



Language Access Problems in Immigration Court

The Immigration Courts run by the Executive Office of Immigration Review (“EOIR”) at the Department of Justice are bound by the language access requirements set out in DOJ’s 2002 Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (“LEP”) Persons.¹ At a minimum, they must provide competent interpretation for LEP individuals during all courtroom proceedings, and during all critical encounters outside the courtroom.² Immigration Courts fall far short of this requirement by failing to provide interpretation for critical encounters, and by providing inaccurate interpretation.

- **No interpretation for exchanges between non-LEP individuals** Interpreters convey only the statements of non-English-speaking respondents and witnesses, and questions or statements addressed directly to them by the court or attorneys.³ The result is that LEP individuals cannot comprehend the testimony of English-speaking witnesses and exchanges between the Immigration Judge and the Department of Homeland Security Trial Attorney or their counsel.

Failure to interpret exchanges between a lawyer and judge almost led an attorney to accept a removal order without his client’s consent

“The attorney of one man from El Salvador almost accepted an order for removal rather than the voluntary departure, which has much less dire consequences, because none of the exchanges between the lawyer and the judge were translated.”⁴

- **No interpretation outside the courtroom** In many Immigration Courts, LEP individuals are not given information in any language other than English when they arrive at the court for the first time. The EOIR employees who interact with the public often do not speak to people in any languages other than English, and they do not provide interpretation of any kind. As a result, many people arriving at court for the first time do not understand what they need to do or where they need to go.

- **Interpreters translate incorrectly**

Immigration Judge found that a Buddhist woman’s testimony was not credible, because of interpreter error

“[A]n interpreter . . . paraphrased a Buddhist woman’s reaction to being persecuted as ‘Oh, my God.’ The Immigration Judge relied on this inaccurate translation of her reaction in finding that she

was not credible, stating that Buddhists do not believe in God and, therefore, a Buddhist would not have used that phrase.”⁵

Interpreter error gave an Immigration Judge the mistaken impression that a respondent had started fires at a demonstration
“[A]n inaccurate translation led an Immigration Judge to believe mistakenly that the immigrant had started fires at a demonstration, when in fact the immigrant testified that fire trucks were called to hose down political demonstrators.”⁶

A respondent had a miscarriage after her husband beat her; the interpreter wrongly stated that the woman had an abortion
“[A] Spanish interpreter from Spain, while interpreting for a Honduran woman, made an important error. She was using a word in Spanish that can mean either ‘miscarriage’ or ‘abortion.’ He simply stated in English that she had an abortion, rather than clarifying with her which meaning was correct. She had actually had a miscarriage, after being beaten by her husband. This difference in meaning was actually quite important to her case.”⁷

- **Interpretation is conducted in the wrong language**

Immigration Court forced to reopen Kanjobal speaker’s removal proceeding because interpretation was provided in Spanish
Francisco Juan Martin, who was born in Guatemala, appeared pro se at a master calendar hearing on August 16, 2007. Although Mr. Martin’s native language is Kanjobal, the court interpreter interpreted the proceedings into Spanish only. Consequently, Mr. Martin was unable to understand the judge’s order that he must apply for cancellation of removal by September 25, 2007. When he failed to apply by that date, he was ordered removed from the country. It was only after the BIA heard his appeal that he was allowed to apply for cancellation.⁸

Immigration Judge called French interpreter for Mooré-speaking man
In a case at the Varick Street Immigration Court in New York City, “a man . . . spoke Mooré, a dialect from Burkina Faso. The immigration judge attempted to call a Mooré interpreter, but was unable to work the phone system to contact one. Instead, the immigration judge called a French interpreter. The detainee barely spoke French, and the difficulty of communication over the phone only exacerbated the misunderstanding and inability to effectively convey questions and answers.”⁹

Detainee languished in detention while Immigration Court tried to find a Mam-speaking interpreter

In a case at the Varick Street Immigration Court in New York City, “a Mam-speaking detainee was provided with only a Spanish interpreter and was therefore unable to comprehend basic questions. The case was continued and the detainee was returned to detention until the later date.”¹⁰

- **Interpreters act unprofessionally** Law students observing the Varick St. Immigration Court in New York City have seen interpreters engaging in “audible private cell phone conversations while court was in session; tardiness by over an hour; flipping through magazines while interpreting; and, inappropriate comments about cases and detainees after detainees were taken from the courtroom.”¹¹

Interpreter refused to interpret respondent’s testimony

“[A]n interpreter . . . flatly refused to translate his client’s testimony about being attacked and disfigured by anti-Semites in the Ukraine; the interpreter opined, ‘that sort of stuff doesn’t happen in the Ukraine.’”¹²

- **Inadequate telephone and videoconference technology exacerbate problems** Even the most sophisticated telephone technology makes it impossible to catch the visual cues on which interpreters rely to determine the meaning, style and tone of the speech to be translated.¹³ Speaker phones, the least expensive and most commonly used forms of courtroom remote interpretation technology,¹⁴ have the additional drawbacks of poor sound quality.¹⁵ Without the proper equipment, speaker phone interpreting also prevents respondents from communicating confidentially with counsel through an interpreter.¹⁶

Immigration Judge slams telephone interpreter system

“In one instance, the telephone interpreter simply became unresponsive midway through the hearing. After repeated attempts to call out to her, the immigration judge hung up and tried several times to dial back into the service, getting a busy signal each time. Frustrated, the judge scheduled a continuance and promised to arrange for a live Korean interpreter on that date. Months later, the same judge colorfully expressed his annoyance with the telephone interpreter service, referring to it as ‘crap’ and ‘a waste.’”¹⁷

While interpreting through videoconferencing has the potential to address some of these concerns, its implementation in Immigration Court been problematic. In many courts, videoconferencing technology consists of a webcam stream, fed to a television monitor split into several frames.¹⁸ Often, the resulting image is small, grainy, blurry, and does not convey the visual cues on which interpreters rely. Many videoconferencing systems also preclude confidential attorney-client communication. Immigrants using interpreters are more likely to

experience problems with videoconferencing and to have a higher rate of removal orders during Master Calendar Hearings.¹⁹

What DOJ Should Do

- A. Require interpreters to interpret all speech occurring in an immigration proceeding.
- B. Ensure that Immigration Court personnel who deal with the public can communicate with LEP individuals.²⁰
- C. Update the Immigration Judge Benchbook regarding the following issues, and train all judges in those protocols:
 - 1. the prohibitions on interpreter paraphrasing or opining;
 - 2. the need to ensure that the interpreter speaks the specific language and dialect spoken by the LEP individual;
 - 3. the importance of interpreters' adhering to ethics requirements such as conflicts rules; and
 - 4. how to ensure that interpretation is effective in videoconferences and over the telephone.
- D. Improve interpreter training and screening.
- E. Improve the monitoring of court interpreters by:
 - 1. asking for additional types of feedback on the Contract Interpreter Performance form;
 - 2. soliciting feedback from attorneys; and
 - 3. using trained, impartial personnel to conduct spot checks of interpreter performance.²¹
- F. Curtail the use of telephone interpreting, and of videoconferencing when interpretation is necessary.²² Ensure that when they are used appropriate equipment is provided.²³
- G. Update EOIR's Language Assistance Plan as required by Executive Order 13166 (and contemplated by EOIR's initial Language Assistance Plan), to incorporate standards for Immigration Court language access that are at least as high as the standards DOJ has set out for state court language access in its LEP guidance for DOJ recipients.²⁴

¹ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455, 41459 n.4 (Dep't of Justice June 18, 2002) ("DOJ LEP Guidance") (noting that "[p]ursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of Federal agencies, including the Department of Justice."); DOJ Coordination & Review Section, Departmental Plan Implementing Executive Order 13166, § 4.23, available at <http://www.justice.gov/crt/cor/lep/dojimp.php#6.%20Executive%20Office%20for%20Immigration%20Review> (web page last updated Jan. 10, 2001) ("EOIR will review its existing language assistance services to ensure that its LEP practices are consistent with the compliance standards for adjudicatory systems receiving federal financial assistance as set forth in the *LEP Guidance for DOJ Recipients*").

² See, .e.g., 67 Fed. Reg. at 41471.

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- ³ See Muneer Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1026 n.87 (2007); Chicago Appleseed, *Assembly Line Injustice* (2009), p. 19, available at <http://www.appleseeds.net/Portals/0/Documents/Publications/Assembly%20Line%20Injustice.pdf>.
- ⁴ Detainee Working Group of the New York University Chapter of the National Lawyers Guild, *Broken Justice: A Report on the Failures of the Court System for Immigration Detainees in New York City* (Vol. I: Sep. 2006-May 2007), p. 18.
- ⁵ Appleseed, *Assembly Line Justice* (2009), p. 19, available at http://www.chicagoappleseed.org/programs/immigration_court_reform.
- ⁶ Appleseed, *Assembly Line Justice* (2009), p. 19, available at http://www.chicagoappleseed.org/programs/immigration_court_reform.
- ⁷ Email from Meredith Rapkin, Villanova School of Law (Jan. 7, 2010).
- ⁸ *In re Francisco Juan Martin*, No. A091 418 436, 2009 WL 263117 (BIA Jan. 2, 2009).
- ⁹ Detainee Working Group of the New York University Chapter of the National Lawyers Guild, *Broken Justice: A Report on the Failures of the Court System for Immigration Detainees in New York City* (Vol. I: Sep. 2006-May 2007), p. 18.
- ¹⁰ *Id.*
- ¹¹ *Id.*
- ¹² Appleseed, *Assembly Line Justice* (2009), p. 21, available at http://www.chicagoappleseed.org/programs/immigration_court_reform.
- ¹³ 67 Fed. Reg. at 41462. See also National Center for State Courts, *Future Trends in State Courts* (2009), p. 37, available at www.ncsc.org/Web%20Documents/FutureTrends2009.pdf; National Association of Judiciary Translators and Interpreters, *Position Paper: Telephone Interpreting in Legal Settings* (2009), at 3, available at <http://www.najit.org/Publications/Position%20Papers/Telephone%20Interpreting.pdf>.
- ¹⁴ See EOIR, *Immigration Judge Benchbook, Introduction to the Master Calendar*, available at <http://www.justice.gov/eoir/vll/benchbook/tools/Purpose%20and%20History%20of%20MC.htm> (“It is often necessary at master calendar hearing to use the services of the contract interpreter by means of the telephone which is located on the bench. . . . If the interpreter is not on hand, the immigration judge must use the telephone to contact the interpreter, who will then assist by speaker phone.”).
- ¹⁵ National Association of Judiciary Translators and Interpreters, *Position Paper: Telephone Interpreting in Legal Settings* (2009), at 3, available at <http://www.najit.org/Publications/Position%20Papers/Telephone%20Interpreting.pdf>.
- ¹⁶ National Center for State Courts, *Future Trends in State Courts* (2009), p. 37, available at <http://www.ncsc.org/Web%20Documents/FutureTrends2009.pdf>. In federal judicial proceedings, the respondent’s right to confidential attorney-client communication through the aid of an interpreter is guaranteed by federal law. 28 U.S.C. § 1827(d) (requiring courts to provide interpreter services where the respondent’s LEP status inhibits his “comprehension of the proceedings or communication with counsel or the presiding judicial officer.”). Some states, including New Jersey and Wisconsin, also require telephone interpreting equipment that enables confidential attorney-client communication. See Wisconsin State Courts, *Guide to Telephone and Video Interpreting* (Sept. 6, 2006), available at www.wicourts.gov/services/interpreter/docs/telephoneinterpet.pdf; New Jersey State Courts, *Operational Standards for Telephone Interpreting* (Jan. 2001), at 5, available at <https://njcourts.judiciary.state.nj.us/web0/directive/vicops/timan1.pdf>.
- ¹⁷ Findings of National Lawyers Guild Detainee Working Group regarding observations of Varick Street Immigration Court 2008-2009 (provided by Gene Smilansky 10-16-09).
- ¹⁸ See *Assembly Line Injustice*, p. 22.
- ¹⁹ Legal Assistance Foundation of Metropolitan Chicago & Chicago Appleseed Fund for Justice, *Videoconferencing in Removal Hearings: A Case Study of the Chicago Immigration Court* (2005), p. 41, available at <http://appleseeds.net/Portals/0/Documents/Publications/Center%20Pubs/Chicago%20Videoconferencing%20Report.pdf>.
- ²⁰ To assess the ability of Immigration Court staff to communicate with LEP individuals, EOIR could send bilingual testers into the public areas of Immigration Court. For successful examples of such language access testing in New York City, Washington, D.C.’s Office of Human Rights, and the social services agencies of Wisconsin and Washington State, see Laureen Laglagaron, *Is This Working? Assessment and Evaluation Methods Used to Build and Assess Language Access Services in Social Services Agencies* (2009), pp. 25-28, http://www.migrationinformation.org/integration/language_portal/files/Language-Access-in-Social-Services.pdf; Washington, D.C. Office of Human Rights, *Implementation of the D.C. Language Access Act of 2004: A*

Compliance Review for Fiscal Year 2008, p. 4,
http://ohr.dc.gov/ohr/frames.asp?doc=/ohr/lib/ohr/pdf/dcohr_compliance_1107fin.pdf.

- ²¹ In the New York State court system, for example, all interpreters, regardless of experience, are observed periodically by a supervisor. New York Office of Court Administration, Working With Court Interpreters (Feb. 2, 2009), <http://www.nycourts.gov/courtinterpreter/pdfs/TipSheet.pdf>.
- ²² Some state courts have disallowed the use of remote interpreting altogether for proceedings lasting longer than 30 minutes or involving “unsophisticated users of interpreter services” or “emotionally charged situations.” See, e.g., Wisconsin State Courts, Guide to Telephone and Video Interpreting (Sept. 6, 2006), available at www.wicourts.gov/services/interpreter/docs/telephoneinterpet.pdf. Videoconferencing in immigration proceedings also poses numerous procedural problems unrelated to language access, which are beyond the scope of this letter. For a case study, see Videoconferencing in Removal Hearings: A Case Study of the Chicago Immigration Court (2005), available at <http://appleseeds.net/Portals/0/Documents/Publications/Center%20Pubs/Chicago%20Videoconferencing%20Report.pdf>.
- ²³ National Association of Judiciary Translators and Interpreters, Position Paper: Telephone Interpreting in Legal Settings (2009), at 3, available at <http://www.najit.org/Publications/Position%20Papers/Telephone%20Interpreting.pdf>; *Position Statement: VRI Services in Hospitals* (April 2008), available at <http://www.nad.org/issues/technology/vri/position-statement-hospitals> (describing best practices for interpreting via videoconference).
- ²⁴ DOJ Coordination & Review Section, Departmental Plan Implementing Executive Order 13166, § 4.23, available at <http://www.justice.gov/crt/cor/lep/dojimp.php#6.%20Executive%20Office%20for%20Immigration%20Review> (web page last updated Jan. 10, 2001).