American Immigration Lawyers Association
EOIR Fall 2013 Liaison Meeting
December 12, 2013 – Meeting Minutes

1. Impact of the Government Shutdown on EOIR

AILA appreciates EOIR's efforts to notify practitioners of court procedures during the shutdown, including the notices *EOIR Operations During Lapse in Government Funding* and *Immigration Court Filings During the Lapse in Government Funding* and thanks EOIR for the liaison relationship which was very effective during the shutdown period. However, during the shutdown, individual courts' handling of detained and nondetained cases, filings, and deadlines appears to have varied. AILA members are concerned about policies moving forward in cases affected in some way by the shutdown and appreciate any guidance EOIR can provide on the following:

Cases Where a Hearing Had to Be Rescheduled Because of the Shutdown

A. In cases where a hearing had to be rescheduled and/or postponed because of the shutdown, how will immigration courts determine the order in which cases will be rescheduled?

EOIR RESPONSE: Thousands of hearings did not take place during the shutdown. EOIR did not issue a blanket rule or policy on how these hearings will be rescheduled. Each Immigration Court is responsible for rescheduling cases on its dockets and cases will be rescheduled based on each individual Court's available dates on its dockets. AILA members can file a motion to advance a case if they feel the circumstances merit an expedited court date.

Treatment of Filing Deadlines During Shutdown

B. Will EOIR issue a blanket policy that all filings due during the government shutdown are deemed timely filed if those filings are made within a certain number of days after the shutdown ends? How should attorneys approach courts with evidence to show either timely filing or attempt to timely file? How should attorneys approach courts when they were told that the court would not accept any filings during the shutdown?

EOIR RESPONSE: On October 25, 2013, EOIR issued a blanket policy regarding cases affected by the government shutdown. The policy can be found on the EOIR website at http://www.justice.gov/eoir/press/2013/FundingLapseFilingChanges10252013.htm.

C. Will the policy for respondent's attorneys and government attorneys be the same?

EOIR RESPONSE: Yes.

D. What guidance will EOIR issue to immigration judges on how to manage deadlines and filings?

EOIR RESPONSE: See responses to parts A and B above.

E. Will immigration courts deem motions to reopen/requests to withdraw voluntary departure to be timely filed if the appropriate court was designated as "closed" during the period in which the motion or request was filed?

EOIR RESPONSE: See response to part B above.

Growing Backlogs Due to Shutdown

F. AILA anticipates that immigration court backlogs will suffer further delays even after the shutdown ends. How does EOIR anticipate moving forward with scheduling, deadlines, and case management goals given these new backlogs created by the government shutdown while still trying to manage already overburdened dockets at most immigration courts?

EOIR RESPONSE: Immigration Courts are doing their best to schedule cases affected by the shutdown in time slots that currently exist. Cases already scheduled for hearings will not be moved because of those affected by the shutdown.

G. Has EOIR developed any plans to address cases that involve relatively straightforward INA § 212(c) or LPR cancellation claims that are likely to be favorably resolved after short hearings? Can the EOIR institute a "rocket docket" of sorts to allow for faster consideration of "easier" cases if requested by the respondent? Can EOIR consider implementing other case management tools, such as allowing some issues to be resolved on summary judgment? This would allow the courts to focus their time on the disputed issues, which should hopefully lead to shorter hearings.

EOIR RESPONSE: EOIR initiated a pilot program in two Immigration Courts over the past year to resolve "non-contested" cases in shorter time periods. In the pilot program, DHS identifies non-contested cases to be advanced on the docket. Cooperation between government attorneys and members of the private bar is necessary for any such program to work. EOIR intends to expand the program to additional Immigration Courts, though they have yet to be determined.

H. Would EOIR consider appointing individuals such as magistrates to help work through backlogs created by the government shutdown?

EOIR RESPONSE: At this time use of Magistrates is not being contemplated by EOIR. However, depending on budget appropriations, EOIR does anticipate using temporary Immigration Judges to help manage work overloads at various courts.

I. Were courts that were open to hear detained cases only during the shutdown nevertheless permitted to issue decisions on non-LPR Cancellation of Removal cases for non-detained respondents? Please advise on how EOIR is managing the non-LPR Cancellation of Removal cap for this fiscal year.

EOIR RESPONSE: Some courts issued non-LPR cancellation decisions during the shutdown, but those decisions were already set to issue. The timing of those decisions was not related to the shutdown. In terms of the 4,000 annual cap for this fiscal year, EOIR has extended OPPM 12-01, which discusses the process to manage cases subject to the cap. Cases now sit in one, nation-wide queue and decisions are put in the queue in accordance with the decision date and time. For the time being, hearings will continue to proceed and cases that are ready to be granted will be put into the queue. Decisions will be issued in order based on the position in the queue.

2. DOMA

On July 22, 2013, AILA President Doug Stump sent a memorandum to EOIR, USCIS, ICE, DOS, and CBP highlighting issues and offering recommendations on the implementation of the Supreme Court's decision in *United States v. Windsor,* which struck down Section 3 of the Defense of Marriage Act (DOMA), and the decision's impact on immigration benefits.[1] EOIR provided written responses to those questions, and AILA thanks the agency for the response to each question.

A. Please provide statistics on the number of motions to remand cases based on the *Windsor* decision the BIA has received and the number of such motions the BIA has granted.

EOIR RESPONSE: EOIR does not track the reasons for a motion to remand or a motion to reopen, including whether the case based on the *Windsor* decision. Anecdotally, EOIR has seen very little activity related to *Windsor* and the majority of the motions to reopen have been related to cases where a visa petition has either been filed or approved.

B. Has EOIR issued instructions to immigration judges to liberally exercise *sua sponte* discretion to reopen removal proceedings where there is now relief available based on the *Windsor* decision?

EOIR RESPONSE: EOIR has not issued blanket instructions to Immigration Judges. Each motion to reopen a case must be adjudicated on its own merits on a case-by-case basis.

C. What training will immigration judges receive on adjudicating applications for relief that involve same-sex marriages?

EOIR RESPONSE: In the 2013 Immigration Judge Legal Training Program, Immigration Judges received training on asylum cases based on sexual orientation. Asylum Officer training materials used by USCIS and UNHCR guidelines were made available to Immigration Judges. EOIR is working on 2014 training now, and will consider including information specific to same-sex marriages.

[1] *See AILA Letter to DHS Agency Heads on Implementation of Supreme Court's Decision on DOMA*, AILA Doc. No. 13072352, http://www.aila.org/content/default.aspx?docid=45160 (posted 7/23/13).

3. Amicus Participation:

AILA appreciates the opportunity to appear as amicus curiae in cases before the BIA and believes strongly that amicus participation is a valuable resource. However, amicus curiae often are not acknowledged in the BIA's decision or listed in the counsel section of the decision. In many cases, it is not evident from the decision that the BIA considered the arguments made in the amicus brief.[2] AILA has noticed this lack of acknowledgement even in cases where the BIA has invited AILA to appear as amicus.

Legal drafting, research, and brief writing is extremely time consuming, and the failure to acknowledge arguments made by amicus, especially when the BIA specifically requests participation, may have a chilling effect on future participation.

A. Most courts, including Courts of Appeal, will acknowledge amicus briefs and address arguments made by amicus. Does the BIA have a different policy? Is there a particular reason why the BIA invites amicus participation, but does not acknowledge the submission of briefs?

EOIR Response: The BIA is very interested in receiving amicus briefs and appreciates the work required for amicus to draft and submit briefs. When the BIA solicits amicus briefs, the practice is to acknowledge the amicus in the decision regardless of whether the decision is published. If amicus briefs were not solicited it is up to the BIA panel on a case-by-case basis whether to acknowledge amicus participation.

B. Does the Board have a preferred process for submitting amicus briefs, especially in cases where amicus have not been invited to submit briefs, to help ensure that the briefs make it to the BIA in time to be considered before a decision is issued? Is there a particular person amicus should contact at the BIA to let them know an amicus brief will be filed?

EOIR Response: Please refer to section 2.10 of the BIA Practice Manual for instructions on appearances by amicus curiae. The request to submit an amicus brief should generally be accompanied by the brief itself. The BIA contact person for amicus briefs is Rebecca Noguera, who can be reached at 703-305-0201.

4. Unpublished BIA Decisions

A. We understand that certain unpublished BIA decisions are made available to the public at the EOIR Law Library and Immigration Research Center in Falls Church, Virginia. Can you describe which unpublished decisions are selected for public access; which decisions are not

[2] *See* Limberg Javier Cortez Arias, A087214544 (BIA March 29, 2013), available at http://www.aila.org/content/default.aspx?docid=44124.

selected for public access; whether there are decisions for which release is categorically barred; and EOIR's rationale for restricting access to certain decisions?

EOIR Response: EOIR's current policy is that only precedential decisions are required to be published. EOIR is currently reviewing its policy on how to distribute unpublished decisions while adhering to the privacy concerns associated with disclosure of personal and other protected information. EOIR hopes to issue further guidance on this subject in 2014.

B. EOIR previously indicated that it did not have plans to make all unpublished decisions available online. Given technological improvements since EOIR first launched the Virtual Law Library, does EOIR have any plans to make unpublished decisions available electronically? In addition, we understand that some unpublished decisions are made available electronically through Lexis and Westlaw. Does EOIR provide Lexis and Westlaw with these decisions directly? If so, how does EOIR decide which decisions to provide to Lexis and Westlaw?

EOIR Response: Please see response to part A above.

5. BIA Oral Argument

A. Pursuant to the Board of Immigration Appeals Practice Manual, oral argument generally is open to the public, with certain exceptions.[3] However, the manual does not specify when oral argument is held or how the public can learn about the oral argument schedule. Does EOIR make its oral argument schedule and the issues in the cases publicly available in advance of the hearings? If not, would EOIR do so? Are the argument recordings publicly available? If not, would EOIR post the recordings on its website, as some federal courts do?

EOIR Response: There is no set schedule for oral argument at the BIA. BIA panels will schedule oral argument when appropriate. Oral arguments occur very rarely and the BIA does not have a specific process to notify the public of upcoming oral arguments. In many cases where oral argument is scheduled, the oral argument is cancelled due to settlement or withdrawal of the appeal.

B. The Practice Manual also provides that "absent the express consent of the alien," a case involving asylum, withholding of removal, or CAT will be closed to the public. The Manual also relies on 8 C.F.R. § 1240.11(c)(3)(I), which indicates that there is a presumption that even asylum and withholding hearings will be open to the public.[4] Does EOIR explicitly ask individuals whose cases are scheduled for oral argument whether they consent to an open hearing? If not, what happens if a member of the public wishes to attend an argument in a case involving asylum, withholding, and/or CAT? Does EOIR contact the party to request consent?

[3] *See Board of Immigration Appeals Practice Manual,* Chapter 8.5 (October 1, 2013), available at http://www.justice.gov/eoir/vll/qapracmanual/BIAPracticeManual.pdf.

[4] *See* 8 C.F.R. § 1240.11(c)(3)(I) (providing that asylum and withholding hearings "will be open to the public unless the alien expressly requests that the hearing be closed pursuant to §1003.27 of this chapter").

EOIR Response: Hearings are generally are open to the public. However, EOIR asks respondents' attorneys to sign a waiver to allow the hearing to be public, despite the regulations allowing hearings to be public without the waiver. If a hearing is private, individuals can seek permission from the Respondent's counsel to attend the hearing.

6. E-Registry and E-Filing

A. The EOIR Frequently Asked Questions (FAQs) on eRegistry state that EOIR-28s cannot be filed electronically prior to the filing of a Notice to Appeal (NTA), and that EOIR-27s cannot be e-filed prior to transmission of the record to the Board.[5] AILA is concerned that these limitations will reduce the effectiveness and use of e-filing. For example, if attorneys cannot e-file an EOIR-28 before the NTA is filed, it limits their ability to use e-filing to quickly seek bond prior to the NTA being filed and to receive notification when a bond hearing is set. Does EOIR have any plans to allow for provisional filing of EOIR-28s before an NTA is filed either now or in the future?

EOIR Response: EOIR understands that e-filing has many limitations at this time. It is important to understand that e-registration was only the first step in the process of building an e-filing system. It was necessary to test the system and to establish the foundation for the e-filing process so EOIR can ultimately expand the system in the future. At this point, the initial stage of the process is completed and EOIR hopes to grow the capabilities of the system over time.

B. Will basic case documents and case histories be available through the e-Registry system, including NTAs and upcoming hearing dates? What is the timeline for the availability of such information?

EOIR Response: EOIR hopes to make case histories and other information available by using the e-registry system eventually. Unfortunately, due to budget and other constraints, there is no time line for completion and no certainty as to when various capabilities in the system will be ready for use.

C. E-filing does not appear to offer any option for simply changing an attorney address or for deleting an old address. Clicking on "edit user information" brings up a webpage that allows changes to name, date of birth, and email only. The only other option appears to be to "add new firm." Over time, attorneys who move offices several times could have extensive lists of addresses in the system which will increase the chance of errors in the future. Does EOIR plan to update this feature to allow for simple editing of attorney addresses and changes of firm affiliation?

[5] *See Frequently Asked Questions – eRegistry*, page 6, available at http://www.justice.gov/eoir/engage/eRegistry/FAQs-eRegistry.pdf.

EOIR Response: See response to parts A and B above. The ability to edit attorney addresses is currently the next capability EOIR is planning to add to the system; however, there is no firm completion date.

D. When an attorney opens the EOIR-28 on e-Registry and enters the alien number, the alien's address is populated in the form. This raises serious privacy and safety concerns for individuals such as VAWA applicants. Can EOIR make changes to the function that automatically populates the alien's address on Form EOIR-28 in order to protect individuals in these situations? What is EOIR doing to ensure that people are not accessing the e-Registry database improperly, for example, by safeguarding the confidentiality of the date of birth information? For example, EOIR could regularly review query logs to determine whether improper queries are made, audit database security and access, encrypt data, guarantee that registrants will be informed about database breaches, and have a clear point of contact for complaints and concerns.

EOIR Response: EOIR understands the privacy concerns raised by this question and is working to fix the problem. EOIR anticipates that in the very near future a Respondent's address will no longer be populated in the e-registry system.

E. AILA members have reported incidents in which people have properly registered online and in person, yet weeks later, still have not received the confirmation e-mail from EOIR. When they inquire, they are told to re-register. What caused these problems? Has EOIR resolved these glitches in the confirmation system?

EOIR Response: EOIR believes most of the glitches encountered in the initial phase of e-registry have been fixed. EOIR had many security requirements to overcome prior to instituting e-registry and has been generally pleased with the results so far. EOIR appreciates input from members of the private bar about problems with e-registry. Any future questions or concerns can be addressed by sending an e-mail to eregistration.info@doj.gov.

F. Many AILA members live outside of the United States and their practice before the BIA consists mostly of written briefs in appeals. For these attorneys, complying with the personal appearance requirement is difficult and cost-prohibitive. Will EOIR please develop an alternative to the in-person registration requirement for such situations?

EOIR Response: At this point EOIR does not anticipate adding any alternatives to the in-person registration requirement. Attorneys are reminded that the e-registration regulation includes a provision that allows an Immigration Judge to permit an attorney who has not completed the e-registration process to appear for an initial hearing.

7. FOIA

ICE has acknowledged that there is a growing backlog in the processing of FOIA requests for individual records by ICE, which can impair the ability of an attorney to effectively prepare and represent a respondent in proceedings. As a result, a motion to continue proceedings until the

FOIA records disclosure is provided may be necessary. Please describe the factors an immigration judge may consider when deciding whether to grant a motion to continue filed in cases where a FOIA response by ICE has not yet been provided.

EOIR Response: Immigration Judges adjudicate the motions on a case-by-case basis in accordance with the "good cause shown" standard set forth in 8 C.F.R. § 1003.29.

8. Prosecutorial Discretion:

AILA understands that EOIR encourages immigration judges to reduce their dockets as much as possible. It also understands that determinations of whether to exercise prosecutorial discretion are generally made by the Department of Homeland Security (DHS). Nevertheless, many attorneys have reported that input from judges either at or prior to an individual hearing has been effective in reminding the government to assess whether an exercise of discretion is appropriate in a case and in encouraging the government to resolve issues outside of court. Would EOIR encourage judges to use specific means to resolve cases short of litigation? For example: 1) granting very brief pre-hearing telephonic conferences; 2) requiring pre-hearing statements on individual hearings where respondents seek relief; and 3) requiring government attorneys and counsel for respondents to confer about the case 30 days prior to an individual hearing.

EOIR Response: EOIR appreciates any suggestions on how to reduce its overburdened dockets. Prosecutorial discretion is one way to help, but requires cooperation of government attorneys and attorneys in the private bar. EOIR recently instituted a pilot program at one Immigration Court to encourage pre-trial conferences. See the answer to question 15, as well. EOIR plans to expand the program to additional Immigration Courts, though they have yet to be identified.

9. Provisional waivers:

Under 8 CFR §212.7(e)(4)(v), an alien who is in removal proceedings is ineligible for a provisional unlawful presence waiver, unless proceedings are administratively closed and have not been re-calendared at the time of filing the I-601A. If the Form I-601A is approved for an alien whose proceedings have been administratively closed, proceedings will need to be terminated before the alien departs for his or her immigrant visa interview abroad in order to avoid being subject to another ground of inadmissibility, such as INA §212(a)(9)(A) (departure while an order of removal is outstanding). Individuals whose proceedings are terminated prior to applying for a provisional waiver are no longer in proceedings and would be eligible.

A. Will immigration judges look favorably on requests to administratively close cases where the respondent confirms he/she has an approved visa petition and has filed for a provisional unlawful presence waiver? What is the suggested process to obtain administrative closure in these situations?

EOIR Response: There is no specific process to obtain administrative closure of a case other than filing a motion. Immigration Judges will rule on appropriately-filed motions on a case-by-case basis.

B. After the provisional unlawful presence waiver is approved and the respondent is ready to depart the U.S. to apply for an immigrant visa, will EOIR re-calendar and terminate removal proceedings based on the respondent's motion? Is the respondent's presence required at a hearing in order to terminate the proceedings?

EOIR Response: There is no specific process to re-calendar and terminate a case other than filing a motion. Immigration Judges will rule on appropriately filed motions on a case-by-case basis.

10. Biometrics - Interagency Issue

AILA members generally agree that the process for initial biometrics, which is managed by the USCIS field offices or ICE detention facilities, is smooth and efficient. However, the system for follow-up biometrics is not uniform throughout the country. Practitioners report that in order to obtain a follow-up biometrics appointment in some districts, ICE OCC issues a letter instructing respondents to make an online INFOPASS appointment with USCIS. After aliens make the online appointment they are then required to go to the INFOPASS appointment and present the OCC letter, which will then trigger the scheduling of a follow-up biometrics appointment at the USCIS Application Support Center (ASC). This process is confusing and causes delays for respondents to get biometrics. In other areas of the country, USCIS offices limit access to follow-up biometrics appointments such as only permitting follow up biometrics appointments 60-days before the individual hearing.

Additionally, there appears to be an ongoing issue between EOIR and USCIS over biometrics. Some immigration judges ask that respondents get printed up to a year before a hearing, but some USCIS offices won't schedule fingerprint appointments at an ASC unless the case is scheduled to be heard much sooner than that. In Chicago, for example, USCIS recently agreed to extend its scheduling for cases that are within 90 days of a next hearing date. For several years, it refused to schedule ASC appointments for cases that were scheduled more than 60 days from the next hearing date.

A. Does EOIR have a policy on when Immigration Judges' should require fingerprints in advance of individual hearings? If not, what does EOIR consider to be a reasonable time in advance of a hearing for a respondent to obtain biometrics?

EOIR Response: EOIR does not have a policy on when fingerprints should be taken. The taking of fingerprints is not within EOIR's control. Immigration Judges can only adjudicate cases when biometrics have been cleared, but EOIR is not involved in the process of taking the fingerprints and cannot comment on how the process is administered by other agencies.

11. Waivers – Interagency Issue

Practitioners report that some immigration courts require that aliens seeking a waiver under INA § 237(a)(1)(H) must file Form I-601 with evidence of payment of the $585.00 fee to apply for such relief. However, the Form I-601 is not required to apply for this relief. Will EOIR instruct immigration judges that an I-601 is not required to obtain a waiver under INA § 237(a)(1)(H)? Furthermore, if biometrics are required in these cases, will EOIR instruct immigration judges to order OCC to make arrangements for the biometrics that do not require the filing of a Form I-601?

EOIR Response: EOIR understands that there is no form required for a waiver under INA § 237(a)(1)(H). EOIR does not intend to instruct Immigration Judges to order OCC to make arrangements for the biometrics since that issue is not within the control of EOIR.

12. Interagency Issues Generally

AILA recognizes that many of the issues regarding biometrics and other matters, for example the issues described in Questions 9 and 10 of this agenda, are not solely within the purview of EOIR's authority. In order to resolve some of the issues that impact EOIR but involve other agencies, would EOIR be willing to participate in an interagency meeting to discuss and hopefully resolve some of these issues?

EOIR Response: EOIR understands that many issues raised in this agenda involve participation and cooperation from other agencies and is willing to meet with other agencies to discuss ways to make removal proceedings work more efficiently.

13. Detention Issue in the Third Circuit

In *Diop v. ICE/Homeland Security,* 656 F.3d 221 (3d Cir. 2011), the Third Circuit held that the Due Process Clause of the Fifth Amendment permits mandatory detention for only a "reasonable period of time," and construed the mandatory detention statute, INA § 236(c) (8 U.S.C. § 1226(c)), as authorizing mandatory detention only for a reasonable period. When detention exceeds that reasonable period, the noncitizen is entitled to an individualized hearing where the government must show that continued detention is necessary to prevent flight or danger to the community. *Id*. at 223.

The governing regulations vest the BIA with jurisdiction to determine whether a respondent's mandatory detention is unreasonably prolonged under *Diop* and therefore not authorized by INA § 236(c).[6] Immigration courts and the BIA routinely hear claims by detainees that they are not subject to the terms of INA § 236(c), including challenges to the length of mandatory

[6] *See* 8 C.F.R. § 1003.19(h)(2)(ii) (alien may "[seek] a determination by an immigration judge that [he] is not properly included within" the mandatory detention statute).

detention.[7] Will EOIR remind immigration judges in the Third Circuit that they have authority to review the issue of whether a respondent has been detained for an unreasonable period of time and to remind immigration judges to conduct such hearings when required?

EOIR Response: This matter is currently at issue in litigation. As such, EOIR cannot comment on the issue.

14. Medical Exams

A. The USCIS amended the Adjudicator's Field Manual to extend the validity of Forms I-693 beyond one year in cases where: 1) Form I-693 was filed initially with the Form I-485; and 2) either no Class A or B medical condition exists, or the only Class B condition falls under "other medical conditions."[8] USCIS has consistently extended the validity of medical exams on an annual basis due to this policy. Given that many cases at EOIR now extend well beyond a year from the date respondents apply for adjustment of status, will EOIR agree to follow the USCIS policy and treat as valid, beyond 12 months, Forms I-693 if the same conditions are met? If EOIR cannot agree to follow the USCIS policy, can EOIR instruct immigration courts to accept Forms I-485 without Form I-693 and allow respondents to supplement their applications with medical exam reports either prior to or at the individual hearings?

B. Some ICE facilities allow civil surgeons access to their facilities, but others make it difficult or impossible for civil surgeons to provide medical exams for detained aliens, thereby frustrating EOIR's ability to grant relief. For detained respondents who require a medical exam to apply for relief from removal, what is EOIR's role in insuring a respondent's access to civil surgeons? Has EOIR taken any steps to ensure that ICE respects and complies with detainees' right to obtain and present this evidence in support of relief?

EOIR Response: Medical exams are not within the control of EOIR. Issues regarding extensions of the validity of medical exam reports are best addressed on a case-by-case basis.

15. Pre-Trial Pilot Project

In the April 11, 2013 AILA liaison meeting with EOIR, EOIR stated that there is a pre-trial pilot program being conducted at the Bloomington, MN, immigration court to help encourage

[7] *See, e.g.*, *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999) (addressing whether detainee is "deportable" or "inadmissible" within meaning of the statute); *In re Dormescar*, A075 286 171, 2010 WL 3780666 (BIA Sept. 3, 2010) (addressing challenge to prolonged mandatory detention); *In re Bourguignon*, A041 055 090, 2009 WL 2218115 (BIA July 14, 2009) (same); *In re Acosta*, A043 971 319, 2010 WL 2224587 (BIA May 12, 2010) (addressing claim that detainee was not taken into immigration custody "when released" from criminal custody); *In re Adreenko*, A070 529 130, 2010 WL 1747388 (BIA Apr. 19, 2010) (same); *In re Christmas*, A40 164 143, 2006 WL 3485565 (BIA Oct. 27, 2006) (same).

[8] *See Extension of Validity of Medical Certifications on Form I-693*, PM-602-0079 (Dec. 20, 2012), available at http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/I693_Extension_PM_Approved_Final122012.pdf; also available at AILA InfoNet Doc. No. 13010247 (posted 1/2/13), available at http://www.aila.org/content/default.aspx?docid=42649.

litigants to resolve as many issues as possible prior to individual hearings.[9] Please describe the pilot project in more detail and provide an update on its status. Have judges and litigants found it helpful? Does EOIR have plans to expand the pilot project to other cities?

EOIR Response: EOIR considered the pilot program to be very successful in terms of finding ways to resolve cases with minimal use of court time. EOIR plans to extend this program to additional Immigration Courts, though they have yet to be determined. See the answer to question 8, as well.

16. Safeguards for Detainees with Mental Disorders

AILA applauds the April 22, 2013 DOJ and DHS announcement of a new, nationwide policy for unrepresented immigration detainees with serious mental disorders.[10] We appreciate EOIR's work on this issue and look forward to the full implementation of the policy.

A. Has EOIR issued any guidance on the implementation of the new policy, and could EOIR share any such guidance?

EOIR Response: EOIR released Phase I Guidance on safeguards for detainees with mental disorders. The document provided to AILA, *available at* http://www.aila.org/content/default.aspx?docid=46907 (AILA Doc. No. 13123160), constitutes EOIR's final "Phase I Guidance" regarding its nationwide plan to provide protections to detained unrepresented aliens who may be mentally incompetent to represent themselves. EOIR has begun training its Immigration Judges concerning issues addressed in this guidance, and will continue to do so on a rolling basis in 2014. Immigration Judges will not have the authority to implement the guidance until after they attend training, and receive notification from EOIR that they are authorized do so, which will occur as close in time as possible. As noted in the guidance, based on observations made during Phase I, EOIR may issue revised guidance in conjunction with further roll-out of the nationwide plan.

B. According to the April 22, 2013 press release, EOIR will make available a qualified representative to unrepresented detainees who are deemed mentally incompetent to represent themselves in immigration proceedings. Has EOIR begun providing representation to mentally incompetent detainees? How will EOIR fund these representatives?

Yes, EOIR is currently providing representation to detainees in Washington, California, and Arizona. Other locations will be added on a rolling basis as IJ are trained. The next cities to

[9] *See Meeting Minutes from the April 2013 Liaison Meeting Between AILA and EOIR*, AILA Doc. No. 13091953 (posted 9/9/13), available at http://www.aila.org/content/default.aspx?docid=45871.

[10] *See DOJ/DHS Announce Safeguards for Immigration Detainees with Serious Mental Conditions*, AILA Doc. No. 13042253 (posted 4/22/13), available at http://www.aila.org/content/default.aspx?docid=44125; *ICE Memo on Safeguards for Immigration Detainees with Serious Mental Conditions*, AILA Doc. No. 13042259 (posted 4/22/13), http://www.aila.org/content/default.aspx?docid=44131.

provide representation will be Miami, Denver, Houston, and El Paso. EOIR worked with current LOP providers to identify and select qualified representatives.

C. Please provide any available updates on the policy, and a timeline for its full implementation.

As of the date of the meeting, EOIR was aware of 114 such cases in Washington, California, and Arizona. 103 of these detainees already have qualified representatives. Implementation will occur on a rolling basis.

17. Regulatory Update

Please advise on the current status of regulatory updates that affect EOIR.

EOIR Response: Various regulations are currently in the process of being reviewed and finalized. EOIR does not have any specific dates to release regulatory updates, but will continue to notify the general public when updates are published.