

Center for Constitutional Rights

Discrimination, Detention, and Deportation: Immigration & Refugees

<https://ccrjustice.org/home/what-we-do/our-cases/dhs-v-anderson>

Policy Issue Resources

Mr. Anderson was granted cancellation of removal on February 5, 2009. He was released that evening, after two years of detention in the Bergen County Jail defending his right to be heard on discretionary forms of relief.

The Legal Aid Society

A case involving the defense of a mentally disabled and mentally ill lawful permanent resident facing deportation from the United States. Mr. Anderson was placed in removal proceedings in January 2007 for a 2005 conviction for simple possession of drugs after living with his family in the United States as a lawful permanent resident for over 22 years.

Gary Anderson is a 42-year-old Jamaican born longtime lawful permanent resident (LPR) who has lived in the United States since 1984 at the age of 17. He has two US citizen siblings and a number of nieces and nephews, and a mother and brother who are both LPRs. Mr. Anderson has a long history of struggling with mental illness and mental disability. He was first hospitalized and diagnosed with schizophrenia and mild mental retardation in 1985. He functions well below the average for his age. In November 2003, Mr. Anderson received housing and Assertive Community Treatment (ACT) mental health, housing and substance use services from Pathways to Housing, a New York City based non-profit agency. His ACT team is made up of a nurse, psychiatrist, social workers and case workers-- all to address his medical, psychiatric, and human needs. He experienced remarkable improvement in his mental health while at Pathways. Among his various family members in the United States, his mother is especially important in his life.

In January 2007, Mr. Anderson was detained by the Immigration and Customs Enforcement (ICE) agency of the Department of Homeland Security (DHS) following a guilty plea for simple possession of a controlled substance. This was his second such conviction. Despite his condition, he was transferred to a detention facility in El Paso, Texas, far from his family and support structure. Pathways secured him representation and an Immigration Judge in Texas transferred his case to a court in New York, after which the Legal Aid Society commenced representation of Mr. Anderson. Due to a precedent decision by the Board of Immigration Appeals that in New York two or more convictions for simple possession of drugs constitutes drug trafficking as defined under immigration law a position which the Second Circuit Court of Appeals has now deemed incorrect in *Alsol v. Mukasey*, 548 F.3d 207 (2d Cir. 2008)-- the Immigration Judge deemed Mr. Anderson ineligible for all forms of discretionary relief and denied relief based on the Convention Against Torture on June 3, 2008. In his decision he noted that this was an exceptionally sympathetic case. Due to the change in law, the matter is before the court now to consider the discretionary applications for relief from deportation.

This case represents the numerous challenges mentally ill and mentally disabled detainees face in removal proceedings: harsh mandatory detention provisions, lack of adequate due process and exceptional hardship to family members. Throughout these proceedings, Mr. Anderson has remained in detention. The length of his detention 2 years is over 100 times the length of the time served for his criminal convictions. Despite his mental disabilities and the exceptional nature of this case, the government denied both of The Legal Aid Societys requests to release Mr. Anderson. Harsh mandatory detention provisions prevent the Immigration Court from granting a bond or bail in his case. Pathways to Housing petitioned a state court in Brooklyn to appoint one of its representatives as guardian under Article 81 of the New York Mental Hygiene Law because the Immigration Judge denied a similar request, stating no provision granted him authority to appoint a guardian *at litem* to protect Mr. Andersons interests.

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