



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.