to an unrepresented detainee's mental competency, *including a mental health review report and mental health records in ICE's possession*". Id. These procedural safeguards were ignored in this case.

Respectfully submitted by: Richard Anyanwu

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Dated: OCT 21ST 2019

4 https://www.ice.gov/doclib/detention-reform/pdf/11063.1_current_id_and_infosharing_detainees_mental_disorders.pdf