



Ulster Correctional Facility

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A Man Who Cannot Speak Could Face Deportation Due to Changes in the Immigration Courts

Santos had a stroke earlier this year and cannot communicate with his lawyers. His case was previously administratively closed then sent back to immigration court.

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In the Ulster Correctional Facility immigration courtroom in upstate New York, Judge Roger Sagerman prepared for his fifth and final hearing of the day in late October. The court reporter dialed the number to teleconference in an inmate from Walsh Hospital in the Mohawk Correctional Facility.

From the hospital, Santos's face beamed onto the screen. He had a vacant expression as his eyes looked away from the camera. His head hung low, looking off into the distance. He exchanged no pleasantries with the judge, unlike other detainees the judge dealt with. "I tried speaking to him last time but he just couldn't respond," Sagerman said.

The problem is, Santos cannot speak. Earlier this year he suffered a stroke and lost the ability to communicate.

At that time, Santos, a 60-year old Middletown, New York, resident of Mexican origin, was in deportation proceedings. When he lost his ability to speak, attorneys from Immigration and Customs Enforcement (ICE) requested that a judge temporarily close his case while he pursued medical attention. However, in September, another attorney from ICE issued a motion to reopen his case based on a ruling from former-Attorney General Jeff Sessions.

Sessions effectively ended the use of a mechanism known as administrative closure, which allowed judges to remove cases from their docket for a variety of reasons. In a decision in the *Matter of Castro Tum*, Sessions also allowed for every case that had previously been administratively closed—more than 300,000—to be reopened. This includes cases such as Santos’s where the defendant is arguably not mentally competent enough for a fair hearing.

Cases such as Santos’s were a strong candidate for administrative closure. Previously, a judge could hold a hearing to determine the mental competency of an individual. These are known as [Matter of M-A-M](#) hearings, after the precedent decision taken by the Board of Immigration Appeals that laid out the guidelines for cases involving mentally incompetent defendants.

In that decision, the BIA [permitted](#) judges to use docket management tools—such as administrative closure—to allow the defendant to get medical attention. Sessions, however, has stripped judges of most of those tools.

A way to ensure a fair trial

“Administrative closure was one option [in *Matter of M-A-M* cases] because in those situations the person’s mental competency may be compromised temporarily,” said Judge Ashley Tabaddor, who spoke with Documented as president of the National Association of Immigration Judges as judges are not authorized to speak with the press. Administrative closure was one method to ensure everyone got a fair trial.

In November, Syracuse University’s Transactional Records Access Clearinghouse reported that 330,211 previously administratively closed cases are now pending in the immigration courts. This means there are 330,211 people who thought their cases were closed and are now being sent back to immigration court.

“Administrative closure was a really nice tool for judges to close cases they didn’t think should be moving forward in the court system,” said Sarah Pierce, a policy analyst for the U.S. Immigration Policy Program at the Migration Policy Institute. “For people who had very sympathetic cases, administrative closure provided a nice out for the judges to just kind of shutter the case and say, ‘This is clearly not in the best interest of the United States to be moving forward with this case.’”

Santos was arrested in August 2015 on charges of assaulting another man with a knife. He was convicted of second degree assault in 2016 and sentenced to four years in prison. He is now set for early release in January.

He's been serving out his sentence in the Mohawk Correctional Facility. Inmates who are facing deportation proceedings are tried at one of the state's most bizarre immigration courts inside the Ulster Correctional Facility. Judge Sagerman oversees the tiny courtroom in the middle of the correctional facility. An ICE attorney with a trolley full of folders sat next to the judge during hearings in late October. Sagerman faced a large screen where inmates in New York state prisons teleconferenced in one after the other. Their attorneys would call, sometimes cutting out due to poor connections and having to be called back. One man who required a translator had to have his hearing delayed as the judge could not connect to his attorney, while the translator could not hear the inmate over the phone. Immigration courts in prison raise [a number](#) of due process concerns.

Santos cannot communicate with his lawyer, Nicholas Phillips of Prisoners' Legal Services of New York (PLS), who was assigned his case in September. PLS provides representation to indigent individuals incarcerated in New York State prisons or Albany and Clinton County jails who are facing deportation hearings. A different attorney from PLS represented Santos in his previous proceeding.

Unable to speak or write

A PLS lawyer visited Santos after his case was reopened, and Santos nodded his head when asked whether he wanted PLS to continue representing him. However, beyond confirming that Santos wanted representation, Phillips has not been able to speak with his client to discuss his immigration case. "He's completely unable to communicate with us," Phillips said.

"He can't speak. He can't write. He had one hearing already, where the prison forgot to produce him. I don't know why DHS would want to re-calendar this case."

ICE Public Affairs Officer Rachael Yong Yow said that the agency routinely reviews cases in which it requested administrative closure, such as Santos's. "Ultimately, an immigration judge with EOIR will decide if [Santos] has a legal basis to remain in the U.S.," Yow told Documented in a statement.

Very few legal avenues remain in his case. Matter of M-A-M allows for a judge to close proceedings based on incompetency, but an immigration judge generally requires medical records to conduct an M-A-M- hearing, and Santos cannot give consent for PLS to obtain his records.

Judges are also entitled to issue other orders such as a continuance or a termination of a case entirely, however, Sessions limited use of these tools as well.

Phillips now fears that Santos will be detained when he is released from prison in January.

At Santos's hearing at Ulster Correctional Facility, Judge Sagerman appeared visibly confused as to why the government would choose to reopen his case. "This is the one that Mr. Kelly chose to re-open?" Sagerman pondered, in reference to ICE's assistant chief counsel Daniel Kelly.

Unaware as to how to proceed, Sagerman suggested to the ICE attorney that he request the dismissal of the case.

Tabaddor, who was not at liberty to comment on this specific case, said that the removal of administrative closure is indicative of a broken system where a prosecutor, the attorney general, can dictate the rules of the court.

"A lot of people don't fully understand how deeply flawed it is when you have an immigration court system that's run by a federal prosecutor," she said. "What you are seeing and happening on a systematic basis, on a structural basis is exactly that conflict of interest coming to fruition and how the prosecutorial powers are being given its supreme authority over the system."

**Documented withheld Santos's last name to protect his identity.*

Update: This story was updated on Dec. 19 with a response from Immigration and Customs Enforcement.

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