

The *Franco Pro Se Competency Standard, Franco-Gonzalez, et al. v. Holder, et al.*, No. CV–10–02211 DMG (DTBx), 2014 WL 5475097, at *3 (C.D. Cal. Oct. 29, 2014)

When determining whether an unrepresented respondent is competent to represent him- or herself in an immigration proceeding, the Immigration Judge must consider both the individual's ability to meaningfully participate in the proceeding as set forth in Matter of M-A-M-, 25 I. & N. Dec. 474 (BIA 2011), and the individual's ability to perform additional functions necessary for self-representation.

Immigration Judges shall consider the following when determining if a respondent is competent to represent him- or herself:

First, the respondent must be able to meaningfully participate in the proceeding as set forth in Matter of M-A-M- . To meaningfully participate, the respondent must have a rational and factual understanding of:

- a. the nature and object of the proceeding;
- b. the privilege of representation by counsel;
- c. the right to present, examine, and object to evidence;
- d. the right to cross-examine witnesses; and
- e. the right to appeal.

Second, for an unrepresented respondent to be competent to represent him or herself in an immigration proceeding, he or she must also be able to perform additional functions necessary for self-representation. To represent him- or herself, the respondent must have sufficient present ability to:

- a. exercise the rights listed above;

- b. make informed decisions about whether to waive the rights listed above;
- c. respond to the allegations and charges in the proceeding;
- d. present information and evidence relevant to eligibility for relief; and
- e. act upon instructions and information presented by the Immigration Judge and government counsel.

A respondent is incompetent to represent him- or herself in an immigration proceeding if he or she, because of a mental disorder (including Intellectual Disability), is unable to satisfy any of the provisions above. For purposes of this standard, “mental disorder” (including Intellectual Disability) is defined as a significant impairment of the cognitive, emotional, or behavioral functioning of a person.

Guidance on applying the pro se competency standard.¹ The following guidance is provided to assist Immigration Judges in applying the pro se competency standard.

First, in applying the above definition, the presence of a legal guardian, near relative, friend, or custodian, under 8 C.F.R. § 1240.4, shall not affect an Immigration Judge’s assessment of whether a respondent is able to perform the additional functions necessary for self-representation.

Second, in assessing whether the respondent can respond to allegations and charges in the proceedings, the Immigration Judge should consider, among other things, the person’s ability to evaluate and coherently discuss legal arguments and defenses.

¹ Wherever the pro se competency standard appears in written materials that will be used as a reference or to train either Immigration Judges or mental health experts who will implement the terms of the Injunction, the standard will be accompanied by the text of the “guidance” on applying the definition of pro se competency.

Third, in assessing whether the respondent can present information and evidence relevant to eligibility for relief, the Immigration Judge should consider, among other things, the person's ability to present rational and coherent testimony based upon adequate recall.