

Notice to Immigration Judges Regarding Applicability of *Franco-Gonzales v. Holder* in Cases Involving Mental Incompetence

As an immigration judge, you have been trained to identify and detect indicia of mental incompetence in the respondents that appear in your courtroom in any court in the nation. Part of this training included specific training on the on the *pro se* competency standard and how to assess the *bona fide* doubt standard for class membership for respondents that may be a part of the class defined in *Franco-Gonzalez v. Holder*.¹ The applicability of the procedures outlined in *Franco-Gonzalez v. Holder* depends on the immigration court in which you preside.

Franco-Gonzalez v. Holder is a class action lawsuit filed in the Central District of California on behalf of unrepresented individuals in the custody of the Department of Homeland Security, Immigration and Customs Enforcement, in Arizona, California and Washington identified as having a serious mental disorder or condition that may render them incompetent to represent themselves in immigration proceedings. Immigration cases of respondents in Arizona, California and Washington who present indicia of mental incompetency are subject to specific procedures and timeframes pursuant to a Permanent Injunction and an Implementation Order issued in *Franco-Gonzalez v. Holder*. See Appendix A (Permanent Injunction) and B (Implementation Order).

If you are assigned to preside over cases in any immigration court in Arizona, California or Washington, you will receive additional, detailed training specific to the procedures and protections required by the Permanent Injunction and Implementation Order issued in *Franco-Gonzalez v. Holder*. However, until you have completed that additional, detailed training specific to *Franco-Gonzalez v. Holder* (to be provided to you at a later date), if you have a bona fide doubt as to whether a detained and unrepresented respondent may be suffering from a serious mental disorder or condition that may render that person mentally incompetent to represent him- or herself in immigration proceeding in Arizona, California or Washington only, you may identify that respondent as a member of the *Franco-Gonzalez v. Holder* class, but you **must not** proceed with the case. Instead, please immediately notify the Assistant Chief Immigration Judge with responsibility for the immigration court where the respondent was identified as a *Franco* class member, so that the case may be promptly transferred to an immigration judge who has been fully trained in handling cases in accordance with the mandates of the Permanent Injunction and Implementation Order in *Franco-Gonzalez v. Holder*.

If you have any questions regarding the applicability of the procedures in *Franco-Gonzalez v. Holder*, please consult the training materials you have received regarding mental incompetence and/or *Franco-Gonzalez v. Holder* that were distributed to you based upon the immigration court

¹ See *Franco-Gonzalez v. Holder*, CV 10-02211, Partial Judgment and Permanent Injunction (C.D. Cal. R. April 23, 2013); *Franco-Gonzalez v. Holder*, CV 10-02211, Order Further Implementing This Court's Permanent Injunction (C.D. Cal. R. Oct. 29, 2014).

where you preside. You may also contact EOIR's Office of the General Counsel at (703) 305-0470 for specific guidance regarding the applicability of these procedures.

Appendix A

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSE ANTONIO)	Case No. CV 10-02211 DMG (DTBx)
FRANCO-GONZALEZ, ET AL.,)	
)	PARTIAL JUDGMENT AND
Plaintiffs,)	PERMANENT INJUNCTION
v.)	
)	
ERIC H. HOLDER, JR., ATTORNEY)	
GENERAL, ET AL.,)	
)	
Defendants.)	
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)	

In accordance with the Order issued concurrently herewith, the Court **GRANTS** in part and **DENIES** in part Plaintiffs’ motion for partial summary judgment. Accordingly, the Court orders the following:

(1) Judgment is entered in favor of Plaintiffs Martinez, Khukhryanskiy, Chavez, Zhalezny, and other members of Sub-Class One, and against Defendants, on Count Four. Judgment is entered in favor of Plaintiffs Martinez, Khukhryanskiy, Zhalezny, Sepulveda, and other members of Sub-Class Two, on Count Eight;

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1 (2) The Court hereby declares that Defendants have violated Section 504 of the
2 Rehabilitation Act by failing to provide Sub-Class One members with a reasonable
3 accommodation, i.e., a Qualified Representative in all aspects of their immigration
4 proceedings;

5 (3) The Court further declares that Defendants have violated the Immigration
6 and Nationality Act by failing to provide Sub-Class Two members with a bond hearing
7 after a presumptively reasonable period of 180 days in detention at which the
8 Government bears the burden of justifying continued detention by clear and convincing
9 evidence;

10 (4) Defendants, and their officers, agents, servants, employees and attorneys,
11 and all those who are in active concert or participation with them, are hereby enjoined
12 from pursuing further immigration proceedings against Plaintiffs Martinez,
13 Khukhryanskiy, Chavez, Zhalezny, and other members of Sub-Class One, who have been
14 identified on or before the date of this Order and Judgment, unless within 60 days from
15 the date of this Order and Judgment, Sub-Class One members are afforded Qualified
16 Representative(s) as defined in the concurrently issued Order who are willing and able to
17 represent them during all phases of their immigration proceedings, including appeals
18 and/or custody hearings, whether *pro bono* or at Defendants' expense;

19 (5) Defendants, and their officers, agents, servants, employees and attorneys,
20 and all those who are in active concert or participation with them, are hereby enjoined
21 from detaining members of Sub-Class Two unless, within 40 days of this Order and
22 Judgment, they provide Sub-Class Two members with a bond hearing before an
23 Immigration Judge with the authority to order their release on conditions of supervision,
24 unless the Government shows by clear and convincing evidence that their ongoing
25 detention is justified. Within 30 days from the date of this Order and Judgment, members
26 of Sub-Class Two who are also members of Sub-Class One shall be provided a Qualified
27 Representative to represent them during such bond hearing. In all cases, at least seven
28 days prior to any bond hearing, Defendants shall provide these sub-class members and/or

1 their Qualified Representatives with adequate notice of a bond hearing scheduled
2 pursuant to this Order and Judgment.

3 (6) For all individuals identified as Sub-Class One members after the date of
4 this Order and Judgment, Defendants, and their officers, agents, servants, employees and
5 attorneys, and all those who are in active concert or participation with them, are hereby
6 enjoined from pursuing further immigration proceedings against these Sub-Class One
7 members unless, within 60 days of their having been identified by an Immigration Judge
8 as a Sub-Class One member, such individuals are afforded Qualified Representatives who
9 are willing and able to represent them during all phases of their immigration proceedings,
10 including appeals and/or custody hearings, whether *pro bono* or at Defendants' expense;

11 (7) For individuals identified as Sub-Class Two members after the date of this
12 Order and Judgment, Defendants, and their officers, agents, servants, employees and
13 attorneys, and all those who are in active concert or participation with them, are hereby
14 enjoined from detaining newly identified Sub-Class Two members for more than 180
15 days unless they provide such sub-class members with a bond hearing before an
16 Immigration Judge with the authority to order their release on conditions of supervision,
17 unless the Government shows by clear and convincing evidence that the Sub-Class Two
18 members' ongoing detention is justified. Such hearing shall be provided as soon as is
19 practicable, but no more than 15 days, after the Sub-Class Two member has been
20 detained for 180 days. All future members of Sub-Class Two who are also identified as
21 members of Sub-Class One shall be provided with a Qualified Representative to represent
22 them during such bond hearing.

23 (8) For purposes of this order, the requirement that all Sub-Class One Members
24 be afforded a Qualified Representative will be deemed satisfied only if at least one
25 Qualified Representative has entered a notice of appearance, in the form of a Form
26 EOIR-27 or EOIR-28, in every forum in which the Sub-Class One member is eligible to
27 have proceedings. The Sub-Class One member may be represented by the same or a
28 different Qualified Representative in each forum, so long as a Qualified Representative

1 has entered an appearance in each forum in which the Sub-Class One member is eligible
2 to have proceedings.

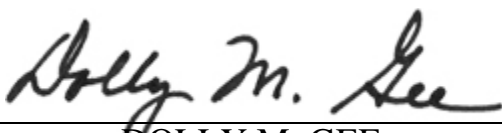
3 (9) That a Sub-Class Two member has had a prior bond hearing shall not be
4 sufficient to satisfy the requirements of this Order and Judgment unless that bond hearing
5 complied with the requirements of *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011). For
6 Sub-Class Two members who are also Sub-Class One members, the individual must also
7 have been represented by a Qualified Representative at that hearing.

8 (10) Within 45 days of this Order and Judgment, Defendants shall submit to the
9 Court a plan and status report describing the steps taken to implement this Order and
10 Judgment and future plans for implementation, including (1) identification of current and
11 future class members and Sub-Class members, (2) provision of Qualified Representatives
12 for Sub-Class One members, and (3) provision of timely bond hearings as required by
13 this Order.

14 (11) This Court retains jurisdiction to entertain such further proceedings and to
15 enter such further orders as may be necessary or appropriate to implement and enforce
16 the provisions of this Order and Judgment.

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18 **IT IS SO ORDERED.**

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20 DATED: April 23, 2013

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22 DOLLY M. GEE
23 UNITED STATES DISTRICT JUDGE
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Appendix B

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSE ANTONIO FRANCO-
GONZALEZ, et al.,

Plaintiffs-Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney
General, et al.,

Defendants-Respondents.

Case No. CV-10-02211 DMG (DTBx)

**ORDER FURTHER
IMPLEMENTING THIS COURT'S
PERMANENT INJUNCTION [785]**

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1 The purpose of this Order is to further implement the Court’s Permanent
2 Injunction. [Doc. # 593.] Defendants will share both the Court’s Permanent
3 Injunction as well as this Order with the persons, agencies, or legal entities
4 responsible for compliance with the Permanent Injunction, this Order, U.S.
5 Immigration and Customs Enforcement’s (“ICE”) national detention standards, and
6 oversight of medical care provided at any immigration detention facility¹ in
7 California, Arizona, or Washington.

8 The Court orders Defendants to implement the following:

- 9 **(I) *Screening and Information Gathering System.*** Such system, which is
10 designed to determine Class membership, shall include initial mental
11 health screening of detainees upon arrival at detention facilities, mental
12 health assessments, and gathering of documents and information relevant
13 to detainees’ mental health. *See* Section I, *infra*.
- 14 **(II) *Information Sharing System.*** Such system shall ensure that Defendants
15 provide relevant documents and information regarding detainees’ mental
16 health to Immigration Judges. *See* Section II, *infra*.
- 17 **(III) *Evaluation System.*** Such system, which is designed to determine
18 whether a Main Class member is competent to represent him- or herself
19 in immigration proceedings, shall include Judicial Competency Inquiries,
20 Forensic Competency Evaluations and Competency Reviews. *See*
21 Section III, *infra*.
- 22 **(IV) *Other Matters.*** *See* Section IV, *infra*.
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26 ¹ Throughout this Order, the terms “immigration detention facility,”
27 “detention facility,” and “facility” are used interchangeably, and refer to facilities
28 used by, contracted with, or acting on behalf of ICE to hold detainees for more
than 72 hours.

1 **I. SCREENING SYSTEM**

2 To comply with the Permanent Injunction, Defendants must implement,
3 within 90 days of the entry of this Order, a system for screening individuals in the
4 Department of Homeland Security’s (“DHS”) custody with the purpose of
5 accurately identifying Sub-Class One and Sub-Class Two members, both of which
6 are sub-classes of the Plaintiff Class, i.e., “individuals who are or will be in DHS
7 custody for immigration proceedings in California, Arizona, and Washington who
8 have been identified by or to medical personnel, DHS, or an Immigration Judge, as
9 having a serious mental disorder or defect that may render them incompetent to
10 represent themselves in immigration proceedings, and who presently lack counsel
11 in their immigration proceedings.” *See* Section IV.D, *infra*. Sub-Class One
12 members are those members of the Plaintiff Class who are “incompetent to
13 represent themselves in immigration proceedings.” *Id*. Sub-Class Two members
14 are those members of the Plaintiff Class “who have been detained for more than
15 six months.” *Id*. Therefore, the Court orders that the following steps be taken with
16 respect to *all* individuals who are admitted into ICE custody at an immigration
17 detention facility in California, Washington, and Arizona, whether or not such
18 facility is staffed by the ICE Health Service Corps (“IHSC”):

19 **A. Screening Procedures**

20 1. To ensure the integrity of the screening procedures set out in this
21 Section, and of the competency procedures set out in Section III,
22 *infra*:

23 a. Unless and until such time as the individual is determined mentally
24 competent by an Immigration Judge, individuals identified as Class
25 members pursuant to the procedures set forth herein shall not be
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1 removed from the United States² unless first afforded a Qualified
2 Representative under the procedures set forth in the Court's
3 Permanent Injunction. [Doc. # 593.]

4 b. The transfer of detainees between immigration detention facilities
5 may be necessary and appropriate in order to facilitate compliance
6 with this Order. ICE shall seek, however, to avoid transfers that
7 may significantly hamper the ability of the detainee's family or
8 community support resources to provide assistance in the
9 detainee's immigration proceedings (including custody
10 determinations and placement plans). In addition, ICE must take
11 into consideration whether any transfer will cause further
12 deterioration of the detainee's mental health. Any Class member
13 who has entered ICE custody after November 21, 2011, and who is
14 subsequently transferred outside of Arizona, California or
15 Washington, continues to be a Class member and entitled to all of
16 the benefits of Class membership during the course of their
17 immigration proceedings, including those in the Permanent
18 Injunction [Doc. # 593] and in this Order.

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24 ² Once jurisdiction vests before the Immigration Judge and an individual is
25 identified as a Class member in his or her pending immigration proceedings,
26 Defendants shall not terminate immigration proceedings for the purpose of
27 removing, deporting, or excluding the Class member (i.e., pursuant to voluntary
28 departure, or return, under 8 U.S.C. § 1229c; reinstatement under 8 U.S.C. §
1231(a)(5); expedited removal under 8 U.S.C. § 1225(b); or administrative
removal under 8 U.S.C. § 1228(b)), unless or until he or she has first been
determined mentally competent by the Immigration Judge or provided a Qualified
Representative.

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2. Absent emergency circumstances related to facility security or the health and safety of staff or detainees, all detainees³ shall be initially screened for evidence of a “serious mental disorder or condition”⁴ upon their admission into ICE custody at an immigration detention facility, in accordance with the applicable ICE national detention standards.⁵ Absent emergency circumstances related to facility security or the health and safety of staff or detainees, detainees shall be further screened (or assessed) by a currently and appropriately licensed psychiatrist, physician, physician assistant, psychologist, clinical social worker, licensed nurse practitioner, or registered nurse within 14 days of their admission into ICE custody at an immigration detention facility. Such further screening shall be conducted utilizing a written screening questionnaire designed to identify individuals who may suffer from serious mental disorders or conditions, including mental health conditions for which the individual has not been previously diagnosed. Such screening questionnaire must not rely solely on a self-reported history of mental illness, but must ask the screener to interpret behavior and ask the individual questions to

³ The terms “immigration detainee” and “detainee” are used interchangeably and refer to individuals detained in ICE custody for immigration proceedings in California, Arizona, or Washington.

⁴ The term “serious mental disorder or condition” shall have the same meaning as the Class membership criteria, identified in Section I.A.3.b.

⁵ “Applicable ICE national detention standards” are those standards currently applicable to detainees detained at the facilities set forth in Appendix A to this Order. Defendants affirm that the facilities identified in Appendix A are the exclusive locations where immigration detainees are detained for more than 72 hours in the States of Washington, Arizona and California, and further affirm that the national detention standards listed next to each of those facilities are those in force at those facilities today. To the extent that there are prospective changes in the “applicable ICE national detention standards,” the screening procedures applicable to Class members shall be no less protective than those found in the detention standards set forth in Appendix A.

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1 gauge his or her understanding of his or her current situation. The
2 results of the screening questionnaire shall be documented.⁶

- 3 3. Individuals identified through the above-referenced screening process
4 as exhibiting evidence of a serious mental disorder or condition shall
5 be referred for a mental health assessment. Individuals first identified
6 at any later stage as exhibiting evidence of a serious mental disorder
7 or condition, such as at a hearing before an Immigration Judge or
8 upon receipt of information provided by a third party, shall also be
9 referred for a mental health assessment. Such mental health
10 assessments are for the purpose of diagnosis, treatment, or
11 stabilization of the individual and are not conducted for the purpose of
12 assessing the individual's legal competency. Based on the results of
13 the mental health assessment and any other available information, the
14 qualified mental health provider will determine whether an
15 unrepresented detainee meets the criteria set forth in Section I.A.3.b(i)
16 or (ii), such that he or she is a member of the Class certified in this
17 case. Where clinically indicated, in conducting the mental health
18 assessment, the qualified mental health provider must inquire about
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22 ⁶ For example, the screening shall seek to identify whether the individual has
23 a history of mental illness, has previously taken medication for mental illness or
24 received mental health services, has been hospitalized for psychiatric condition(s),
25 experienced auditory or visual hallucinations, or demonstrates evidence of
26 cognitive impairment. The screener will also look for evidence of a mental
27 disability, bizarre or unusual behavior, or other obvious signs of mental illness.
28 Within 90 days of the entry of this Order, Defendants will provide to Plaintiffs the
relevant screening forms currently in use at all immigration detention facilities in
Arizona, California and Washington, ensuring that the forms satisfy the
requirements set forth in this Order. If Plaintiffs allege such forms do not comply
with the terms of this Order, the Parties shall meet and confer regarding the
screening forms and, if the Parties do not resolve their dispute informally, the
matter shall be addressed, initially, before the Special Master.

1 and consider the detainee's relevant social history.⁷ The mental health
2 assessment will be completed as soon as practicable, ordinarily within
3 14 days after the detainee is identified through the screening process
4 described in Section I.A.2, *supra*, as exhibiting evidence of a serious
5 mental disorder or condition.

6 a. The mental health assessment shall be performed by a qualified
7 mental health provider. For purposes of this Order, "qualified
8 mental health providers" are currently and appropriately licensed
9 psychiatrists, physicians, physician assistants, psychologists,
10 clinical social workers, licensed nurse practitioners, and registered
11 nurses. Providers who are general practitioners shall have
12 appropriate training in mental health assessments.

13 b. For purposes of this Order, unrepresented⁸ immigration detainees
14 are members of the Class certified in this case, *see* Section IV.D,
15 *infra*, if the criteria of subparagraph (i), (ii) or (iii) of this
16 paragraph are met:

17 (i) a qualified mental health provider determines the
18 detainee⁹ meets one or both of the following criteria:

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21 ⁷ Relevant social history may include factors such as educational level,
22 special education history, if any, occupational functioning, relationships, and
cultural concerns.

23 ⁸ Detainees shall be considered unrepresented unless one of the following
24 has entered an appearance on their behalf: "(1) an attorney, (2) a law student or
25 law graduate directly supervised by a retained attorney, or (3) an accredited
representative, all as defined in 8 C.F.R. § 1292.1." *Franco-Gonzalez, et al. v.*
Holder, 828 F. Supp. 2d 1133, 1147 (C.D. Cal. 2011); *see also* Doc. # 593 at ¶ 8.

26 ⁹ Such determination may be made regardless of whether the detainee was
27 previously diagnosed with a psychiatric condition, was treated in the past or is now
28 being treated for a psychiatric condition, and regardless of whether the cause of the
disorder would be considered a medical or, instead, a psychiatric condition.

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- (1) has a mental disorder that is causing serious limitations in communication, memory or general mental and/or intellectual functioning (*e.g.*, communicating, reasoning, conducting activities of daily living, social skills); or a severe medical condition(s) (*e.g.*, traumatic brain injury or dementia) that is significantly impairing mental function; or
 - (2) is exhibiting one or more of the following active psychiatric symptoms or behavior: severe disorganization, active hallucinations or delusions, mania, catatonia, severe depressive symptoms, suicidal ideation and/or behavior, marked anxiety or impulsivity.
- (ii) a qualified mental health provider otherwise diagnoses the detainee as demonstrating significant symptoms of one of the following:
- (1) Psychosis or Psychotic Disorder;
 - (2) Bipolar Disorder;
 - (3) Schizophrenia or Schizoaffective Disorder;
 - (4) Major Depressive Disorder with Psychotic Features;
 - (5) Dementia and/or a Neurocognitive Disorder; or
 - (6) Intellectual Development Disorder (moderate, severe or profound).
- (iii) an Immigration Judge finds that the evidence of record results in a bona fide doubt about the detainee's competency to represent him- or herself.

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- 1 4. Class membership, as defined in Section I.A.3.b, *supra*, shall not be
2 terminated by a later determination of competency by an Immigration
3 Judge pursuant to Section III, *infra*.
- 4 5. Within seven (7) days of completion of the mental health assessment
5 described in Section I.A.3, *supra*, the qualified mental health provider
6 shall cause the ICE Office of the Chief Counsel to be notified if such
7 mental health assessment or other available information shows that an
8 immigration detainee meets the criteria described in Section I.A.3.b(i)
9 or (ii), *supra*.

10 B. Information Gathering Procedures for ICE and Detention Facility

11 Personnel

- 12 1. Whenever ICE or detention facility personnel become aware that an
13 immigration detainee identified through the screening system
14 described in Section I.A.2, *supra*, was previously found incompetent
15 in any court proceedings (including past criminal proceedings) or was
16 hospitalized due to a mental disorder or condition, ICE or detention
17 facility personnel must provide that information, and any related
18 documents in their possession, to the qualified mental health provider
19 performing the mental health assessment. If the mental health
20 assessment has already been completed at the time that ICE or
21 detention facility personnel provide this information to the qualified
22 mental health provider, the qualified mental health provider must
23 determine whether the new information affects the determination
24 whether a detainee meets the Class membership criteria described in
25 Section I.A.3.b(i) or (ii), *supra*, and shall cause the ICE Office of the
26 Chief Counsel to be notified of any change in that determination.
- 27 2. ICE and detention facility personnel must accept relevant information
28 and documents from family members, social workers, or treatment

1 providers regarding detainees' mental disorders or conditions, and
2 provide such information and documents to the qualified mental
3 health provider performing the mental health assessment. If a
4 detainee was not referred for a mental health assessment upon initial
5 screening, but information and/or records received through third
6 parties indicate that an individual suffers from a serious mental
7 disorder or condition, such individual shall be referred for a mental
8 health assessment for further evaluation. If the mental health
9 assessment has already been completed at the time that ICE or
10 detention facility personnel provide this information or documents to
11 the qualified mental health provider, the qualified mental health
12 provider must determine whether the new information or documents
13 affect the determination whether a detainee meets the Class
14 membership criteria described in Section I.A.3.b(i) or (ii), *supra*, and
15 shall cause the ICE Office of the Chief Counsel to be notified of any
16 change in that determination.

- 17 3. ICE will utilize a toll-free telephone hotline and contact information
18 for detainees, family members, and others to report and provide
19 relevant information regarding detainees who have serious mental
20 disorders or conditions that may impact their ability to represent
21 themselves in immigration proceedings. A notice advertising the
22 telephone hotline and contact information will be posted at all
23 detention facilities, both where detainees reside and in visitation areas,
24 and on ICE's public website. Such notice shall explicitly state that the
25 hotline is available to report detainees who have serious mental
26 disorders or conditions, and shall be available in the languages most
27 likely to be understood by detainees and family members, including
28 English and Spanish. Hotline operators shall cause any relevant

1 information regarding detainees with serious mental disorders or
2 conditions to be reported to the ICE Office of the Chief Counsel
3 within seven (7) days of the receipt of such information. If a detainee
4 identified through the hotline was not previously referred for a mental
5 health assessment, but information received through the hotline
6 indicates that the detainee suffers from a serious mental disorder or
7 condition, then ICE shall ensure that the detainee is referred for a
8 mental health assessment.

- 9 4. In the event Plaintiffs' counsel alleges that detention facility personnel
10 have failed to comply with the terms of Section I.B, Plaintiffs'
11 counsel shall provide Defendants with a written statement describing
12 the alleged non-compliance ("Notice of Non-Compliance"). Within
13 seven (7) calendar days, counsel for the Parties shall meet and confer
14 in a good faith effort to resolve their dispute informally. In the event
15 that the Parties are unable to resolve the dispute informally within 21
16 calendar days of the Notice of Non-Compliance, Plaintiffs may file a
17 motion for enforcement in the United States District Court for the
18 Central District of California. Nothing in this provision is intended to
19 limit Plaintiffs' ability to seek enforcement of any other provisions of
20 this injunction by any appropriate means. The provisions of this
21 Section are not intended to resolve the question of whether third
22 parties who are not Defendants in this case can be subject to
23 contempt. *See* Fed. R. Civ. P. 65(d)(2).

24 **II. INFORMATION SHARING SYSTEM BETWEEN ICE AND EOIR**

25 To further ensure that Immigration Judges have all of the information
26 available to Defendants so that they can, among other things, evaluate competency
27 and identify members of Sub-Class One, Defendants must implement a
28 functioning system for sharing information gathered through that screening and

1 identification process with the Executive Office for Immigration Review
2 (“EOIR”), which includes Immigration Judges and the Board of Immigration
3 Appeals (“BIA” or “Board”). Therefore, the Court orders that within 90 days of
4 this Order, Defendants shall implement the following system:

5 A. Upon notification that a detainee meets the criteria of Section I.A.3.b,
6 and is therefore a member of the Class, the ICE Office of the Chief
7 Counsel shall gather the following documents and information, if in the
8 possession of ICE or the detention facility personnel: any documents or
9 information that ICE identifies as relevant to competency provided to an
10 immigration detention facility or to ICE by the unrepresented
11 immigration detainee, his or her family, medical providers, caseworkers,
12 friends, legal service providers, and detention facility staff; any
13 information or documents gathered by ICE or the detention facility
14 personnel pursuant to Section I.B, *supra*; any competency determinations
15 made in prior judicial proceedings; any forensic competency evaluations;
16 any mental health assessment completed pursuant to Section I.A.3, *supra*;
17 any other evidence of an evaluation or a determination regarding whether
18 the detainee is or was mentally incompetent; and any other documents
19 that ICE identifies as relevant to the Immigration Judge’s determination
20 pursuant to Section III. ICE and detention facility personnel shall also
21 notify the ICE Office of the Chief Counsel (or cause the ICE Office of
22 the Chief Counsel to be notified) when they are aware that, in the last
23 five years, a detainee has been housed in a medical unit or cell due to a
24 mental disorder, has been placed in segregation due to a mental disorder,
25 has displayed an intent to commit suicide or self-harm due to a mental
26 disorder, or has been hospitalized due to a mental disorder. Finally, if
27 ICE is aware of third party records that it identifies as relevant to the
28 Immigration Judge’s determination pursuant to Section III, ICE will

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1 inform the ICE Office of the Chief Counsel of the existence of those
2 records.

3 B. Within 21 days of the notification described in Section II.A, *supra*, the
4 ICE Office of the Chief Counsel shall file a notice with EOIR to notify
5 the Immigration Judge presiding over the detainee's case, or the Board of
6 Immigration Appeals, if applicable, that the detainee—if unrepresented—
7 is a member of the Class. The notice shall contain all information
8 gathered by the ICE Office of the Chief Counsel pursuant to Section II.A,
9 *supra*, and shall attach to that notice all documents gathered by the ICE
10 Office of the Chief Counsel pursuant to Section II.A, *supra*, for
11 consideration by the Immigration Judge at the Judicial Competency
12 Inquiry and Competency Review. If the ICE Office of Chief Counsel
13 receives additional documents or information described in Section II.A
14 after the notice is filed, it will provide such documents or information to
15 the Immigration Judge as soon as practicable.

16 C. The ICE Office of the Chief Counsel will also submit to the Immigration
17 Judge any other medical records in ICE's possession, custody, or control,
18 should the Immigration Judge request such information.¹⁰

19 **III. EVALUATION SYSTEM**

20 Within 90 days of the entry of this Order, Defendants are ordered to
21 implement the following system:

22 When documentary, medical, or other evidence that comes to ICE's or
23 EOIR's attention indicates that the detainee is a member of the Class (*i.e.*, meets
24 one of the criteria set forth in Section I.A.3.b, *supra*), the Immigration Judge shall

25 _____
26 ¹⁰ If an unrepresented detainee with an appeal pending before the Board was
27 not previously determined to be a Class member, and information comes to the
28 attention of ICE that the individual falls under Section I.A.3.b, *supra*, ICE will
notify the Board and request a limited remand, in accordance with Section III.D.5,
infra.

1 conduct a Judicial Competency Inquiry and, when appropriate, a Competency
2 Review, for the purpose of determining whether the Class member is competent to
3 represent him- or herself in immigration proceedings. Such hearings shall conform
4 to the standard and procedures set forth below.

5 A. Pro Se Competency Standard

6 When determining whether an unrepresented respondent is competent to
7 represent him- or herself in an immigration proceeding, the Immigration Judge
8 must consider **both** the individual's ability to meaningfully participate in the
9 proceeding as set forth in *Matter of M-A-M-*, 25 I. & N. Dec. 474 (BIA 2011), **and**
10 the individual's ability to perform additional functions necessary for self-
11 representation.

12 Immigration Judges shall consider the following when determining if a
13 respondent is competent to represent him- or herself:

14 *First*, the respondent must be able to meaningfully participate in the
15 proceeding as set forth in *Matter of M-A-M-* . To meaningfully participate, the
16 respondent must have a rational and factual understanding of:

- 17 a. the nature and object of the proceeding;
- 18 b. the privilege of representation by counsel;
- 19 c. the right to present, examine, and object to evidence;
- 20 d. the right to cross-examine witnesses; and
- 21 e. the right to appeal.

22 *Second*, for an unrepresented respondent to be competent to represent him or
23 herself in an immigration proceeding, he or she must also be able to perform
24 additional functions necessary for self-representation. To represent him- or
25 herself, the respondent must have sufficient present ability to:

- 26 a. exercise the rights listed above;
- 27 b. make informed decisions about whether to waive the rights listed
28 above;

- 1 c. respond to the allegations and charges in the proceeding;
- 2 d. present information and evidence relevant to eligibility for relief; and
- 3 e. act upon instructions and information presented by the Immigration
- 4 Judge and government counsel.

5 A respondent is incompetent to represent him- or herself in an immigration
6 proceeding if he or she, because of a mental disorder (including Intellectual
7 Disability), is unable to satisfy any of the provisions above. For purposes of this
8 standard, “mental disorder” (including Intellectual Disability) is defined as a
9 significant impairment of the cognitive, emotional, or behavioral functioning of a
10 person.

11 Guidance on applying the pro se competency standard.¹¹ The following
12 guidance is provided to assist Immigration Judges in applying the *pro se*
13 competency standard.

14 First, in applying the above definition, the presence of a legal guardian, near
15 relative, friend, or custodian, under 8 C.F.R. § 1240.4, shall not affect an
16 Immigration Judge’s assessment of whether a respondent is able to perform the
17 additional functions necessary for self-representation.

18 Second, in assessing whether the respondent can respond to allegations and
19 charges in the proceedings, the Immigration Judge should consider, among other
20 things, the person’s ability to evaluate and coherently discuss legal arguments and
21 defenses.

22 Third, in assessing whether the respondent can present information and
23 evidence relevant to eligibility for relief, the Immigration Judge should consider,

24
25 _____
26 ¹¹ Wherever the *pro se* competency standard appears in written materials that
27 will be used as a reference or to train either Immigration Judges or mental health
28 experts who will implement the terms of the Injunction, the standard will be
accompanied by the text of the “guidance” on applying the definition of *pro se*
competency.

1 among other things, the person's ability to present rational and coherent testimony
2 based upon adequate recall.

3 B. Judicial Competency Inquiries and Competency Reviews

4 Judicial Competency Inquiries and Competency Reviews shall proceed as
5 follows.

- 6 1. There is no presumption of competence or incompetence for Class
7 members.
- 8 2. There is no burden of production or persuasion at either the Judicial
9 Competency Inquiry or the Competency Review. Such inquiries and
10 reviews shall serve as information-gathering hearings, which will
11 inform Immigration Judges' determinations concerning a Class
12 member's competence to represent him- or herself in the
13 proceedings. Consistent with *Matter of M-A-M-*, 8 U.S.C. § 1229a
14 and its implementing regulations, and the procedures set forth in
15 Section II, *supra*, the parties agree that the ICE Office of the Chief
16 Counsel's interest in presenting evidence and argument is "in the law
17 being observed" and not in a particular result concerning a Class
18 member's competence or incompetence. *Reid v. INS*, 949 F.2d 287,
19 288 (9th Cir. 1991). To the extent the evidence establishes a Class
20 member's incompetence, the ICE Office of the Chief Counsel's
21 presentation of evidence and argument should assist the Immigration
22 Judge in according the appropriate procedural rights or benefits
23 pursuant to the Court's Permanent Injunction [Doc. # 593] or
24 Implementation Plan Order. *See Matter of S-M-J-*, 21 I. & N. Dec.
25 722, 727 (BIA 1997).
- 26 3. The Immigration Judge shall convene a Judicial Competency Inquiry
27 no later than 21 days after receiving the notice pursuant to Section
28 II.B that a detainee is a member of the Main Class.

- 1 4. At the beginning of the Judicial Competency Inquiry, the Immigration
2 Judge shall advise and question the Class member based on the
3 Competency Proceeding Advisal, attached as Appendix B. The
4 Immigration Judge is neither required to ask each and every question
5 listed in the Advisal nor prohibited from asking questions not
6 otherwise listed therein.
- 7 5. Following the Judicial Competency Inquiry, the Immigration Judge
8 may make any of the following findings, based on all available
9 evidence and any testimony presented:
- 10 a. Class member is competent. There is no reasonable cause¹² to
11 believe that the Class member is suffering from a mental disorder
12 that impairs his or her ability to perform the functions listed in the
13 definition of competence to represent him- or herself.
- 14 b. Class member is incompetent. A preponderance of the evidence
15 establishes that the Class member is not competent to represent
16 him- or herself in the proceedings.
- 17 c. Insufficient evidence to determine if Class member is competent.
18 The evidence is not sufficient to support a finding of incompetence
19 but the Immigration Judge has reasonable cause to believe that the
20 Class member is suffering from a mental disorder that may impair
21 his or her ability to represent him- or herself.
- 22 6. When, at the conclusion of the Judicial Competency Inquiry, an
23 Immigration Judge determines that a Class member is not competent
24 to represent him- or herself in the proceedings pursuant to Section
25

26
27 ¹² The “no reasonable cause to believe” standard is equivalent to a “bona
28 fide doubt” standard and is less onerous than a probable cause standard.

1 III.B.5.b, *supra*, EOIR shall have 60 days from the date of the
2 determination to arrange for provision of a Qualified Representative.

3 7. When, at the conclusion of the Judicial Competency Inquiry, an
4 Immigration Judge determines that he or she has insufficient evidence
5 to determine if the Class member is competent pursuant to III.B.5.c,
6 *supra*, the Immigration Judge shall follow the procedures set forth
7 below:

8 a. Upon the conclusion of the Judicial Competency Inquiry, the
9 Immigration Judge shall promptly order that a Forensic
10 Competency Evaluation of the Class member be conducted and
11 that the results of the evaluation be provided to the Immigration
12 Judge, the ICE Office of the Chief Counsel, and the Class member.

13 b. A Forensic Competency Evaluation ordered by the Immigration
14 Judge shall be completed and a written report provided to the
15 Judge and the parties within 45 days after the date of the order set
16 forth in III.B.7.a, *supra*.

17 c. Within 30 days after receiving the report from the Forensic
18 Competency Evaluation, the Immigration Judge shall convene a
19 Competency Review, including further testimony if necessary, and
20 shall make a determination by a preponderance of the evidence as
21 to whether the Class member is mentally competent or
22 incompetent to represent him- or herself.

23 d. When, at the conclusion of the Competency Review, an
24 Immigration Judge determines that a Class member is mentally
25 incompetent to represent him- or herself pursuant to Section
26 III.B.5.b, *supra*, EOIR shall have 21 days from the date of the
27 determination to arrange for provision of a Qualified
28 Representative.

1 8. The Immigration Judge may allow one extension of no more than 30
2 days for each of the timeframes set forth above for Judicial
3 Competency Inquiries (Section III.B.3), Forensic Competency
4 Evaluations (Section III.B.7.b), and Competency Reviews (Section
5 III.B.7.c). The Immigration Judge may, thereafter, allow for
6 additional extensions of these time frames in exceptional
7 circumstances or where the Immigration Judge otherwise determines
8 that such extensions are necessary to ensure the fundamental fairness
9 of the Class member's proceeding.

10 C. Forensic Competency Evaluations

11 As set forth below, defendants shall provide Forensic Competency
12 Evaluations upon the request of Immigration Judges:

- 13 1. Forensic Competency Evaluations shall be conducted by a "mental
14 health professional," defined as forensically trained and currently
15 licensed psychiatrists, psychologists, and licensed clinical social
16 workers.
- 17 2. Except in very rare exigent circumstances, the Forensic Competency
18 Evaluations conducted at the request of an Immigration Judge will be
19 conducted in person, and not by teleconference, videoconference, or
20 other remote access means. The parties agree that the following are
21 not exigent circumstances that justify deviation from the in-person
22 requirement: a) the unavailability of a trained mental health
23 professional who meets the requisite qualifications and who is willing
24 to travel to the individual's location at the compensation rate
25 requested by Defendants; b) the inconvenience or expense to
26 Defendants associated with obtaining a trained mental health
27 professional at additional cost. The exigent circumstances envisioned
28 by the Parties are circumstances in which the unique characteristics or

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1 social circumstances of the individual to be evaluated are such that the
2 quality of the Forensic Competency Evaluation will be enhanced by
3 the use of remote access technology, even though a qualified clinician
4 is available for an in-person evaluation.

- 5 3. Forensic Competency Evaluations must be conducted substantially in
6 accordance with the procedures described in the American Academy
7 of Psychiatry and the Law Practice Guideline for the Forensic
8 Evaluation of Competence to Stand Trial.

9 D. Additional Procedures

- 10 1. Judicial Competency Inquiries and Competency Reviews shall be
11 recorded. The Immigration Judge shall state on the record the
12 reasoning supporting a finding of competence or incompetence.
- 13 2. At or before Judicial Competency Inquiries and Competency
14 Reviews, the ICE Office of the Chief Counsel, the Class member, and
15 third parties (including family members, social service providers, and
16 others) may submit to the Immigration Judge, and the Immigration
17 Judge shall consider, additional mental health information or other
18 information relevant to a detainee's mental competency or
19 incompetency to represent him- or herself in immigration
20 proceedings.
- 21 3. "Mental Health Information" includes any information expressly
22 contained in or directly obtained from an Immigration Court's
23 administrative inquiry into mental competence, a portion of a hearing
24 in which mental competence is addressed, a mental health
25 examination of a detainee (including a request for such examination),
26 and a report of such examination. Except as otherwise noted below,
27 Mental Health Information shall only be used to determine a
28 detainee's mental competency to participate or represent oneself in an

1 immigration proceeding, and may not be used to establish the truth of
2 allegations or charges against the detainee, or to establish ineligibility
3 for relief.

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

- 16 4. Either party may appeal the Immigration Judge's determination that a
17 detainee is mentally competent to represent him- or herself in
18 immigration proceedings to the Board. In the event the ICE Office of
19 the Chief Counsel appeals an Immigration Judge's determination that
20 a detainee is mentally incompetent to represent him- or herself in
21 immigration proceedings to the Board, EOIR shall provide the
22 detainee with a Qualified Representative to represent the detainee in
23 the appeal before the Board and any other proceedings, including
24 bond hearings, to which the detainee may be entitled under the
25 Permanent Injunction unless and until the detainee is otherwise
26 determined to be competent by an Immigration Judge.
- 27 5. In the case of an unrepresented immigration detainee with an appeal
28 pending before the Board who has not previously been determined to

1 be a Class member, when documentary, medical, or other evidence
2 indicating that such individual falls under Section I.A.3.b comes to the
3 Board's attention, the Board shall order a remand to the Immigration
4 Judge with instructions to apply the procedures set forth in Section
5 III.B of this Order.

- 6 6. Where an Immigration Judge finds from the record and proceedings
7 before him/her, or from evidence made available to all parties, that
8 there is sufficient reason to believe that the Sub-Class One member is
9 no longer suffering from a mental disorder that renders him
10 incompetent to represent him-or herself, before issuing any finding
11 that the Sub-Class One member has in fact been restored to
12 competency, the Immigration Judge shall employ and follow the
13 procedures set forth in Section III.B.4 for conducting a Judicial
14 Competency Inquiry, including reliance on and application of the
15 Competency Proceeding Advisal attached as Appendix B. No finding
16 of restored competency may be issued unless and until the
17 Immigration Judge has invited the input of the Qualified
18 Representative. The Immigration Judge shall state on the record the
19 reasoning supporting a finding that the Sub-Class One member is now
20 competent to represent him- or herself. Prior to stating such a finding,
21 the Immigration Judge, in his or her discretion, may order that a
22 Forensic Competency Evaluation of the Sub-Class One member be
23 conducted and that the results of the evaluation be provided to the
24 Immigration Judge and the parties, within the time frames set forth in
25 Section III.B7(b) and (c).
- 26 7. Absent exceptional circumstances, a Sub-Class One member shall not
27 be found to have knowingly, intelligently and voluntarily waived his
28 right to a Qualified Representative.

1 **IV. OTHER MATTERS**

2 A. EOIR's nationwide policy

3 Nothing in EOIR's nationwide policy is intended to negate or alter the
4 obligations of EOIR under the orders of the Court in *Franco-Gonzalez v. Holder*.

5 B. Released Main Class Members

6 The procedural protections set forth in the Permanent Injunction and in this
7 Order are limited to individuals who are physically detained in ICE custody, except
8 as provided in Sections IV.B and IV.C, *infra*:

9 If a Main Class member is released from detention after an Immigration
10 Judge has ordered a Forensic Competency Evaluation but before the Immigration
11 Judge has made a competency determination, the Main Class member continues to
12 be entitled to the procedural protections set forth in the Permanent Injunction and
13 in this Order, including the completion of the Forensic Competency Evaluation,
14 Section III.B.7.a-b, a Competency Review, Section III.B.7.c, and, if the
15 Immigration Judge determines that the individual is not competent to represent
16 him-or herself, the provision of a Qualified Representative, Section III.B.7.d. The
17 timelines, however, for scheduling a Forensic Competency Evaluation, a
18 Competency Review, and, if applicable, for provision of a Qualified
19 Representative at the conclusion of a Competency Review shall not apply
20 following such Main Class member's release from detention; provided that, the
21 Competency Review shall be scheduled no more than 45 days after the
22 Immigration Court receives the report from the Forensic Competency Evaluation
23 (absent exceptional circumstances or where the Immigration Judge otherwise
24 determines that more time is necessary to ensure the fundamental fairness of the
25 Class member's proceeding). If such released Main Class member fails to appear
26 at the Forensic Competency Evaluation ordered by the Immigration Judge for an
27 unexcused reason or no reason, he or she may thereby forfeit the right to such an
28

1 evaluation, and the Immigration Judge may make the competency determination
2 without the aid of that evaluation.

3 If a Main Class member (who is not also a Sub-Class One member) is
4 released from detention after Defendants have carried out the requirements in
5 Section II.B, but before an Immigration Judge has ordered a Forensic Competency
6 Evaluation in the case pursuant to Section III.B.7 or made a competency
7 determination pursuant to Section III.B.5, he or she is not entitled to the procedural
8 protections set forth in the Permanent Injunction and in this Order. However, if
9 such released Main Class member fails to appear at a scheduled hearing for an
10 unexcused reason or no reason, he or she shall not be ordered removed in absentia,
11 unless or until (1) he or she is represented in his or her immigration proceedings or
12 (2) he or she has been determined mentally competent by the Immigration Judge
13 prior to the failure to appear. If such released Main Class member fails to appear
14 at a scheduled hearing for an unexcused reason or no reason, he or she may be re-
15 detained by ICE and, for purposes of any subsequent bond hearings, the failure to
16 appear shall constitute clear and convincing evidence that the Main Class member
17 is a flight risk.

18 C. Released Sub-Class One Members

19 Released Sub-Class One members are entitled to representation by Qualified
20 Representatives pursuant to this Court's Injunction until the conclusion of their
21 immigration proceedings, irrespective of whether their case is transferred to a
22 venue outside of the three states in which this Order applies.

23 D. Class Definition

24 Pursuant to the Parties' agreement, the Court hereby substitutes the term
25 "immigration proceedings" for "removal proceedings" and "detention and removal
26 proceedings" in the Class definition. Therefore, the Class and Sub-Class
27 definitions are as follows:
28

1 *Plaintiff (or “Main”) Class:*

2 All individuals who are or will be in DHS custody for immigration
3 proceedings in California, Arizona, and Washington who have been
4 identified by or to medical personnel, DHS, or an Immigration Judge, as
5 having a serious mental disorder or defect that may render them incompetent
6 to represent themselves in immigration proceedings, and who presently lack
7 counsel in their immigration proceedings.

8 *Sub-Class 1:*

9 Individuals in the above-named Plaintiff Class who have a serious
10 mental disorder or defect that renders them incompetent to represent
11 themselves in immigration proceedings.

12 *Sub-Class 2:*

13 Individuals in the above-named Plaintiff Class who have been
14 detained for more than six months.

15 For purposes of the Class and Sub-Class definitions above, the class
16 certification order [Doc. # 348], permanent injunction order [Doc. # 593], and this
17 implementation plan order, “immigration proceedings” shall mean, and be limited
18 to, proceedings at which Immigration and Customs Enforcement (“ICE”) appears
19 on behalf of the Department of Homeland Security (“DHS”) before an Immigration
20 Judge or the Board of Immigration Appeals (“BIA” or “Board”):

- 21 (1) that occur prior to the entry of a final administrative order of removal,
22 final administrative order of deportation, final administrative order of
23 exclusion, or a final administrative determination pursuant to 8 C.F.R.
24 § 1208.2(c)(3);¹³ and

25 ¹³ Pursuant to 8 C.F.R. § 1208.2(c)(3), in proceedings falling under the
26 jurisdiction of an immigration judge for asylum and withholding of removal only
27 applications under 8 C.F.R. § 1208.2(c)(1)-(2), Defendants shall apply the
28 provisions of Sections I (Screening and Information Gathering), II (Information
Sharing), and III (Evaluation System), *supra*, as well as the Permanent Injunction
and clarifying minute order [Doc. ## 593, 626].

1 (2) bond hearings that occur after the entry of a final administrative order
2 of removal, final administrative order of deportation, final
3 administrative order of exclusion, or a final administrative
4 determination pursuant to 8 C.F.R. § 1208.2(c)(3) (collectively, “post-
5 order bond hearings”), except in such cases where the final order is
6 thereafter reopened; provided that, Defendants shall not be bound to
7 apply the provisions of Section I (Screening and Information
8 Gathering) and II (Information Sharing), *supra*. Instead, in all such
9 post-order bond hearings, the ICE Office of the Chief Counsel shall
10 notify the Immigration Judge whenever the information contained in
11 the file in its possession shows that a detainee was previously
12 identified as a Class or Sub-Class member. If the information in the
13 file shows that a detainee was previously identified as a Class
14 member, *or* if the Immigration Judge determines that the detainee is a
15 Class member pursuant to Section I.A.b.3(iii), *supra*, then the
16 Immigration Judge shall determine the detainee’s competence in
17 compliance with Section III (Evaluation System), *supra*.
18 Notwithstanding the above, if a detainee was previously determined to
19 be a member of Sub-Class One, he or she must be afforded a
20 Qualified Representative in his or her post-order bond hearings, unless
21 a determination has been made that he is competent pursuant to the
22 procedures described in Section III.D.6, *supra*.

23 E. Implementation of Partial Settlement Agreement, Subject to the Court’s
24 Approval

25 1. Definition of “Removal Order Class Member.”

26 Subject to the Court’s approval of the Parties’ Partial Settlement Agreement
27 Regarding Procedures of Notifying and Reopening Cases of *Franco* Class
28 Members who Have Received Final Orders of Removal (the “Agreement”)—

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1 For purposes of this Order and Sections IV.E.2, *infra*, the term “Removal Order
2 Class Member(s)” shall have the same meaning and applicability, and be limited
3 to, the definition as set forth in Parties’ Agreement. *See* Agreement at Section I.

4 2. Equitable Tolling of Time and Numerical Limitations for Motions to
5 Reopen under the Agreement.

6 Subject to the Court’s approval of the Parties’ Agreement, the Court hereby
7 orders that the time and numerical limitations set forth in the Immigration and
8 Nationality Act and its implementing regulations shall be equitably tolled for
9 motions to reopen filed by “Removal Order Class Members” and accepted for
10 adjudication on the merits, as provided under the terms of the Parties’ Agreement.

11 F. Tools

12 Within 90 days of the entry of this Order, Defendants shall prepare tools to
13 be provided to all Main Class members before the Judicial Competency Inquiry
14 that will have basic information to help individuals prepare for the hearing. Prior
15 to finalizing these tools, Defendants shall provide Plaintiffs with a reasonable
16 opportunity to review Defendants’ proposed tools and to provide input.

17 G. Retention of Jurisdiction

18 This Court retains jurisdiction to entertain such further proceedings and to
19 enter such further orders as may be necessary or appropriate to enforce the
20 provisions of this Order, or to amend this Order for good cause shown.¹⁴ In
21 addition to the dispute resolution procedures contained in this or further Orders, the


22 //
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26 _____
27 ¹⁴ Nothing in this order should be read to suggest that the Court has subject
28 matter jurisdiction to entertain individual challenges to removal orders entered in
immigration proceedings brought by or on behalf of Class members.

1 Parties shall comply with the requirements of Local Rule 7-3 prior to bringing any
2 motion seeking to implement, enforce, or amend this Order.

3
4 IT IS SO ORDERED.

5 DATED: October 29, 2014

6 
7 DOLLY M. GEE
8 UNITED STATES DISTRICT JUDGE
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TABLE OF TIMELINES¹⁵

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Implementation	
DATE	ACTION
Within 90 days of the entry of this Order.	Defendants must implement the Screening System (<i>see</i> Section I), Information Sharing System Between ICE and EOIR (<i>see</i> Section II), and the Evaluation System (<i>see</i> Section III).
Within 90 days of the entry of this Order.	Defendants shall prepare tools to be provided to all Main Class members before the Judicial Competency Inquiry. <i>See</i> Section IV.F.
Screening Procedures	
DATE	ACTION
Upon a detainee’s admission into ICE custody at an immigration detention facility for immigration proceedings in California, Arizona, or Washington.	Absent emergency circumstances related to facility security or the health and safety of staff or detainees, all detainees shall be initially screened for evidence of a “serious mental disorder or condition,” in accordance with the applicable ICE national detention standards. <i>See</i> Section I.A.2.
Within 14 days of a detainee’s admission into ICE custody at an immigration detention facility for immigration proceedings in California, Arizona, or Washington.	Absent emergency circumstances related to facility security or the health and safety of staff or detainees, detainees shall be further screened (or assessed) by a currently and appropriately licensed psychiatrist, physician, physician assistant, psychologist, clinical social worker, licensed nurse practitioner, or

¹⁵ The Table of Timelines is provided for convenience only and is not a part of this Order. Accordingly, it does not supplement, modify, or in any way alter the contents of this Order.

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1	registered nurse. <i>See</i> Section I.A.2.
2 3 4	Individuals identified as exhibiting evidence of a serious mental disorder or condition shall be referred for a mental health assessment performed by a qualified mental health provider. <i>See</i> Section I.A.3. ¹⁷
5 6 7 8 9 10	The qualified mental health provider shall cause the ICE Office of the Chief Counsel to be notified if such mental health assessment or other available information shows that an immigration detainee meets specified Main Class Membership Criteria. <i>See</i> Section I.A.5. ¹⁸
11 12 13	The Hotline operator shall cause such information to be reported to the ICE Office of the Chief Counsel. <i>See</i> Section I.B.3.
14 15 16	Counsel for the Parties shall meet and confer in a good faith effort to resolve their dispute informally. <i>See</i> Section I.B.4.

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¹⁶ As set forth in the Order, whenever ICE or detention facility personnel become aware that an immigration detainee identified through the screening system was previously found incompetent in any court proceedings (including past criminal proceedings) or was hospitalized due to a mental disorder or condition, ICE or detention facility personnel must provide that information, and any related documents in their possession, to the qualified mental health provider performing the mental health assessment. *See* Section I.B.1.

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¹⁷ As set forth in the Order, if a detainee was not referred for a mental health assessment upon initial screening, but information and/or records received through third parties indicate that an individual suffers from a serious mental disorder or condition, such individual shall be referred for a mental health assessment for further evaluation. *See* Section I.B.2.

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¹⁸ As set forth in the Order, if the mental health assessment has already been completed at the time that ICE or detention facility personnel provide the information or documents referenced in footnote 16 or 17, *supra*, the qualified mental health provider must determine whether the new information affects the determination whether a detainee meets the Class membership criteria, and shall cause the ICE Office of the Chief Counsel to be notified of any change in that determination. *See* Section I.B.1, I.B.2.

1	with the Information Gathering Procedures (i.e., “Notice of Non-Compliance”).	
2		
3	In the event the Parties are unable to resolve the dispute regarding the alleged non-compliance with the Information Gathering Procedures informally within 21 calendar days of the Notice of Non-Compliance.	Plaintiffs may file a motion for enforcement in the United States District Court for the Central District of California. <i>See</i> Section I.B.4.
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7	Information Sharing	
8		
9	DATE	ACTION
10	Upon notification that a detainee meets the Main Class Membership Criteria, and is therefore a member of the Class.	The ICE Office of the Chief Counsel shall gather relevant documents and information, if in the possession of ICE or the detention facility personnel. <i>See</i> Section II.A.
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13	Within 21 days of notification that a detainee meets the Main Class Membership Criteria.	The ICE Office of Chief Counsel shall file a notice with EOIR to notify the Immigration Judge presiding over the detainee’s case, or the Board of Immigration Appeals, if applicable, that the detainee – if unrepresented – is a member of the Class. <i>See</i> Section II.B.
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18	Evaluation System¹⁹	
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20	DATE	ACTION
21	No later than 21 days after receiving the notice that a detainee is a member of the Main Class.	The Immigration Judge shall convene a Judicial Competency Inquiry, following which the Immigration Judge may, based on all available evidence
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¹⁹ As set forth in the Order, the Immigration Judge may allow one extension of no more than 30 days for each of the timeframes for Judicial Competency Inquiries, Forensic Competency Evaluations, and Competency Reviews. The Immigration Judge may, thereafter, allow for additional extensions of these timeframes in exceptional circumstances or where the Immigration Judge otherwise determines that such extensions are necessary to ensure the fundamental fairness of the Class member’s proceeding. *See* Section III.B.8.

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1		and testimony presented, find the Class member competent or not competent, or determine that there is not sufficient evidence to determine if the Class member is competent. <i>See</i> Section III.B.3, III.B.5.
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5	60 days from the date an Immigration Judge determines that a Class member is not competent to represent him- or herself in the proceedings (if the determination is made at the conclusion of the Judicial Competency Inquiry).	EOIR shall arrange for the provision of a Qualified Representative. <i>See</i> Section III.B.6.
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9	Upon the conclusion of the Judicial Competency Inquiry.	The Immigration Judge shall promptly order that a Forensic Competency Evaluation of the Class member be conducted and that the results of the evaluation be provided to the Immigration Judge, the ICE Office of the Chief Counsel, and the Class member. <i>See</i> Section III.B.7.a.
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14	Within 45 days after the date an Immigration Judge orders a Forensic Competency Evaluation.	The Forensic Competency Evaluation shall be completed and a written report provided to the Immigration Judge and the parties. <i>See</i> Section III.B.7.b.
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17	Within 30 days after receiving the report from the Forensic Competency Evaluation.	The Immigration Judge shall convene a Competency Review, and shall make a determination by a preponderance of the evidence as to whether the Class member is mentally competent or incompetent to represent him- or herself. <i>See</i> Section III.B.7.c.
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22	21 days from the date of an Immigration Judge determines that a Class member is not competent to represent him- or herself (if the determination is made at the conclusion of the Competency Review).	EOIR shall arrange for the provision of a Qualified Representative. <i>See</i> Section III.B.7.d.
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Other Matters – Released Main Class Members

DATE	ACTION
No more than 45 days after the Immigration Court receives the report from the Forensic Competency Evaluation (if the Main Class member was released from detention after the Immigration Judge ordered a Forensic Competency Evaluation but before the Immigration Judge made a competency determination). ²⁰	Absent exceptional circumstances or where an Immigration Judge otherwise determines that more time is necessary to ensure the fundamental fairness of the Class member’s proceeding, a Competency Review shall be scheduled. <i>See</i> Section IV.B.

²⁰ As set forth in the Order, the timelines for scheduling a Forensic Competency Evaluation, a Competency Review, and, if applicable, for provision of a Qualified Representative at the conclusion of a Competency Review shall not apply following a Main Class member’s release from detention. *See* Section IV.B.

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Appendix A

ERO Custody Management Division

Authorized Facilities in the States of Arizona, California and Washington

Data: Facility Performance Management System (FPMS) database, 10/10/2014.

DETLOC	FACILITY NAME	CITY	STATE	AOR	FACILITY TYPE	DETENTION STANDARD	IHSC STAFFED?
CCADCAZ	CCA CENTRAL ARIZONA DETENTION CENTER	FLORENCE	AZ	PHO	USMS IGA	PBND5 2008	NO
CCAFIAZ	CCA, FLORENCE CORRECTIONAL CENTER	FLORENCE	AZ	PHO	USMS IGA	PBND5 2008	NO
EAZ	ELOY FEDERAL CONTRACT FACILITY	ELOY	AZ	PHO	DIGSA	PBND5 2011	YES
FLO	FLORENCE SERVICE PROCESSING CENTER	FLORENCE	AZ	PHO	SPC	PBND5 2011	YES
SLRDCAZ	SAN LUIS REGIONAL DETENTION CENTER	SAN LUIS	AZ	PHO	IGSA	NDS	NO
ADLINTCA	ADELANTO CORRECTIONAL FACILITY	ADELANTO	CA	LOS	DIGSA	PBND5 2011	NO
CONWECA	CONTRA COSTA COUNTY JAIL WEST	RICHMOND	CA	SFR	USMS IGA	NDS	NO
IRADFCA	IMPERIAL REGIONAL ADULT DETENTION FACILITY	CALEXICO	CA	SND	DIGSA	PBND5 2011	NO
MUSIKCA	JAMES MUISICK FACILITY	IRVINE	CA	LOS	IGSA	PBND5 2008	NO
RIOCCCA	SACRAMENTO COUNTY JAIL - RIO COSUMNES CORR. CENTER	ELK GROVE	CA	SFR	IGSA	NDS	NO
CCASDCA	SAN DIEGO CONTRACT DETENTION FACILITY - CCA	SAN DIEGO	CA	SND	CDF	PBND5 2011	YES
SACITCA	SANTA ANA CITY JAIL	SANTA ANA	CA	LOS	IGSA	NDS	NO
TLACYCA	THEO LACY FACILITY	ORANGE	CA	LOS	IGSA	PBND5 2008	NO
YUBAICA	YUBA COUNTY JAIL	MARYSVILLE	CA	SFR	IGSA	NDS	NO
CSCNWWA	NORTHWEST DETENTION CENTER	TACOMA	WA	SEA	CDF	PBND5 2011	YES

Appendix B

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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 advisal 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?