

Thompson, Karl (OAG)

From: Thompson, Karl (OAG)
Sent: Tuesday, April 23, 2013 11:19 AM
To: Richardson, Margaret (OAG)
Subject: Franco Policies
Attachments: EOIR memo.pdf; Civil Immigration Detention Guidance memo.pdf

Margaret,

Attached are the two documents laying out the new policy for unrepresented immigration detainees with serious mental disorders, which were adopted in connection with the Franco litigation.

The first pdf contains a new EOIR memo addressed to IJs. It directs them to: (1) conduct a competency hearing for unrepresented detained aliens appearing before them if documentation, medical records, or other evidence suggest that the detained alien may have a serious mental disorder or condition that would prevent self-representation; (2) order, in their discretion, a mental competency evaluation if the competency hearing described in #1 is inconclusive; (3) offer qualified legal representation to an unrepresented alien deemed mentally incompetent to represent himself or herself; and (4) offer a bond hearing to detainees identified as having a serious mental disorder or condition who have been held in immigration detention for at least six months.

The second pdf contains a new ICE memo, which directs the development and implementation of a variety of procedures designed to (1) identify those ICE detainees who may be mentally incompetent to represent themselves, and (2) provide that information to the immigration court so that an IJ can rule on their competency and, where appropriate, get them counsel and a bond hearing.

Please let me know if you or the AG have any questions.

Thanks,

Karl

Policy Number: 11063.1
FEA Number: 306-112-002b

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

April 22, 2013

MEMORANDUM FOR: Thomas D. Homan
Acting Executive Associate Director
Enforcement & Removal Operations

Peter S. Vincent
Principal Legal Advisor

Kevin Landy
Assistant Director
Office of Detention Policy and Planning

FROM: John Morton
Director

SUBJECT: Civil Immigration Detention: Guidance for New
Identification and Information-Sharing Procedures Related
to Unrepresented Detainees With Serious Mental Disorders
or Conditions

Purpose

This memorandum directs that procedures be in place to ensure that U.S. Immigration and Customs Enforcement (ICE) detainees who may be mentally incompetent to represent themselves in removal proceedings before the Department of Justice's Executive Office for Immigration Review (EOIR) are identified, that relevant information about them is provided to the immigration court so that an immigration judge (IJ) can rule on their competency and, where appropriate, that such aliens are provided with access to new procedures for unrepresented mentally incompetent detainees being implemented by EOIR.¹ In order to assist EOIR in identifying unrepresented individuals detained in ICE custody for removal proceedings who have serious mental disorders or conditions that may render them mentally incompetent to represent themselves in those proceedings, ICE personnel should immediately begin taking the following steps.²

¹ This policy directive supplements all previous guidance distributed by ICE pursuant to the Board of Immigration Appeals' decision in *Matter of M-A-M-*, 25 I. & N. Dec. 474 (BIA 2011).

² On this same date, EOIR issued a nationwide policy authorizing IJs to order competency exams for detained aliens where there are indicia of mental incompetency and the immigration judge believes that he or she cannot render a competency determination in the absence of an exam. When an IJ orders a

Civil Immigration Detention: Guidance for New Identification and Information-Sharing Procedures Related to Unrepresented Detainees With Serious Mental Disorders or Conditions
Page 2

Identification and Assessment Procedures

For facilities that are staffed by the ICE Health Service Corps (IHSC) where screening procedures have not yet begun being implemented, Enforcement and Removal Operations (ERO) and IHSC personnel should immediately begin developing procedures to ensure that, absent emergency circumstances related to facility security or the health and safety of staff or detainees, all immigration detainees will be initially screened when they enter the facility and will receive a more thorough medical and mental health assessment within 14 days of their admission. For all other facilities, ERO and IHSC personnel should immediately begin working with the detention facilities' medical staff to develop procedures to identify detainees with serious mental disorders or conditions that may impact their ability to participate in their removal proceedings, including through use of a national telephone hotline for detainees and family members to report and provide information regarding detainees.

These procedures should provide that if a detainee is identified as having serious mental disorders or conditions, ICE will request that either a qualified mental health provider complete a mental health review report or the facility provide the detainee's medical records within the facility's possession to ICE for further review.

Information-Sharing Procedures

ERO and IHSC personnel should also immediately begin developing 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, are provided to the applicable Office of Chief Counsel (OCC). OCCs should begin developing procedures to ensure that relevant information in its possession that would inform the immigration court about the detainee's mental competency is made available to the IJ.

Timeline

Where these procedures have not yet begun being implemented, ICE personnel are directed to begin developing these procedures immediately and have the relevant procedures in place at all immigration detention facilities by December 31, 2013.

competency exam for a detained alien, ICE will ensure that the independent examiner has the necessary access to the detained alien to conduct the competency exam. EOIR's new policy also provides custody hearings to unrepresented detained aliens who were identified as having a serious mental disorder or condition that may render them incompetent to represent themselves and have been detained in ICE custody for six months or longer. ICE trial counsel shall participate in these custody hearings. EOIR's new nationwide policy also provides qualified representatives to detainees who are found to be mentally incompetent to represent themselves. ICE trial counsel will work with such qualified representatives, consistent with treatment afforded any respondent's representative-of-record, in removal proceedings before EOIR.



U.S. Department of Justice


Executive Office for Immigration Review

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

April 22, 2013

MEMORANDUM TO: All Immigration Judges

FROM: Brian M. O'Leary 
Chief Immigration Judge

SUBJECT: Nationwide Policy to Provide Enhanced Procedural Protections
to Unrepresented Detained Aliens with Serious Mental Disorders
or Conditions

For those of you who have had unrepresented detained aliens with serious mental disorders or conditions appear in your courtrooms, you are more than aware of the many unique challenges encountered in conducting removal proceedings involving such individuals. Accordingly, in order to enable Immigration Judges to more efficiently and effectively carry out their adjudicatory duties when confronted with such cases and to enhance procedural protections for mentally incompetent individuals appearing in our courts, today we are announcing, together with the Department of Homeland Security (DHS), a number of enhancements throughout the immigration removal and detention system.

Specifically, we will today begin implementation of a system that will accomplish the following:

- **Competency Hearings.** When it comes to your attention through documentation, medical records, or other evidence that an unrepresented detained alien appearing before you may have a serious mental disorder or condition that may render him or her incompetent to represent him- or herself in removal proceedings, you will conduct a competency hearing.
- **Mental Competency Examinations.** If, at the conclusion of competency hearing(s), you are unable to make a determination of whether the alien is competent to represent him- or herself in removal proceedings based on the evidence presented, you will now be able to order an independent mental competency examination and the production of a psychiatric or psychological report. EOIR will be administering a system that works with DHS to

procure such independent examinations and reports. While Immigration Judges shall retain their discretion to determine whether or not a detained alien is competent to represent him- or herself, the independent competency evaluation will serve as a useful tool in assisting with that determination.

- **Availability of Qualified Representatives.** If, at the conclusion of competency hearing(s), you find that the unrepresented detained alien is not mentally competent to represent him- or herself, and the alien does not at that point otherwise have legal representation, EOIR will make available a qualified legal representative to represent the alien in all future detained removal and/or bond proceedings.
- **Bond Hearings.** In addition, any unrepresented detained aliens who were initially identified as having a serious mental disorder or condition that may render them incompetent to represent themselves and who have been held in detention by DHS for six months or longer will be afforded a bond hearing.

More detailed information will be provided as it becomes available. We expect these new procedures will be fully operational by the end of 2013.

EOIR Accomplishments, FY 2009 FY 2013 (to date)

- In February 2002, EOIR's BIA had a pending caseload of 58,000 cases. As of the end of FY 2012, the BIA's pending caseload was just over 17,000.
- EOIR has eliminated the transcription backlog at the BIA.
- Summary affirmances by the EOIR BIA, also known as "affirmances without opinion," have decreased from more than 30 percent in 2004 to approximately 3% of the Board's decisions.
- EOIR's transcription vendors are processing more detained cases within the five-day turn around goal. This resulted in 96 percent of detained case appeals being transcribed within the five-day window during compared to 73 percent of detained cases in FY 2009.
- In 2012, EOIR launched several pilot projects to improve immigration court efficiency and cost effectiveness, including an alternatives to detention pilot, a pre-trial conference pilot, and a stipulated removal pilot.
- OCAHO is in the final stages of implementing an email filing pilot project for certain cases, which EOIR expects will be fully implemented after the trial period.
- EOIR completed deployment of Digital Audio Recording (DAR) during FY 2010.
- In FY 2012, EOIR created the Office of Legal Access Programs (OLAP). The LOP now operates in 27 sites, serving roughly 60,000 detained aliens per year, and LOP self-help materials are now available in all ICE detention facility libraries.
- In April 2012, EOIR launched a nationwide policy to provide independent medical professionals to evaluate detainees with possible competency issues, and to then provide with any attorney any detainees evaluated as incompetent.
- In FY 2010, EOIR announced and implemented the first phase of a Judicial Complaint System and began posting statistics on its website regarding the number, type, and disposition of complaints.
- EOIR expanded training for new immigration judges, and BIA and immigration court staff.
- EOIR developed an orientation and mentor program for interpreters and also enhanced the biannual interpreter performance review process for all staff interpreters. In addition, the agency established a quality assurance team to monitor contract interpreter accountability and performance. EOIR also created a website link for the public to report complaints regarding interpreter services.

Taylor, Elizabeth G. (OAAG)

From: Taylor, Elizabeth G. (OAAG)
Sent: Friday, May 17, 2013 2:54 PM
To: West, Tony (OAAG)
Cc: Martinez, Brian (OAAG)
Subject: Franco -- issue re public defenders representing incompetent aliens
Attachments: Letter to public defender (2).docx

From: Flentje, August (CIV)
Sent: Thursday, May 16, 2013 12:03 PM
To: Jacobsohn, Robin (ODAG); Taylor, Elizabeth G. (OAAG)
Cc: Lawrence, Victor (CIV)
Subject: RE: Franco CJA ALERT

Tony, I flagged this for you the other day. In the Franco litigation, we argued that CJA funds could not be used to fund attorneys for incompetent aliens in removal proceedings. The plaintiffs disagreed and provided a declaration from a federal public defender that he could provide the representation. The court initially said that it thought that CJA funds would not be available but, in her recent order, she left open the possibility that CJA funds could be used. EOIR would like to explore the possibility. The attached draft letter has been edited (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Let me know what you think please.

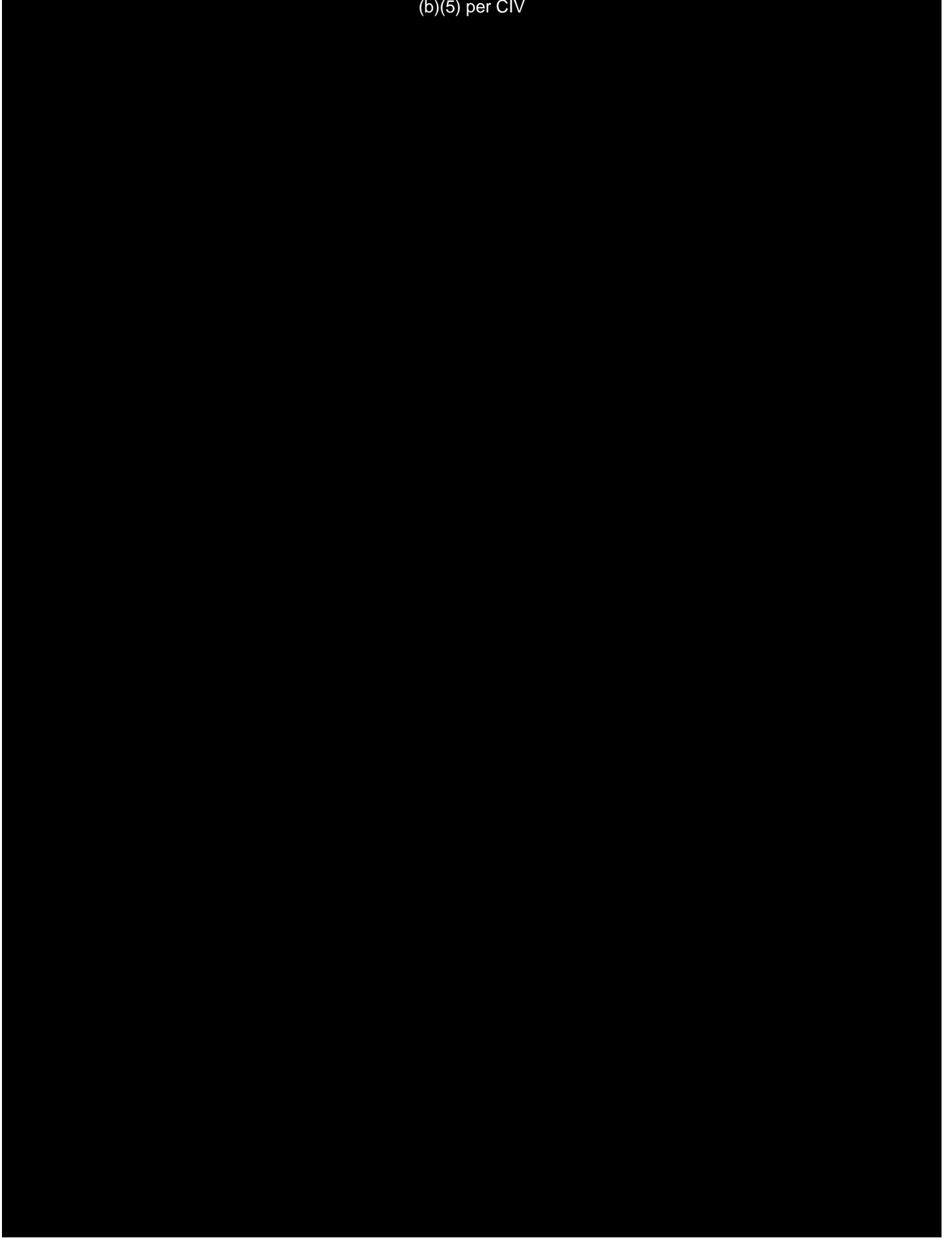
I'm copying below some info Auggie sent me as background about this issue.

Elizabeth -- Here are some talking points on this issue. Let me know if this works.

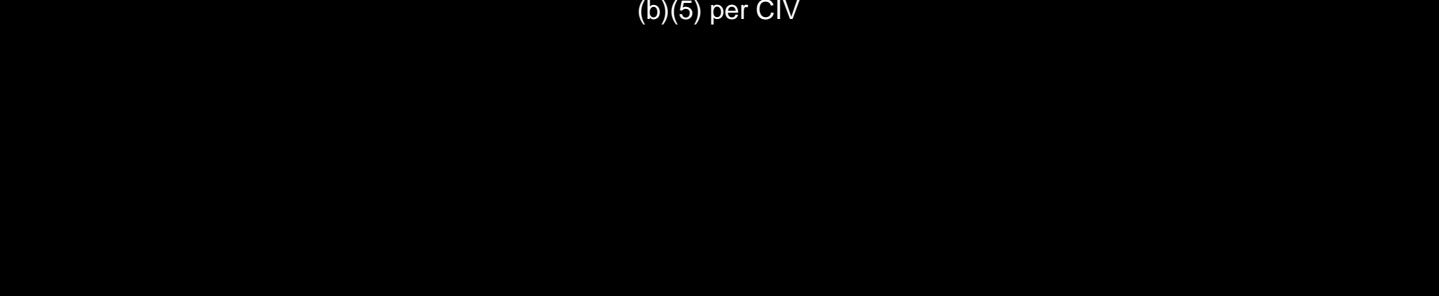
(b)(5) per CIV

[REDACTED]

(b)(5) per CIV



(b)(5) per CIV



From: [Osuna, Juan \(EOIR\)](#)
To: [Dix, Melanie \(ODAG\)](#); [Margolis, David \(ODAG\)](#)
Subject: RE: Agenda for Friday's meeting
Date: Friday, June 28, 2013 6:16:28 PM

Here is the proposed agenda for the EOIR meeting next week:

(1) Comprehensive Immigration Reform

Update
Resource Issues
Related Issues on Immigration Enforcement

(2) Sequestration

Impact on EOIR in FY 2013 and FY 2014

(3) E-Registration Initiative

Progress Report
Long Term Plan for Electronic Filing

(4) Update on Implementation of Mental Incompetence Policy

Related Issues on Franco Litigation

From: Dix, Melanie (ODAG)
Sent: Friday, June 28, 2013 3:51 PM
To: Osuna, Juan (EOIR); Margolis, David (ODAG)
Subject: RE: Agenda for Friday's meeting

Thanks!

From: Osuna, Juan (EOIR)
Sent: Friday, June 28, 2013 3:47 PM
To: Dix, Melanie (ODAG); Margolis, David (ODAG)
Subject: Re: Agenda for Friday's meeting

Will get it to you today.

Goldberg, Stuart (ODAG)

From: Goldberg, Stuart (ODAG)
Sent: Wednesday, September 4, 2013 7:14 PM
To: Jacobsohn, Robin (ODAG)
Subject: FW: Mental Competency Policy
Attachments: Nationwide Guidance_DRAFT 8-30-13.pdf

R let me know if you have any concerns. thx

Stuart M. Goldberg
Principal Associate Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Room 4208
Washington, D.C. 20530

(b) (6)

From: Osuna, Juan (EOIR)
Sent: Wednesday, September 04, 2013 2:52 PM
To: Goldberg, Stuart (ODAG)
Subject: Mental Competency Policy

Stuart:

At the last EOIR quarterly meeting with the DAG I reported on the work we are doing to implement the joint DOJ/DHS national policy on how to deal with detained aliens in removal proceedings that are mentally incompetent. This is the issue being litigated in the Franco class action. Attached, just for you and the DAG's information, is a draft of the plan we are putting together, and plan to begin implementing in the next few weeks. We are working with DHS and Civil on this.

JMD has also been very helpful in figuring out the funding issues with this.

Let me know if you all have any questions.

Thanks.

JPO

Goldberg, Stuart (ODAG)

From: Goldberg, Stuart (ODAG)
Sent: Sunday, October 20, 2013 11:56 AM
To: Jacobsohn, Robin (ODAG)
Subject: Fwd: Mental competence program plan
Attachments: Phase I Guidance.pdf; ATT00001.htm; Appendix A - Process for Conducting a Judicial Inquiry.pdf; ATT00002.htm; Appendix B - Mental Health Examination Referral.pdf; ATT00003.htm

Robin -- please review and let me know if you have any concerns about how this is being implemented. Thanks.

Stuart M. Goldberg
Principal Associate Deputy Attorney General

Begin forwarded message:

From: "Osuna, Juan (EOIR) (b) (6)"
Date: October 18, 2013, 1:56:23 PM EDT
To: "Goldberg, Stuart (ODAG) (b) (6)" >, "Jacobsohn, Robin (ODAG)"
(b) (6)
Cc: "Kocur, Ana (EOIR) (b) (6)" >, "Rosenblum, Jeff (EOIR)"
(b) (6)
Subject: Mental competence program plan

Stuart and Robin:

Attached please find details on the first phase of our mental competence national program, beginning next week in San Diego. Stuart, I will mention this briefly at this afternoon's EOIR meeting with the DAG.

Let me know if you have any questions, or feel free to reach in to Ana or Jeff, copied here.

JPO

Process for Conducting a Judicial Inquiry

I. Purpose of the Judicial Inquiry - The purpose of the judicial inquiry is to determine whether respondent's competence is in issue and a more in-depth competency review is warranted.

II. Mandatory Advisals The judicial inquiry should generally occur after explaining to the respondent the nature and purpose of the proceeding and providing the advisals required in 8 C.F.R. § 1240.10(a).

III. Suggested Advisal - The judicial inquiry should begin by explaining to the respondent the purpose and process for conducting the judicial inquiry. A sample advisory follows:

I am an Immigration Judge. My job is to decide whether you will be allowed to stay in the United States. I am going to hold a hearing to gather information from you and the representative of the Government to help me decide whether you will be allowed to stay in the United States.

It is important that you understand what is happening in court. It is important that you understand what is being said about you. It is also important that you are able to tell your side of the story.

To make sure that you are able to understand and tell your story, I am going to ask some questions about you and your case. I will use this information to decide whether you will need any special help in the hearing.

Can you explain to me what I just said in your own words?

Do you have any questions before we begin today?

IV. Suggested Questions

A. Areas of Inquiry - When conducting the judicial inquiry, the Immigration Judge must ask questions to assess respondent's:

1. understanding of the nature and object of the proceeding,
2. understanding of and ability to exercise core rights and privileges,
3. ability to respond to the allegations and charges,
4. ability to present information and respond to questions relevant to eligibility for relief, and
5. cognitive, emotional, and behavioral functioning.

- B. **Suggested Questions** The following list of questions is designed to shed light on the respondent's: 1) cognitive, emotional, and behavioral functioning; and 2) ability to represent him- or herself. This list is not exhaustive. The judge may ask other questions relevant to the respondent's mental health and ability to function as required in the hearing (*e.g.*, ability to communicate, subjective reality, memory, and interest in self). It is important for a judge to observe respondent's non-verbal as well as verbal responses to questions posed.

1. Cognitive, Emotional, and Behavioral Functioning

- a. How are you today?
- b. What is your name?
- c. What is today's date (including year)?
- d. What state and country are we in today?
- e. How did you get to the United States?
- f. When did you come to the United States? About how long have you been in the United States?
- g. Do you want to stay in the United States?
- h. Where do you live?
- i. What is the highest level of school that you completed?
- j. Are you seeing a doctor or taking any medications?
 - 1) If yes, what condition or problems are you being treated for?
 - 2) If yes, what medications are you taking?
- k. Are you currently being treated for a mental health (psychological/psychiatric) or emotional problem?
 - 1) If yes, what is the problem for which you are being treated?
 - 2) If yes, how often do you see the doctor?
 - 3) If yes, what medications, if any, are you receiving for this problem?
- l. Have you been treated for a mental health (psychological/psychiatric) or emotional problem in the past?
 - 1) If yes, when and for what problem?

2. Ability to Respond to the Allegations and Charges

- a. Why were you arrested? (Why did the immigration officers pick you up?)
- b. Where were you arrested?
- c. When were you arrested? (What was the date and time of your arrest?)
- d. Can you explain to me the immigration charges against you? (Can you explain to me what the government says you did wrong?)
- e. Is there anything important that you think I should know about what they say you did wrong? (Do you agree with what the government is saying about you?)

- f. What does _____ (e.g., alien smuggling, controlled substance, conviction, firearm) mean?
- g. How do you plan to proceed in court? (What do you plan to do next?)
- h. What do you want me to know about you and/or why you are here?
- i. What do you hope happens in court?

3. Understanding and Ability to Exercise Rights and Privileges

- a. What are your rights in immigration proceedings?
- b. What is a legal representative? What does a legal representative do in court?
- c. How do you find an attorney or legal representative?
- d. Is there anyone who can help you with your case?
- e. What is “evidence”?
- f. Can you give me an example of “evidence” that may be offered in your proceeding?
- g. What is an “appeal”?
- h. Why and how would you file an appeal?

4. Ability to Present Information and Respond to Questions Relevant to Relief

- a. What does “relief from removal” mean?
- b. What forms of relief from removal may be available in these proceedings?
- c. How long have you been in the United States?
- d. Do you have any family in the United States?
- e. Have you or your family ever had papers or permission to be in the United States?
- f. Has someone hurt you or tried to hurt you in your country?
- g. Are you afraid to go back to your country? Why?
- h. What does _____ (e.g., asylum, cancellation of removal, withholding of removal) mean?
- i. I am going to show you a relief application. Please take a moment to review the application. Can you explain to me how you would fill the application out or bring it back to me completed?
- j. Who do you know who might be able to help you with your case?

5. Other appropriate questions

- a. Is there anything else you would like to tell me?
- b. Are there any other questions you would like to ask?

Mental Health Examination Referral

Respondent: _____ Date: _____

Case No.: _____ Best Language: _____

Apparent Country of Origin: _____ Ethnicity (if known): _____

Judge: _____ Hearing Location: _____

Place of Detention: _____

Next Scheduled Hearing Date or Requested Due Date: _____

Type of Proceeding: _____ Estimated Length of Hearing: _____

Likely Forms of Relief:

- | | | |
|---|--|---|
| <input type="checkbox"/> Asylum | <input type="checkbox"/> Adjustment of status | <input type="checkbox"/> Temporary Protected Status |
| <input type="checkbox"/> Withholding of removal | <input type="checkbox"/> Cancellation of removal (LPR) | <input type="checkbox"/> Waiver(s) |
| <input type="checkbox"/> Convention Against Torture | <input type="checkbox"/> Cancellation of removal (non-LPR) | <input type="checkbox"/> Voluntary Departure |
| <input type="checkbox"/> Other: _____ | | |

Estimated Complexity of Issues (Circle one: 1 is least and 10 is most complex): 1 2 3 4 5 6 7 8 9 10

Indicia of a mental disorder:

- | | | |
|--|---|---|
| <input type="checkbox"/> History of outpatient mental health treatment | <input type="checkbox"/> Poor memory | <input type="checkbox"/> Severe depression or anxiety |
| <input type="checkbox"/> History of psychiatric hospitalization | <input type="checkbox"/> Poor attention/concentration | <input type="checkbox"/> Poor intellectual functioning |
| <input type="checkbox"/> History of self-injurious behavior | <input type="checkbox"/> Confused or disorganized thinking | <input type="checkbox"/> Irrational behavior or speech in court |
| <input type="checkbox"/> History of suicide attempts | <input type="checkbox"/> Paranoid thinking | <input type="checkbox"/> Lack of responsiveness in court |
| <input type="checkbox"/> History of limited academic achievement | <input type="checkbox"/> Grandiose thinking | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Currently receiving mental health treatment | <input type="checkbox"/> Seeing or hearing things not present | |

Other Relevant Documents or Health Information: _____

Other Relevant Information: _____

Contact with Information about Respondent's Health: _____

Attachments:

- | | |
|---|---|
| <input type="checkbox"/> Notice to Appear (Form I-862) or other charging document | <input type="checkbox"/> Record of Deportable/Inadmissible Alien (Form I-213) |
| <input type="checkbox"/> Additional Charges of Deportability/Inadmissibility (Form I-261) | <input type="checkbox"/> Other: _____ |

Phase I of Plan to Provide Enhanced Procedural Protections to Unrepresented Detained Respondents with Mental Disorders¹

I. Foundational Principles

Commitment to Screen and Provide Protections

The Executive Office for Immigration Review (“EOIR”) is committed to identifying detained unrepresented respondents in immigration custody who are not competent to represent themselves in removal and custody redetermination proceedings.

EOIR will not proceed in the case of any detained unrepresented respondent determined to be incompetent to represent him- or herself in a removal or custody redetermination proceeding until appropriate procedural protections and safeguards are in place.

II. Determinations to Be Made by Immigration Judges²

A. Background

In *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011), the Board of Immigration Appeals held that for an alien to be competent to participate in an immigration proceeding, he or she must have a rational and factual understanding of the nature and object of the proceeding and a reasonable opportunity to exercise the core rights and privileges afforded by law. *Id.* at 479.

On April 22, 2013, the Office of the Chief Immigration Judge announced a “Nationwide Policy to Provide Enhanced Procedural Protections to Unrepresented Detained Aliens with Serious Mental Disorders or Conditions.” This policy makes a qualified legal representative available in removal and custody redetermination proceedings if it is determined that a respondent with a serious mental disorder or condition is detained, unrepresented, and incompetent to represent him- or herself.

Accordingly, for a detained, unrepresented respondent with a serious mental disorder or condition to be considered competent to represent him- or herself in a removal or custody redetermination proceeding, he or she must be able to meaningfully

¹ EOIR announced its nationwide plan to provide enhanced procedural protections to unrepresented, detained respondents on April 22, 2013. On August 15, 2013, EOIR began Phase I of its nationwide plan, in order to test aspects of the plan. This document constitutes EOIR’s final guidance for Phase I of its nationwide plan. Based on observations made during Phase I, EOIR may issue revised guidance in conjunction with further roll out of the plan.

² This guidance sets forth principles by which Immigration Judges should assess competency within the context of EOIR’s nationwide plan to provide enhanced procedural protections to unrepresented, detained respondents with mental disorders. As part of its ongoing commitment to provide such protections, EOIR also intends to issue a Notice of Proposed Rulemaking on this subject and, upon receipt and review of public comment, a Final Rule.

participate in the proceeding and perform the functions necessary for self-representation.

B. Competence to Represent Oneself

Immigration Judges should utilize the following guidance to determine if a respondent is competent to represent him- or herself:

A respondent is competent to represent him- or herself in a removal or custody redetermination proceeding if he or she has a:

1. rational and factual understanding of:
 - a. the nature and object of the proceeding;
 - b. the privilege of representation, including but not limited to, the ability to consult with a representative if one is present;
 - c. the right to present, examine, and object to evidence;
 - d. the right to cross-examine witnesses; and
 - e. the right to appeal.
2. reasonable ability to:
 - a. make decisions about asserting and waiving rights;
 - b. respond to the allegations and charges in the proceeding; and
 - c. present information and respond to questions relevant to eligibility for relief.

A respondent is incompetent to represent him- or herself in a removal or custody redetermination proceeding if he or she is unable because of a mental disorder to perform any of the functions listed in the definition of competence to represent oneself. “Mental disorder” (including Intellectual Disability) is defined as a significant impairment of the cognitive, emotional, or behavioral functioning of a person that substantially interferes with the ability to meet the ordinary demands of living.

C. Presumption of Competence

A respondent is presumed to be competent to represent him- or herself in a removal and custody redetermination proceeding. *See, e.g., M-A-M-, 25 I&N Dec. at 479.*

The presumption of competence to represent oneself is rebutted if an Immigration Judge finds, by a preponderance of the evidence, that the respondent is unable because of a mental disorder to perform any of the functions listed in the definition of competence to represent oneself.

D. Provision of a Qualified Legal Representative

EOIR will provide a qualified legal representative to any detained, unrepresented alien in a removal or custody redetermination proceeding found to be incompetent to represent him- or herself.

III. Process to Identify & Determine Issues of Competence

There are three stages to screen for and decide issues of competence:

1. Detecting indicia The judge remains attentive to any behaviors or other indicators that the respondent may have a mental disorder limiting his or her ability to represent him- or herself. Where there is a “bona fide doubt” about respondent’s competence to represent him- or herself, the judge should move to stage 2 and conduct a judicial inquiry.
2. Conducting a judicial inquiry The judge asks a series of questions to determine whether there is “reasonable cause” to believe that the respondent may be incompetent to represent him- or herself. At the conclusion of the judicial inquiry, the judge may find that the respondent is competent or incompetent to represent him- or herself. Alternatively, if there is reasonable cause to believe the respondent may be incompetent to represent him- or herself, but the evidence is not sufficient to rebut the presumption of competence, the judge should move to stage 3 and conduct a more in-depth hearing on the issue of competence.
3. Conducting a competency review The judge conducts an evidentiary hearing to determine whether the presumption of competence has been rebutted.

IV. Detection of Indicia

Competence is the ability to perform a function demanded in a particular situation at the defined level. Competence is neither a status nor a state. Competence cannot be observed. Rather, one may observe behavioral signs or indicia that a person may lack the ability to perform a task or function required in a particular situation.

Immigration Judges must be vigilant at all times for indicia of a mental disorder that significantly impairs the respondent’s ability to perform the functions listed in the definition of competence.

A. Examples of Indicia

Indicia of a mental disorder that can impair competence or reflect impaired competence include, but are not limited to:

Past or current evidence of interventions related to mental disorder for example:

- Outpatient mental health treatment
- Psychiatric hospitalization
- Interventions for self-injurious behavior or suicide attempts
- Limited academic achievement
- Currently receiving mental health treatment

Current manifestations of behavior suggesting mental disorder for example:

- Poor memory
- Poor attention/concentration
- Confused or disorganized thinking
- Paranoid thinking (unreasonable fears)
- Grandiose thinking (overestimating own ability)
- Seeing or hearing things not present
- Serious depression or anxiety
- Poor intellectual functioning
- Irrational behavior or speech in court
- Lack of responsiveness in court

B. Sources of Indicia

Indicia of the respondent's cognitive, emotional, or behavioral functioning may come from any reliable source including, but not limited to: family members, friends, legal service providers, health care providers, social service providers, caseworkers, clergy, detention personnel, or other collateral informants or third parties knowledgeable about the respondent.

C. Form of Indicia

Indicia of incompetence may appear in any form including, but not limited to, observed behaviors; letters; government, legal, educational, employment, or health care records; or other verbal or written accounts.

D. Timing of Indicia

Because competence is fluid and may change over time, indicia of incompetence may appear and must be considered throughout all stages of the proceeding.

E. Communication by the Department of Homeland Security (DHS) of Indicia to the Court

Role of DHS v. EOIR Examinations

DHS serves a custodial and prosecutorial role in immigration proceedings. EOIR serves as an impartial adjudicator in immigration proceedings.

In its custodial role, the Department of Homeland Security may, upon taking an individual into custody, perform a physical and mental health examination of the individual. The purpose of this examination is, in part, to ensure that the detained individual does not pose a danger to self or others and to address appropriate treatment during detention. The purpose of this examination is not to determine whether the detained individual is competent to represent him- or herself in an immigration proceeding. In fact, not all individuals detained by DHS are detained for the purpose of instituting an immigration proceeding.

The DHS intake examination may nonetheless reveal information relevant to understanding the respondent's cognitive, emotional, and behavioral functioning. DHS has an obligation to provide the court with relevant materials in its possession that would inform the court about the respondent's mental competency. *M-A-M-*, 25 I&N Dec. at 480.

The examination to inform the court's determination of the competence of the respondent will be prepared at the request of the court rather than during the custodial intake by DHS. This is because the judge is in a better position to inform the mental health professional in the referral for examination about the nature and object of the proceeding and the reasons why the court questions the competence of the respondent. Additionally, a competence examination prepared by an agent of the court is likely to have greater evidentiary weight and avoid potential conflicts of interest than a report prepared by an agent of the prosecuting component of the government. The process for an Immigration Judge to refer the respondent for a competency examination is set forth below.

V. Judicial Inquiry

A. When to Conduct a Judicial Inquiry

Where the evidence of record results in a "bona fide doubt" about the respondent's competency to represent him- or herself, the judge should conduct a judicial inquiry. A "bona fide doubt" exists if there is "substantial evidence of incompetence." Evidence suggestive of a "bona fide doubt" includes, but is not limited to, respondent's demeanor before the court, irrational behavior, and available health evaluations. *See, e.g., Amaya-Ruiz v. Stewart*, 121 F.3d 486 (9th Cir. 1997) (internal citations omitted).

B. Purpose of the Judicial Inquiry

The purpose of the judicial inquiry is to gather information so the judge can make an informed decision whether the respondent's competency is at issue and a more in-depth competency review is necessary.

C. Process for Conducting a Judicial Inquiry

The judge begins the judicial inquiry by explaining to the respondent the purpose and process for conducting the judicial inquiry. The judge then proceeds to ask the respondent questions designed to shed light on the respondent's ability to represent him- or herself and his or her cognitive, emotional, and behavioral functioning. An explanation of the process for conducting a judicial inquiry with a sample advisory and suggested questions is contained in Appendix A. When performing the judicial inquiry, it is important that the judge note for the record any relevant non-verbal as well as verbal response to the questions.

D. Possible Outcomes of the Judicial Inquiry

There are three possible outcomes of the judicial inquiry:

- Respondent is competent - There is no reasonable cause to believe that the respondent is suffering from a mental disorder that impairs his or her ability to perform the functions listed in the definition of competence to represent him- or herself. In such case, the presumption that the respondent is competent is not rebutted and the court can proceed without any additional safeguards or protections.
- Respondent is incompetent - A preponderance of the evidence establishes that the respondent is not competent to represent him- or herself in the proceeding. In such case, the judge will find the presumption of competence has been rebutted, request provision of a qualified representative, and ensure appropriate safeguards and protections are put in place.
- Insufficient evidence to decide if respondent is competent - The evidence is not sufficient to rebut the presumption of competence but the judge has "reasonable cause" to believe that the respondent is suffering from a mental disorder that impairs his or her ability to represent him- or herself. In such cases, the judge should conduct a hearing to gather additional evidence needed to determine whether the respondent is competent.

VI. Competency Review

A. When to Conduct a More In-Depth Competency Review

Where, at the conclusion of the judicial inquiry, the judge has “reasonable cause” to believe that the respondent is suffering from a mental disorder but needs additional evidence to determine whether the presumption of competence is rebutted, the judge will schedule a hearing to collect and review evidence of competency. It is at this stage that the judge will consider whether to refer the respondent for a mental health examination to inform the court’s decision on competency.

B. Procedural Rules

A determination of competence to represent oneself encompasses issues of law and fact that are addressed, along with all other issues of law and fact, in the context of the immigration proceeding. No additional hearing type or separate record of proceeding will be generated.

VII. System of Referral for a Mental Health Examination

A. When to Refer a Respondent for a Mental Health Examination

The Immigration Judge is not required to refer the respondent for a mental health examination. However, the judge is required to consider whether a referral is necessary.

A referral for a mental health examination is appropriate where the judge is unable to determine, based upon existing evidence of record, whether the respondent is competent to represent him- or herself.

B. Process to Refer Respondent for a Mental Health Examination

To refer the respondent for a mental health examination, the judge should complete the mental health examination referral found in Appendix B.

The referral provides the mental health professional with information, if available, about the nature and object of the proceeding, including the type of proceeding, the projected length of the hearings, the anticipated complexity of issues, the allegations and charges against the respondent, and potential forms of relief. The referral provides the mental health professional with information relating to respondent’s current cognitive, emotional, and behavioral functioning such as the behavioral observations, statements, or other information that caused the judge to question the ability of the respondent to perform as required in the proceeding.

The referral also provides background and administrative information to the mental health professional, including the name of the respondent, alien registration number, language spoken, apparent country of origin, place of detention, next court date or other deadline for the examination or report, and the name of the judge.

The referral should also include the name of a contact the mental health professional can speak with, if any, who may be knowledgeable about the respondent's past or current cognitive, emotional, and behavioral functioning.

The referral should also be accompanied by other documents, records, or information relevant to the competence of the respondent.

C. Use of an Interpreter in the Mental Health Examination

Where it is indicated in the mental health examination referral that the language the respondent speaks and understands best is a language other than English and the mental health professional is not fluent in the respondent's language, the Language Services Unit of the Office of the Chief Immigration Judge should be notified so that arrangements can be made to secure the services of a qualified interpreter for the mental health examination.

D. Qualifications of Examining Professionals

Upon receipt of the mental health examination referral, EOIR will procure the services of a qualified mental health professional.

At a minimum, mental health professionals assigned to serve as examiners for purposes of immigration proceedings must:

- be licensed to practice psychology or medicine in the jurisdiction where the examination will be conducted;
- have specialty training in psychiatry, clinical psychology, or counseling psychology;
- have completed an EOIR-approved training in conducting mental health examinations of respondents in immigration proceedings; and
- be able to document successful completion of a minimum of 100 hours of approved continuing education in conducting forensic examinations.

Whenever feasible, psychologists and psychiatrists appointed to conduct mental health examinations shall:

- be certified by the American Board of Psychiatry and Neurology (with added qualifications in forensic psychiatry) or the American Board of Forensic Psychology or other comparable organization; or

- have experience and completed training on conducting competence examinations.

Other relevant considerations when assigning a mental health professional in immigration proceedings include the quantity and level of training completed by the mental health professional, experience conducting competency examinations (especially experience conducting examinations of respondents in immigration proceedings), the complexity of examination required, the mental health professional's familiarity with and knowledge of the respondent's language, culture and possible disorder(s), and other factors relevant to the case at hand.

Mental health professionals should use structured and standardized assessment tools and methods whenever possible. Any tools or methods used must be reliable and valid, taking into consideration the respondent's background and culture.

Mental health professionals meeting the above qualifications presumptively qualify as having expertise in conducting an examination of a respondent's competence to represent him- or herself in an immigration proceeding.

E. EOIR-Approved Training of Mental Health Professionals

The EOIR-approved training program required to be qualified to conduct mental health examinations in immigration proceedings will cover:

- introduction to immigration law and procedure;
- determinations of competence in immigration proceedings;
- conducting mental health evaluations for immigration proceedings;
- report writing for the immigration court;
- ethics and professionalism;
- working with a foreign language interpreter; and
- cultural competence in forensic examinations.

Any mental health professional conducting an examination by tele-health or other electronic technology shall also have completed training in conducting an examination via that modality.

F. Role of the Mental Health Professional v. Role of the Judge

The role of the mental health professional is to identify and describe for the court any cognitive, emotional, or behavioral impairments the respondent has and their effects, if any, on the respondent's ability to perform the functions required to be competent to represent him- or herself in an immigration proceeding.

The role of the Immigration Judge is to determine whether any limitations on the respondent to perform the functions as reported by the mental health professional and established by any other relevant evidence of record fall within the defined range of ability (*i.e.*, rationally able to... , factually able to..., or reasonably able to...) necessary to represent him- or herself.

G. Fiduciary Duty and Notification of the Mental Health Professional

The purpose of the mental health examination ordered by the immigration court is to provide information to the court about the mental health of the respondent so the court can make an informed decision about the respondent's competence to represent him- or herself. The purpose of the mental health professional is not to treat or assist the respondent. Although the examining mental health professional may owe the respondent some legal duties, the fiduciary duty of the mental health professional is owed to the court. No relationship or privilege exists or is created between the respondent and the examining mental health professional assigned to conduct the examination by the immigration court.

There is no requirement that the examining mental health professional obtain informed consent from the respondent when the examination has been ordered by the court. The mental health professional, however, must notify the respondent of the purpose of the mental health examination, the examination procedure to be utilized, the lack of privilege and confidentiality between the mental health professional and the respondent, possible uses of the examination report, how information obtained during the examination and the report may be shared, and any other matter required by professional or ethical rules of behavior.

Any record, report, or work product prepared by the examining mental health professional belongs to the immigration court. There is no right or privilege of privacy or confidentiality between the examining mental health professional and the respondent. A mental health professional assigned by the court shall be deemed a court witness whether called by the court or either party, and may be examined as such by either party.

H. Refusal of the Respondent to Cooperate in the Mental Health Examination

Where the respondent refuses to cooperate in or attend the mental health examination ordered by the court, the examining mental health professional shall use any available data or information to assess the competency of the respondent to represent him- or herself and, to the extent possible, prepare the report ordered by the court. The examining mental health professional can rely on information such as personal observation of the respondent, health care records, information provided by family, friends, or others familiar with the respondent, information from detention personnel, educational records, court records, records of law enforcement agencies, or any other information relevant to the respondent's ability to represent him- or herself and assist a qualified representative if one is provided.

I. Format of the Examination

The mental health examination should be conducted in person in the facility where the respondent is detained unless there is a medical, administrative, or security justification for not doing so.

Subject to reasonable security and administrative considerations, the mental health examination must be conducted in a location such as a pro bono room or room designated for detainees to meet with legal counsel that provides, as determined by the mental health professional, a sufficient degree of uninterrupted quiet and privacy to conduct the examination. The examining mental health professional and respondent should have access to a table and two chairs. Where possible, common visitation and consultation areas and areas with glass or other dividers separating the respondent from the mental health professional should be avoided.

In rare circumstances, for instance where no qualified mental health professional can be located near the place of respondent's detention, an immediate examination is needed, or a distant examining mental health professional with special skill or knowledge is required, the examination may be conducted using tele-health technology. In the event that tele-health technologies are employed, the resolution of electronic images must be medically appropriate as determined by the mental health professional performing the examination.

Examining mental health professionals must comply with the laws regulating his or her profession in the jurisdiction in which the examination is performed and any other professional or ethical obligations that apply.

J. Scope of the Examination

Upon assignment by the court, the mental health professional shall examine the respondent's cognitive, emotional, and behavioral functioning and competence to represent him- or herself, as specified by the court in its order appointing the mental health professional to evaluate the respondent.

1. Assessment of Respondent's Cognitive, Emotional, and Behavioral Functioning

When conducting the evaluation the mental health professional shall assess:

- a. relevant aspects of the respondent's social, educational, vocational, medical, and mental health histories, and other histories if necessary; and
- b. the respondent's presentation and behavior during the evaluation, including reported or observed signs or symptoms of a mental disorder and the respondent's response style (*i.e.*, approach to the evaluation).

2. Assessment of Respondent's Competence

When conducting the evaluation, the mental health professional shall consider factors related to the issue of whether the respondent meets the criteria for competence in an immigration proceeding (*i.e.*, whether the respondent has present ability to represent him- or herself).

In considering the issue of competence, the mental health professional shall assess all of the following:

a. Respondent's rational and factual understanding of:

- 1) the nature and object of the proceeding, including its adversarial nature;
- 2) the allegations and charge(s);
- 3) possible outcomes of the proceeding; and
- 4) the roles of participants in the proceeding.

b. Respondent's rational and factual understanding of:

- 1) the privilege of representation, including but not limited to, the ability to consult with a representative if one is present;
- 2) the right to present, examine, and object to evidence;
- 3) the right to cross-examine witnesses; and
- 4) the right to appeal.

c. Respondent's ability to:

- 1) make decisions about asserting and waiving rights;
- 2) respond to the allegations and charges in the proceeding; and
- 3) present information and respond to questions relevant to eligibility for relief.

d. Any other factors the mental health professional deems relevant to the respondent's competence to represent him- or herself.

If the mental health professional will recommend that the respondent be adjudicated incompetent to represent him- or herself, the mental health professional shall:

- 1) identify the impairments and mental disorder that are the cause of the incompetence; and
- 2) assess the respondent's ability to:
 - a) make a rational decision about being represented by counsel; and
 - b) assist counsel.

K. Payment for Services Rendered

The examining mental health professional will receive a flat rate to conduct the mental health examination and prepare a report of the examination for submission to the immigration court.

No other fees, costs or expenses will be reimbursed, including but not limited to: costs incurred for travel, parking, or testimony; fees associated with administration of tests; or costs of instruments.

L. Report Standards

The examining mental health professional must file with the court a written report summarizing the evaluation with copies for the respondent and the attorney for the Government.

In the written report, the mental health professional must:

1. identify the specific matters referred for evaluation;
2. list any evaluation procedures, techniques, and tests used in the examination;
3. list all sources of information considered by the mental health professional;
4. describe relevant aspects of the respondent's social, educational, vocational, medical, and mental health histories, and other factors as necessary;
5. describe the respondent's presentation and behavior during the evaluation (including reports or exhibition of signs or symptoms of mental disorder) and response style;
6. provide opinions on each issue referred for evaluation and identify any issues about which the mental health professional could not give an opinion;
7. provide a factual basis for any opinions offered in the report; and

8. identify the mental disorder that is the cause of the incompetence (if indicated).

M. Quality Control of Reports

The first time that a mental health professional is assigned by EOIR to conduct a competency evaluation, he or she must submit a copy of his or her report of examination to the point of contact designated by EOIR. The report will be reviewed to ensure that the examination and report comply with the directives of the agency.

Payment for services rendered by a mental health professional will not be released until the report of the mental health professional is received by the immigration court and deemed acceptable by the Immigration Judge.

Where the report of the examination fails to address matters required by the order of the court, payment for services rendered by the mental health professional may be withheld and the mental health professional may be ordered to supplement the report as necessary or appear in court without additional remuneration to provide information missing from the report.

N. Use of the Report of the Mental Health Examination

Upon receipt of the mental health examination report, the Immigration Judge will schedule a hearing to address the contents of the report, resolve the issue of competency, and determine whether additional safeguards or protections are necessary.

The Immigration Judge shall weigh the totality of the evidence including, but not limited to, the report summarizing the mental health evaluation, and the Immigration Judge shall determine whether the presumption that the respondent is competent to represent him- or herself has been rebutted by a preponderance of the evidence.

O. Protection of Mental Health Information

“Mental Health Information” includes any information expressly contained in or directly obtained from a request for a mental competence review, an Immigration Court’s administrative inquiry into mental competence, a portion of a hearing in which mental competence is addressed, a mental health examination of an alien, and a report of such examination.

Except as otherwise noted below, Mental Health Information shall only be used to determine an alien’s mental competency to participate or represent oneself in an immigration proceeding, and may not be used to establish the truth of allegations or charges against the alien, or to establish ineligibility for relief.

The paragraph above shall not apply to DHS' use of Mental Health Information if such information is independently submitted by, obtained by, or in the possession of DHS. If a respondent uses Mental Health Information in any proceeding for any purpose other than to inform his or her mental competency to participate in an immigration proceeding, the paragraph above shall not apply, and disclosure and use of the Mental Health Information shall be governed by rules of evidence and procedures applicable in immigration proceedings. If the alien uses a part of a document or report, DHS may request the production of any other portion of that document or report. Such request shall be granted at the Immigration Judge's discretion upon consideration of all relevant factors.

VIII. Procedural Protections & Safeguards

A. Obligation to Prescribe Appropriate Safeguards and Protections

Where the Immigration Judge finds the respondent is not competent to represent him- or herself in an immigration proceeding, the Immigration Judge shall consider the totality of the facts and circumstances and prescribe appropriate safeguards and protections to ensure the fundamental fairness of the immigration proceeding.

B. Provision of a Qualified Representative

EOIR will provide a qualified representative to an unrepresented, detained respondent where the judge has found the respondent incompetent to represent him- or herself.

The court should consider the examining mental health professional's assessment of the respondent's ability to consult with and assist counsel when deciding whether provision of a qualified representative is an effective safeguard and protection in a case.

C. Waiver of Counsel

As the provision of a qualified representative is a safeguard or protection deemed necessary by the court to guarantee the fairness of the proceeding rather than pursuant to a legal right owed to the respondent, the respondent does not have the right to waive the presence of the qualified representative.

D. Refusal to Cooperate with the Qualified Representative

The refusal of a respondent who has been determined by the mental health professional to be able to consult with and assist counsel, to cooperate with the qualified representative provided by the court, does not negate the efforts of the government to provide an appropriate safeguard or protection.

IX. Format of IJ Decision

A. On the Record

All portions of an immigration proceeding addressing the issue of competence must be on the record.

B. Decision of the Judge

The Immigration Judge must articulate the rationale for his or her decision regarding the competency of the respondent to represent him- or herself. The decision should set forth all findings of fact and conclusions of law, and give the reasoning and analyses therefor. Specifically, the decision should discuss the presence of indicia of incompetence, the results of the judicial inquiry and the basis for any finding that there was or was not reasonable cause to believe competence was in issue, and the evidence offered in the competency review hearing, and ultimately whether the evidence was or was not sufficient to rebut the presumption of competence.

Where the Immigration Judge determines that the respondent is not competent to represent him- or herself, the decision should discuss the function required in the definition of competence that the respondent was found unable to perform, the safeguards and protections considered, the appropriateness and adequacy of any safeguards provided, and articulate the reasoning.

X. Tracking Cases

Data Entry

As soon as is reasonably practicable, the database used to track cases pending before the immigration court shall be amended to track the following events and dates:

- **Indicia** whether the judge found indicia resulting in a “bona fide doubt” that respondent has a mental disorder impairing his or her ability to represent him- or herself in an immigration proceeding and the date of such finding.
- **Judicial inquiry** the date the judicial inquiry was conducted and whether the judge found “reasonable cause” to believe the respondent has a mental disorder impairing his or her ability to perform the functions listed in the definition of competence to represent him- or herself.
- **Mental Health Examination** whether the respondent was referred for a mental health examination and, if so, the date of the referral.
- **Competence Determination** whether the judge found the respondent competent or incompetent to represent him- or herself and the date of such finding.
- **Qualified Representative** whether a qualified representative was provided and, if so, the date of the assignment.

XI. Impact on *Franco v. Holder*

Nothing in this document is intended to negate or alter the obligations of EOIR under the orders of the Court in *Franco v. Holder*.

Jacobsohn, Robin (ODAG)

From: Jacobsohn, Robin (ODAG)
Sent: Monday, October 21, 2013 6:40 PM
To: Goldberg, Stuart (ODAG)
Subject: RE: Mental competence program plan

Ok – will try to look tomorrow

From: Goldberg, Stuart (ODAG)
Sent: Sunday, October 20, 2013 11:56 AM
To: Jacobsohn, Robin (ODAG)
Subject: Fwd: Mental competence program plan

Duplicative Material



Jacobsohn, Robin (ODAG)

From: Jacobsohn, Robin (ODAG)
Sent: Tuesday, November 5, 2013 9:18 PM
To: Goldberg, Stuart (ODAG)
Subject: RE: Mental competence program plan

Just wanted to let you know that I had a number of questions for Juan, and he will get back to me shortly with more info. I'll let you know my thoughts once that occurs.

Robin

From: Goldberg, Stuart (ODAG)
Sent: Sunday, October 20, 2013 11:56 AM
To: Jacobsohn, Robin (ODAG)
Subject: Fwd: Mental competence program plan

Duplicative Material



Osuna, Juan (EOIR)

From: Osuna, Juan (EOIR)
Sent: Monday, March 24, 2014 9:09 PM
To: Goldberg, Stuart (ODAG)
Subject: RE: briefing for Tony on implementation of Franco

Ok thanks. I will just update him at the next EOIR quarterly about the implementation of the program, which is going pretty well so far.

From: Goldberg, Stuart (ODAG)
Sent: Monday, March 24, 2014 7:08 PM
To: Osuna, Juan (EOIR)
Subject: RE: briefing for Tony on implementation of Franco

Juan the DAG got an overview from CIV today, particularly regarding the special master's latest report. He probably does not need a separate hearing at this point, but let us know if something is coming up that you think needs to be brought to his attention. Thanks.

Stuart M. Goldberg
Principal Associate Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Room 4208
Washington, D.C. 20530
(b) (6)

From: Osuna, Juan (EOIR)
Sent: Tuesday, March 18, 2014 2:33 PM
To: Goldberg, Stuart (ODAG)
Cc: Jacobsohn, Robin (ODAG)
Subject: FW: briefing for Tony on implementation of Franco

Stuart:

See below. Would the DAG be interested in a briefing on where our mental competence program stands? As you know implementation of the nationwide plan has been proceeding steadily, and we have an upcoming (hopefully the last) hearing in mid-May.

JPO

From: Taylor, Elizabeth G. (OAAG)

Sent: Tuesday, March 18, 2014 12:38 PM
To: Osuna, Juan (EOIR); Flentje, August (CIV); Jacobsohn, Robin (ODAG)
Cc: Martinez, Brian (OAAG); Delery, Stuart F. (CIV); Olin, Jonathan F. (CIV)
Subject: RE: briefing for Tony on implementation of Franco

Glad you picked this up. I have been meaning to do the same. We'll get back to you on possible days/times that work for Tony.

From: Osuna, Juan (EOIR)
Sent: Tuesday, March 18, 2014 12:16 PM
To: Flentje, August (CIV); Taylor, Elizabeth G. (OAAG); Jacobsohn, Robin (ODAG)
Cc: Martinez, Brian (OAAG); Delery, Stuart F. (CIV); Olin, Jonathan F. (CIV)
Subject: RE: briefing for Tony on implementation of Franco

Looping in Robin. I'd like to see if the DAG is interested in a briefing as well, in which case we can do one for both him and Tony. We got the SM report last week, and the hearing is scheduled for mid-May, so perhaps sometime in the next two weeks might work.

From: Flentje, August (CIV)
Sent: Friday, February 28, 2014 8:28 PM
To: Taylor, Elizabeth G. (OAAG); Osuna, Juan (EOIR)
Cc: Martinez, Brian (OAAG); Delery, Stuart F. (CIV); Olin, Jonathan F. (CIV)
Subject: Re: briefing for Tony on implementation of Franco

As for scheduling, it would be best for us, but not essential, if this were before March 12, when some of us in Civil become less available for a while -- one of our team memb (b) (6); and Stuart and I will be traveling for and preparing for arguments.

On the other hand, the Special Master report is set to be filed on March 12, so we will know quite a bit more about what is coming next at that time. If you want to wait until after then, either the 13th or the 14th may work for most of us.

Cc: Stuart and Jon

From: Taylor, Elizabeth G. (OAAG)
Sent: Thursday, February 27, 2014 02:10 PM
To: Osuna, Juan (EOIR); Flentje, August (CIV)
Cc: Martinez, Brian (OAAG)
Subject: briefing for Tony on implementation of Franco

We talked several weeks ago about having you and your teams give Tony (and perhaps the DAG?) a briefing on the significant steps you have implemented in response to Franco. If you are still interested, let's get that on the calendar when we are not in crisis mode. Why don't you give us a general idea of when you could do this -- as in what week you could do it and what times don't work -- and Brian can tell us what would be open on Tony's calendar.

Jacobsohn, Robin (ODAG)

From: Jacobsohn, Robin (ODAG)
Sent: Thursday, April 3, 2014 8:05 PM
To: Burrows, Charlotte (ODAG); Mosier, Jenny (OAG); McEvoy, Julie (OAAG)
Subject: FW: Mental competence program - bond hearings
Attachments: RE: Franco - To Do List.msg; Re: Franco.msg

From: Osuna, Juan (EOIR)
Sent: Thursday, April 03, 2014 1:30 PM
To: Jacobsohn, Robin (ODAG); Flentje, August (CIV)
Subject: FW: Mental competence program bond hearings

Robin/Auggie:

Just FYI, per our conversation yesterday, this is the message I sent Steve Bunnell a couple of weeks ago on the issue of bond hearings for the mentally incompetent population.

JPO

From: Osuna, Juan (EOIR)
Sent: Monday, March 24, 2014 9:07 PM
To: (b)(6) per DHS
Subject: Mental competence program bond hearings

Steve:

Following up on the issue we discussed sometime back regarding the program that DOJ and DHS established for detainees who are mentally incompetent. As you know, we set up the program last year to include a number of procedural protections for this population, including bond hearings.

The program has been well-received, and EOIR intends to roll out the next phase of its nationwide program in the next two weeks. Specifically, in the immigration courts where we have provided training (Miami, Houston and El Paso), we plan to direct the courts to begin rolling out all aspects of the policy (i.e., competency evaluations, the provision of qualified representatives and bond hearings).

As you know, one key aspect of the policy is the provision of bond hearings to unrepresented, detained respondents who may be mentally incompetent to represent themselves in immigration proceedings and who have been held in immigration detention for at least six months. Pursuant to the policy, an immigration judge will be required to hold a bond hearing for any respondent who meets the above-referenced criteria regardless of the detention statute under which the respondent is detained, unless the respondent is subject to a final order of removal. At the hearing, the

immigration judge will consider whether the alien's release would pose a danger to property or persons, whether the alien is likely to appear for further immigration proceedings, and whether the alien is a threat to national security.

The burden of proof will be on the respondent the only exception to this allocation of burdens is for respondents detained in the three states subject to the *Franco* litigation (Arizona, California, and Washington) where, pursuant to the *Franco* permanent injunction, the burden of proof is on ICE.

As we have discussed, and as reflected in the attached correspondence with Seth Grossman and others, DHS and DOJ actively discussed and collectively committed to this aspect of EOIR's nationwide policy prior to its issuance. Indeed, DOJ would have been unable to include the provision of bond hearings as part of its policy without DHS's prior commitment that ICE would participate in and not object on jurisdictional grounds to such bond hearings when they are held. DHS's commitment is consistent with ICE's April 22, 2013 policy announcement, which specifically confirms that ICE trial counsel must participate in these hearings. As EOIR begins to roll out its policy nationwide, I ask for your help in reaffirming ICE's role in bond hearings. Specifically, I request that you confirm with OPLA that when an immigration judge conducts a bond hearing pursuant to this policy, ICE trial counsel will: (1) refrain from raising any jurisdictional objections to such hearing, so long as the respondent otherwise meets the criteria set forth in EOIR's policy (i.e., the respondent is unrepresented, has been detained for more than six months, and may be mentally incompetent); and (2) participate in the hearing.

Thank you in advance, and please let me know if you have any questions or concerns, or would like to discuss further.

JPO

Juan P. Osuna
Director
Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike
Suite 2600
Falls Church, VA 22041

(b) (6)

(b) (6)

>
> Auggie,
>
> Thank you for your note. We are, as well, working through enforcement provisions, in addition to the termination items that we discussed earlier today. While we continue to look at and craft these provisions, we can share with you one thing: it is important to our team that some elements of this resolution be enforceable through a consent decree.
>
> We hope to be further along in our thinking by tomorrow afternoon, and we should touch base then. Would a call at 6 p.m. your time tomorrow work?
>
> Regards.
> Ahilan & Michael
>
>
> -----Original Message-----
> From: Flentje, August (CIV) [mailto: (b) (6)]
> Sent: Friday, April 12, 2013 4:14 PM
> To: Steinberg, Michael H.; aarulanantham@aclu-sc.org
> Cc: Lawrence, Victor (CIV)
> Subject: Re: Franco
>
> Ahilan/Michael: We are working on a revised draft enforcement provision on our side. In the meantime folks here are interested if there is anything that came out of your internal meeting today that you can share. I'd be happy to talk this evening if you think it worthwhile (though I am currentl (b) (6) ,

but could be available in an hour or so).

>

> Thx

> Auggie

>

>

(b) (5)



(b) (5)



>
> -----Original Message-----
> From: Flentje, August (CIV)
> Sent: Friday, April 12, 2013 8:34 AM
> To: 'Ahilan Arulanantham'; steinbergm@sullcrom.com

> Cc: Lawrence, Victor (CIV)
> Subject: RE: Franco
>
> Ahilan/Michael --
>
> Thanks for getting back to us. We have discussed your approach here, and we think the structure of your proposal on a termination provision is acceptable. The attached edits make two changes, and if possible can we talk this morning to discuss our rationale behind those changes? I'm available most of the day here on the east coast, so please let me know if there is a time that you guys are available to discuss.
>
> Thanks,
> Auggie
>
> August E. Flentje
> Senior Counsel for Immigration
> Civil Division
> U.S. Department of Justice
> 950 Pennsylvania Avenue, Room 3613

(b) (6)

>
>
> -----Original Message-----
> From: Ahilan Arulanantham [mailto:aarulanantham@ACLU-SC.ORG]
> Sent: Thursday, April 11, 2013 2:13 PM
> To: Flentje, August (CIV); steinbergm@sullcrom.com
> Cc: Lawrence, Victor (CIV)
> Subject: RE: Franco

> Dear Auggie,

> We have reviewed your proposal with our team. While we all appreciate your putting it together on a tight timeline, we hope you can understand that we cannot delay the relief that our clients in the three states will shortly receive based on your proposal. The reason is simple: as we read it, the language provided does not implement "permanent" change that "institutionalizes" relief for our class members, as you had stated was your goal in your letter to us and in our call. For us to give up the opportunity to make permanent the district court's tentative opinion, we need a termination provision that ends the agreement only if there is some binding obligation to protect members of the class, which we envisioned through either legislation or regulation. While the last portion of your proposal contains such a termination provision, the prior portion allows termination without any such binding obligation.

> As we read the first part of your proposal, the agreement will expire in five years so long as Defendants' conduct complies with the agreement's requirements, even if that conduct is not itself required by any permanent obligation. Unless we have misread your proposal, it appears that Defendants would be free to resume the existing system at the end of that time, and our only remedy would be to file a new suit.

> We would not be acting in the best interests of our class members in the three states (to whom we are ethically bound) if we traded permanent relief that we will shortly obtain for relief that will expire in five years. We suspect that you would feel similarly if you were on the verge of obtaining a permanent injunction.

> In addition, the first portion of this proposal would impose on us an on-going duty to closely monitor and document Defendants' conduct for far beyond five years in order to keep even the contractual obligations set forth in the agreement in place. As we had discussed on the call, neither our side nor yours is served by requiring us to do that. We have neither the resources nor desire to spend a decade or more monitoring the government's conduct and filing motions to describe it every two years, and we assume the government would

not want us engaged in the discovery required to make such showings on a regular basis for that length of time.
> We have attached a counter-proposal on the termination provision that would satisfy our clients' interests. If you accepted it, then we would be willing to jointly request a limited and defined stay of the Court's impending order and proceed to negotiating the rest of the agreement. If you would like to discuss any of this further, please let us know and we will find a time shortly.

> One last thing: we note the irony in these negotiations occurring while, at the same time, your colleagues continue to file briefs accusing us of having failed to act in our clients' best interests. On page 3 of your most recent brief (a discovery brief that your side will be filing shortly with the magistrate), the government has again accused us of acting contrary to our duties to the class. Regrettably, such accusations have become par for the course in the government's briefing against us in this litigation, and the accusations seem to be directly related to our side's success in the litigation. Please note that the continued use of such tactics is not productive, and does not leave us with the impression that your side is proceeding in good faith.

>

>

>

>

>

>

>

> Yours,

> Ahilan and Mike

>

>

> -----Original Message-----

> From: Flentje, August (CIV) [mailto: [REDACTED] (b) (6)]

> Sent: Wednesday, April 10, 2013 12:48 PM

> To: Ahilan Arulanantham; steinbergm@sullcrom.com

> Cc: Lawrence, Victor (CIV)

> Subject: Franco

>

> Ahilan & Michael --

>

> Attached is our proposal on a termination provision. We based this on the termination provision in your July 2012 version, but of course with many changes to reflect our call and the principles I discussed with you on the call. I've tried to mark the changes from that July 2012 iteration on the attached red line.

>

> The initial period in this version is 5 years, but a 6 year initial term is also fine with us -- we were not sure whether you would prefer a somewhat longer or shorter initial period given the other new proposals here for extending the agreement. And, of course, we are open to working through any of the elements of this proposal in negotiating over the next period.

>

> Once you have had time to review, let's discuss the next steps. Of course, on our end, we are interested in getting two weeks of intensive negotiation to try to put together a full agreement and resolve the remaining issues -- and a stay of the issuance of the court injunction to allow us that window. We hope you agree that may be worthwhile. Let's talk soon.

>

> Thanks,

> Auggie

>

> August E. Flentje

> Senior Counsel for Immigration

> Civil Division
> U.S. Department of Justice
> 950 Pennsylvania Avenue, Room 3613

(b) (6)

>
>
>
>
>

Mosier, Jenny (OAG)

From: Mosier, Jenny (OAG)
Sent: Thursday, April 3, 2014 8:56 PM
To: Jacobsohn, Robin (ODAG); Burrows, Charlotte (ODAG); McEvoy, Julie (OAAG)
Subject: Re: Mental competence program - bond hearings

Thanks, Robin.

Jenny R. Mosier
Deputy Chief of Staff & Counselor to the Attorney General
U.S. Department of Justice
950 Constitution Avenue, NW, Room 5112
Washington, DC 20530
(b) (6) (office)
(b) (6) (cell)
(b) (6)

From: Jacobsohn, Robin (ODAG)
Sent: Thursday, April 03, 2014 08:05 PM Eastern Standard Time
To: Burrows, Charlotte (ODAG); Mosier, Jenny (OAG); McEvoy, Julie (OAAG)
Subject: FW: Mental competence program bond hearings

Duplicative Material



From: Chang, Cindy (OAAG)
Sent: Wednesday, April 9, 2014 6:21 PM
To: Martinez, Brian (OAAG)
Subject: FW: mentally incompetent alien program

This is what Julie sent me for Bunnell

-----Original Message-----
From: McEvoy, Julie (OAAG)
Sent: Wednesday, April 09, 2014 3:56 PM
To: Chang, Cindy (OAAG)
Subject: Fw: mentally incompetent alien program

TPs for lunch with Bunnell.

----- Original Message -----
From: Taylor, Elizabeth G. (OAAG)
Sent: Wednesday, April 09, 2014 03:53 PM
To: McEvoy, Julie (OAAG)
Subject: Fw: mentally incompetent alien program

Do you want to pass these on to Tony? Haven't heard from Robin about Karl.

----- Original Message -----
From: Flentje, August (CIV)
Sent: Wednesday, April 09, 2014 03:50 PM
To: Osuna, Juan (EOIR); Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Jacobsohn, Robin (ODAG)
Subject: RE: mentally incompetent alien program

Here is a possible additional bullet point:

(b)(5) per EOIR and CIV
[Redacted]

-----Original Message-----
From: Osuna, Juan (EOIR)
Sent: Tuesday, April 08, 2014 11:29 PM
To: Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Jacobsohn, Robin (ODAG); Flentje, August (CIV)
Subject: mentally incompetent alien program

All:

Per our conversation today, here are some potential talking points for Tony to use when he meets with Steve Bunnell this week.

JPO

The proposal to implement a nationwide program to provide some protections for mentally incompetent detainees in immigration proceedings, one that includes bond hearings, was first proposed by DHS last year, and DOJ agreed to implement such a program.

The national program contains three main pieces: (1) independent forensic medical evaluations; (2) government appointed counsel for those deemed to be mentally incompetent; and (3) bond hearings for detainees.

(b)(5) per EOIR

DOJ and DHS publicly committed to the nationwide program a year ago, in consultation with the White House. In the public rollout of the program last April we informed Congress and immigration stakeholders, and since then there has been considerable public interest in the program.

(b)(5) per EOIR

(b)(5) per EOIR

(b)(5) per EOIR

Osuna, Juan (EOIR)

From: Osuna, Juan (EOIR)
Sent: Wednesday, April 16, 2014 11:28 AM
To: Mosier, Jenny (OAG); Jacobsohn, Robin (ODAG); Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG)
Cc: Kocur, Ana (EOIR); Flentje, August (CIV); Rosenblum, Jeff (EOIR)
Subject: mental competence program
Attachments: Nationwide policy update 4-16 AMK edit.docx

All:

Please see attached. It is a status report on where we are with our national program for detainees who are mentally incompetent. It includes a discussi (b)(5) per EOIR

Will follow up by phone with a couple of you shortly on next steps.

JPO

Implementation of EOIR's Nationwide Plan Regarding Detained Unrepresented Aliens with Mental Competency Issues

Background

- On April 22, 2013, DOJ and DHS announced a nationwide policy to provide enhanced procedural protections to unrepresented immigration detainees with serious mental disorders that may render them incompetent to represent themselves in immigration proceedings before EOIR immigration judges. The nationwide policy consists of the following three key components:
 1. Procedures for assessing competency. EOIR will contract with doctors to perform competency evaluations when requested by an immigration judge.
 2. Provision of qualified representatives. EOIR will provide a qualified representative to any unrepresented detainee who is found by an immigration judge to be mentally incompetent to represent him- or herself in immigration proceedings.
 3. Bond hearings. EOIR will provide bond hearings to any unrepresented detainee who may be mentally incompetent to represent him- or herself in immigration proceedings and who has been detained by DHS for 180 days or more.
- On April 23, 2013, a federal judge in the Central District of California issued a permanent injunction in *Franco-Gonzalez v. Holder*, a class action filed on behalf of unrepresented detainees in Arizona, California, and Washington ("*Franco* states") who may be mentally incompetent to represent themselves in immigration proceedings. The injunction requires the Government to provide two of the three components listed above: (1) qualified representatives; and (2) bond hearings. The procedures for assessing competency, including the availability of competency evaluations, remain subject to litigation, though EOIR has been providing for competency evaluations in the *Franco* states.

Current Status

- EOIR has created a program to provide qualified representatives to unrepresented mentally incompetent detainees. In the *Franco* states, it has already provided approximately 150 qualified representatives.
- EOIR is providing bond hearings to unrepresented detainees who may be incompetent to represent themselves in the *Franco* states. These hearings are generally conducted between 180 – 195 days of detention.
- EOIR has trained approximately 45 immigration judges and 90 doctors pursuant to Phase I of the nationwide policy at the following sites: San Diego (East Mesa) in August 2013; Seattle (Tacoma) in October 2013; Los Angeles (Adelanto/Orange County/San Francisco/El Centro) and Phoenix (Florence and Eloy) in November 2013; Miami (Krome) in January 2014; Houston in February 2014; El Paso in February 2014; and Denver (Aurora) in March 2014.
- The protections listed above are currently available in the *Franco* states. EOIR will make the protections available nationwide, on a rolling basis, subsequent to training immigration judges and doctors in each city.

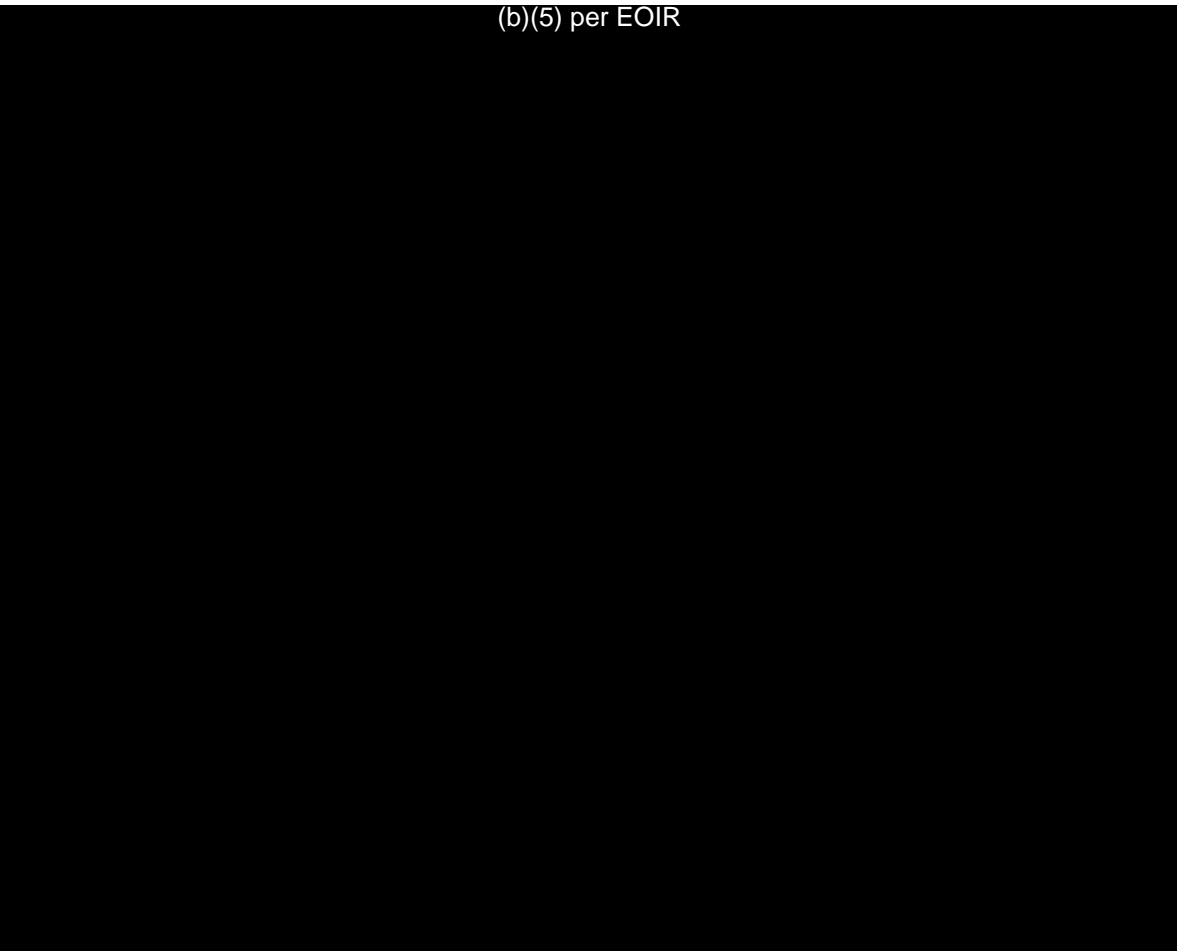
**Implementation of EOIR's Nationwide Plan Regarding
Detained Unrepresented Aliens with Mental Competency Issues**

- EOIR intends for all immigration judges, including those who handle exclusively non-detained dockets, to eventually receive training in this area, either in-person or by video.

Bond Hearings

- Pursuant to the DOJ/DHS April 22, 2013 nationwide policy, EOIR will be providing bond hearings to unrepresented immigration detainees who may be mentally incompetent to represent themselves in immigration proceedings and who have been detained for 180 days or more.

(b)(5) per EOIR



Osuna, Juan (EOIR)

From: Osuna, Juan (EOIR)
Sent: Friday, April 18, 2014 11:32 AM
To: Mosier, Jenny (OAG); Jacobsohn, Robin (ODAG); Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Chilakamarri, Varudhini (OASG)
Cc: Kocur, Ana (EOIR); Flentje, August (CIV); Rosenblum, Jeff (EOIR)
Subject: RE: mental competence program
Attachments: Nationwide policy update 4-18.docx

All:

Based on conversations with Elizabeth and Julie yesterday, here is a slightly revised version of this. Among other thing [REDACTED] (b)(5) per EOIR [REDACTED] Also, Elizabeth and I discuss [REDACTED] (b)(5) per EOIR [REDACTED]. I think w [REDACTED] (b)(5) per EOIR [REDACTED]. For the moment, this is only intended for DOJ internal use. Let me know what you think.

JPO

From: Osuna, Juan (EOIR)
Sent: Wednesday, April 16, 2014 11:28 AM
To: Mosier, Jenny (OAG); Jacobsohn, Robin (ODAG); Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG)
Cc: Kocur, Ana (EOIR); Flentje, August (CIV [REDACTED] (b) (6) [REDACTED]); Rosenblum, Jeff (EOIR)
[REDACTED] (b) (6) [REDACTED]
Subject: mental competence program

Duplicative Material



Implementation of EOIR's Nationwide Plan Regarding Detained Unrepresented Aliens with Mental Competency Issues

Background

- On April 22, 2013, DOJ and DHS announced a nationwide policy to provide enhanced procedural protections to unrepresented immigration detainees with serious mental disorders that may render them incompetent to represent themselves in immigration proceedings before EOIR immigration judges. The nationwide policy consists of the following three key components:
 1. Procedures for assessing competency. EOIR will contract with doctors to perform competency evaluations when requested by an immigration judge.
 2. Provision of qualified representatives. EOIR will provide a qualified representative to any unrepresented detainee who is found by an immigration judge to be mentally incompetent to represent him- or herself in immigration proceedings.
 3. Bond hearings. EOIR will provide bond hearings to unrepresented detainees who may be mentally incompetent to represent themselves in immigration proceedings and who have been detained by DHS for 180 days or more.
- On April 23, 2013, a federal judge in the Central District of California issued a permanent injunction in *Franco-Gonzalez v. Holder*, a class action filed on behalf of unrepresented detainees in Arizona, California, and Washington ("*Franco* states") who may be mentally incompetent to represent themselves in immigration proceedings. The injunction requires the Government to provide two of the three components listed above: (1) qualified representatives; and (2) bond hearings. The procedures for assessing competency, including the availability of competency evaluations, remain subject to litigation, though EOIR has been providing for competency evaluations in the *Franco* states.

Current Status

- EOIR has created a program to provide qualified representatives to unrepresented mentally incompetent detainees. In the *Franco* states, it has already provided approximately 150 qualified representatives.
- EOIR is providing bond hearings to unrepresented detainees who may be incompetent to represent themselves in the *Franco* states. These hearings are generally conducted between 180 – 195 days of detention.
- EOIR has trained approximately 45 immigration judges and 90 doctors pursuant to Phase I of the nationwide policy at the following sites: San Diego (East Mesa) in August 2013; Seattle (Tacoma) in October 2013; Los Angeles (Adelanto/Orange County/San Francisco/El Centro) and Phoenix (Florence and Eloy) in November 2013; Miami (Krome) in January 2014; Houston in February 2014; El Paso in February 2014; and Denver (Aurora) in March 2014.
- The protections listed above are currently available in the *Franco* states. EOIR will make the protections available nationwide, on a rolling basis, subsequent to training immigration judges and doctors in each city.

**Implementation of EOIR's Nationwide Plan Regarding
Detained Unrepresented Aliens with Mental Competency Issues**

- EOIR intends for all immigration judges, including those who handle exclusively non-detained dockets, to eventually receive training in this area, either in-person or by video.

Bond Hearings

- Pursuant to the DOJ/DHS April 22, 2013 nationwide policy, EOIR will be providing bond hearings to unrepresented immigration detainees who may be mentally incompetent to represent themselves in immigration proceedings and who have been detained for 180 days or more.

(b)(5) per EOIR



Mosier, Jenny (OAG)

From: Mosier, Jenny (OAG)
Sent: Friday, April 18, 2014 3:00 PM
To: Osuna, Juan (EOIR); Jacobsohn, Robin (ODAG); Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Chilakamarri, Varudhini (OASG)
Cc: Kocur, Ana (EOIR); Flentje, August (CIV); Rosenblum, Jeff (EOIR)
Subject: RE: mental competence program

Thanks, Juan. I'm not sure of the particular intended purpose of this document, b (b) (5)
I would like to have a discussion on that point before we take any steps in that regard.

Thank you,
Jenny

From: Osuna, Juan (EOIR)
Sent: Friday, April 18, 2014 11:32 AM
To: Mosier, Jenny (OAG); Jacobsohn, Robin (ODAG); Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Chilakamarri, Varudhini (OASG)
Cc: Kocur, Ana (EOIR); Flentje, August (CIV); Rosenblum, Jeff (EOIR)
Subject: RE: mental competence program

Duplicative Material

From: Taylor, Elizabeth G. (OAAG)
Sent: Friday, April 18, 2014 4:44 PM
To: West, Tony (OAAG)
Cc: McEvoy, Julie (OAAG)
Subject: FW: mental competence program
Attachments: Nationwide policy update 4-18.docx

Tony, Juan prepared this memo as an update on the national program for mentally incompetent individuals in removal proceedings. He included a section (b) (5)

I asked Stuart about his lunch with Steve and got this report: "The lunch did happen (b) (5)

That was about it."

OAG wants to discuss this memo further before we share with DHS (b) (5) and let you know.

From: Osuna, Juan (EOIR)
Sent: Friday, April 18, 2014 11:32 AM
To: Mosier, Jenny (OAG); Jacobsohn, Robin (ODAG); Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Chilakamarri, Varudhini (OASG)
Cc: Kocur, Ana (EOIR); Flentje, August (CIV); Rosenblum, Jeff (EOIR)
Subject: RE: mental competence program

Duplicative Material

McEvoy, Julie (OAAG)

From: McEvoy, Julie (OAAG)
Sent: Wednesday, April 23, 2014 6:02 PM
To: Mosier, Jenny (OAG); Osuna, Juan (EOIR); Jacobsohn, Robin (ODAG); Taylor, Elizabeth G. (OAAG); Chilakamarri, Varudhini (OASG)
Subject: RE: mental competence program

That is the intended purpose. I can do 10:15.

From: Mosier, Jenny (OAG)
Sent: Wednesday, April 23, 2014 6:01 PM
To: McEvoy, Julie (OAAG); Osuna, Juan (EOIR); Jacobsohn, Robin (ODAG); Taylor, Elizabeth G. (OAAG); Chilakamarri, Varudhini (OASG)
Subject: Re: mental competence program

Sure. I can talk between 10:15 - 10:45, 12 - 1, or 2:45 - 3:30. I think I sent a separate email notin (b) (5) [REDACTED], and I'm happy to talk about that if it is the intended purpose. (And happy to talk about whatever you wish.)

Jenny R. Mosier
Deputy Chief of Staff & Counselor to the Attorney General
U.S. Department of Justice
950 Constitution Avenue, NW, Room 5112
Washington, DC 20530
(b) (6) (office)
(b) (6) (cell)
(b) (6)

From: McEvoy, Julie (OAAG)
Sent: Wednesday, April 23, 2014 05:51 PM Eastern Standard Time
To: Osuna, Juan (EOIR); Mosier, Jenny (OAG); Jacobsohn, Robin (ODAG); Taylor, Elizabeth G. (OAAG); Chilakamarri, Varudhini (OASG)
Subject: RE: mental competence program

Jenny and Robin, do you have a few moments tomorrow to discuss?

From: Osuna, Juan (EOIR)
Sent: Friday, April 18, 2014 11:32 AM
To: Mosier, Jenny (OAG); Jacobsohn, Robin (ODAG); Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Chilakamarri, Varudhini (OASG)
Cc: Kocur, Ana (EOIR); Flentje, August (CIV); Rosenblum, Jeff (EOIR)
Subject: RE: mental competence program

Duplicative Material



Mosier, Jenny (OAG)

From: Mosier, Jenny (OAG)
Sent: Wednesday, April 23, 2014 6:58 PM
To: Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Jacobsohn, Robin (ODAG); Osuna, Juan (EOIR); Chilakamarri, Varudhini (OASG)
Subject: Re: mental competence program

I can get a room.

Jenny R. Mosier
Deputy Chief of Staff & Counselor to the Attorney General
U.S. Department of Justice
950 Constitution Avenue, NW, Room 5112
Washington, DC 20530
(b) (6) (office)
(b) (6) (cell)
(b) (6)

From: Taylor, Elizabeth G. (OAAG)
Sent: Wednesday, April 23, 2014 06:10 PM Eastern Standard Time
To: McEvoy, Julie (OAAG); Mosier, Jenny (OAG); Jacobsohn, Robin (ODAG); Osuna, Juan (EOIR); Chilakamarri, Varudhini (OASG)
Subject: RE: mental competence program

Yes. I can

From: McEvoy, Julie (OAAG)
Sent: Wednesday, April 23, 2014 6:09 PM
To: Mosier, Jenny (OAG); Jacobsohn, Robin (ODAG); Osuna, Juan (EOIR); Taylor, Elizabeth G. (OAAG); Chilakamarri, Varudhini (OASG)
Subject: RE: mental competence program

Ok, let's see if Elizabeth or Varu can do 2:45 tomorrow and you can proceed without me (particularly since I'm really the third wheel in our office on Franco anyway!).

From: Mosier, Jenny (OAG)
Sent: Wednesday, April 23, 2014 6:08 PM
To: McEvoy, Julie (OAAG); Jacobsohn, Robin (ODAG); Osuna, Juan (EOIR); Taylor, Elizabeth G. (OAAG); Chilakamarri, Varudhini (OASG)
Subject: Re: mental competence program

I am out and unavailable on Friday. I do think both Robin and I should be there for any discussion.

Jenny R. Mosier
Deputy Chief of Staff & Counselor to the Attorney General
U.S. Department of Justice

950 Constitution Avenue, NW, Room 5112
Washington, DC 20530

(b) (6) (office)

(b) (6) (cell)

(b) (6)

From: McEvoy, Julie (OAAG)

Sent: Wednesday, April 23, 2014 06:06 PM Eastern Standard Time

To: Jacobsohn, Robin (ODAG); Mosier, Jenny (OAG); Osuna, Juan (EOIR); Taylor, Elizabeth G. (OAAG); Chilakamarri, Varudhini (OASG)

Subject: RE: mental competence program

I'm afraid that doesn't work for me. Sometime on Friday?

From: Jacobsohn, Robin (ODAG)

Sent: Wednesday, April 23, 2014 6:03 PM

To: Mosier, Jenny (OAG); McEvoy, Julie (OAAG); Osuna, Juan (EOIR); Taylor, Elizabeth G. (OAAG); Chilakamarri, Varudhini (OASG)

Subject: RE: mental competence program

I can only do the 2:45-3:30 slot

From: Mosier, Jenny (OAG)

Sent: Wednesday, April 23, 2014 6:01 PM

To: McEvoy, Julie (OAAG); Osuna, Juan (EOIR); Jacobsohn, Robin (ODAG); Taylor, Elizabeth G. (OAAG); Chilakamarri, Varudhini (OASG)

Subject: Re: mental competence program

Duplicative Material



Chilakamarri, Varudhini (OASG)

From: Chilakamarri, Varudhini (OASG)
Sent: Wednesday, April 23, 2014 7:05 PM
To: Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Mosier, Jenny (OAG); Jacobsohn, Robin (ODAG); Osuna, Juan (EOIR)
Subject: Re: mental competence program

Me too.

From: Taylor, Elizabeth G. (OAAG)
Sent: Wednesday, April 23, 2014 06:10 PM
To: McEvoy, Julie (OAAG); Mosier, Jenny (OAG); Jacobsohn, Robin (ODAG); Osuna, Juan (EOIR); Chilakamarri, Varudhini (OASG)
Subject: RE: mental competence program

Duplicative Material



Subject: RE: mental competence program

0116

From: Chilakamarri, Varudhini (OASG)
Sent: Friday, May 2, 2014 11:01 AM
To: Chang, Cindy (OAAG); Martinez, Brian (OAAG)
Subject: FW: Franco

Do you guys know whether Tony wants to talk with Steve at DHS about this? Or, if there's time on his schedule, maybe I can chat with him today?

From: Chilakamarri, Varudhini (OASG)
Sent: Thursday, May 01, 2014 10:26 AM
To: West, Tony (OAAG)
Cc: Taylor, Elizabeth G. (OAAG)
Subject: Franco

Tony,
Following up from the CIV meeting yesterday per below (b) (5)
(b) (5) but we first wanted to make sure that you were comfortable with this and didn't feel like you needed to speak with Steve Bunnell beforehand. I just checked with Juan and he is waiting to hear back from our office before doing anything further. Please let us know what you think or if you'd like to discuss.
Thanks,
Varu

From: Taylor, Elizabeth G. (OAG)
Sent: Thursday, April 24, 2014 4:02 PM
To: West, Tony (OAG)
Cc: Chilakamarri, Varudhini (OASG)
Subject: Franco

We have continued our discussions with OAG and ODAG about whether and how you should (b) (5)

[REDACTED]

(b) (5)

[REDACTED]. Does this sound ok to you or do you feel that you need to get back to Steve first (b) (5)

Mosier, Jenny (OAG)

From: Mosier, Jenny (OAG)
Sent: Friday, May 2, 2014 3:44 PM
To: Chilakamarri, Varudhini (OASG); Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Jacobsohn, Robin (ODAG); Osuna, Juan (EOIR)
Subject: RE: mental competence program

Thanks, Varu.

From: Chilakamarri, Varudhini (OASG)
Sent: Friday, May 02, 2014 12:27 PM
To: Mosier, Jenny (OAG); Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Jacobsohn, Robin (ODAG); Osuna, Juan (EOIR)
Subject: RE: mental competence program

Quick update to make sure we're all on the same page: I spoke with Tony. He just put in a call to Steve Bunnell and is planning to tell him that [REDACTED] (b) (5) [REDACTED]. We of course hope that this will resolve the matter, but I wanted you all to know in case Steve decides to elevate this to the DAG/AG. I'll pass along any updates from Tony after he makes contact with Steve.
Thanks,
Varu

From: Chilakamarri, Varudhini (OASG)
Sent: Wednesday, April 30, 2014 3:32 PM
To: Mosier, Jenny (OAG); Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Jacobsohn, Robin (ODAG); Osuna, Juan (EOIR)
Subject: RE: mental competence program

Hi Juan do you have any updates from your conversations with the ICE folks regarding implementation of the national program? This came up during our meeting with CIV today, so we wanted to check in. Thanks!

From: Mosier, Jenny (OAG)
Sent: Wednesday, April 23, 2014 6:58 PM
To: Taylor, Elizabeth G. (OAAG); McEvoy, Julie (OAAG); Jacobsohn, Robin (ODAG); Osuna, Juan (EOIR); Chilakamarri, Varudhini (OASG)
Subject: Re: mental competence program

Duplicative Material



Chilakamarri, Varudhini (OASG)

From: Chilakamarri, Varudhini (OASG)
Sent: Friday, May 9, 2014 11:19 AM
To: Chang, Cindy (OAAG); Braunstein, Joshua (OAAG)
Subject: RE: Call to Steve Bunnell

There's no exact deadline, so next week should be okay -- but this does involve something that EOIR and leadership would like to resolve quickly. Tony called Steve last Friday, so really they should be trying to call us back!

From: Chang, Cindy (OAAG)
Sent: Friday, May 09, 2014 11:13 AM
To: Chilakamarri, Varudhini (OASG); Braunstein, Joshua (OAAG)
Subject: Re: Call to Steve Bunnell

He hasn't. We need to schedule the call. Is there a date by which it has to happen? Or ideally? Is next week ok?

From: Chilakamarri, Varudhini (OASG)
Sent: Friday, May 09, 2014 11:02 AM
To: Braunstein, Joshua (OAAG); Chang, Cindy (OAAG)
Subject: Call to Steve Bunnell

Hi guys – do you know if Tony was able to call Steve re the Franco nationwide policy?

Thanks!

Osuna, Juan (EOIR)

From: Osuna, Juan (EOIR)
Sent: Wednesday, May 14, 2014 10:53 PM
To: Mosier, Jenny (OAG); Jacobsohn, Robin (ODAG); Burrows, Charlotte (ODAG); McEvoy, Julie (OAAG); Chilakamarri, Varudhini (OASG)
Cc: Rosenblum, Jeff (EOIR); Leen, Barbara (EOIR); Cicchini, Daniel (EOIR)
Subject: (b)(5) per EOIR
Attachments: Memo to OAG 5-14-14_final.docx

All:

Attached is EOIR's proposal f (b)(5) per EOIR. It will be going up the chain through regular channels tomorrow, and will go to OSG, CIV and other interested components, but I wanted to get you an advance copy.

Look forward to discussing.

JPO

Mosier, Jenny (OAG)

From: Mosier, Jenny (OAG)
Sent: Monday, May 19, 2014 4:30 PM
To: Richardson, Margaret (OAG)
Subject: FW: EOIR Draft Conference Agenda
Attachments: 5.14.14 Draft EOIR Legal Training Program Agenda.pdf

From: Kocur, Ana (EOIR)
Sent: Wednesday, May 14, 2014 4:41 PM
To: Mosier, Jenny (OAG)
Cc: Osuna, Juan (EOIR)
Subject: EOIR Draft Conference Agenda

Jenny,

Attached is a draft conference agenda for this year. We are doing the cost analysis if we reduce the number of days from 4 ½ to 3 ½ . We will get back to you on that once we have completed the analysis.

In the interim, let me know if you have any other questions.

Ana

Ana M. Kocur
Deputy Director
U.S Department of Justice
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

(b) (6)

MONDAY					
Time	Ballroom	Large Meeting Room	Room A	Room B	Room C
8:00 - 8:30	registration				
8:30 - 10:00	VIP Opening Remarks		X	X	X
10:00 - 10:30	Director's Awards		X	X	X
break					
11:00 - 12:00	Moncrieffe and Descamp: Impact on EOIR adjudications		X	X	X
lunch on your own					
1:00 - 2:00	Particular Social Group - <i>Matters of W-G-R- and M-E-V-G-</i> (session 1)	TRIG- Terrorism-Related Inadmissibility Grounds and Exemptions in Removal Proceedings	Advanced adjustment of status issues	Symposium: Drug offenses and immigration law	Workshop: First and Second Circuit Law
break					
2:15 - 3:15	Gangs: Legal update	Same-sex and gender issues in immigration law	Waivers of Inadmissibility (session 1)	Advanced cancellation issues (session 1)	Workshop : Third and Fourth Circuit Law
3:30 - 4:30	Credibility and corroboration post-REAL ID Act (session 1)	CIMT and <i>Matter of Silva-Trevino</i>	Gangs/Cartels and country conditions	Mock custody hearing	Workshop: Fifth Circuit Law
4:30- 5:30	NAIJ Reception – All invited				

DRAFT 5.14.14

0158

TUESDAY					
<i>Time</i>	<i>Ballroom</i>	<i>Large Meeting Room</i>	<i>Room A</i>	<i>Room B</i>	<i>Room C</i>
8:00 - 8:30	OCIJ - Message from CIJ	BIA- Message from Chairman	X	X	X
8:30 - 9:30	Implicit Bias Training for Immigration Judges	BIA - Panel of IJs	X	X	X
<i>break</i>					
10:00 - 11:30	Implicit Bias Training for Immigration Judges	Major Circuit Court Splits	DHS Adjudications Panel (session 1)	Consular Waivers and Processing (session 1)	Parsing Complex Cases (session 1)
<i>lunch on your own - exhibitors open</i>					
12:30 - 1:30	Implicit Bias Training for Immigration Judges	BIA - Visa petitions	DHS Adjudications Panel (session 2)	Consular Waivers and Processing (session 2)	Parsing Complex Cases (session 2)
<i>break - exhibitors open</i>					
2:00 - 3:00	Reversal, Remand, and Professional Conduct	Implicit Bias Training in Appellate Review	X	X	X
<i>break - exhibitors open</i>					
3:30 - 4:30	OCIJ- Credible/Reasonable Fear Law and Procedure & Mock Hearing	Implicit Bias Training in Appellate Review	X	X	X
5:00 - 7:00	<i>(optional) Holocaust Memorial Museum Tour</i>				

WEDNESDAY					
Time	Ballroom	Large Meeting Room	Room A	Room B	Room C
8:00 - 9:00	Mental Competency – Identifying & handling competency issues		X	X	X
break					
9:15 - 10:15	Mental Competency – Identifying & handling competency issues (continued)		X	X	X
break					
10:45 - 11:45	Mental Competency – Procedural issues and <i>Franco</i> guidance		BIA Topic	BIA Topic	BIA Topic
lunch on your own – exhibitors open					
12:45 - 1:45	International Religious Freedom Act and Tolerance Training		X	X	X
break – exhibitors open					
2:00 - 3:00	Professional responsibility (Part I)		X	X	X
break – exhibitors open					
3:30 - 4:30	Professional responsibility (Part II)		X	X	X
TBD	Movie Premiere- “ <i>La Jaula de Oro</i> ” – <i>The Golden Cage</i>				

DRAFT 5.14.14

THURSDAY					
Time	Ballroom	Large Meeting Room	Room A	Room B	Room C
8:00 - 8:30	The Journey of UACs	Custody and Bond Issues	Advanced Cancellation of Removal issues (session 2)	Shifting burdens of proof	Workshop: Ninth and Tenth Circuit Law
8:30 - 9:30	Child Development				
break					
9:45 - 10:45	Child Witnesses	VLL and Country Conditions – Hot topics	Admissibility and Admission updates	Assessing Expert Witness Evidence	Workshop: Sixth, Seventh & Eight Circuit Law -
break					
11:00 - 12:00	Juvenile Docket Management	Human Trafficking and Crime Victims Relief - T, U, and V visas	Particular Social Group - <i>Matters of W-G-R- and M-E-V-G-</i> (session 2)	Waivers of Inadmissibility (session 2)	Workshop: Eleventh Circuit Law
lunch on your own –exhibitors open					
1:00 - 2:00	Child Relief Claims	Advanced Asylum and Protection Topics	Crimes Involving Moral Turpitude and <i>Silva-Trevino</i> (session 2)	Credibility and Corroboration post-REAL ID Act (session 2)	Border Patrol issues
break					
2:15 - 3:15	EEO/Sexual Harassment/No FEAR Act/Nepotism	Interpreter Panel	X	X	X
break					
3:30 - 4:30	Ethics		X	X	X

DRAFT 5.14.14

FRIDAY					
Time	Ballroom	Large Meeting Room	Room A	Room B	Room C
8:00 – 9:00	OCIJ- Best Practices and Docket Management		MS Word training	X	X
break					
9:15-10:15	Retirement benefits	Handling a High-volume Docket	MS Word training	X	Long-Term Care and other insurance Programs
break					
10:30 – 11:30	EOIR Flash Updates and Closing Remarks		MS Word training	X	X
DRAFT 5.14.14					

Osuna, Juan (EOIR)

From: Osuna, Juan (EOIR)
Sent: Friday, May 23, 2014 1:10 AM
To: Burrows, Charlotte (ODAG); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Cc: Osuna, Juan (EOIR)
Subject: immigration policy memo
Attachments: Immigration Policy-- DOJ Priorities Revised.docx

All:

Attached please find a revised, redlined version of the immigration policy initiatives memo, per our conversation this afternoon.

Consistent with Charlotte's email earlier this evening, (b)(5) per EOIR [REDACTED]. Charlotte, I sent you the draft talking points by separate message regardless. I als (b)(5) per [REDACTED].

You will see the following additions and changes to the memo:

(b)(5) per EOIR [REDACTED]

In additio (b)(5) per EOIR [REDACTED]
[REDACTED] Finally, I made a number of stylistic and other minor edits throughout (the old editor in me can't help himself).

Robin, (b)(5) per EOIR [REDACTED].

I suggest we work off of this redline version for any additions Robin and Charlotte have tomorrow. We should be able to finalize it by the noon deadline.

Thanks all.

JPO

Childs, Heather G. (ODAG)

From: Childs, Heather G. (ODAG)
Sent: Friday, May 23, 2014 10:44 AM
To: Osuna, Juan (EOIR); Burrows, Charlotte (ODAG); Jacobsohn, Robin (ODAG)
Subject: RE: immigration policy memo
Attachments: Immigration Policy-- DOJ Priorities Revised.docx

Thanks so much Juan. This looks great. I had just a couple of nits. See attached.

From: Osuna, Juan (EOIR)
Sent: Friday, May 23, 2014 1:10 AM
To: Burrows, Charlotte (ODAG); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Cc: Osuna, Juan (EOIR)
Subject: immigration policy memo

Duplicative Material



Burrows, Charlotte (ODAG)

From: Burrows, Charlotte (ODAG)
Sent: Friday, May 23, 2014 11:40 AM
To: Childs, Heather G. (ODAG); Osuna, Juan (EOIR); Jacobsohn, Robin (ODAG)
Subject: RE: immigration policy memo

Thanks. I'll add these to the latest version as Juan is in a mtg.

From: Childs, Heather G. (ODAG)
Sent: Friday, May 23, 2014 10:44 AM
To: Osuna, Juan (EOIR); Burrows, Charlotte (ODAG); Jacobsohn, Robin (ODAG)
Subject: RE: immigration policy memo

Duplicative Material



Burrows, Charlotte (ODAG)

From: Burrows, Charlotte (ODAG)
Sent: Friday, May 23, 2014 12:01 PM
To: Osuna, Juan (EOIR); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Subject: RE: immigration policy memo
Attachments: Immigration Policy-- DOJ Priorities Revised.cb edits short.docx

Never mind. Will keep as is. Robin, I will take you off if you haven't read this yet. Putting in final now.

From: Osuna, Juan (EOIR)
Sent: Friday, May 23, 2014 11:50 AM
To: Burrows, Charlotte (ODAG); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Subject: RE: immigration policy memo

I have revised to shorten it. Not sure we need all the detail that was in there. Here is my suggested version:

(b) (5)



(b) (5)

From: Burrows, Charlotte (ODAG)

Sent: Friday, May 23, 2014 11:38 AM

To: Osuna, Juan (EOIR); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)

Subject: RE: immigration policy memo

Here's my insert. There's a formatting issue I will work on now.

(b) (5)

(b) (5)



From: Osuna, Juan (EOIR)

Sent: Friday, May 23, 2014 1:10 AM

To: Burrows, Charlotte (ODAG); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)

Cc: Osuna, Juan (EOIR)

Subject: immigration policy memo

Duplicative Material



(b) (5)



Jacobsohn, Robin (ODAG)

From: Jacobsohn, Robin (ODAG)
Sent: Friday, May 23, 2014 12:01 PM
To: Burrows, Charlotte (ODAG); Osuna, Juan (EOIR); Childs, Heather G. (ODAG)
Subject: RE: immigration policy memo

I have a few edits – will send in a few minutes

From: Burrows, Charlotte (ODAG)
Sent: Friday, May 23, 2014 12:01 PM
To: Osuna, Juan (EOIR); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Subject: RE: immigration policy memo

Duplicative Material



Jacobsohn, Robin (ODAG)

From: Jacobsohn, Robin (ODAG)
Sent: Friday, May 23, 2014 12:16 PM
To: Burrows, Charlotte (ODAG); Osuna, Juan (EOIR); Childs, Heather G. (ODAG)
Subject: Immigration Policy-- DOJ Priorities Revised
Attachments: Immigration Policy-- DOJ Priorities Revised.docx

Here's everything bu (b) (5) piece

<<Immigration Policy-- DOJ Priorities Revised.docx>>

Burrows, Charlotte (ODAG)

From: Burrows, Charlotte (ODAG)
Sent: Friday, May 23, 2014 12:58 PM
To: Osuna, Juan (EOIR); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Subject: RE: immigration policy memo
Attachments: Immigration Policy-- DOJ Priorities Revised.cb edits short.docx

Ok

Two changes to (b) (5)

I slightly tweaked one of Robin's edits to this sentence so it reads as follows:

(b) (5)

And I added this sentence (I think it's helpful, but will delete if anyone has the slightest concern):

(b) (5)

Putting in final now.

Thanks, all!

Charlotte

From: Osuna, Juan (EOIR)
Sent: Friday, May 23, 2014 12:49 PM
To: Burrows, Charlotte (ODAG); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Subject: Re: immigration policy memo

Looks good.

From: Burrows, Charlotte (ODAG)
Sent: Friday, May 23, 2014 12:38 PM
To: Osuna, Juan (EOIR); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Subject: RE: immigration policy memo

Juan

Wanted to be sure you saw this addition to the end of (b) (5):

(b) (5)

From: Osuna, Juan (EOIR)
Sent: Friday, May 23, 2014 12:00 PM
To: Burrows, Charlotte (ODAG); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Subject: Re: immigration policy memo

No problem with including it.

From: Burrows, Charlotte (ODAG)
Sent: Friday, May 23, 2014 11:53 AM
To: Osuna, Juan (EOIR); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Subject: RE: immigration policy memo

I think we need to (b) (5)
(b) (5) Did you have a problem w/ this sentence?

(b) (5)

From: Osuna, Juan (EOIR)
Sent: Friday, May 23, 2014 11:50 AM
To: Burrows, Charlotte (ODAG); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Subject: RE: immigration policy memo

Duplicative Material

Jacobsohn, Robin (ODAG)

From: Jacobsohn, Robin (ODAG)
Sent: Friday, May 23, 2014 1:10 PM
To: Burrows, Charlotte (ODAG); Childs, Heather G. (ODAG)
Subject: Re: immigration policy memo

No - out till 3 - feel free to initial for me

From: Burrows, Charlotte (ODAG)
Sent: Friday, May 23, 2014 01:05 PM
To: Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Subject: RE: immigration policy memo

You all around to sign?

From: Osuna, Juan (EOIR)
Sent: Friday, May 23, 2014 12:49 PM
To: Burrows, Charlotte (ODAG); Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Subject: Re: immigration policy memo

Duplicative Material



Childs, Heather G. (ODAG)

From: Childs, Heather G. (ODAG)
Sent: Friday, May 23, 2014 1:44 PM
To: Burrows, Charlotte (ODAG); Jacobsohn, Robin (ODAG)
Subject: RE: immigration policy memo

Im around to sign.

From: Burrows, Charlotte (ODAG)
Sent: Friday, May 23, 2014 1:06 PM
To: Jacobsohn, Robin (ODAG); Childs, Heather G. (ODAG)
Subject: RE: immigration policy memo

Duplicative Material



Osuna, Juan (EOIR)

From: Osuna, Juan (EOIR)
Sent: Tuesday, June 17, 2014 12:44 PM
To: Goldberg, Stuart (ODAG)
Cc: Dix, Melanie (ODAG)
Subject: TPs for meeting with DHS Dep Sect
Attachments: RGVplan.docx

Stuart:

Here are some talking points for the DAG for this afternoon's meeting with the Deputy Secretary.

There are three sets of talking points. The first s (b)(5) per EOIR
(b)(5) per EOIR and discusses other points raised at last evening's Deputies meeting.

The second s (b)(5) per EOIR

The third set discusses the Franco issue that Robin and I raised with the DAG a few weeks a o (b)(5) per EOIR
(b)(5) per EOIR but the DAG may want to use the opportunity that he has this afternoon to raise it, as
(b)(5) per EOIR.

Let me know if you have questions.

Thanks.

JPO

Osuna, Juan (EOIR)

From: Osuna, Juan (EOIR)
Sent: Tuesday, June 17, 2014 2:17 PM
To: Goldberg, Stuart (ODAG)
Cc: Dix, Melanie (ODAG); Burrows, Charlotte (ODAG); Mosier, Jenny (OAG)
Subject: RE: TPs for meeting with DHS Dep Sect
Attachments: RGVplan.docx

Sorry, please use this version. We made a few tweaks.

JPO

From: Osuna, Juan (EOIR)
Sent: Tuesday, June 17, 2014 12:44 PM
To: Goldberg, Stuart (ODAG)
Cc: Dix, Melanie (ODAG)
Subject: TPs for meeting with DHS Dep Sect

Duplicative Material



Burrows, Charlotte (ODAG)

From: Burrows, Charlotte (ODAG)
Sent: Monday, June 30, 2014 4:00 PM
To: Mosier, Jenny (OAG); Osuna, Juan (EOIR)
Subject: RE: materials on exec action
Attachments: Immigration Policy-- DOJ Priorities Revised.FINAL.corrected.docx

I think this is final.

From: Mosier, Jenny (OAG)
Sent: Monday, June 30, 2014 3:24 PM
To: Osuna, Juan (EOIR); Burrows, Charlotte (ODAG)
Subject: materials on exec action

Could you please send me whatever we have together already that summarizes the things we are working on re: potential executive action on immigration? I know that the DAG had a meeting at the WH on this awhile back, so I thought maybe you all put together briefing materials at that time that would be a good overview.

Thanks,
J

Jenny R. Mosier
Deputy Chief of Staff and Counselor to the Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 5112
Washington, D.C. 20530
Offic (b) (6)
Cel (b) (6)
Fa (b) (6)
E-mai (b) (6)

Burrows, Charlotte (ODAG)

From: Burrows, Charlotte (ODAG)
Sent: Tuesday, July 22, 2014 1:31 PM
To: Mosier, Jenny (OAG)
Subject: RE: DAG Materials on Exec Action
Attachments: Immigration Policy-- DOJ Priorities Revised.FINAL.corrected.docx

Actually, this is the more recent memo. There were 2, so you should use this one.

From: Mosier, Jenny (OAG)
Sent: Tuesday, July 22, 2014 1:27 PM
To: Burrows, Charlotte (ODAG)
Subject: RE: DAG Materials on Exec Action

Do you have in word by any chance?

From: Burrows, Charlotte (ODAG)
Sent: Tuesday, July 22, 2014 1:26 PM
To: Mosier, Jenny (OAG)
Subject: RE: DAG Materials on Exec Action

<< File: Background on DOJ Immigration Role.April 25 2014.pdf >>

Here it is. The executive action materials are at the end.

From: Mosier, Jenny (OAG)
Sent: Tuesday, July 22, 2014 1:13 PM
To: Burrows, Charlotte (ODAG)
Subject: DAG Materials on Exec Action

Charlotte

You mentioned you were willing to re-send me the materials created for the DAG on executive action related to immigration matters. Could you flip those to me? I've tried to locate them in my inbox, and I can't seem to find it. Sorry for bothering you!

Jenny

Jenny R. Mosier
Deputy Chief of Staff and Counselor to the Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 5112
Washington, D.C. 20530
Offic (b) (6)
Cel (b) (6)
Fa (b) (6)
E-mai (b) (6)

Osuna, Juan (EOIR)

From: Osuna, Juan (EOIR)
Sent: Sunday, July 27, 2014 9:58 PM
To: Childs, Heather G. (ODAG); Jacobsohn, Robin (ODAG)
Cc: Burrows, Charlotte (ODAG)
Subject: immigration initiatives
Attachments: Immigration Policy-- DOJ Priorities Revised7-26.docx

Heather and Robin:

As we discussed last week, I have revised our prior memo to the DAG on immigration initiatives to reflect the current state of play. See attached. In addition to updating it I also shortened it, as I did not think it was necessary to include some of the detail in the prior memo for purposes of this update. I'd like to give it to the DAG tomorrow, in advance of a Tuesday meeting he has with the AG.

Could you take a quick look? In particular, if you could make sure you are ok with th
[REDACTED] sections I would appreciate it.

(b) (5)

Thanks.

JPO

July 28, 2014

To: The Attorney General
From: Jenny R. Mosier
Cc: Margaret L. Richardson
Re: Meeting on Executive Action on Immigration

On Tuesday, July 29, 2014, we will discuss the Department's efforts to identify potential ways in which we can use executive action to achieve improvements to our immigration system. In the President's June 30, 2014 remarks on border security and immigration reform, he stated:

I have also directed Secretary Johnson and Attorney General Holder to identify additional actions my administration can take on our own, within my existing legal authorities, to do what Congress refuses to do and fix as much of our immigration system as we can. If Congress will not do their job, at least we can do ours. I expect their recommendations before the end of summer and I intend to adopt those recommendations without further delay.

As explained in more detail in the attached memorandum, the Department has been exploring potential action in the following areas:

Guidance Documents and Proposed Executive Actions

- (b) (5)
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Potential Regulations

- (b) (5)
- [REDACTED]
- [REDACTED]
- [REDACTED]

Attachment: July 27, 2014 Memo for the Deputy Attorney General re: Background on Department of Justice Role in Immigration Enforcement and Potential Immigration Policy Initiatives

DEPARTMENT OF JUSTICE

OPEN GOVERNMENT

PROGRESS REPORT

April 2015

Since the release of the Department of Justice's Open Government Plan 3.0 on June 1, 2014, Department components have been working hard to implement the commitments made. Following is a snapshot of the status as of March 31, 2015, of some of these commitments. You can find further details on each of these in the [Plan](#).

Our last status report was dated December 2014:

<http://www.justice.gov/open/departments-justice-open-government-progress-report-december-2014>

Community Relations Service (CRS)

Post-Ferguson Police-Community Relations

In October 2014, the Community Relations Service, in collaboration with the Federal Bureau of Investigation (FBI) and the U.S. Attorney's Office for the District of Connecticut, hosted an all-day symposium entitled "Moving Beyond Ferguson: A Symposium for Law Enforcement CEOs." The symposium was an event for law enforcement officials to discuss issues surrounding rebuilding police organizations through effective constitutional policing and self-monitoring departments from state and federal perspectives. CRS facilitated break-out sessions and led a debriefing plenary dialogue. A similar symposium was also conducted in December 2014, in Houston, Texas. The symposium was organized in collaboration with the local FBI field office and the U.S. Attorney's Office for the Southern District of Texas.

In addition to these symposiums, CRS, in collaboration with the FBI and the Civil Rights Division, hosted a joint program entitled "Federal Civil Rights Issues and 21st Century Policing." The event was held in response to numerous post-Ferguson requests from law enforcement officials, and nationwide protests following similar events of police use of deadly force. The event was designed to assist law enforcement agencies and the organizational leaders to better understand, address and avoid divisive community policing flashpoints. In particular, CRS presented best practices and strategies for improving community confidence to strengthen police-community partnerships.

Vulnerable Workers Project

The Community Relations Service and the Civil Rights Division serve as the Department of Justice's representatives to the interagency working group to work alongside the Equal Employment Opportunity Commission, the Department of Labor, and the National Labor Relations Board, in the launch of the Vulnerable Workers Project. The project is supported by the White House Initiative on Asian American and Pacific Islanders and focuses on strengthening employment and labor protections for Asian American and Pacific Islander workers in high-risk and low-wage industries. The interagency working group conducts a series of listening sessions across the country to hear from Asian American and Pacific Islanders workers and stakeholders to learn about the employment and labor challenges they face. Sessions have been conducted in Houston, Texas; Los Angeles, California; and Washington, DC. Additional future sessions are currently being planned.

Criminal Division

The Criminal Division had three Open Government projects: (1) circulation of a Proactive Disclosure memorandum to all Criminal Division sections, informing the chiefs of our responsibilities and soliciting documents for disclosure; (2) a comprehensive System of Records Notice (SORN) review; and (3) broader publication of the Human Rights and Special Prosecutions Section (HRSPS) newsletter by linking that publication to the FOIA/PA Unit website. The Proactive Disclosure memorandum has been circulated amongst the Section Chiefs, and the HRSPS newsletter is linked to our website. The SORN review is still on hold due to resource constraints.

Drug Enforcement Administration (DEA)

The DEA.gov website has experienced a significant increase in usage by the public:

01 January 01 March 2015:
Total Visits increased 28%
Total Page views increased 34%
Average Visits per day increased 28%
Average page views per day increased 34%

Plans are underway to change the content management system of this most important public-facing site for DEA.

From January 1 until March 31, DEA.gov has posted approximately 300 new news releases from our divisions; and since the beginning of last year DEA headquarters has posted 80 new top news stories. This is in addition to hundreds of other small changes and additions to the website over the past year. Some portions of the DEA.gov website are now offered in Spanish.

DEA websites **GetSmartAboutDrugs.com**, a drug prevention educational website for parents, caregivers, educators and community organizations was redesigned and re-launched in September 2014; **JustThinkTwice.com**, a drug prevention educational website for teens, was redesigned and re-launched in October 2014.

- Both websites continue to be updated with news, featured articles, drug information, drug trends, true stories, where to get help and other relevant content.
- We continue to ensure the websites and DEA Demand Reduction publications available for viewing and/or download are 508 compliant
- We utilize readability statistics as appropriate for the audience on both sites.

DEA launched its Twitter account, @DEANews, in December 2013, and we are now Tweeting two to three times per week, with 16,000 followers.

Executive Office for Immigration Review (EOIR)

The Executive Office for Immigration Review has completed the first two objectives of its commitments under the Open Government Plan 3.0.

First, to better inform immigration proceedings, EOIR has launched an innovative nationwide program that taps into the expertise of the private forensic psychiatric and psychological profession by contracting with these professionals to provide independent examinations of aliens who may be incompetent to represent themselves. In April 2013, the Department announced, in partnership with the Department of Homeland Security, a Nationwide Policy to provide enhanced procedural protections, including competency inquiries, mental health examinations, and bond hearings, to certain unrepresented and detained aliens with serious mental disorders or conditions that may render them incompetent to represent themselves in immigration proceedings.

Under the Nationwide Policy, EOIR will provide a qualified representative to unrepresented detainees who are determined by an immigration judge to be incompetent to represent themselves in immigration proceedings. Detainees who are identified as having a serious mental disorder or condition that may render them incompetent to represent themselves and who have been held in immigration detention for at least six months will be afforded a bond hearing.

Between August 2013 and February 2014, EOIR implemented Phase I of the Nationwide Policy. In Phase I, EOIR completed training of immigration judges handling cases and psychologists and psychiatrists conducting mental health examinations in: East Mesa, CA; Tacoma, WA; Eloy, AZ; Florence, AZ; El Centro, CA; San Francisco, CA; Adelanto, CA; and Orange County, CA.

EOIR is continuing the rollout of the Nationwide Policy in FY 2015 and has identified the following potential next rollout sites: El Paso (TX); Houston (TX); Denver (CO); Miami (FL); Pearsall (TX); Stewart (GA); Chicago (IL); Newark/Elizabeth (NJ); Batavia/Buffalo (NY); York/Baltimore (MD); Arlington (VA); Port Isabel/Harlingen/South Texas (TX) ; and Baton Rouge/Jena (LA). The long term goal is to provide Nationwide Policy training at every detained docket in the country.

Second, EOIR changed the way it calculates certain statistical information provided to the public to provide more comprehensive measurements of operations and processing times. Beginning with the Fiscal Year 2013 Annual Statistical Yearbook, several changes were made to expand the way in which EOIR evaluated its workload and to allow the public to more easily receive comprehensible answers to their statistics questions. EOIR rearranged some of the tabs to create a better flow of information.

Additionally, in an effort to clarify the agency's workload, EOIR changed the methodology for counting matters received and matters completed. The changes were well received and the second Statistical Yearbook using the new approach was published Monday, March 16, 2015, and can be located at:
<http://www.justice.gov/eoir/press/2015/FY2014SYBNewsRelease03162015.html>.

National Security Division (NSD)

The National Security Cyber Specialist Network (NSCS) is working to increase outreach to private sector businesses in order to provide threat information and resources to companies in the wake of a cyber incident. Updated outreach materials have been produced and disseminated to NSCS AUSA representatives around the country.

Foreign Agents Registration Act (FARA): The NSD Information Technology team and the FARA Registration Unit staff continue to meet regularly to review and develop technical upgrades and eFile enhancements to FARA.gov. These additional capabilities include an infrastructure refresh, upgrades to address security matters, and development of web forms for FARA eFile. The FARA Unit is working to implement improved privacy features, reduce burden, and develop efficient methods to gather FARA public data and records more intelligently for eventual public researcher customization.

NSD public website: NSD is working with the Office of Public Affairs and IT Staff to improve its public website. The updated website will feature more information, photos, and website links relating to topics that are of interest and useful to the public.

Office of Information Policy (OIP)

Drafting a Common FOIA Regulation: In our 3.0 Plan, the Department announced that it would take the lead on the National Action Plan initiative to evaluate the feasibility of developing a potential common or core FOIA regulation applicable to all agencies.

- Status: *Ongoing*. This initiative is well under way. OIP **kicked off** the initiative in May 2014 by meeting with stakeholders both inside and outside the government. Prior to this kickoff meeting, OIP also held a meeting with interested members of civil society to receive their feedback and ideas from the very beginning of the project. Since then, OIP has formed an interagency task force comprising separate teams responsible for each part of the FOIA regulation. OIP also facilitated several meetings with those teams and civil society organizations to discuss in more detail the possible content of each specific subsection of the common regulation. The teams are now working on high-level outlines for this project and we plan to continue to engage with civil society throughout the entire process.

Developing a Consolidated FOIA Portal: In our 3.0 Plan, the Department also committed to funding this project and to serving as a key member of the project's task force, in close collaboration with the Office of the U.S. Chief Technology Officer.

- Status: *Ongoing*. DOJ has provided funding for this project and is working closely with GSA on its development.

Improving Internal Agency Processes: The Department committed to holding a series of agency *Best Practices* workshops focused on specific topics concerning agencies' FOIA administration.

- Status: *Completed*. OIP **launched** this initiative in May 2014 and so far has held five workshops, which were a great success. These workshops focused on agency efforts to reduce backlogs, improve proactive disclosures, implement best practices observed by requesters, utilize technology to improve FOIA processing, and improve FOIA customer service. You can read about all of these events on OIP's blog, *FOIA Post*. OIP has also created a **page** on its website that provides all of the best practices highlighted at these sessions as a resource for all agencies. In April, OIP solicited ideas from both agencies and the public on new topics for the next slate of workshops to be held in 2015.

Improving FOIA Training Across the Government Through e-Learning: The Department committed to developing a suite of e-Learning training modules for all levels of the federal workforce.

- Status: *Completed*. On March 13, 2015, OIP announced the [rollout](#) of a new suite of electronic FOIA training tools designed to ensure all agencies have important FOIA resources available to them as they administer the FOIA. The four new training resources consist of: 1) an infographic that provides FOIA basics for all new federal employees; 2) a video for senior executives that emphasizes the importance of high-level support to their agency's FOIA program; 3) an e-Learning training module designed for any federal employee that provides a primer on the FOIA and highlights ways that employees can assist their agency in administering the law; and 4) an in-depth e-Learning training module designed for FOIA professionals which addresses all major procedural and substantive requirements of the law, as well as the importance of customer service.

Other OIP Commitments

FOIA Libraries: The Department committed to directing all components to review and update their FOIA Libraries on a set schedule.

- Status: *Ongoing*. As a foundational step, OIP has been conducting an ongoing review of the Department's FOIA websites as part of its Component Improvement Initiative. Moreover, in an additional effort to implement this commitment, on April 3, 2015, the Department published new FOIA regulations that include a provision requiring components to ensure that their FOIA websites are reviewed and updated on an ongoing basis. OIP will continue working with the components in the upcoming months to ensure procedures are in place to regularly review and update all of the Department's FOIA websites.

Proactive Disclosures: The Department committed to issuing new guidance on proactive disclosures.

- Status: *Completed*. On March 16, 2015, OIP [issued](#) new guidance on proactive disclosures designed to improve agency compliance with the statutory provisions requiring agencies to make certain categories of non-exempt records available to the public without waiting for a FOIA request. In addition to the legal requirements of the FOIA, the guidance addresses ways in which agencies can

take additional steps to improve transparency through proactive disclosures in keeping with the President's and Attorney General's FOIA Memoranda.

Litigation Review: The Department will review a snapshot of its FOIA litigation for application of the AG's 2009 Guidelines.

- Status: Currently pending and to be completed.

Component Improvement Initiative: We agreed to conduct a wide-range view of each Department component's FOIA operation to identify causes contributing to backlogs and areas where they can make improvements, as well as to share best practices that have resulted in success with other components.

- Status: *Completed.* OIP has completed its initial review and outreach as part of its Component Improvement Initiative. Throughout Fiscal Year 2015, OIP will be implementing a number of recommendations developed from this initiative. Additionally, OIP has implemented the first Annual Improvement Action Plan, which is customized to each individual component, and will carry forward the work started with the Component Improvement Initiative.

Office of Justice Programs (OJP)

This past quarter, the Office of Justice Programs submitted 28 new data sets to the Department's open data inventory and Data.gov. DOJ's total Public Data Listing (PDL) is now at 974 data sets. In addition, OJP migrated its PDL to a new Open Data metadata form (version 1.1) as required by OMB.

Office of Privacy and Civil Liberties (OPCL)

The Chief Privacy and Civil Liberties Officer (CPCLO) and the Office of Privacy and Civil Liberties (OPCL) have taken a number of steps to implement the commitments made in the Department's Open Government Plan 3.0, including:

Improve Privacy Compliance

- Component Meetings: The CPCLO and OPCL have continued to meet with Department components to gather information about component privacy programs. In 2014 and 2015, the CPCLO and OPCL met with the Senior Component Officials for Privacy (SCOPs) and other leadership of many large components. Future meetings with other components have been scheduled, and

the CPCLO and OPCL continue to hold regular meetings with components as issues arise.

- Social Media Compliance: OPCL has continued to work with the Department's Web 2.0 Policy Working Group to ensure the Department's use of social media and other communications technologies are compliant with applicable privacy laws and policies.

Increase Transparency of Privacy Policies

- Outreach with Advocacy Groups and Other Agencies: The CPCLO and OPCL have also worked with various advocacy groups and the Privacy and Civil Liberties Oversight Board (PCLOB) to address privacy concerns, as well as ways to improve agency outreach. Moreover, the CPCLO and OPCL have met with other federal agencies to improve inter-agency coordination, and to discuss agency privacy practices and common concerns. These meetings enable OPCL to review and assess the Department's information and privacy-related policies, and make improvements where appropriate and necessary.
- Data & Civil Rights Conference: The CPCLO and OPCL participated in the Data & Society Research Institute's conference on why "big data" is a civil rights issue. The event convened representatives from the civil rights community, industry, government, philanthropy, and research.
- Access to Privacy Policies and Compliance Reports: The CPCLO and OPCL have been participating in meetings with the White House, the PCLOB, and other federal agencies to discuss ways to improve the privacy reports required by Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007. In 2015, OPCL discussed these efforts with various advocacy representatives in a meeting hosted by the White House. Discussions on improving such reports are still ongoing.

Enhance Sharing of Best Practices on Data Privacy

- Privacy Best Practices Resources: The CPCLO submitted to the White House a sampling of the Department's privacy resources made available to state, local, and tribal law enforcement entities. The [Bureau of Justice Assistance \(BJA\)](#) and the [Office of Community Oriented Policing Services \(COPS\)](#) have developed a suite of privacy resources to support law enforcement agencies in their efforts to implement privacy, civil rights, and civil liberties policies and protections for the information they access, collect, store, maintain, share, and disseminate. In 2015, the CPCLO and OPCL discussed these resources with various advocacy representatives in a meeting hosted by the White House.
- Outreach with State, Local, and Tribal Law Enforcement Entities: The CPCLO also submitted to the White House a description of the conferences and in-person meetings provided by the Department in 2014 in order to enhance collaboration and information sharing about privacy best practices among state and local law enforcement agencies receiving federal grants. This privacy outreach is ongoing, and occurs regularly throughout the country.

Office of Public Affairs (OPA)

The Office of Public Affairs has produced 26 weekly Attorney General video messages announcing and discussing new Department initiatives, priorities and policy decisions. The videos cover a wide variety of topics, ranging from countering violent extremism to expanding the AMBER Alert tools to recover missing children. The weekly videos are available on the Justice Department's website and YouTube account. Additionally, OPA has successfully participated in a Twitter Town Hall with the FTC for National Consumer Protection Week.

United States Marshals Service (USMS)

The USMS Office of Procurement updated the USMS Internet page to inform the public on "how to do business with the USMS." The USMS Office of Procurement organizational structure was posted, together with links to helpful procurement websites, a list of common things the USMS buys, and a checklist of "10 steps to do business with the USMS." Please go to: <http://www.usmarshals.gov/business/index.html>

United States Trustee Program

Since January 1, we have posted four new data sets to our website, all under civil enforcement. Language Assistance Program files for the time period July - December 2014 have also been completed and posted.

Osuna, Juan (EOIR)

From: Osuna, Juan (EOIR)
Sent: Sunday, April 2, 2017 3:08 PM
To: Sheehan, Matthew (ODAG)
Cc: Lan, Iris (ODAG)
Subject: Re: Spring 2017 Unified Agenda

The typical process is as follows:

Our office of General Counsel takes the pen initially. It is then circulated within the various components of EOIR and a single draft is produced to share outside EOIR. The draft then goes to OLP which takes care of looping in other DOJ components with an interest in the reg's subject matter. Typically CIV is involved. Depending on the subject matter, CRT, CRM and others may be involved. Discussions happen among the various components and the draft is edited or redrafted accordingly. It then goes to ODAG and other leadership offices, including OLC. If approved by leadership it is then shared with other agencies, typically under the auspices of OMB. DHS is always involved. Others looped in could include State, HHS, Labor etc. That process produces a single version that can then be published.

This is the "typical" process but often it varies depending on the topic and reg, and the various agencies with equities often are often in discussions outside this formal process. Sometimes leadership offices are involved at an early stage. At times the White House has even taking charge of coordinating. And as we discussed yesterday, t [REDACTED] (b)(5) per EOIR [REDACTED]
[REDACTED]
[REDACTED]

JPO

On Apr 2, 2017, at 11:23 AM, Sheehan, Matthew (ODAG) [REDACTED] (b) (6) > wrote:

And what is the general start to finish process and who is involved at each step?

On Apr 2, 2017, at 2:22 PM, Sheehan, Matthew (ODAG) [REDACTED] (b) (6) > wrote:

Thanks, Juan. Who does the initial drafting of regs? Is it EOIR or OLP?

On Apr 2, 2017, at 2:01 PM, Osuna, Juan (EOIR) [REDACTED] (b) (6) wrote:

Matt:

Following up on your questions from our conversation yesterday about this.

First, I confirmed that the rulemaking on page 10 (retrospective review) is a housekeeping "clean up" reg. It deletes references to outdated sections, duplicate regs, that sort of thing. Purely ministerial.

Second, the concept behind the rulemaking listed on page 13 (mental competence (b)(5) per EOIR

[REDACTED]

Third, the TVPRA rulemaking on page 9 primarily would codify existing policies and procedures for (b)(5) per EOIR

[REDACTED]

Let me know if you have any other questions.

JPO

On Mar 31, 2017, at 4:50 PM, Sheehan, Matthew (ODAG)

(b) (6) > wrote:

Juan,

Yesterday, we received a binder from OLP regarding draft submissions for the Spring 2017 *Unified Agenda*, a semi-annual public summary of all pending agency rulemakings and those under development that are anticipated to be published during the next 12 months. We have some questions about EOIR's proposed regulations, which I attached.

Broadly speaking, there are three categories of "proposed rules." Those rules that (1) remain as proposed rules from our last submission to the Fall 2016 *Unified Agenda*; (2) are moved to pending status (these rules will not appear in the *Unified Agenda*); or (3) are withdrawn (a statement will appear in the *Unified Agenda* indicating that the rules are withdrawn).

In particular, we have questions about the proposed regulations on pages 8, 9, 12, 13, 14, 17, and 20 of the PDF. Could we please have a call later this weekend to discuss these proposed regulations.

Thanks,

Matt

Matthew J. Sheehan
Counsel to the Deputy Attorney General
Office of the Deputy Attorney General

(b) (6)

(b) (6) (Desk)

(b) (6) (Mobile)

<EOIR.PDF>

Executive Office for Immigration Review
Office of Planning, Analysis, and Technology
18-087

Administrative Closures & PD Administrative Closures
Date Range: October 1, 2008 Through December 8, 2017
Date of Data Run: December 8, 2017

Administrative Closures & PD Administrative Closures by FY

Fiscal Year	Administrative Closures	PD Administrative Closures	TOTAL
FY 2009	7,887	0	7,887
FY 2010	8,938	0	8,938
FY 2011	6,357	7	6,364
FY 2012	8,901	9,223	18,124
FY 2013	16,925	15,614	32,539
FY 2014	21,455	12,964	34,419
FY 2015	28,383	17,832	46,215
FY 2016	28,196	25,533	53,729
FY 2017	23,700	8,674	32,374
FY 2018	3,259	42	3,301
TOTAL	154,001	89,889	243,890

Administrative Closures & PD Administrative Closures by FY

Fiscal Year	Terminations	PD Terminations	TOTAL
FY 2009	19,045	0	19,045
FY 2010	26,380	2	26,382
FY 2011	27,614	0	27,614
FY 2012	26,538	442	26,980
FY 2013	25,810	698	26,508
FY 2014	23,711	549	24,260
FY 2015	29,742	744	30,486
FY 2016	32,403	952	33,355
FY 2017	23,540	299	23,839
FY 2018	4,915	15	4,930
TOTAL	239,698	3,701	243,399

Initial Case Completion Average Processing Times (C RECD DATE to Completion)*

Fiscal Year	Initial Case Completions*	Average Processing Time (in Days)*
FY 2009	222,519	242.48
FY 2010	212,962	293.34
FY 2011	207,187	324.40
FY 2012	185,993	424.19
FY 2013	171,016	554.42
FY 2014	166,675	544.28
FY 2015	180,855	570.61
FY 2016	186,877	662.20
FY 2017	187,240	616.00
FY 2018	34,659	594.75
TOTAL	1,755,983	461.83

* Initial case completions and average processing times do not includes decisions with a negative processing time.

Initial Case Completions (IJ Decisions Only) FY 2007 to FY 2018 (10/1/2006 12/8/2017)

Fiscal Year	Initial Case Completions (IJ Decisions Only)
FY 2009	214,959
FY 2010	204,567
FY 2011	201,198
FY 2012	169,941
FY 2013	142,310
FY 2014	135,572
FY 2015	138,474
FY 2016	138,178
FY 2017	157,716
FY 2018	31,740
TOTAL	1,534,655

Bond Completions by Fiscal Year from FY 2007 to FY 2018 (10/1/2006 12/8/2018)

FY	Bond Completions
FY 2007	42,434
FY 2008	45,437
FY 2009	50,931
FY 2010	51,892
FY 2011	75,966
FY 2012	78,399
FY 2013	57,515
FY 2014	59,830
FY 2015	59,521
FY 2016	62,177
FY 2017	77,137
FY 2018	15,849
Total	677,088

Number of Initial Case Receipts with a charge under 212(a)(2) and 237(a)(2) by Fiscal Year from FY 2007 to FY 2018 (10/1/2006 - 12/8/2017)

Charge Group	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	Total
212a02	22,819	23,990	26,833	27,101	23,171	19,756	15,957	12,577	11,221	9,864	8,765	1,323	203,377
237a02	25,565	26,368	28,414	29,577	28,361	27,224	24,638	19,046	16,838	14,622	13,271	2,277	256,201
Total	48,384	50,358	55,247	56,678	51,532	46,980	40,595	31,623	28,059	24,486	22,036	3,600	459,578

Charge	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
(212)(a)(02)() () - Criminal and Related Grounds	40	24	3	4	6	1	1	0	5	1	0	0	85
(212)(a)(02)(A)(i) () - Crimes involving moral turpitude	9,939	10,761	11,782	12,765	11,023	9,438	7,467	6,016	5,261	4,471	4,018	565	93,506
(212)(a)(02)(A)(i)(II) - Controlled Substance Violation	8,714	9,284	10,710	10,496	9,052	7,773	6,170	4,722	4,036	3,569	3,256	491	78,273
(212)(a)(02)(B)() () - Multiple Criminal Convictions	295	320	316	288	305	268	233	188	331	311	284	37	3,176
(212)(a)(02)(C)() () - Controlled substance traffickers	3,553	3,409	3,856	3,399	2,666	2,145	1,974	1,554	1,304	1,045	834	138	25,877
(212)(a)(02)(C)(i) () - Drug Traffickers	109	28	26	25	19	23	22	29	224	404	316	79	1,304
(212)(a)(02)(C)(ii) () - Spouse or Child Obtaining any Benefit from Illicit Activity by an inadmissible Alien	5	5	2	0	4	0	0	0	3	1	1	0	21
(212)(a)(02)(D)(i) () - Prostitution and Commercialized Vice	71	50	41	45	28	23	22	12	15	8	16	1	332
(212)(a)(02)(D)(ii) () - Import of prostitutes	36	45	37	39	17	24	20	9	9	6	7	2	251
(212)(a)(02)(D)(iii)() - Engage in Other Unlawful Commercialized Vice	20	9	8	5	2	4	1	4	0	1	0	0	54
(212)(a)(02)(E)() () - Certain aliens involved in serious criminal activity who have asserted immunity from prosecution	1	1	2	0	1	1	2	2	0	2	0	0	12
(212)(a)(02)(H)(i) () - Significant Traffickers in Persons	1	1	1	0	1	3	1	2	2	1	1	1	15
(212)(a)(02)(I)(i) () - Alien who is engaged or seeks to enter the U.S. to engage in Money Laundering	21	34	37	23	25	29	20	25	21	33	23	5	296
(212)(a)(02)(I)(ii) () - Alien who has been a knowing aider, abettor, assister, conspirator or colluder with others in an offense relating to money laundering	14	19	12	12	22	24	24	14	10	11	9	4	175
(237)(a)(02)(A)(i) () - Crimes of moral turpitude	1,511	1,656	1,860	2,184	2,094	1,891	1,692	1,327	1,148	962	950	185	17,460
(237)(a)(02)(A)(i)(I) - None	22	21	30	24	27	23	23	13	7	5	8	1	204
(237)(a)(02)(A)(ii) () - Convicted of two or more crimes involving moral turpitude	2,234	2,448	3,017	3,612	3,511	3,425	2,896	2,084	1,735	1,382	1,374	213	27,931
(237)(a)(02)(A)(iii)() - Convicted of Aggravated Felony	12,627	12,827	12,902	12,557	12,421	11,786	10,785	8,590	7,765	6,940	6,009	1,022	116,231
(237)(a)(02)(A)(iv) () - Conviction relation to High Speed Flight from an immigrant checkpoint	0	0	1	0	0	0	0	1	0	0	0	0	2
(237)(a)(02)(A)(v) () - Failure to Register as a Sex Offender	0	0	0	0	0	1	1	1	2	2	1	1	9
(237)(a)(02)(B)(i) () - Controlled Substance Conviction	6,241	6,495	7,133	7,402	6,966	6,788	5,962	4,759	4,123	3,513	3,100	543	63,025
(237)(a)(02)(B)(ii) () - Narcotic/drug addict or drug abuser	34	35	30	46	30	27	24	18	16	17	10	4	291
(237)(a)(02)(C)() () - Convicted of Certain Firearm Offenses	1,158	1,108	1,287	1,496	1,322	1,312	1,162	872	659	537	499	87	11,499
(237)(a)(02)(D)(i) () - Any conviction relating to Espionage, Sabotage, Treason or Sedition for which a term of 5 or more years of imprisonment may be imposed	8	5	8	10	8	18	11	6	1	1	5	0	81
(237)(a)(02)(D)(ii) () - Any offense under Sec. 871/960 of Title 18 U.S.C.	0	0	1	1	0	0	0	0	1	0	0	0	3
(237)(a)(02)(D)(iii)() - A Violation of the Military Selective Service Act	1	0	0	0	0	0	0	0	0	0	0	1	2
(237)(a)(02)(D)(iv) () - A Violation of Sec. 215/278 of this Act	1	0	1	0	0	0	0	1	2	3	0	0	8
(237)(a)(02)(E)(i) () - Crimes of Domestic Violence, Stalking, Child Abuse, child neglect, or child abandonment	1,529	1,573	1,886	1,919	1,651	1,646	1,742	1,145	1,143	1,032	1,080	182	16,528
(237)(a)(02)(E)(ii) () - Violators of Protective Orders	199	200	258	326	331	307	340	229	236	228	235	38	2,927
Total	48,384	50,358	55,247	56,678	51,532	46,980	40,595	31,623	28,059	24,486	22,036	3,600	459,578

Adjournments by adjournment reason for hearings from FY 2007 to FY 2018 (10/1/2006 - 12/8/2017)

Adjournment Reason	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	Total
IJ Completion prior to hearing	140,382	272,712	284,669	282,070	310,153	296,036	278,044	276,332	271,483	282,026	306,141	58,590	3,058,638
ALIEN TO SEEK REPRESENTATION	70,679	67,755	74,941	80,076	84,122	78,985	81,588	81,265	110,686	130,261	136,018	20,118	1,016,494
PREPARATION--ALIEN/ATTORNEY/REPRESENTATIVE	65,133	66,217	78,182	90,079	101,039	99,840	88,099	75,292	94,581	97,910	110,699	20,064	987,135
MC TO IC--MERITS HEARING	34,943	31,147	32,682	43,275	52,369	69,938	74,197	66,543	64,738	92,859	144,656	33,604	740,951
DHS APPLICATION PROCESS - ALIEN INITIATED	40,632	53,269	57,186	55,565	54,506	45,696	42,751	32,767	33,564	36,765	40,814	8,989	502,504
OTHER ALIEN/ALIEN'S ATTY/REPRESENTATIVE REQUEST	27,952	29,869	34,480	42,498	48,086	51,543	48,055	39,429	45,650	54,251	57,740	10,794	490,347
OTHER OPERATIONAL/SECURITY FACTORS	21,623	24,123	20,741	25,098	43,351	32,964	32,549	39,531	43,453	46,215	74,664	8,676	412,988
Data Entry Error	12,740	26,194	25,357	25,670	28,607	27,409	26,497	32,029	34,380	34,480	48,480	10,033	331,876
ALIEN DELAYED RECORDS/FINGERPRINT CHECK	46,792	61,808	54,503	43,334	42,269	22,229	15,834	9,233	6,844	7,406	5,423	1,134	316,809
ALIEN RELEASED FROM DHS/CORRECTIONS CUSTODY	6,096	11,554	14,289	20,636	31,108	34,638	32,658	39,532	35,326	36,928	40,691	7,331	310,787
ALIEN TO FILE FOR ASYLUM	12,945	10,603	10,733	12,065	17,841	18,465	21,626	30,322	42,093	51,731	61,833	9,968	300,225
ALIEN TO FILE OTHER APPLICATION	16,149	17,742	19,888	24,571	29,179	31,862	30,391	24,443	21,219	22,386	27,052	6,467	271,349
DHS DELAYED RECORDS/FINGERPRINT CHECK	29,426	45,890	56,647	41,459	33,146	16,935	12,743	8,908	8,061	7,608	8,126	1,128	270,077
UNPLANNED IJ LEAVE - SICK/ANNUAL	11,214	12,603	12,987	18,134	18,970	19,885	22,356	20,838	24,197	24,581	27,703	6,756	220,224
TO ALLOW FOR SCHEDULING OF PRIORITY CASE	1,534	2,960	3,641	6,269	10,910	15,954	10,878	17,182	46,753	33,940	25,212	3,285	178,518
OTHER NO-SHOW BY ALIEN/ALIEN'S ATTORNEY OR REP.	9,000	7,981	8,850	10,098	11,109	10,042	10,472	11,650	18,672	22,232	21,832	3,988	145,926
UNPLANNED IJ LEAVE - DETAIL/OTHER ASSIGNMENT	3,795	7,759	11,802	12,383	11,309	10,273	6,862	9,837	12,892	11,439	34,695	6,686	139,732
ALIEN OR REP. REJECTED EARLIEST POSSIBLE HEARING	14,301	11,110	9,336	8,159	7,988	9,337	8,734	7,646	7,970	10,206	13,484	3,263	111,534
PREPARATION--DHS	9,078	9,887	11,375	12,399	11,705	12,586	9,904	7,233	6,308	6,655	7,562	1,672	106,364
INSUFFICIENT TIME TO COMPLETE HEARING	4,423	4,299	5,463	6,944	8,145	8,951	7,142	5,780	5,497	6,030	9,142	2,500	74,316
JOINT REQUEST OF BOTH PARTIES	2,054	1,463	1,321	1,783	3,699	11,908	12,074	10,067	8,642	8,198	4,749	848	66,806
HEARING DELIBERATELY ADVANCED BY COURT	1,082	2,591	4,146	4,756	4,704	5,749	6,169	4,942	6,330	11,010	9,972	1,461	62,912
SUPPLEMENT ASYLUM APPLICATION	6,101	5,571	4,078	4,248	6,420	4,362	3,208	3,338	4,713	7,488	9,486	2,018	61,031
ALIEN IN DHS/CORR. CUSTODY NOT PRESENTED FOR HRG.	5,739	6,688	5,795	4,534	4,850	4,606	4,156	5,738	3,188	3,040	3,619	1,339	53,292
CONSOLIDATION WITH FAMILY MEMBERS	2,633	6,537	8,999	7,430	3,370	1,562	1,617	2,321	4,135	5,651	6,455	1,275	51,985
RESERVED DECISION	358	1,001	1,548	2,133	3,129	3,954	4,833	5,432	5,183	5,291	8,358	1,943	43,163
DHS INVESTIGATION	6,755	9,105	7,217	6,017	4,221	2,040	1,336	923	725	1,215	1,942	173	41,669
DHS OR DHS ADMIN FILE UNAVAILABLE FOR HEARING	3,960	4,080	4,012	3,871	3,852	3,297	3,106	2,823	2,617	2,303	2,657	570	37,148
CONTESTED CHARGES	2,178	2,725	3,652	4,537	3,819	3,602	3,423	2,589	2,328	2,518	3,169	653	35,193
ASYLUM APPLICATION WITHDRAWN/RESET FOR OTHER ISSUE	3,067	2,137	2,613	2,685	3,262	3,788	4,441	2,552	1,781	1,880	1,811	367	30,384
NOTICE SENT/SERVED INCORRECTLY	1,837	2,232	2,087	1,788	1,687	1,742	2,074	2,736	3,958	3,538	5,063	1,138	29,880
CASE CONVERSION	21,132	8,413	183	3	0	0	0	0	1	0	0	0	29,732
Case joined to Lead-Hearing Adjourned	0	0	0	0	1,118	1,942	1,898	2,591	4,535	5,766	7,525	1,723	27,098
INTERPRETER NOT ORDERED	1,209	1,521	1,750	2,342	2,049	1,866	2,345	2,290	3,161	3,845	3,786	678	26,842
ILLNESS OF ALIEN/ATTY REP/WITNESS	1,302	1,601	2,070	2,440	2,339	2,589	2,395	1,762	1,837	2,074	2,446	684	23,539
DHS APPLICATION PROCESS - DHS INITIATED	307	237	459	688	781	784	691	849	2,393	3,924	5,053	1,791	17,957
COURT CLOSURE	0	0	0	0	0	5	73	16,649	30	9	129	78	16,973
DHS FORENSIC ANALYSIS	3,762	5,088	4,478	1,762	381	224	105	48	45	57	54	8	16,012

INTERPRETER ORDERED, BUT FTA	519	492	536	833	535	585	450	509	531	2,214	3,560	667	11,431
JUVENILE HOME STUDY	1,084	1,127	950	943	1,220	1,504	1,466	401	338	855	627	79	10,594
QUARANTINE - DETAINED CASES	893	426	1,408	1,183	646	640	612	410	450	1,612	833	61	9,174
ALIEN REQUEST FOR AN IN-PERSON HEARING	1,076	939	791	1,404	1,056	439	366	337	211	960	1,195	263	9,037
Alien Claim to U.S. Citizenship	958	1,126	1,036	835	887	835	755	508	442	334	269	51	8,036
NEW CHARGE FILED BY DHS	637	802	925	717	884	924	720	424	417	234	270	60	7,014
VIDEO MALFUNCTION	433	700	500	711	788	654	742	482	514	403	636	96	6,659
CONCURRENT APPLICATION	24	19	20	32	124	691	569	618	642	1,388	1,308	108	5,543
DHS Request for Certification of Mental Competency	134	73	63	84	401	777	1,377	1,307	638	335	290	7	5,486
Case severed from Lead-Hearing Adjourned	0	0	0	0	334	457	514	379	611	1,061	1,257	228	4,841
IJ DETERMINED AN IN-PERSON HEARING IS NECESSARY	249	287	332	334	339	340	243	253	289	240	620	109	3,635
DECISION DELAYED	70	89	207	329	196	224	274	347	338	502	668	176	3,420
IJ REASSIGNMENT	0	0	0	0	0	0	0	1	3	0	35	2,107	2,146
CANCELLATION APPLICATION 42B	23	45	74	131	133	180	239	306	185	370	237	13	1,936
VP - DHS CAUSED DELAY	2	166	320	146	196	228	86	173	127	261	108	0	1,813
JUDICIAL COMPETENCY INQUIRY	0	0	0	0	0	0	0	2	267	463	708	211	1,651
COOPERATING WITNESS/LAW ENFORCEMENT	289	310	197	117	136	97	87	57	44	34	15	1	1,384
INTERPRETER APPEARED BUT DISQUALIFIED	88	85	89	141	128	180	117	121	90	118	157	41	1,355
APPOINTMENT OF QUALIFIED REPRESENTATIVE	0	0	0	0	0	0	1	110	279	272	339	104	1,105
PENDING IJ RESPONSE TO MOTION OR REQUEST	52	126	119	148	87	84	91	96	150	81	46	21	1,101
ALIEN/ATTORNEY/REP. TO FILE BRIEF (NOT APPEAL)	73	49	62	73	49	68	92	67	85	104	130	23	875
ALIEN/ATTORNEY/REP. TO FILE OTHER APPLICATION	31	101	61	75	63	45	26	109	90	164	64	16	845
ALIEN/ATTORNEY/REP. TO FILE AN ASYLUM APPLICATION	9	10	18	12	11	10	52	142	229	142	92	95	822
STATE DEPARTMENT RESPONSE NOT IN FILE	34	64	62	104	186	80	41	59	65	53	54	0	802
EOIR FORENSIC COMPETENCY EVALUATION	0	0	0	0	0	0	0	86	135	144	241	75	681
DHS REQUEST FOR AN IN-PERSON HEARING	57	86	47	100	71	46	34	37	46	38	34	19	615
CANCELLATION APPLICATION 42A	29	37	31	28	42	40	73	86	64	35	33	8	506
JURISDICTION RESTS WITH THE BIA	27	41	47	61	60	64	34	42	37	35	38	13	499
DHS VP Date Not Accommodated - Clock Runs	0	27	93	25	28	118	65	31	12	9	2	0	410
RC TO SC MERITS HEARING	13	19	30	85	72	28	21	26	29	27	43	7	400
ALIEN/ATTORNEY/REP. TO FILE FOR ADJUST. OF STATUS	12	12	8	24	12	38	52	40	23	57	29	13	320
DHS TO FILE BRIEF (OTHER THAN FOR APPEAL)	7	18	11	24	14	16	20	19	36	48	44	11	268
ALIEN REQUESTED FORENSIC ANALYSIS	60	38	37	16	16	20	9	19	10	11	10	3	249
TECHNICAL MALFUNCTION (NOT VIDEO)	0	0	0	0	0	0	0	0	0	0	1	242	243
DHS VP Date Not Accommodated - Clock Stops	0	53	39	7	10	23	8	11	3	14	10	1	179
ALIEN/ATTORNEY/REP. TO FILE A WAIVER -- 212 (C)	6	5	3	2	6	11	28	23	26	11	27	5	153
UNPLANNED IJ LEAVE OR DETAIL ASSIGNMENT	151	0	0	0	0	0	0	0	0	0	0	0	151
ALIEN/DHS APPLICATION PROCESS	124	0	0	0	0	0	0	0	0	0	0	0	124
Hearing Advanced by Motion	0	0	0	0	0	0	0	0	5	0	4	102	111
LACK OF INTERPRETER	90	0	0	0	0	0	0	0	0	0	0	0	90
PENDING STATE DEPARTMENT RESPONSE TO ASYLUM APP.	1	0	2	4	1	1	0	0	3	2	4	56	74

ALIEN/ATTORNEY/REP TO FILE FOR REGISTRY -- 249	0	1	4	4	8	10	7	3	4	4	9	13	67
NON-FRANCO COMPETENCY INQUIRY	0	0	0	0	0	0	0	0	0	0	1	42	43
INTERLOCUTORY APPEAL	1	2	2	2	0	1	1	1	4	4	3	1	22
ALIEN/ATTORNEY/REP. TO FILE FOR SUSP. OF DEPORT.	0	0	6	1	0	0	1	1	1	0	0	0	10
REQUEST FOR AN IN-PERSON HEARING	3	0	0	0	0	0	0	0	0	0	0	0	3
RESET TO HEAR HIGHER PRIORITY CASE	2	0	0	0	0	0	0	0	0	0	0	0	2
Total	649,574	843,847	890,290	920,534	1,014,332	977,046	924,597	911,085	997,442	1,096,355	1,292,292	246,941	#####

Credible Fear Review receipts and completions from FY 2007 to FY 2018 (10/1/2006 12/8/2017)

FY	Initial Credible Fear Review Receipts	Credible Fear Review Completions
FY 2007	806	824
FY 2008	677	696
FY 2009	861	885
FY 2010	1,144	1,142
FY 2011	885	908
FY 2012	738	721
FY 2013	1,770	1,750
FY 2014	6,507	6,442
FY 2015	6,644	6,749
FY 2016	7,464	7,573
FY 2017	6,527	6,636
FY 2018	946	1,018
Total	34,969	35,344

Initial & All Other Receipts (Minus Receipts of a COV or Transfer) by Fiscal Year

Fiscal Year	Initial Receipts	COV & Transfers	All Receipts	All Receipts (Minus Receipts of a COV or Transfer)	TOTAL
FY 2007	214,337	40,065	279,407	25,005	239,342
FY 2008	226,473	40,937	291,999	24,589	251,062
FY 2009	255,973	48,411	327,934	23,550	279,523
FY 2010	248,580	53,716	326,597	24,301	272,881
FY 2011	239,302	75,518	338,741	23,921	263,223
FY 2012	214,355	83,519	319,406	21,532	235,887
FY 2013	199,411	88,734	309,493	21,348	220,759
FY 2014	238,444	105,415	364,249	20,390	258,834
FY 2015	202,305	87,962	316,560	26,293	228,598
FY 2016	238,467	98,104	365,683	29,112	267,579
FY 2017	301,288	115,480	450,296	33,528	334,816
FY 2018	41,761	20,902	68,972	6,309	48,070
TOTAL	2,620,696	858,763	3,759,337	279,878	2,900,574

Initial Case Completion Per IJ

Fiscal Year	Initial Case Completions	# of IJs*	Initial Case Completions Per IJ
FY 2009	223,123	235	949
FY 2010	213,569	233	917
FY 2011	207,699	260	799
FY 2012	186,412	251	743
FY 2013	171,386	247	694
FY 2014	166,823	234	713
FY 2015	180,870	241	750
FY 2016	186,885	278	672
FY 2017	187,243	320	585
FY 2018	34,659		#DIV/0!

Note: IJ count for FY 2009 is an estimate.

***IJ count does not include CIJs, DCIJs or ACIJs.**

In Absentia Non Detained Case Completions*

Fiscal Year	In Absentia Orders	IJ Decisions	In Absentia Rate
FY 2007	31,209	98,023	32%
FY 2008	25,806	87,719	29%
FY 2009	22,827	82,000	28%
FY 2010	24,570	90,728	27%
FY 2011	22,218	89,630	25%
FY 2012	19,365	81,591	24%
FY 2013	21,402	80,356	27%
FY 2014	26,012	74,986	35%
FY 2015	38,283	88,310	43%
FY 2016	34,307	87,149	39%
FY 2017	41,771	93,723	45%
FY 2018	8,516	18,751	45%
TOTAL	316,286	972,966	33%

*Non Detained case completions equal the sum of case completions with never detained and released custody status.

**Includes initial case completions only.

UC Initial Case Completions

Fiscal Year	UC Initial Case Completions
FY 2014	1,565
FY 2015	16,449
FY 2016	19,806
FY 2017	21,290
FY 2018	3,110
TOTAL	62,220

McHenry, James (EOIR)

From: McHenry, James (EOIR)
Sent: Tuesday, March 6, 2018 2:40 PM
To: Wetmore, David H. (ODAG); Hamilton, Gene (OAG)
Subject: FW: Vera Institute - BPA 2757.xlsx
Attachments: Vera Institute - BPA 2757.xlsx

[For discussion on Friday.](#)

BPA No. DJJ17PSSS2757, Vera Institute of Justice, Inc.

Call Order No.	Mod No.	Description	Effective Date	Completion Date	Total Obligated	Expended	Balance
DJJ17PSSC27570001	0	Legal Orientation Program (LOP) for Custodians of Unaccompanied Alien Children (UAC) The Contractor addresses the custodians responsibilities to ensure that UAC's appearance at all Immigration Court hearings and protect the UAC from mistreatment, exploitation and trafficking.	1 Aug 17	15 Jun 18	\$2,215,000.00	\$1,309,761.60	\$905,238.40
DJJ17PSSC27570002	0	LOP National Call Center schedules appointments	25 Sep 17	24 Sep 18	\$200,000.00	\$66,666.68	\$133,333.32
DJJ17PSSC27570003	1	Legal Orientation Program (LOP) The contractor informs detained respondents appearing before the court on immigration court practices, procedures, available legal options and other relevant resources available to them.	1 Aug 17	30 Apr 18	\$5,909,000.00	\$3,909,158.29	\$1,999,841.71
DJJ17PSSC27570004	0	Immigration Court Help Desk(ICH) The contractor improves the efficiency and effectiveness of EOIR Immigration Court Proceeding by informing respondents appearing before court on court practices, procedures and legal options. In 5 locations: NY, LA, San Antonio, Chicago and Miami.	1 Aug 17	31 Jul 18	\$1,000,000.00	\$491,342.52	\$508,657.48
DJJ17PSSC0005	2	Office of Legal Access Program National Qualified Representative Program (NQRP) The contractor provides legal representation and other related services via provision of Qualified Representatives to certain unrepresented individuals in custody of DHS who have been determined by EOIR to be incompetent to represent themselves in the immigration proceedings.	1 Oct 17	30 Sep 18	\$2,226,924.69	\$2,147,328.07	\$79,596.62
Totals					\$11,550,924.69	\$7,924,257.16	\$3,626,667.53


**BLANKET PURCHASE AGREEMENT
FEDERAL SUPPLY SCHEDULE
U.S. DEPARTMENT OF JUSTICE, JUSTICE MANAGEMENT DIVISION**

In the spirit of the Federal Acquisition Streamlining Act, the Department of Justice, Justice Management Division and the Vera Institute of Justice enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items and services from General Services Administration (GSA) Federal Supply Schedule Contract number GS-10F-0105N.

Federal Supply Schedule Blanket Purchase Agreements (BPA) eliminate contracting and open market costs such as: search for sources; the development of technical documents; solicitations; and the evaluation of bids and offers. Contractor Team Arrangements are permitted with Federal Supply Schedule contractors.

This BPA will further decrease costs, reduce paperwork and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the Government that works better and costs less.

Signatures:


Pamela F. Pilz
Contracting Officer

May 22, 2017
Date


Adair Iacono
Corporate Counsel

May 19, 2017
Date

Pursuant to the GSA Federal Supply Schedule contract number listed on page 1 of this agreement, the Vera Institute of Justice agrees to the following terms of a Blanket Purchase Agreement exclusively with the U.S. Department of Justice.

1. BPA SERVICES AND PRICES:

(a) The services to be performed under this BPA are legal orientation and representation services for the Executive Office for Immigration Review (EOIR). The unit prices in the Attachment (1) pricing table shall be fixed for the specified period (fiscal year) unless a price reduction(s) is effected via formal modification by mutual agreement between the Contractor and the Contracting Officer. Task orders issued against this BPA will be issued on a firm fixed-price, labor hour, or time and materials basis. All task orders issued against this BPA are subject to the terms and conditions of the Contractor's GSA schedule contract and this BPA.

(b) The following definitions apply to the pricing table:

(1) Hourly Rate. All hourly rates must be fully loaded rates that include all costs (including indirect costs) and profit necessary to provide the level of service specified in the BPA and/or task order. The hourly rates specified in the pricing table apply to work performed on the Government site and the Contractor site.

(2) Multiplier. The factor to be applied against the actual cost of any Other Direct Cost (ODC) item to cover administrative handling expenses. The multiplier is to be applied against the actual cost of an ODC for which reimbursement has been authorized. The billable amount shall be limited to the actual cost plus the amount resulting from the application of the appropriate multiplier identified in the table (e.g., actual cost of item is \$100.00, and multiplier for the CLIN is 1.02, the total billable amount is \$102.00). For subcontracted items/services, the multiplier shall only be applied one time. For example, a subcontractor might be required to travel. It is not permissible for the subcontractor to apply a markup to the travel costs in billing the prime contractor, and then for the prime contractor to apply another markup when billing the Government. The multiplier may only be applied once, and must be applied to the original cost of the item.

(c) Travel. As a general rule, local travel will not be reimbursed under this BPA. Examples of local travel which will not be subject to reimbursement are: travel to and from normal job site; supervisory personnel traveling to a Government site or alternative facility to oversee operations. Personnel temporarily working at a Government site or alternative facility will consider such facility his/her normal job site. All reimbursable long distance travel shall be approved in advance by the Contracting Officer's Representative (COR). Reimbursement for actual (approved) travel costs incurred during the performance of support services shall be in accordance with Part 31 of the Federal Acquisition Regulations. Travel requirements under this BPA shall be met using the most economical form of transportation available. If economy class transportation is not available, the Contractor must submit (to the COR) a request for advance approval to utilize higher class travel. All travel should be scheduled sufficiently in advance to be able to take advantage of offered discount rates. Individual travel authorization letters may be provided to the Contractor (for all Contractor personnel who are required to travel) which may allow Contractor personnel to receive Government rates when on long distance travel. The Department encourages advance airfare purchases to take advantage of supersaver discounts. If the trip is canceled or travel dates are changed due to the Government's actions, the Government will, absent special circumstances, pay airline cancellation charges or airline charges for changes in the travel dates.

2. STATEMENT OF WORK

2.1 Introduction

The Executive Office for Immigration Review (EOIR) has a requirement for the following non-personal services for individuals who are, or may be, placed in immigration removal proceedings and appear before the EOIR Immigration Court:

- (a) legal orientation programs for detained alien adults and for the custodians of unaccompanied alien children,
- (b) direct legal representation programs for certain unaccompanied alien children and detained alien adults, and
- (c) immigration court helpdesk programs for non-detained individuals.

2.2 Background

(a) EOIR was established in January 1983. Under delegated authority of the Attorney General of the United States, EOIR administers and interprets Federal Immigration laws and regulations through the conduct of immigration court proceedings, appellate reviews, and administrative hearings in individual cases. EOIR carries out these responsibilities through its three main components:

- (1) The Office of the Chief Immigration Judge (OCIJ), which oversees all the immigration courts and their proceedings throughout the United States;
- (2) The Board of Immigration Appeals (BIA), which hears appeals of decisions made in individual cases by Immigration Judges, District Directors of the Department of Homeland Security (DHS), or other immigration officials; and
- (3) The Office of the Chief Administrative Hearing Officer (OCAHO), which resolves cases concerning employer sanctions, document fraud, and immigration-related employment discrimination.

(b) The Office of the Chief Immigration Judge oversees and directs the activities of immigration courts throughout the United States. Immigration courts are located in federal buildings, private buildings, correctional institutions, and DHS-operated/contracted detention centers. Immigration judges conduct immigration hearings at these courts, and at designated 'detail' sites, to resolve various immigration matters.

(c) Although there are various types of immigration proceedings before the court, the vast majority are Removal proceedings, which are scheduled as either Master Calendar or Individual Hearings. In Master Calendar hearings, Immigration Judges are required to ensure that aliens proceeding pro se have a clear understanding of the charges against them, their procedural rights during the hearing process, and their options for relief. In addition, Immigration Judges attempt to provide adequate time for pro se aliens to assemble facts, documents, and witnesses which may be helpful in the aliens' pursuit of relief from removal. As a result, the additional time required by detained pro se aliens often places a great burden on the court's dockets and reduces the efficiency of the Master Calendar hearing process.

(d) In FY 2002, Congress appropriated \$1 million to the Department of Justice to carry out "legal orientation programs." These programs were to be used "for nongovernmental agencies to provide live

presentations to persons in INS [DHS] detention prior to their first hearing before an immigration judge.” Presentations were to include essential information about immigration court procedures and the availability of legal remedies to assist detainees in distinguishing between meritorious cases and frivolous cases. These funds were transferred to EOIR, which used the funds to implement the Legal Orientation Program (LOP) at six immigration detention sites: Port Isabel, Texas; Batavia, New York; Eloy, Arizona; Tacoma, Washington; Lancaster, California; and Aurora, Colorado.

(e) Following the success of the LOP for detained adults, in 2009, Congress appropriated funds for EOIR to establish, with the cooperation of the Secretary of Health and Human Services (“HHS”), legal orientation presentations for custodians of Unaccompanied Alien Children (UACs). Subsequently, in October 2010, EOIR rolled out the Legal Orientation Program for Custodians of Unaccompanied Alien Children (LOPC).

(f) As a result of additional funding from Congress, EOIR is presently carrying out the LOP at forty-one (41) sites, and is carrying out the LOPC at fifteen (15) sites in addition to operating a National LOPC Call Center in New York City.

(g) In FY 2014, EOIR launched pilot programs to promote innovation in immigration court efficiency by improving the level and quality of legal representation for vulnerable populations and protecting children from mistreatment, exploitation, and trafficking. These programs focused on two groups of individuals – unaccompanied alien children and adult detainees in ICE custody who are mentally incompetent to represent themselves in immigration proceedings. For unaccompanied alien children, EOIR is currently carrying out the Baltimore Representation Initiative for Unaccompanied Children as well as the Remote Access Initiative in multiple areas of the U.S. Southeast. For mentally-incompetent detained aliens, EOIR is currently carrying out the National Qualified Representative Program.

(h) In FY 2016, with specific funding from Congress, EOIR launched the Immigration Court Helpdesk (ICH) Program to serve non-detained aliens in immigration court proceedings. The primary purpose of the ICH is to orient non-detained aliens appearing before the immigration court on the removal hearing process and to inform them about possible remedies and legal resources. In selecting sites, the ICH prioritizes those immigration courts with the highest backlog of cases. ICH services include in-person information sessions, group information sessions, self-help assistance to individuals without counsel, and information on available pro bono resources to unrepresented individuals. The ICH is currently operational in five immigration courts: Chicago, Los Angeles, Miami, New York City, and San Antonio.

(i) Appendix (2) provides a list of current sites where the different programs exist. The Government may consider the following factors prior to adding new Program sites:

FOR LOP:

- (1) Stability of population size and nationality/language demographic in EOIR removal proceedings during period of performance;
- (2) Percentage of facility used to house immigration detainees in EOIR removal proceedings;
- (3) Representation rate for detained aliens in EOIR removal proceedings;
- (4) Budget justification for program based on the size of the target detained population;

- (5) Presence of logistical and/or security-related concerns that could undermine the program operation plan;
- (6) Ability of detention facility to implement identified changes in its practice and procedures necessary to implement the program operation plan;
- (7) Geographic diversity of selected detention sites;
- (8) Ability to serve gaps in coverage of an immigration court.

FOR LOPC:

- (1) Size of UAC population in EOIR removal proceedings at local immigration court;
- (2) Number of custodians reunified with UAC in the geographic area of the local immigration court.
- (3) Representation rate for UACs in EOIR removal proceedings at local immigration court;
- (4) Budget justification for program based on the size of the target population;
- (5) Presence of logistical and/or other obstacles that could undermine the program operation plan.

FOR ICH:

- (1) Backlog of cases at local immigration court, as determined by:
 - (A) Total pending cases per court
 - (B) Average pending cases per immigration judge
 - (C) Average age of non-detained case;
- (2) Representation rate for non-detained individuals in EOIR immigration proceedings at local immigration court;
- (3) Budget justification for program based on the size of the target population;
- (4) Presence of logistical and/or other obstacles that could undermine the program operation plan.

FOR LEGAL REPRESENTATION PROGRAMS:

- (1) Size of the target population in EOIR removal proceedings at local immigration court;
- (2) Representation rate for target population in EOIR removal proceedings at local immigration court;
- (3) Budget justification for program based on the size of the target population;

- (4) Presence of logistical and/or other obstacles that could undermine program operations.

2.3 Scope of Services

The Contractor shall provide non-personal legal orientation program services and direct legal representation services necessary to meet the requirements of EOIR as specified herein. All work and services shall be performed in accordance with the terms and conditions of the Contractor's General Services Administration's Federal Supply Schedule (FSS) contract, this BPA, and task orders issued under this BPA. The primary users of this BPA are expected to be EOIR representatives; however, other components of the DOJ may also make use of this BPA.

2.4 Project Management and Staffing

2.4.1 Management

The Contractor shall provide all management, administration, staffing, planning, scheduling, etc., for all items and services required by the BPA and individual task orders issued against the BPA. The Contractor is solely responsible for supervising all of its employees and the duties described below:

- (1) Recruiting, hiring, training, and professional development of personnel.
- (2) Providing effective supervision of all contractor employees.
- (3) Monitoring service problems and keeping the COR and designated Government officials informed of project status and problem resolution.
- (4) Providing monthly status and financial reports to the Government in an agreed upon format.
- (5) Ensuring that deliverables are supplied to the Government, as defined in Section 2.4.3.
- (6) Ensuring that all personnel comply with the security requirements outlined in this BPA.

2.4.2 Staffing

(a) The Contractor shall provide trained, experienced staff to perform the work specified under individual orders issued against this BPA. The Contractor shall continuously monitor, manage, and control the work to ensure it is successfully accomplished. The Contractor shall make its best effort to retain staff members who have gained experience on this BPA, and to minimize staff turnover. The Contractor shall ensure that all personnel who perform under this BPA meet the security requirements of Section 11.

(b) The Government reserves the right to review the qualifications of all staff (to include subcontractor staff) selected to work on any given task order before assignment. During the period of performance associated with any task order under this BPA, the Contractor shall submit resumes for any individuals being added to the BPA staff (not including subcontractor staff) or replacing a member of the BPA staff (not including subcontractor staff). These individuals must be fully qualified for the relevant position. Resumes shall be pre-screened through the Contractor prior to submitting them for Government review. Each resume shall include past employment positions and a brief description of the experiences, dates, and names of one or more references, including addresses and telephone numbers where available.

(c) The Government reserves the right to request the Contractor to reassign Contractor personnel whose services are no longer required by the Government for such reasons as quality of performance, changes in project requirements, etc. An official request for such a reassignment will be provided to the Contractor in writing by the ACO.

2.4.3 Deliverables

(a) All reports required under this BPA shall be delivered to the COR as shown below. This list of reports is not exhaustive; additional reports shall be delivered as required by the COR.

(b) Unless otherwise defined in advance, the Contractor's format for all documentation deliverables is acceptable.

(c) The Contractor shall attend any briefings, other meetings, and/or on-the-job training provided by the Government. Briefings are normally held during normal working hours.

2.4.3.1 Management Plan

The Contractor shall implement and update the Management Plan delineated in the Contractor's quotation for the legal orientation programs and the legal representation programs. The Contractor's Management Plan shall, at a minimum, address the following:

- (1) Lay out the organization and infrastructure the Contractor has in place to manage the day-to-day operations necessary to meet the BPA requirements, including the Contractor's chain of command, points of contact, problem notification procedures and problem response times, problem escalation procedures, and any other processes or procedures the Contractor has in place to facilitate performance;
- (2) Establish a schedule for completion of all required tasks;
- (3) Emphasize a "team" approach between the Contractor and subcontractors carrying out the programs at the local level, with the Contractor serving as leader of such team.

2.4.3.2 Program Operation Plan

(a) Program Operation Plan (POP). The Contractor, in consultation with the COR, shall provide a POP for each program carried out by a subcontractor at a local program site prior to the start of operation at each program site, or within a time frame agreed upon by the parties if the particular program site is a new addition to the task order. The POP shall include:

- (1) Start date (if different from task order start date)
- (2) Structure and schedule of group orientations and individual orientations (LOP and LOPC only)
- (3) Structure and schedule of self-help workshops (LOP and LOPC only)
- (4) Structure and schedule of any "post release" LOPC Services (LOPC only)
- (5) Structure and schedule of any group sessions and individual sessions (ICH only)
- (6) Pro Bono Plan
- (7) Proposed local management plan, to include staffing and supervision along with labor categories and hours

- (8) Proposed plan to implement a system whereby cases are accepted for legal representation as early in immigration proceedings as feasible, and in a manner not based on potential eligibility for relief from removal, consistent with the terms of this BPA (UAC Legal Representation Programs only)
- (9) Proposed capacity and/or plan for determining ongoing capacity of contract attorneys (Legal Representation Programs only)

(b) Implementation. The Contractor shall coordinate with the COR and on-site representatives to implement the programs at each detention site, location, or designated contract site, as they apply to each program. "On-site representatives" may include officials from the DHS, Immigration and Customs Enforcement, EOIR, or other individuals deemed necessary by the COR. The Contractor shall coordinate with these officials for the scheduling of legal orientation presentations, the use of facilities, and the exchange of information on aliens served.

(c) Site Monitoring and Evaluations. The Contractor shall perform an annual evaluation of each program site, which may include in-person site visits, as specified in each individual task order, and shall include at a minimum: i) collection and review of data evaluating the level and quality of services provided, and ii) the impact of such services on the goals of the program to determine the performance of each local program site

(d) For each program, the Contractor shall facilitate a Monthly Conference Call conducted between the COR and each Program Director.

2.4.3.3 Quarterly Progress Report

The Contractor shall submit a quarterly program management progress report to the COR. The first quarterly progress report shall be delivered electronically to the COR by the 15th calendar day of the fifth month of BPA performance with all subsequent progress reports to be provided in three-month increments. The quarterly reports shall discuss at a minimum:

- (1) Summary of activities that were performed and/or occurred during the previous quarter to include, but not be limited to, a description of the effort and cost.
- (2) Results of site evaluations for any site inspections conducted within the previous quarter;
- (3) The progress to date on any new programs compared with the plan and time schedule;
- (4) Any information which the Contractor believes would impact the time schedule for major actions.
- (5) For the legal orientation programs: The number of group and individual orientations made and self-help workshops conducted over the past quarter and cumulatively; the number of individuals served (by attending a group orientation, individual orientation and self-help workshop) over the past quarter and cumulatively; the number of pro

bono referrals made over the past quarter and cumulatively; and other data as deemed necessary by the Government;

- (6) For the legal representation programs: the number of individuals represented over the past quarter and cumulatively; the number of pro bono referrals made over the past quarter and cumulatively; and other data as deemed necessary by the Government.
- (7) For the immigration court helpdesk programs: The number of group and individual sessions provided and self-help workshops conducted over the past quarter and cumulatively; the number of individuals served (by attending a group session, individual session, and self-help workshop) over the past quarter and cumulatively; the number of pro bono referrals made over the past quarter and cumulatively; and other data as deemed necessary by the Government.

2.4.3.4 Other Deliverables.

Other deliverables will be specified in individual task orders and may include, but are not limited to:

- (1) Legal Orientation Programs Training – The Contractor shall provide training for all essential participants in the legal orientation programs, including Contractor presenters and key management staff. The Contractor shall also provide training to Government-contracted personnel (e.g. DHS-contracted staff, HHS-contracted caseworkers and field coordinators) and other Government representatives as determined by the COR. This training may be provided through any or all of the following means:
 - (A) Legal orientation programs Training Manuals – When training manuals are produced, they shall be updated as needed.
 - (B) Annual Conference - to include all essential staff.
 - (C) Local On-Site Training Programs (OSTP) – for new presenters and key management staff.
 - (D) Conference calls, webinars, or other remote learning methods can be used to supplement other training methods.
- (2) Written and/or Recorded Legal Orientation Materials – In consultation with the COR, the Contractor shall develop appropriate written and/or recorded legal orientation materials for use by all sites, as requested.
- (3) Program Evaluation Reports – The Contractor shall provide Program Evaluation Reports for each program on a quarterly and/or annual basis as determined by each task order's period of performance. The Program Evaluation Reports shall include a detailed description of services performed and provide recommendations on the use of outcome information for continuous improvement of each program. The evaluation of program outcomes shall include analysis on how the particular program task order as well as each program task order site has met the stated goals (see Attachment (3)) of the program.

- (4) Facilitate monthly conference calls between the Government, the Contractor and the subcontractors, as specified in each respective task order, to discuss local program performance.
- (5) Ad hoc requests – If requested by the COR, the Contractor shall provide other documentation to include, but not be limited to, policies, directives, manuals, orders, operating procedures, guidelines, white papers, data reports, and administration suggestions.

2.5 Requirements

2.5.1 Legal Orientation Program for Adults

(a) The Contractor shall implement and oversee Legal Orientation Programs for detained adult aliens who are, or may be placed, in EOIR Immigration Court proceedings at sites designated by the COR. As specified in each task order issued against this BPA, the Contractor shall furnish the services described below at each site cited in Attachment (2). The services described herein shall be performed by on-site presenters, who must either be a licensed attorney or BIA Accredited Representative, or a legal assistant/paralegal, law student, law school graduate, or other trained volunteer working under the direct supervision of such licensed attorneys or Accredited Representatives.

(1) Group Orientations – The Contractor shall:

- (A) Arrange for suitable space in which to conduct the group orientations, which may include the EOIR Immigration Court or other space within the detention facility. Where a contract detention facility or state or county jail is involved, EOIR will make its best effort to facilitate access to a suitable space.
- (B) Review in advance available information on individuals scheduled to attend the group orientation in order to make necessary preparations for the orientation.
- (C) Provide group orientations to all detained aliens, who are or may be placed in immigration removal proceedings (as proposed in each site's POP and with reasonable exceptions to be approved by the COR), prior to their initial Master Calendar Hearing in the Immigration Court. Additional group orientations may be provided to detained aliens prior to subsequent hearings. Group orientations shall review the range of rights available to detained aliens in immigration proceedings, and alert these individuals to their alternatives or the lack thereof.
- (D) Follow the general structure of the group orientation as provided in the EOIR Legal Orientation Program Manual. The presenters shall respond to general concerns of the individuals in group question and answer periods held during the group orientations.
- (E) Conduct group orientations in the language most appropriate for the majority of detained aliens present at the orientation. If a detained alien does not understand the language in which the group orientation is conducted, the presenter shall provide an interpreter or written or recorded orientation materials in a language understood by the detained alien. EOIR will not provide interpreters for the purpose of the group orientation.

- (F) State at the beginning of each group orientation that the presenter is not the attorney or representative of the detained aliens, and that the views expressed by the presenter do not necessarily represent the views of EOIR, the Department of Justice, or the United States Government. In addition, the presenter shall not, in any manner, either speak, or appear to speak, on behalf of EOIR, the Department of Justice, or the United States Government.
- (G) Distribute to individuals at the orientation appropriate written legal orientation and other relevant and informative materials, as well as make available any relevant recorded materials. All such materials intended for distribution under this agreement must be preapproved by the COR.

(2) Individual Orientations – The Contractor shall:

- (A) Provide individual orientations when requested by unrepresented individual detained aliens and as specified in the POP. The individual orientations are intended to assist individuals in understanding their legal situations. The presenters may respond to specific concerns and questions of an individual regarding matters of immigration law and procedure. Individual orientations should be distinguishable from consultations with legal representatives to avoid the appearance of providing representation to the individuals.
- (B) Explain to all aliens receiving an individual orientation that the presenter is not their attorney or representative. In addition, the presenter shall not, in any manner, either speak, or appear to speak, on behalf of EOIR, the Department of Justice, or the United States Government. The presenter shall also obtain written acknowledgment from each individual stating, in effect, that the individual (a) understands the presenter is not his/her attorney or representative, (b) has voluntarily given his/her information, and (c) understands there is no guarantee of pro bono representation in the individual's case.
- (C) Conduct the individual orientation in the language most appropriate for the alien. EOIR will not provide interpreters for the purpose of the individual orientation.
- (D) Distribute to individuals at the orientation appropriate written legal orientation and other relevant and informative materials, as well as make available any relevant recorded materials. All such materials intended for distribution under this agreement must be preapproved by the COR.

(3) Self-help workshops

The Contractor shall provide self-help workshops in accordance with the POP for unrepresented individuals interested in pursuing relief from removal (including voluntary departure), custody redetermination, or subject to special procedures (e.g. Temporary Protected Status, reinstatement of a previous order of removal/deportation, "reasonable fear" or "credible fear" proceedings, and aliens eligible for post-removal order review). The purpose of the self-help workshop is to inform and assist small groups of individuals in understanding the relevant law

and procedures to be followed in pursuing particular forms of relief, custody redetermination, or in understanding special procedures in place, that may apply to their own legal situation. The Contractor shall design course syllabi for the most common types of self-help workshops. The list of syllabi, and their deadlines for development, shall be contained in the Legal Orientation Materials and Self-Help Workshop Development Plan.

(4) Development of Pro Bono Plans

The Contractor shall promote and facilitate pro bono representation for detained aliens. This plan shall be developed in consultation with the COR, and included in the POP.

(5) Additional Tasks (in support of the sites)

- (A) The Contractor shall report to the COR any problems that arise related to the performance of any tasks within this Statement of Work, and will consult with the COR regarding resolution of such problems.
- (B) The Contractor shall coordinate with the COR to conduct visits of each designated site by EOIR and the Contractor to monitor performance and provide feedback regarding observed performance.
- (C) The Contractor shall make available to the public on the internet all relevant self-help legal materials currently in use by the sites and relevant written training conference materials.

(b) The Contractor shall provide additional services, which may include social services, legal representation, or other assistance to address the special needs of individuals, as determined by the COR.

2.5.2 Legal Orientation Program for Custodians

(a) The Contractor shall implement and oversee Legal Orientation Programs for Custodians of Unaccompanied Alien Children (LOPC). Under the LOPC, the Contractor shall provide legal orientation presentations for custodians of an Unaccompanied Alien Child ("UAC") (as defined by Section 462 of the Homeland Security Act of 2002). A "custodian" is an individual seeking custody of a UAC in the care of the Department of Health and Human Services (HHS), or an individual who already has custody of a child who was formerly a UAC in HHS care. The LOPC will address the custodians' responsibilities to ensure, as best as possible, the UAC's appearance at all Immigration Court hearings, and to protect the UAC from mistreatment, exploitation and trafficking.

(b) As specified in individual BPA task orders, the Contractor shall furnish the services specified below at each site cited in Attachment (2). The services described herein shall be performed by on-site presenters, who must either be a licensed attorney or BIA Accredited Representative, or a legal assistant/paralegal, law student, law school graduate or other trained volunteer working under the direct supervision of such licensed attorneys or Accredited Representatives.

(1) Group and/or Individual Orientations. The Contractor shall:

- (A) Provide group and/or individual orientations to custodians at the designated sites as specified in the POP, prior to the UAC's initial Master Calendar

hearing at the Immigration Court, regardless of the UAC's representation status. Orientations shall be provided in person, except in limited circumstances, to be approved by the COR, in which telephonic individual orientations may be provided. Orientations shall review the range of rights available to UACs, as well as the responsibilities of UACs and their respective custodians throughout the immigration adjudication process, including appearance at all immigration hearings. The orientations shall also review the applicable laws and programs intended to protect UACs from mistreatment, exploitation and trafficking, and inform the custodians of available resources to assist UACs in this respect. Presenters may respond to specific concerns and questions of the custodians, regarding matters of immigration law and procedure.

- (B) Arrange for suitable space in which to conduct the group orientations, which may include space within the Contractor's offices, the Immigration Court, the HHS-contracted Children's Shelter, or other locations generally accessible to the custodians.
- (C) Review in advance available information on UACs and their respective custodians in order to make necessary preparations for the orientations.
- (D) Conduct all group and individual orientations following the general structure of the group and individual orientations as designed by the EOIR Office of Legal Access Programs and contained in the Legal Orientation Program for Custodians Training Manual.
- (E) Conduct individual orientations in the language most appropriate for the custodian, and group orientations in the language most appropriate for the majority of the custodians present. If a custodian does not understand the language in which the group orientation is conducted, the Contractor shall provide interpreters, or written or recorded orientation materials in the language understood by the custodian. The Government will not provide interpreters for the purpose of the orientations.
- (F) Explain at the beginning of each group orientation that the presenter is not the attorney or representative of the custodian or UAC, and that the views expressed by the presenter do not necessarily represent the views of EOIR, the Department of Justice, or the United States Government. In addition, the presenter shall not, in any manner, either speak or appear to speak, on behalf of EOIR, the Department of Justice, or the United States Government. The presenter shall also obtain written acknowledgment from each custodian stating, in effect, that the custodian (a) understands the presenter is not the attorney or representative of the custodian or his/her UAC, (b) has voluntarily given his/her information, and (c) understands there is no guarantee of pro bono representation in the UAC's case.
- (G) Distribute to custodians at the orientations appropriate and informative written materials, as well as make available any relevant recorded materials. All such materials intended for distribution under this agreement must be preapproved by the COR.

- (H) Provide post-release LOPC services in accordance with the POP, for custodians of unrepresented UACs who are interested in assisting their respective UACs in pursuing relief from removal (including voluntary departure), preparing for an immigration hearing or asylum interview, and/or protecting the UAC from mistreatment, exploitation, and trafficking. The post-release LOPC services can take the form of follow-up individual orientations, self-help workshops, or pro bono referrals [as discussed in paragraph (b) below]. Self-help workshops are intended to inform and assist small groups of custodians and their respective UACs in understanding the relevant laws and procedures to be followed by the UAC in pursuing particular forms of relief or in understanding special procedures in place that may apply to the UAC's legal situation. The Contractor shall design written materials to assist custodians and their respective UACs for the most common types of post-release LOPC services.
- (2) Pro Bono Referral Plan. The Contractor shall develop a Pro Bono Referral Plan to promote and facilitate pro bono representation for UACs who are released to custodians. Elements of the plan shall discuss: screening of children for pro bono referrals, outreach to pro bono attorneys, referrals to pro bono attorneys following specific case selection criteria, training and mentoring of pro bono attorneys, and evaluation of pro bono activities. This plan shall be developed in consultation with the COR, and included in the POP.
- (3) The Contractor shall implement, in coordination with the COR, a system for measuring the performance of the LOPC against its stated goals. To this end, the Contractor shall collect program data in different areas, which include but are not limited to the following areas:
 - (A) Number of UAC Custodians served
 - (B) Follow-up services provided to UAC Custodians (e.g., additional orientations, placement of UAC cases with pro bono counsel, self-help workshops, referral to non-legal resources)
 - (C) Number of UAC represented by counsel
 - (D) Number of UAC who fail to appear for their hearings
 - (E) Applications for relief submitted by UAC (e.g. Asylum/Withholding).
- (d) The Contractor shall examine, in coordination with the COR, such issues as:
 - (1) The timeliness of the LOPC with respect to the reunification with the Custodian
 - (2) The best steps for expanding the LOPC to other sites, developing best practices for program operation, and analyzing the level and quality of coverage
 - (3) Other performance measurements deemed necessary by the COR.
- (e) Additional Tasks (in support of the sites) are as follows:

- (1) The Contractor shall report to the COR any problems that arise related to the performance of any tasks in this Statement of Work, and will consult with the COR regarding resolution of such problems.
- (2) The Contractor shall coordinate with the COR to conduct visits of each designated site by EOIR and the Contractor to monitor performance and provide feedback regarding observed performance.
- (3) The Contractor shall provide additional services, which may include social services, legal representation, or other assistance to address the special needs of individuals, as determined by the COR.

2.5.3 Legal Representation Programs for Unaccompanied Alien Children

(a) The Contractor shall implement and oversee legal representation programs to provide legal representation and other related services to certain unaccompanied alien children in removal proceedings before specific EOIR Immigration Courts throughout the United States (as identified by the Government). As specified in each individual task order, EOIR may further restrict the eligibility for representation, for example to only those unaccompanied alien children who: (a) are under the age of 18, (b) have been released from the custody of the Office of Refugee Resettlement (ORR), (c) have been served by a Notice to Appear in immigration proceedings before the specific Immigration Court, and (d) have not had their cases consolidated with immigration proceedings against an adult parent or legal guardian. The Contractor shall furnish the following legal representation services at each site cited in Attachment (2):

- (1) Representation in immigration proceedings before the EOIR Immigration Court;
- (2) Representation in appellate proceedings before the BIA if the unaccompanied UAC was represented at the Immigration Court by the subcontractor's attorneys under the terms of this BPA;
- (3) Representation in any work directly relating to subsections (1) and (2) above before U.S. Citizenship & Immigration Services;
- (4) Representation in any work directly relating to subsections (1) and (2) above in state court proceedings;
- (5) Other related services reasonably necessary to complete the immigration proceedings in (1) and (2) above:

(b) Immigration proceedings will not include any claims, litigation, or other proceedings before federal district courts, circuit courts of appeals, or the Supreme Court.

2.5.4 Legal Representation Programs for Adults

(a) The Contractor shall provide legal representation and other related services to certain unrepresented adults, such as those in the custody of the Department of Homeland Security ("DHS") who are in immigration proceedings and who are determined by the EOIR to be incompetent to represent themselves in their immigration proceedings. Specific tasks to be performed include, but are not limited to, the following:

- 1) The Contractor shall provide legal representation via provision of a Qualified Representative, defined as a licensed attorney, a law student or law graduate directly supervised by a licensed attorney, or a DOJ Accredited Representative, as set forth in 8 C.F.R. §1292.1) in the following:
 - a) Immigration proceedings prior to entry of a final administrative order or determination, as follows:
 - (1) Immigration and Nationality Act Section 240 removal proceedings before the Immigration Court;
 - (2) Custody redetermination (i.e., bond) proceedings before the Immigration Court;
 - (3) Immigration Court “asylum only” and “withholding only” removal proceedings pursuant to 8 C.F.R. §1208.2;
 - (4) Appellate proceedings before the Board of Immigration Appeals (“BIA”);
 - b) The Contractor shall provide legal representation in any custody redetermination or review proceeding before EOIR that occurs after an order of removal has become administratively final (not to include any such proceeding before an Article III court).
 - c) The Contractor shall provide legal representation in any case-related work directly relating to Section 2.5.4(a)(1)(a) or (b), above, before United States Citizenship and Immigration Services (“USCIS”).
 - d) The Contractor shall provide legal representation in any motions to reopen and/or reconsider directly relating to representation in Section 2.5.4(a)(1)(a) through (c) above.
 - e) The Contractor shall provide legal representation to obtain post-conviction relief directly relating to Section 2.5.4(a)(1)(a) through (d) above.
- 2) The Contractor shall provide other related services necessary to complete the immigration proceedings listed in Section 2.5.4(a) (a) through (e) above and/or a “release plan” for release from DHS custody.

2.5.5 Immigration Court Helpdesks for Non-Detained Individuals

(a) The Contractor shall establish and oversee immigration court helpdesks (ICH) at immigration court locations determined by the Government to orient non-detained individuals appearing before certain immigration courts on the removal hearing process and to inform non-detained individuals about possible remedies and legal resources.

(b) As specified in individual task orders, the Contractor shall furnish the services specified below at each site cited in Attachment (2). The services described herein shall be performed by on-site presenters, who must either be a licensed attorney or BIA Accredited Representative, or a legal assistant/paralegal, law student, law school graduate, or other trained volunteer working under the direct supervision of such licensed attorneys or Accredited Representatives.

- (1) Group Sessions – The Contractor shall perform the following tasks:

- (A) In consultation with the COR, arrange for suitable space in which to

conduct the group sessions.

- (B) Conduct group sessions, which shall review the immigration court removal hearing process, possible remedies in immigration court, and legal resources locally available. The presenters shall respond to general concerns of the individuals in group question and answer periods held during the group orientations.
- (C) Conduct group sessions in the language most appropriate for the majority of individuals present at the session. If an individual does not understand the language in which the group session is conducted, the presenter shall provide an interpreter or written or recorded materials in a language understood by the individual. The Government will not provide interpreters for the purpose of the group sessions, but will provide advance information to the Contractor on the anticipated language needs of those eligible to attend the sessions.
- (D) State at the beginning of each group session that the presenter is not the attorney or representative of the individuals, and that the views expressed by the presenter do not necessarily represent the views of EOIR, the Department of Justice, or the United States Government. In addition, the presenter shall not, in any manner, either speak, or appear to speak, on behalf of EOIR, the Department of Justice, or the United States Government.
- (E) Distribute to individuals at the session appropriate written, legal, and other relevant and informative materials, as well as make available any relevant recorded materials. All such materials intended for distribution at the group sessions must be preapproved by the COR.

(2) Individual Sessions – The Contractor shall perform the following tasks:

- (A) Provide individual sessions when requested by unrepresented individuals and as specified in the POP. The individual sessions are intended to assist individuals in understanding their legal situations. The presenters may respond to specific concerns and questions of an individual regarding matters of immigration law and procedure. Individual sessions should be distinguishable from consultations with legal representatives to avoid the appearance of providing representation to the individuals.
- (B) Explain to all aliens receiving an individual session that the presenter is not their attorney or representative. In addition, the presenter shall not, in any manner, either speak, or appear to speak, on behalf of EOIR, the Department of Justice, or the United States Government. The presenter shall also obtain written acknowledgment from each individual stating, in effect, that the individual (a) understands the presenter is not his/her attorney or representative, (b) has voluntarily given his/her information, and (c) understands there is no guarantee of pro bono representation in the individual's case.
- (C) Conduct the individual session in the language most appropriate for the alien. EOIR will not provide interpreters for the purpose of the individual session.

- (D) Distribute to individuals at the session appropriate written, legal, and other relevant and informative materials, as well as make available any relevant recorded materials. All such materials intended for distribution at the individual sessions must be preapproved by the COR.

(c) Self-help workshops - The Contractor shall provide self-help workshops in accordance with the POP for unrepresented individuals interested in pursuing relief from removal (including voluntary departure), or who are subject to special immigration procedures. The purpose of the self-help workshop is to inform and assist small groups of individuals in understanding the relevant law and procedures to be followed in pursuing particular forms of relief, or in understanding special procedures in place that may apply to their own legal situation. The Contractor shall design course syllabi for the most common types of self-help workshops. The list of syllabi, and their deadlines for development, shall be contained in the Immigration Court Helpdesk Materials and Self-Help Workshop Development Plan.

(d) Development of Pro Bono Plans - The Contractor shall promote and facilitate pro bono representation for non-detained aliens. This plan shall be developed in consultation with the COR, and included in the POP.

(e) The Contractor shall perform the following additional tasks (in support of the sites):

- (1) The Contractor shall report to the COR any problems that arise related to the performance of any tasks within this Statement of Work, and will consult with the COR regarding resolution of such problems.
- (2) The Contractor shall coordinate with the COR to conduct, at a minimum, bi-annual visits of each designated site by EOIR and the Contractor to monitor performance and provide feedback regarding observed performance.
- (3) The Contractor shall make available to the public on the internet all relevant self-help legal materials currently in use by the sites and relevant written training conference materials.

2.6 Quality Control

The Contractor shall perform quality control pursuant to the Quality Assurance Plan originally submitted in its pre-award quotation. The Contractor's Quality Assurance Plan shall provide a detailed description of the quality assurance measures employed to meet all of the requirements of this BPA. The Contractor shall maintain and update its Quality Assurance Plan as necessary; however, any changes to the plan must be approved by the Government before being implemented.

2.7 Phase-In

The continuing provision of legal orientation and representation services specified herein is essential to continuity of the program. Therefore, it is critical that the transition from the current operation to a new BPA be accomplished in a well-planned, orderly and efficient manner. The Contractor shall be responsible for the phase-in of Contractor personnel and the assumption of ongoing tasks utilizing the transition plan provided by the contractor in its quotation. Phase-in activities shall include, but not be limited to, placement of any necessary subcontracts, mobilization of staff and other resources, obtaining of necessary clearances, execution of the Confidentiality Agreement included as Attachment (4), and any other activities required to put the Contractor in a position to perform this scope of work.

2.8 Phase-Out

At the conclusion of the BPA, the functions performed under the BPA and any task order issued against it may convert to an in-house Government operation or may be awarded through another contractual instrument. In either case, the Contractor may be required to assist in the phase-out of this BPA. The price and terms of the assistance required will be negotiated separately.

3. DELIVERY

The Contractor shall deliver all services and deliverables as specified in Section 2.

4. VOLUME OF PURCHASES

The estimated aggregate value of all task orders to be issued under this BPA is \$100,000,000 for the entire term of the BPA. This is not a maximum ceiling amount. It is strictly an estimate and may be exceeded at the discretion of the Government on a unilateral basis. There is no minimum guaranteed amount, quantity, or initial order quantity. The Government is obligated only to the extent of authorized purchases actually ordered under this BPA.

5. OBLIGATION OF FUNDS

This BPA does not obligate any funds. Funds will be obligated by the placement of individual task orders.

6. TERM OF THE BPA

(a) the term of the BPA will include a base period and four (4) option periods as shown in the table below. The dates delineated below may be adjusted to reflect the actual BPA award date.

Phase-in Period	06/01/2017	Through	07/31/2017
Base Period	08/01/2017	through	07/31/2018
Option Period 1	08/01/2018	through	07/31/2019
Option Period 2	08/01/2019	through	07/31/2020
Option Period 3	08/01/2020	through	07/31/2021
Option Period 4	08/01/2021	through	07/31/2022

(b) This BPA may be extended, at the unilateral option of the Government, upon the same terms and conditions stated herein for a period of one (1) year or fractions thereof. To exercise the option to extend the term of the BPA, the Contracting Officer will issue a written modification prior to the expiration of the applicable term period. The Government will endeavor to provide a preliminary written notice of its intent to exercise the option; however, the lack of such a written notice will not in any way lessen the Government's unilateral right to extend the BPA pursuant to this clause. If such a preliminary notice is provided, it shall not be construed as an exercise of the option nor will it bind the Government to exercise the option. Any phase-in/phase-out periods are not considered to be part of the total BPA Term.

(c) The term of this BPA is subject to the Contractor maintaining and/or renewing its GSA FSS contract and a determination by the Administrative Contracting Officer (at least annually) that this BPA is still within the best interest of the Government.

(d) The term of this BPA may be extended beyond the last option period by mutual agreement of the parties.

(e) The Government may cancel this BPA for cause or for the Government's convenience by providing advance written notice to the Contractor.

7. ORDERING

The following offices are hereby authorized to place orders under this BPA:

Justice Management Division, Procurement Services Staff

8. BPA ADMINISTRATION

8.1 Administrative Contracting Officer

(a) The Administrative Contracting Officer (ACO) has the overall responsibility for the administration of this BPA. He/she alone, without delegation, is authorized to take actions on behalf of the Government to amend, modify or deviate from the BPA terms, conditions, requirements, specifications, details and/or delivery schedules. However, the ACO may delegate certain other responsibilities to his/her authorized representative.

(b) This BPA will be administered by:

Pamela Pilz
Contracting Officer
Procurement Services Staff
U.S. Department of Justice
145 N Street, NE, Room 8E.121
Washington, D.C. 20530
Phone: (b) (6)

8.2 Contracting Officer's Representative (COR)

(a) Oversight of the technical work requirements specified in this BPA will be the responsibility of the cognizant Contracting Officer's Representative (COR) or his/her designee.

(b) The COR is authorized to evaluate the Contractor's performance, inspect items delivered/services performed, and certify (but not reject or deny) invoices for payment in accordance with Section 9. The authority to reject or deny performance and associated invoice payment is expressly reserved for the Contracting Officer.

(c) The COR for this BPA is:

Steven Lang
U.S. Department of Justice
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
Phone: (b) (6)

(d) The COR does not have the authority to alter the Contractor's obligations under the contract/BPA/task order, direct changes that fall within the purview of the clause entitled, "Changes", and/or modify any of the express terms, conditions, specifications, or cost of the contract/BPA/task order. If as a result of technical discussions, it is desirable to alter/change contractual obligations or the Specification/Work Statement, the ACO shall issue such changes in writing and signed.

8.3 Security Program Manager

(a) The Security Programs Manager (SPM) is designated to coordinate those aspects of this BPA which pertain to obtaining and maintaining security clearances at the appropriate levels for Contractor personnel performing hereunder.

(b) The SPM for this BPA is:

James McDaniel
U.S. Department of Justice
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1900
Falls Church, VA 22041
Phone: (b) (6)

(c) The personnel security requirements of this BPA are set forth in Section 11.

(d) Following award of this BPA, the SPM shall ensure that the personnel security requirements set forth herein are followed.

8.4 Contractor Representative

(a) The Contractor's representative to be contacted for all administration matters is:

Stacey Strongarone
Deputy Director, Center on Immigration and Justice
Vera Institute of Justice, Inc.
233 Broadway, 12th Floor

New York, NY 10279

Phone: (b) (6)

Email: (b) (6)

(b) The Contractor's representative shall be responsible for all BPA and task order administration issues and shall act as the central point of contact with the Government for all such issues. The representative shall have full authority to act for the Contractor in all contractual matters.

9. INVOICES

(a) The Contractor shall render invoices not more frequently than monthly, in an original only (i.e., one copy only) to the COR at the address listed in Section 8.2. To constitute a proper invoice, the following information and/or attached documentation shall be included with the invoice (as applicable):

- (1) Name and address of the Contractor
- (2) Invoice date
- (3) BPA number
- (4) Task Order number
- (5) CLIN number and description, quantity, unit price and extended total for the period covered (see also paragraph (b) below)
- (6) Shipping and payment terms
- (7) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment)
- (8) Taxpayer Identification Number
- (9) DUNS Number

(b) In addition to the invoice requirements listed in paragraph (a) above, each invoice shall include (as applicable):

- (1) For task orders with labor hour costs, actual direct labor hours expended by each individual (fractional parts of an hour shall be rounded to the nearest one-half (1/2) hour or lesser fraction in computing the amount payable) multiplied by the appropriate unit price (hourly rate) from the applicable CLIN.
- (2) Itemization of all actual ODCs being claimed in accordance with Part 31 of the FAR with supporting documentation as requested by the COR. The appropriate multiplier (administrative handling charge) from the pricing table shall be included.
- (3) Total cost for each CLIN category shall be shown as a whole dollar/cent value. Computations that equal a fractional value of a cent shall be rounded up or down accordingly to the nearest whole cent (.005 or less round down).

(c) The COR will certify the hours worked, ODC items (if any), and satisfactory completion of all work and services billed. Negative inspection results will be reported immediately to the Contractor and Contracting Officer.

(d) Payment will be made on a monthly basis in accordance with FAR clause 52.232-7 entitled "Payments under Time-and-Materials and Labor-Hour Contracts". The office that will make the

payments due under this BPA (i.e., the designated payment office) is shown below. Please note that the Contractor must submit all invoices to the address in Section 8.2.

U.S. Department of Justice
Executive Office for Immigration Review
Administration Division
Office of the Comptroller/BFMS
5107 Leesburg Pike - 22nd Floor, Suite 2250
Falls Church, VA 22041

(e) All follow-up invoices shall be marked "Duplicate of Original." Contractor questions regarding payment information or check identification should be directed to the DOJ Vendor Assistance Hotline (202) 616-6260.

10. KEY PERSONNEL

(a) The key personnel to be assigned to perform hereunder and the minimum level of effort for their respective assignments are as follows:

Stacey Strongarone
Marina Caeiro

Deputy Director
Program Director, LOP/ICH

(b) The level of effort specified for each individual listed above may not be decreased without the prior written approval of the Contracting Officer.

(c) The personnel specified in this clause of this BPA are considered to be essential to the work the Contractor agrees to perform hereunder. Prior to diverting any of the specified individuals to other programs, or replacing any of them for any reason, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification, including proposed substitutions or replacements, in sufficient detail to permit the Contracting Officer to evaluate the impact on the work the Contractor is obligated to perform hereunder. The Contractor shall not replace any of the key personnel hereinafter named to work on this BPA without the written consent of the Contracting Officer. The list of key personnel set forth above may be amended from time to time during the course of the BPA to add or delete personnel, as appropriate.

11. SECURITY

11.1 Security Requirements

(a) The work to be performed under this BPA will involve access to unclassified information. All references to "BPA personnel" and "BPA employee" in this clause 11 are limited to individuals that will perform under this BPA and require access to sensitive unclassified information, including individuals employed by the Contractor, team member, subcontractor, consultant, and/or independent contractor. For purposes of this BPA, sensitive unclassified information will mean PII (as defined below).

(b) Duplication or disclosure of the sensitive unclassified information to which the Contractor may have access as a result of this BPA is prohibited by Public Law and is subject to criminal penalties unless specifically authorized by the COR or as required for performance of this BPA.

11.1.1 Contractor Personnel

(a) Notwithstanding 11.1(a), the Government reserves the right to conduct a Public Trust Investigation (PTI) on all BPA personnel who require access to sensitive unclassified information. Except where specifically noted otherwise (e.g., 11.1.1.5(a)), the Government will be responsible for conducting the investigation and the cost of the investigation. All investigations will be conducted in accordance with applicable Executive Orders, DOJ Orders, Office of Personnel Management (OPM) guidance, Homeland Security Presidential Directive 12 (HSPD-12), and Federal Information Processing Standard Publication 201 (FIPS 201).

(b) PTI certifications will be accepted from other Federal agencies provided the investigation performed by the other agency meets or exceeds DOJ requirements.

(c) The Contractor will not be permitted to commence performance under this BPA until a sufficient number of its personnel who require access to sensitive unclassified information, as determined by the COR and Security Programs Manager (SPM), have received the requisite security approval.

(d) During the life of the BPA, the Contractor shall ensure that no contract employee who requires access to sensitive unclassified information is given access to such information prior to receipt of a written authorization from the Contracting Officer, the COR, or the SPM.

11.1.1.1 Access to Unclassified Information

(a) Contractor personnel requiring access to unclassified information will fall under the following category:

Low Risk. Low Risk positions are those positions that have limited potential for adversely affecting the national security operations of the Department.

11.1.1.2 Pre-Appointment Background Investigations and Waivers

(a) Background investigations must be conducted and favorably adjudicated for each BPA employee requiring access to sensitive unclassified information prior to being given access to such information under this BPA. However, where programmatic needs do not permit the Government to wait for completion of the entire background investigation, a pre-appointment background investigation waiver can be granted by the SPM, in consultation with the cognizant COR. The extent of the background investigation will vary depending upon the Risk Category associated with each position and whether each position is long- or short-term. Short-term is defined as BPA employees having access to Federally-controlled information systems and/or unescorted access to Federally-controlled facilities or space for six months or fewer. The requisite background investigation does not need to be initiated for short-term positions as part of the pre-employment waiver except in the case of non-U.S. citizen BPA employees. However, long-term BPA employees requiring unescorted access to Federally-controlled facilities and/or access to any Federally-controlled information system shall be subject to the requisite background investigations described below. A waiver will be disapproved if it develops derogatory information that cannot be resolved in the BPA employee's favor. When a waiver has been disapproved, the COR, in consultation with the SPM, will determine (1) whether the BPA employee will no longer be considered for work on a DOJ BPA or (2) whether to wait for the completion and favorable adjudication of the background investigation before the BPA employee commences work on a Department BPA. The minimum pre-appointment investigative requirements are as follows:

Low Risk/Non-Sensitive Positions. The minimum background investigation required for Low Risk/Non-Sensitive positions is a National Agency Check with Written Inquiries (NACI)

and the required five-year reinvestigation is also a NACI. The SF-85, Questionnaire for Non-Sensitive Positions, is required.

(b) The pre-appointment background investigation waiver requirements include:

- (1) Favorable review of the SF-85 form;
- (2) Favorable FBI fingerprint results;
- (3) Verification of citizenship (copy of a birth certificate, Naturalization Certificate, or U.S. Passport);
- (4) Verification of compliance with the DOJ residency requirement;
- (5) Verification of the initiation of the appropriate background investigation for long-term Contractor personnel.

11.1.1.3 Required Security Forms

(a) The following forms must be completed and submitted by the Contractor's Corporate Security Officer for each BPA employee PTI:

- (1) FD-258 Applicant Fingerprint Card. Two sets are required per applicant. The Contractor may schedule appointments with the SPM to be digitally fingerprinted; otherwise, fingerprinting by the FBI is required. All pertinent information must be completed by the individual taking the prints, or by the FBI if prints are taken there.
- (2) SF-85 Questionnaire for Non-Sensitive Positions. The BPA employee shall complete the SF-85 via the Electronic Security Questionnaires for Investigations Processing (e-QIP) System after first obtaining access to e-QIP from the e-QIP Initiator. The Contractor shall also submit a hard copy of the form (as completed and signed by the BPA employee) with the remainder of the security package.
- (3) Foreign National Relatives and Associates Statement. This is only required if any relatives listed on the SF-85 are foreign nationals.
- (4) Loyalty Statement. This form is required only if the BPA employee has dual citizenship.
- (5) Confidentiality Agreement for Contractor and Subcontractor Employee. See Section 11.3 for confidentiality requirements.
- (6) Any additional information requested by the Office of Security to make a fitness determination.

(b) **Using e-QIP**. Immediately after BPA award, the Contractor shall designate an employee as its "e-QIP Initiator" and provide the name of this person to the COR. The e-QIP Initiator must have, at a minimum, a favorably adjudicated MBI and the appropriate DOJ security approval before being given access to e-QIP. After the e-QIP Initiator's security approval is granted, the Contractor will be configured in e-QIP as a sub-agency to DOJ. The Contractor will then be responsible for initiating all BPA personnel in e-QIP for completion of the security questionnaire form and forwarding the electronic form along with

a hard copy of the form (as completed and signed by the BPA employee) with the remainder of the security package to the designated DOJ representative. Subject to the prior approval of the SPM, the Contractor may designate an e-QIP Initiator for each subcontractor. Subcontractor e-QIP Initiators must have, at a minimum, a favorably adjudicated MBI and the appropriate DOJ security approval before being given access to e-QIP.

11.1.1.4 Citizenship and Residency Requirements

(a) **Residency Requirement.** BPA employees both United States (U.S.) citizens and non-U.S. citizens, must meet the Department's Residency Requirement, i.e., he/she must have lived in the U.S. three of the last five years immediately prior to employment under the Department BPA; and/or worked for the U.S. overseas in a Federal or military capacity; and/or be a dependent of a Federal or military employee serving overseas. At the Department's sole discretion, the residency requirement may be waived by the Department Security Officer (DSO) or designee on a case-by-case basis where justified by extenuating circumstances.

(b) **Citizenship.** The DOJ gives strong priority to BPA employees that are U.S. citizens and nationals. Any prospective BPA employee that is a foreign national must be from a country allied with the U.S. (See <http://www.opm.gov/employ/html/Citizen.htm>). At the Department's sole discretion, a waiver of the allied nations list requirement may be granted by the DSO or designee on a case-by-case basis where justified by extenuating circumstances. The Contractor is responsible for verifying that all non-U.S. citizens working under this BPA have been lawfully admitted to the U.S.

(c) **Dual Citizenship.** U.S. citizens who hold dual citizenship with a foreign country may be considered for BPA employment. However, how the BPA employee obtained or exercises his or her dual citizenship status will be a consideration in the adjudication process.

11.1.1.5 Procedures for Pre-Screening Applicants and Investigation

(a) The Contractor shall perform the following pre-screening and investigation duties for all persons proposed for work and who require access to sensitive unclassified information under this BPA:

(1) Furnish to each proposed BPA employee the forms described in Section 11.1.1.3 above and ensure that adequate instructions for completing the forms are provided to each applicant.

(2) Ensure that applicants obtain two (2) complete sets of their fingerprints on the prescribed Form FD-258 from an organization qualified to take fingerprints.

(3) Collect completed forms from each applicant and review all forms for completeness and correctness. This includes, for example, satisfactory resolution of address issues or

discrepancies. Return any incomplete or incorrect form(s) to applicant(s) to be corrected and re-submitted.

(4) Submit completed forms to the COR by no later than fourteen (14) calendar days after receipt of the blank forms and access to e-QIP has been initiated.

(5) As directed by the COR, initiate pre-appointment waivers for certain positions. This may entail performing credit history checks and submission of these checks as part of the security package, including satisfactory resolution of any issues prior to submission to the Government.

(6) As directed by the COR, review all forms prior to their being submitted to DOJ to ensure that candidates meet DOJ requirements, including residency and citizenship requirements.

(b) The Department will be responsible for the following:

(1) Provide the Contractor an adequate supply of forms and instructions for completing the forms within five (5) business days after BPA award. Ensure that the Contractor is provided access to the e-QIP system as described in 11.1.1.3(b).

(2) Ensure that completed security forms are forwarded to the appropriate investigating agency in accordance with appropriate internal procedures. The investigating agency will conduct the requisite investigations.

(3) Determine whether pre-appointment background investigation waivers will be needed, and if so, which positions will require such waivers. The COR will notify the Contractor which pre-appointment waivers to initiate.

(4) Notify the Contractor of the results of background investigations as they are completed and adjudicated. The COR will notify the Contractor of any applicants who are found ineligible for employment security approval so that the Contractor can immediately recruit and initiate paperwork to clear replacement applicants.

(5) Notify the Contracting Officer when a sufficient number of BPA employees who require access to sensitive unclassified information have received employment security approvals or pre-appointment waivers approvals. Upon receipt of this information and any other information which may be required elsewhere in the BPA, the Contracting Officer will issue the Contractor a Notice to Proceed which permits the commencement of work under the BPA.

(7) Maintain an up-to-date file of Certificates of Investigation (COI) and other background investigation-related documentation for all BPA employees throughout the life of the BPA.

(c) The investigating agency will furnish the relevant SPM the results of each proposed BPA employee's investigation through issuance of a Certificate of Investigation (COI). Upon receipt of the COI and any other pertinent documents from the investigating agency, the SPM will determine whether or not each proposed BPA employee should be granted employment security approval. This decision process is called "adjudication." The SPM will notify, if required, the investigating agency of the adjudicative determination of each investigation. If OPM is the investigating agency, this will be

accomplished by the SPM completing and submitting to OPM an INV Form 79A, "Report of Agency Adjudicative Action."

11.1.1.6 Replacement Personnel

(a) Security investigations are very costly to the Government. The Contractor shall take all necessary steps to assure that Contractor personnel who are selected for assignment to this BPA are professionally qualified and personally reliable, of reputable background and sound character, and meet all other requirements stipulated herein.

(b) The fact that the Government performs security investigations shall not in any manner relieve the Contractor of its responsibility to assure that all personnel furnished are reliable and of reputable background and sound character. Should a security investigation conducted by the Government render ineligible a Contractor furnished employee, the Contracting Officer will investigate the cause and determine whether the Contractor has abdicated its responsibilities to make every effort to select reliable employees of reputable background and sound character. Should there be need to replace a BPA employee due to nonperformance, the Contracting Officer will determine whether the Contractor has abdicated its responsibilities to make every effort to select trained and experienced employees.

(c) Should the Contracting Officer determine that the Contractor has failed to comply with the terms of Section 11.1.1.5(a), the Contractor may be held monetarily responsible, at a minimum, for all reasonable and necessary costs incurred by the Government to (a) provide coverage (performance) through assignment of individuals employed by the Government or third parties in those cases where absence of Contractor personnel would cause either a security threat or DOJ program disruption and (b) conduct security investigations in excess of those which would otherwise be required.

(d) Nothing in this Clause shall require the Contractor to bear costs involved in the conduct of security investigations for replacement of an employee who becomes deceased or severely ill for a long period of time.

(e) Acceptance by the Government of consideration to which the Government may be entitled pursuant to paragraph (c) above shall not be construed to establish a course of conduct which will serve to limit the rights and remedies otherwise available to the Government. Under no circumstances shall the Contractor fail to comply with the terms and conditions set forth herein without assuming liability for such failure as may be established pursuant to this Clause. The rights and remedies conferred upon the Government by this Clause are in addition to all and other rights and remedies specified elsewhere in this BPA or established by law.

11.2 Security of DOJ Information and Systems

11.2.1 Applicability to Contractors and Subcontractors

This clause applies to Contractor and its subcontractor sites, and personnel of Contractor and its subcontractors, that may access, collect, store, process, maintain, use, share, retrieve, disseminate, transmit, or dispose of DOJ Information. It establishes and implements specific DOJ requirements applicable to this BPA. The requirements established herein are in addition to those required by the Federal Acquisition Regulation ("FAR"), including FAR 11.002(g) and 52.239-1, the Privacy Act of 1974, and any other applicable laws, mandates, Procurement Guidance Documents, and Executive Orders pertaining to the development and operation of Information Systems and the protection of Government Information. This clause does not alter or diminish

any existing rights, obligation or liability under any other civil and/or criminal law, rule, regulation or mandate.

11.2.2 General Definitions

The following general definitions apply to this clause. Specific definitions also apply as set forth in other paragraphs.

- (a) Information means any communication or representation of knowledge such as facts, data, or opinions, in any form or medium, including textual, numerical, graphic, cartographic, narrative, or audiovisual. Information includes information in an electronic format that allows it be stored, retrieved or transmitted, also referred to as “data,” and “personally identifiable information” (“PII”), regardless of form.
- (b) Personally Identifiable Information (or PII) means any information about an individual received from DOJ and maintained by Contractor, and as to which no waiver of confidentiality has been received from the individual, including, but not limited to, information related to education, financial transactions, medical history, and criminal or employment history and information, which can be used to distinguish or trace an individual's identity, such as his or her name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual.
- (c) DOJ Information means any Information that is owned, produced, controlled, protected by, or otherwise within the custody or responsibility of the DOJ, including, without limitation, Information related to DOJ programs or personnel, provided by the DOJ to Contractor in connection with the performance of the BPA.
- (d) Information System means any resources, or set of resources organized for accessing, collecting, storing, processing, maintaining, using, sharing, retrieving, disseminating, transmitting, or disposing of (hereinafter collectively, “processing, storing, or transmitting”) Information.
- (e) Covered Information System means any information system used for, involved with, or allowing, the processing, storing, or transmitting of PII

11.2.3 Confidentiality and Non-disclosure of DOJ Information

- (a) Preliminary and final deliverables and all associated working papers and material generated by Contractor containing DOJ Information are the property of the U.S. Government and must be submitted to the Contracting Officer (“CO”) or the CO’s Representative (“COR”) at the conclusion of the BPA, except where protected by Institutional Review Board (IRB) restrictions, attorney/client privilege and other applicable laws, or where the information is collected from an individual with his/her consent. Subject to such exceptions, the U.S. Government has unlimited data rights to all such deliverables and associated working papers and materials in accordance with FAR 52.227-14.

(b) All documents produced in the performance of this BPA containing DOJ Information are the property of the U.S. Government and Contractor shall neither reproduce nor release to any third-party at any time, including during or at expiration or termination of the BPA without the

(c) Any DOJ information made available to Contractor under this BPA shall be used only for the purpose of performance of this BPA and shall not be divulged or made known in any manner to any persons except as may be necessary in the performance of this BPA. In performance of this BPA, Contractor assumes responsibility for the protection of the confidentiality of any and all DOJ Information processed, stored, or transmitted by the Contractor. When requested by the CO (typically no more than annually), Contractor shall provide a report to the CO identifying, to the best of Contractor's knowledge and belief, the type, amount, and level of sensitivity of the DOJ Information processed, stored, or transmitted under the BPA, including an estimate of the number of individuals for whom PII has been processed, stored or transmitted under the BPA and whether such information includes social security numbers (in whole or in part).

11.2.4 Compliance with Information Technology Security Policies, Procedures and Requirements

(a) For all Covered Information Systems, Contractor shall comply with the following security requirements, derived from the regulations and guidance found in the Federal Information Security Management Act of 2014 ("FISMA"), Privacy Act of 1974, E-Government Act of 2002, National Institute of Standards and Technology ("NIST") Special Publications ("SP"), including NIST SP 800-37, 800-53, and 800-60 Volumes I and II, Federal Information Processing Standards ("FIPS") Publications 140-2, 199, and 200, OMB Memoranda, Federal Risk and Authorization Management Program ("FedRAMP"), DOJ IT Security Standards, including DOJ Order 2640.2, as amended. These requirements are:

- (1) Limiting access to PII and Covered Information Systems to authorized users and to transactions and functions that authorized users are permitted to exercise;
- (2) Providing security awareness training including, but not limited to, recognizing and reporting potential indicators of insider threats to users and managers of PII and Covered Information Systems;
- (3) Creating, protecting, and retaining Covered Information System audit records, reports, and supporting documentation to enable reviewing, monitoring, analysis, investigation, reconstruction, and reporting of unlawful, unauthorized, or inappropriate activity related to such Covered Information Systems and/or PII ;
- (4) [Omitted.]
- (5) Performing monitoring on all Covered Information Systems;
- (6) Establishing and maintaining baseline configurations and inventories of Covered Information Systems, including hardware, software, firmware, and documentation, throughout the Information System Development Lifecycle, and establishing and enforcing security configuration settings for IT products employed in Information Systems;
- (7) Ensuring appropriate contingency planning has been performed, including Covered Information System backups;

- (8) Identifying Covered Information System users, processes acting on behalf of users, or devices, and authenticating and verifying the identities of such users, processes, or devices, using multifactor authentication or HSPD-12 compliant authentication methods where required by the COR;
- (9) Establishing an operational incident handling capability for Covered Information Systems that includes adequate preparation, detection, analysis, containment, recovery, and user response activities, and tracking, documenting, and reporting incidents to appropriate officials and authorities within Contractor's organization and the DOJ;
- (10) Performing periodic and timely maintenance on Covered Information Systems, and providing effective controls on tools, techniques, mechanisms, and personnel used to conduct such maintenance;
- (11) Protecting Covered Information System media containing PII, including paper, digital and electronic media; limiting access to PII to authorized users; and sanitizing or destroying Covered Information System media containing PII before disposal, release or reuse of such media;
- (12) Limiting physical access to Covered Information Systems, equipment, and physical facilities housing such Covered Information Systems to authorized individuals unless a waiver has been granted by the Contracting Officer ("CO"), and protecting the physical facilities and support infrastructure for such Information Systems;
- (13) Screening individuals prior to authorizing access to Covered Information Systems to ensure compliance with security standards;
- (14) Assessing the risk to PII in Covered Information Systems periodically, including scanning for vulnerabilities and remediating such vulnerabilities and ensuring the timely removal of assets no longer supported by the Contractor;
- (15) Assessing the security controls of Covered Information Systems periodically to determine if the controls are effective in their application, developing and implementing plans of action designed to correct deficiencies and eliminate or reduce vulnerabilities in such Information Systems, and monitoring security controls on an ongoing basis to ensure the continued effectiveness of the controls;
- (16) Monitoring, controlling, and protecting information transmitted or received by Covered Information Systems at the external boundaries and key internal boundaries of such Information Systems, and employing architectural designs, software development techniques, and systems engineering principles that promote effective security; and
- (17) Identifying, reporting, and correcting Covered Information System security flaws in a timely manner, providing protection from malicious code at

appropriate locations, monitoring security alerts and advisories and taking appropriate action in response.

(b) [Omitted.]

(c) When requested by the DOJ CO or COR, or other DOJ official as described below, in connection with DOJ's efforts to ensure compliance with security requirements and to maintain and safeguard against threats and hazards to the security, confidentiality, integrity, and availability of DOJ Information, Contractor shall provide DOJ, including the Office of Inspector General ("OIG") and Federal law enforcement components, (1) access to any and all information and records, including electronic information, regarding a Covered Information System, and (2) physical access to Contractor's facilities, installations, systems, operations, documents, records, and databases, in each case, except where protected by Institutional Review Board (IRB) restrictions, attorney/client privilege and other applicable laws, or where the information is collected from an individual with his/her consent. Such access may include independent validation testing of controls, system penetration testing, and FISMA data reviews by DOJ or agents acting on behalf of DOJ, and such access shall be provided within 96 hours of the request. Additionally, Contractor shall cooperate with DOJ's efforts to ensure, maintain, and safeguard the security, confidentiality, integrity, and availability of DOJ Information.

(d) The use of Contractor-owned laptops or other portable digital or electronic media to process or store DOJ Information covered by this clause is prohibited until Contractor provides a letter to the DOJ CO, and obtains the CO's approval, certifying compliance with the following requirements:

- (1) Media must be encrypted using a NIST FIPS 140-2 approved product;
- (2) Contractor must develop and implement a process to ensure that security and other applications software is kept up-to-date;
- (3) Where applicable, media must utilize antivirus software and a host-based firewall mechanism;
- (4) Contractor must log all computer-readable data extracts from databases holding sensitive unclassified information and verify that each extract including such data has been erased within 90 days of extraction or that its use is still required; and,
- (5) A Rules of Behavior ("ROB") form must be signed by users. These rules must address, at a minimum, authorized and official use, prohibition against