

EXHIBIT 21



U.S. Department of Justice
Executive Office for Immigration Review
Office of the General Counsel

5107 Leesburg Pike, Suite 2150
Falls Church, Virginia 22041

November 19, 2020

Via Email at sahmed@law.harvard.edu

Sameer Ahmed
Harvard Immigration and Refugee Clinical Program
6 Everett Street
Cambridge, MA 02138

Re: FOIA 2021-03376 First Response

Dear Mr. Ahmed:

This letter constitutes our first response to your Freedom of Information Act (FOIA) request dated October 21, 2020 to the Executive Office for Immigration Review (EOIR) in which you seek:

1. All records, directives, orders, training materials, memoranda, guidance, briefings, instructions, handouts, flyers, policies, procedures, rules, regulations, email, other electronic communications and/or any other communications, whether issued verbally or in writing, regarding DOJ's and EOIR's implementation of the Nationwide Policy and the National Qualified Representative Program, including the following:
 - a. Implementation of procedures put into place by EOIR to provide "enhanced procedural protections, including competency inquiries, mental health examinations, and bond hearings to certain unrepresented and detained respondents with serious mental disorders or conditions that may render them incompetent to represent themselves in immigration proceedings."
 - b. Implementation of procedures put into place by EOIR to provide "Qualified Representatives (QRs) to certain unrepresented and detained respondents who are found by an Immigration Judge or the BIA to be mentally incompetent to represent themselves in immigration proceedings."
 - c. Implementation of procedures authorizing Immigration Judges "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."
 - d. Implementation of procedures authorizing Immigration Judges to provide "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."
2. Records responsive to Section I that indicate whether they have been provided to personnel at each Immigration Court, including the Boston Immigration Court.

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3. Records responsive to Section I that indicate whether they have been provided to personnel at the Board of Immigration Appeals.
4. All documents provided to or completed by Immigration Judges when implementing any part of the NQRP or Nationwide Policy, including any and all Competency Worksheets completed by Immigration Judges at each Immigration Court, including the Boston Immigration Court.
5. All information contained in the “Mental Competence” or “MC” section in EOIR’s database, including information that tracks decisions and results during the competency determination process, from the initial identification of indicia of mental incompetence to the ultimate decision on competence.
6. Records disclosing the number of ICE detainees who may be mentally incompetent to represent themselves in immigration proceedings, including records disclosing the requested information in the following enumerated categories. For each category, please provide records disclosing the requested information at each Immigration Court, including the Boston Immigration Court, and at the Board of Immigration Appeals. Please provide these records broken down by how many detainees have been in each category each year from 2013 to the present.
 - a. The total number of ICE detainees where the ICE Office of Chief Counsel provided relevant information in its possession to inform the Board of Immigration Appeals or the Immigration Court about the detainee’s mental competency.
 - b. The total number of ICE detainees where Third Party Notifications were submitted to the Immigration Judge.
 - c. The total number of ICE detainees where the Immigration Judge used Third Party Notifications to find indicia resulting in a “bona fide doubt” that the detainee has a mental disorder impairing his or her ability to represent him- or herself in an immigration proceeding
 - d. The total number of ICE detainees where the Immigration Judge used Third Party Notifications to find that the detainee was not competent to represent him- or herself in an immigration proceeding.
 - e. The total number of ICE detainees where the Immigration Judge found indicia resulting in a “bona fide doubt” that the detainee has a mental disorder impairing his or her ability to represent him- or herself in an immigration proceeding and the date of such finding.
 - f. The total number of ICE detainees who have any information included in “Mental Competence” section of EOIR’s database.
 - g. The total number of ICE detainees where an Immigration Judge held a competency inquiry to determine whether the detainee has a serious mental disorder or condition that may render them incompetent to represent themselves in immigration proceedings, including the date the judicial inquiry was conducted and whether the Immigration Judge found “reasonable cause” to believe the detainee has a mental

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- disorder impairing his or her ability to perform the functions listed in the definition of competence to represent him or herself.
- h. The total number of ICE detainees where the Immigration Judge held a competency inquiry and determined that the detainee (1) was competent, (2) was not competent, or (3) there was insufficient evidence to decide if the detainee was competent, and the date of the competence determination.
 - i. The total number of ICE detainees where an Immigration Judge referred the detainee for a mental health or competency examination to be conducted by an independent examiner, and the date of the referral.
 - j. The total number of ICE detainees where the Language Services Unit of the Office of the Chief Immigration Judge was notified so that arrangements were made to secure the services of a qualified interpreter for a mental health or competency examination for the detainee.
 - k. The total number of ICE detainees where an Immigration Judge ordered that the detainee be provided a custody hearing because the detainee was identified as having a serious mental disorder or condition that may render them incompetent to represent themselves and had been detained in ICE custody for six months or longer.
 - l. The total number of ICE detainees where an Immigration Judge ordered that the detainee be provided bond after receiving a custody hearing because the detainee was identified as having a serious mental disorder or condition that may render them incompetent to represent themselves and had been detained in ICE custody for six months or longer, as well as the amount of the bond provided.
 - m. The total number of ICE detainees where an Immigration Judge ordered that the detainee be provided a Qualified Representative because they were found incompetent to represent themselves.
 - n. The total number of ICE detainees where the detainee received a Qualified Representative after the Immigration Judge ordered it, and the date when the Qualified Representative was assigned to the detainee.
 - o. The total number of ICE detainees where the Immigration Judge ordered the detainee's case to be administratively closed or terminated because the detainee had a serious mental disorder or condition.
7. All records indicating what training has been provided regarding the implementation of the Nationwide Policy and the NQRP and when such training has occurred, including training provided to:
- a. Personnel at all facilities holding ICE detainees, including medical staff that are privately contracted by the facilities
 - b. ICE personnel, including at all Enforcement and Removal Operations Field Offices, all IHSC personnel, and all Office of the Principal Legal Advisor Field Locations
 - c. EOIR personnel, including Immigration Judges, Appellate Immigration Judges of the Board of Immigration Appeals, and Immigration Court clerks and administrators, as well as the names of each Immigration Judge, Appellate Immigration Judge, clerk, and administrator that has received such training.

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- d. Mental health professionals required to be qualified to conduct mental health examinations in immigration proceedings.
8. All training materials provided to Immigration Judges related to the implementation of the Nationwide Policy, NQRP, and the federal district court's orders in *Franco-Gonzalez v. Holder*, No. CV-10-02211 DMG DTBX (C.D. Cal.), including the required "on-board [Immigration Judge] training regarding Franco, including the pro se competency standard and how to apply the bona fide doubt standard for Class Membership" and the "full multi-hour Franco training."
9. All records disclosing the existence of specific "mental health dockets" at different Immigration Courts, the existence of a "mental health panel" at the Board of Immigration Appeals, the names of all Immigration Judges on such dockets and panels, and how Immigration Judges are selected for such dockets and panels.
10. All Mental Health Examination Referral forms completed by Immigration Judges to refer an ICE detainee for a mental health examination.
11. Records disclosing the names and business addresses of all Qualified Representatives approved to take cases pursuant to the NQRP and Nationwide Policy.
12. All Third Party Notifications received by the Board of Immigration Appeals and all Immigration Judges at each Immigration Court, including the Boston Immigration Court.

With respect to paragraphs 4 and 5 of your request and to the extent such records exist, we are denying these portions of your request in their entirety in accordance with FOIA Exemption 6, 5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties.

Moreover, to the extent mental competency records are "completed by Immigration Judges" and exist, those records would reside in individual hard-copy Record of Proceedings located in one of the 63 Immigration Courts or 15 Federal Record Centers geographically located throughout the United States or its territories, or in EOIR's Headquarters. Identifying, collecting, and processing such records would be unduly burdensome. In that regard, these portions of your request as-filed are improper notwithstanding that would be subject to withholding in their entirety in accordance with FOIA Exemption 6, 5 U.S.C. § 552(b)(6).

We are continuing to process the remainder of your request.

If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA Officer who processed your request or the EOIR FOIA Public Liaison at (703) 605-1297. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information

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Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at (877) 684-6448; or facsimile at (202) 741-5769.

If you are not satisfied with the Executive Office for Immigration Review's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

SHELLEY O'HARA

Digitally signed by SHELLEY
O'HARA
Date: 2020.11.19 19:08:57 -05'00'

Shelley M. O'Hara
Attorney Advisor (FOIA)