



**U.S. Immigration
and Customs
Enforcement**

April 22, 2013

MEMORANDUM FOR: Thomas D. Homan
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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

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.