

Advocating for Clients with Mental Health Issues

with

Aimee Mayer-Salins

Christine Lin

Dr. Pratyusha Tummala-Narra

May 13, 2022

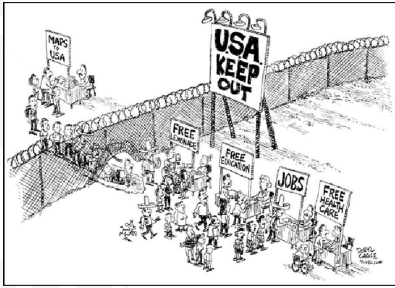
Overview

- Immigrant Experience and Mental Health Issues
- Identifying Mental Health Issues in Clients
- Due Process
- Competency Assessment and Safeguards
- Rehabilitation Act and Accommodations
- Case Study
- Working with Mental Healthcare Professionals

Immigration and Mental Health

- ❖ Reasons for why people migrate (e.g. family reunification, parental employment, education, poverty, war, persecution, environmental disaster)
- ❖ Separation from family and friends, and familiar context
- ❖ Optimism co-exists with sense of disorientation and sometimes disillusion
- ❖ Xenophobia, anti-immigrant sentiment and policy, racism

Prevailing Stereotype



"illegal immigration" overwhelming the nation

Key Issues in Mental Health

- ◆ **Immigrant Paradox:** Studies suggest that 1st generation immigrants may experience **less psychological distress** compared to 2nd generation immigrants (American Psychological Association, 2012, 2017).
- ❖ Psychological distress is going **unnoticed**.
- ❖ Many of the mental health problems particular to the immigrant experience can be linked to **acculturation, discrimination, and trauma**.
- ❖ Immigrants **underutilize** mental health services.



Acculturative Stress

- ❖ Stressful events/appraisal of events related to the acculturation experience
- ❖ Linked to psychological outcomes (depression, anxiety, suicidal ideation, substance abuse, eating disorders)
- ❖ Discrimination is a component of acculturative stress; Variations in discrimination-related stress across generations and across documentation status



Trauma-Based Presenting Problems

- ❖ Migratory trauma
 - ❖ Pre-migration
 - ❖ Migration
 - ❖ Post-migration
 - ❖ Deportation
- ❖ Interpersonal violence
- ❖ Vulnerable groups: Undocumented Immigrants, Asylum Seekers, Women, LGBTQ+, Survivors of Trafficking



Trauma-Based Presenting Problems

- ❖ Depression, anxiety, post-traumatic stress disorder
- ❖ Compromises identifications with country of origin and adopted country
- ❖ Interpersonal difficulties
- ❖ Feelings of persecution and distrust of authorities and institutions
- ❖ Lack of trust in adults' ability to provide and protect
- ❖ Fear of Deportation



Discrimination- & Racism-Based Presenting Problems

- ❖ Discrimination (overt and aversive); Microaggressions
- ❖ Profiling



*Poster by Ester Hernandez against SB 1070



Discrimination- & Racism-Based Presenting Problems

- ❖ Contribute to atmosphere of fear and anxiety and compromise in sense of safety
- ❖ Overt and subtle or aversive forms of racism both have detrimental effects
- ❖ Feeling of “second class” person
- ❖ Lack of sense of belonging (e.g. perpetual foreigner)
- ❖ Decreased use of mental health services



Barriers to Seeking Help

- ❖ Sociocultural Barriers
 - Stigma and shame associated with seeking professional help; Silence about trauma (including racism)
 - Mistrust of providers
- ❖ Systemic Barriers
 - Financial barriers
 - Legal barriers
 - Problems with cultural competence within mental health care
 - Lack of access to education about mental health



Identifying Mental Health Issues

- Ask about:
 - Prior hospitalizations, treatment
 - Supportive housing
 - Medications
 - Head injuries
 - Substance use
 - Exposure to violence/trauma
 - Self-injurious behavior
- Be aware that many people may minimize their symptoms



Common Indicators of Trauma

- Anger
- Anxiety
- Avoidance
- Confusion
- Disassociation
- Fear
- Flashbacks
- Flat Affect
- Nightmares
- Preoccupation
- Feelings of guilt, self-blame, shame, worthlessness
- Loss of control over own life
- Suicidal Ideation



Impact of Mental Health Issues on Client's Immigration Case

- Communication
- Ability to participate in process
- Trust/rapport
- Memory
- Decision-making/choices
- Ability to testify
- Re-traumatization
- Competency
- "Credibility"





Legal Standards



Due Process

- Due process requires that proceedings be fundamentally fair.
- Noncitizens must at least be afforded the specific rights provided in the INA.
- But procedural rights are only real and sufficient if a person can exercise them.



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INA § 240(b)(4)(B)

The noncitizen “shall have a *reasonable opportunity* to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government . . .”



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Competency



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Standard for Competency

- “The test for determining whether an alien 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)



Competency is Fluid

- May change based on medications, treatment, triggering events, etc
- May need to be reassessed at multiple points during the representation
- May need to strategize about when to request a competency hearing



When to Assess Competency

- Presumption of competency:
 - If there are no indicia of incompetency, “no further inquiry regarding competency is required”
- Where there are indicia of incompetency, IJ must conduct a competency assessment.



Indicia of Incompetency

- Behavioral observations:
 - inability to understand and respond to questions
 - inability to stay on topic
 - high level of distraction
- Record evidence:
 - assessments or medical reports from past medical treatment or from criminal proceedings
 - testimony from medical health professionals
 - school records regarding special education classes or individualized education plans
 - reports or letters from teachers, counselors, or social workers
 - applications for disability benefits
 - affidavits or testimony from friends or family



Safeguards



Safeguards: Notice

Matter of E-S-I-, 26 I&N Dec. 136 (BIA 2013).

- Where there are manifest indicia of incompetency, DHS generally should serve the NTA on :
 1. the noncitizen
 2. a person with whom the noncitizen resides, and
 3. a relative, guardian, or person similarly close to the noncitizen.
 - Where the noncitizen is confined in a custodial setting of any type, then "a person with whom the incompetent . . . resides" means someone who is in a position of demonstrated authority in the institution or his delegate. Where the noncitizen is not confined, then the statutory language refers to a responsible person in the household.
- If DHS did not comply with 8 CFR § 103.8(c), and indicia of mental incompetency arise or are manifest at master calendar hearing, IJ should grant a continuance so DHS may serve properly.
- If indicia of incompetency become apparent later, IJ should evaluate whether re-serving the NTA in compliance with 8 CFR § 103.8(c) would be an appropriate safeguard, and if so, grant a continuance for DHS to re-serve the NTA.



Statutory and Regulatory Safeguards During the Hearing

- INA § 240(b)(3) directs the AG to “prescribe safeguards to protect the rights and privileges of the alien.”
- 8 CFR §§ 1240.4, 1240.10(c), 1240.43.
 - allowing an attorney, legal representative or guardian, near relative or friend to appear on the noncitizen’s behalf if it is impracticable for noncitizen to be present at the hearing.
 - If such a person cannot be found or will not appear, then IJ may request that the noncitizen’s custodian appear.
 - IJ cannot accept admission of removability from noncitizen who is mentally incompetent and not accompanied by an attorney or legal representative, near relative, legal guardian, or friend.
 - IJ cannot accept an admission of removability “from an officer of an institution in which a respondent is an inmate or patient.”



Safeguards Stemming from *Matter of M-A-M-* and Its Progeny

- IJ has “discretion to determine which safeguards are appropriate, given the particular circumstances in a case before them.”
- *M-A-M-* provided a non-exhaustive list of safeguards:
 - refusal to accept an admission of removability from an unrepresented respondent;
 - identification and appearance of a family member or close friend who can assist respondent and provide information to the court;
 - docketing or managing case to facilitate the respondent’s ability to obtain legal representation and/or medical treatment;
 - participation of a guardian;
 - continuance for good cause shown;
 - closing hearing to the public;
 - waiving respondent’s appearance;
 - actively aiding in development of the record, including the examination and cross-examination of witnesses;
 - reserving appeal rights for the respondent.



Testimony Safeguards

- No adverse inference if client does not testify
- Nature of questioning (leading questions, appropriate tone, etc.)
- Flexibility in assessing credibility

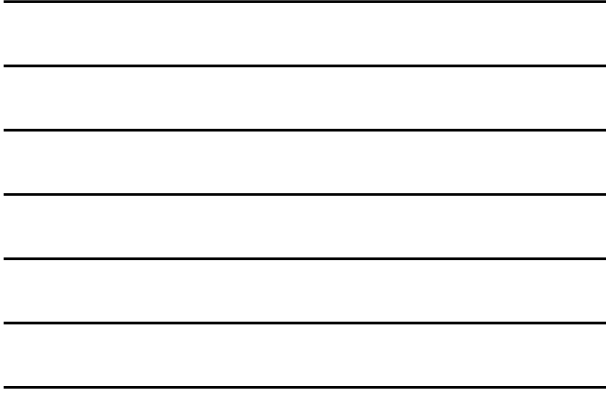
Matter of J-R-R-A-, 26 I&N Dec. 609, 611–12 (BIA 2015):

- “[W]here 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.”
 - “inconsistencies, implausibility, inaccuracy of details, inappropriate demeanor, and nonresponsiveness—may be reflective of a mental illness or disability, rather than an attempt to deceive the Immigration Judge.”



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Pedro: Intake Preparation

- Pedro is scheduled for an intake with your office.
- You have the following information about Pedro based on a quick phone screen:
 - 22 year-old Salvadoran male who has attended several "quick" hearings in immigration court, but needs a lawyer
 - Says he's feeling very depressed and desperate because he's contacted many organizations and has not been able to find a lawyer
 - Wants to speak with a lawyer to explore his options
- **What steps would you take to prepare for the intake interview?**



Pedro: Intake Meeting

- Hearing notice shows his individual hearing is in less than 2 months.
- Has some aunts, uncles, and cousins in the US, but the rest of his family reside in his home country.
- Says he is afraid to go back to his home country because "bad people" there want to hurt him.
- He won't say who the bad people are because he's afraid they will find out he's told on them.
- He is fidgety and keeps looking around the room when he is talking to you.
- When you ask him questions, he sometimes does not respond or says something unrelated.



Pedro: Subsequent Meetings

- Pedro misses 2 scheduled meetings with you.
- When you do meet, he tells you that he had nightmares several nights after your last meeting.
- He tells you he thinks some men have been following him so he was afraid to go outside and missed the 2 meetings.
- He was afraid to come to your office today, but knows it is important for his immigration case.



Pedro: Immigration Court Hearing

- Pedro's individual hearing is 3 weeks away.
- You have not been able to get much information about Pedro's immigration case because he missed 2 meetings and is very hesitant to discuss why he's afraid to go back to his home country.
- **What steps will you take before the individual hearing?**



Toolbox Techniques



- Be aware of the different ways trauma may impact an individual
- Active listening
- Observe client's behavior
- Identify problem/trigger areas
- Meet the client where they are at
- Acknowledge challenges/limitations
- Explore with client what would make them feel more comfortable
- Create timeline, charts, drawings, visual aids to help with memory
- "Homework" and interactive discussion
- Breaks, grounding exercises, breathing, meditation



Referrals

- Identify available resources and services
- Outreach and developing relationships with organizations/individuals working with similar client population
- Maintain list of referrals for various resources
 - Social services, medical, psychological, support groups, emergency contacts, education, other legal matters outside your expertise, etc.
- Provide appropriate referrals
 - Obtain confidentiality waivers



Collaboration with Health Professionals

- Provide mental health/medical support to individual going through the asylum process
- Serve as “Expert” Witness by conducting forensic evaluation of client and possibly testifying in court
- Corroborate mental health issues as well as documenting any physical and/or psychological harm
- Corroborate legal issues



Where Health Professionals' Expertise Can Be Critical

- Vulnerability Assessment
 - Children
 - Mental competency
 - Developmental disabilities
- Credibility
- Incomplete or inconsistent memory
- For asylum, withholding, Convention Against Torture claims, severity of past persecution/torture, e.g. physical scars, psychological trauma
- Overcoming bars to eligibility for relief
- Mitigating negative discretionary factors
- Discretion



Working with Mental Health Professionals

- Ascertain whether mental health professional has necessary expertise
- Communicate expectations
 - telephonic or in-person testimony
 - provide relevant filing and hearing dates
 - establish due dates for reviewing, editing, and finalizing any evaluation
 - set expectations around the frequency and means of communication
 - discuss compensation.
- Review the evaluation before submitting it to the Immigration Court.
 - Should address 3 prongs of *M-A-M*-competency test, what safeguards would help and why, and any issues necessary to establish noncitizen's eligibility for relief
- Prepare mental health professionals to testify, and anticipate and prepare for potential challenges to their qualifications or testimony.



Preparation: Minimize Surprises

- Discuss client's previous experiences with court/system
- Explain:
 - Purpose of interview/hearing
 - Interview/courtroom setting
 - Who present/role
 - Process
- Warn if need to discuss difficult topics and techniques for handling
- Manage client expectations



Preparation

- Review declaration in client's best language
- Moot and incorporate techniques discussed, such as asking to take breaks
- Identify problems areas
- Observe client's behavior



Who else may be impacted by client's trauma?

- Legal representative
- Interpreter
- Paralegal
- Social worker
- Expert
- Adjudicator
- DHS attorney
- Other individuals who interact with client



Burnout, Compassion Fatigue, Compassion Satisfaction, Vicarious Trauma

- **Burnout**
 - Characterized by emotional exhaustion and withdrawal due to general workload and occupational stress
- **Compassion Fatigue**
 - Physical and mental exhaustion and emotional withdrawal experienced by those who work with or care for traumatized individuals
- **Compassion Satisfaction**
 - Pleasure or positive feeling that comes from caring, helping others, or being able to contribute to the greater good of society
- **Vicarious Trauma**
 - May occur with second-hand exposure to disturbing or difficult stories or images



Questions

Questions?

(Use the chat box on the right of your screen to ask questions.)



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