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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

EL RESCATE LEGAL SERVICES, INC., et al.,)	NO. CV 88-1201-WPG
)	
Plaintiffs,)	
)	JOINT STATUS REPORT
vs.)	
)	
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, et al.,)	
)	
Defendants.)	
)	



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1 Attorneys for Plaintiffs (Continued)

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1 Pursuant to plaintiffs' motion, the Court granted partial
2 summary judgment in favor of plaintiffs on the "completeness"
3 causes of action and entered a permanent injunction. (A copy of
4 the order is attached hereto as Exhibit 1). This was appealed to
5 the Court of Appeals which on March 10, 1992 reversed the Court's
6 decision and remanded for further proceedings. (A copy of the
7 order and amended opinion is attached hereto as Exhibit 2). The
8 Court removed the "competency" causes of action from its trial
9 schedule as a result of representations made by defendants
10 regarding remedial steps, both taken and planned, to improve the
11 quality of interpretation in the immigration courts in Los
12 Angeles, San Diego, and El Centro.

13
14 THE "COMPLETENESS" ISSUES

15 Plaintiffs moved for Partial Summary Judgment and sought an
16 order from the Court declaring defendant EOIR's failure to
17 provide for complete interpretation of the entire immigration
18 court proceedings to be violative of class-members' statutory
19 rights to a fair hearing, to cross-examine witnesses, to examine
20 evidence presented against them, to present evidence, and to be
21 represented by counsel and violative of their constitutional
22 right to due process. Plaintiffs also asserted a cause of action
23 under the Administrative Procedures Act.

24 The Court granted plaintiffs' motion for partial summary
25 judgment. It found that in the cases of unrepresented class-
26 members appearing before the immigration courts, "the full
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1 proceedings [were] rarely interpreted." Memorandum of Decision,
2 Dec. 14, 1989, p. 16. The Court concluded that "EOIR's failure
3 to require full interpretation of immigration court proceedings
4 seriously undermines the plaintiffs' statutory right to be
5 present at their proceedings, their right to counsel, their right
6 to examine evidence, and their right to confront and cross-
7 examine witnesses." Memorandum of Decision, Dec. 14, 1989, p. 8.
8 The Court declined to address the constitutional issue.¹
9 Defendants then appealed.

10 While the appeal was pending plaintiffs filed a Motion to
11 Compel Compliance before the District Court in which plaintiffs
12 asserted defendant EOIR was not complying fully with the
13 permanent injunction. Shortly after commencing an evidentiary
14 hearing on the Motion to Compel Compliance, the court halted the
15 proceedings, stating that it would not find the defendants in
16 contempt and asked the parties to attempt to come to an agreement
17 as to the scope of the injunction. A Memorandum of Understanding
18 was then executed and filed with the Court and the Motion to
19 Compel Compliance was withdrawn.

20 The Ninth Circuit issued an initial decision and plaintiffs
21
22

23
24 ¹ The partial summary judgment order became an appealable
25 issue through defendant EOIR's motion for a permanent injunction
26 affirmatively requiring EOIR to provide complete interpretation.
27 This motion was opposed by plaintiffs due to plaintiffs' belief
28 that an adequate record for injunctive relief had not been
created. The Court granted EOIR's motion for a permanent
injunction.

1 sought rehearing.² On March 10, 1992 the Ninth Circuit granted
2 plaintiffs' Petition for Rehearing and issued an amended opinion
3 which reversed the District Court. The Ninth Circuit concluded
4 that the EOIR had a policy which gives individual immigration
5 judges the discretion to determine what portions of an
6 immigration court hearing are to be interpreted and that such a
7 policy, on its face, is not inconsistent with the Immigration and
8 Nationality Act. The Ninth Circuit stated "plaintiffs have
9 failed to show 'that no set of circumstances exists under which
10 the [Immigration and Nationality] Act would be valid. The fact
11 that [the regulations] might operate unconstitutionally under
12 some conceivable set of circumstances is insufficient to render
13 [them] wholly invalid.'" Slip Opinion, March 10, 1992, p. 2350.
14 The Court of Appeals remanded for the purpose of deciding whether
15 the EOIR's policy as applied violates class-members' statutory or
16 constitutional rights.

17 For the past two years the immigration courts have operated
18 under a policy where the entire proceedings are interpreted. In
19 light of the Ninth Circuit ruling, reversing the District Court
20 order, EOIR has had to decide the scope of interpretation that
21 will now be provided. EOIR has taken the matter under
22 consideration and expects to state its policy in the upcoming

23
24 ² The initial Ninth Circuit was issued on August 12, 1991.
25 The Ninth Circuit concluded that summary judgment had been
26 inappropriate because plaintiffs had failed to show that they
27 would be prevented by EOIR from bringing personal interpreters to
28 court if complete interpretation was desired. This issue had not
been raised before the District Court or the Court of Appeals by
either party.

1 week. In the interim, interpretation will continue as provided
2 for in the Memorandum of Understanding.

3
4 THE "COMPETENCY" ISSUES

5 When this action was commenced, EOIR employed interpreter
6 clerks who were not certified. The interpreters were required to
7 perform clerical functions while interpreting in court.

8 Plaintiffs alleged that the lack of certification and training
9 rendered the interpreters provided by EOIR not competent to
10 perform their duties as interpreters.

11 In June of 1990 the parties entered into settlement
12 discussions before Judge A. Wallace Tashima regarding the
13 "competency" issues. The settlement discussions ended without an
14 agreement and the case was set for a pretrial conference on April
15 8, 1991.

16 Before that date, defendants requested and were granted a
17 conference with Judge William P. Gray to discuss the scope of the
18 trial. (A copy of the transcript of the conference is attached
19 hereto as Exhibit 3). Defendants presented a plan outlining
20 long-term and interim steps EOIR would take to improve the
21 quality of interpretation in immigration court.

22 As a result of that conference, the Court stayed the
23 proceedings. The Court found that, under the circumstance, there
24 was no need for a trial as to the adequacy of EOIR's past
25 practices. However, since these changes were only at the
26 planning stage, defendants were instructed to keep plaintiffs
27

1 informed of all remedial actions. If it appeared, at a later
2 date, that an injunction was needed, the Court retained
3 jurisdiction and would entertain such a request.

4 The parties then agreed to a monitoring plan which would
5 keep plaintiffs apprised of the remedial actions and allow them
6 to provide input. Defendants agreed to provide plaintiffs with a
7 monthly letter summarizing the steps that had been taken to date
8 and detailing proposed future actions. The Court was also kept
9 abreast through quarterly reports filed by defendants. It was
10 also agreed that defendants would consider plaintiffs' comments
11 and recommendations and in the event that they were not followed,
12 explain why.

13 The cornerstone of the remedial plan is the development of a
14 certification examination which is to be administered to EOIR
15 Spanish language interpreters. Defendants are patterning the
16 examination after the one developed for Spanish language federal
17 court interpreters. Defendants have identified several steps
18 leading up to the development of the certification exam. Those
19 steps are: 1) Job Task Analysis (analysis of the tasks
20 performed by immigration court interpreters); 2) Linguistic
21 Analysis (analysis of the linguistic components and levels of
22 language used in immigration court proceedings); 3) Needs
23 Assessment (description of what interpreters should be doing in
24 the course of their duties and what knowledge is required to
25 competently perform these tasks); and 4) Statement of Work
26 (request for bids for the contract to develop the certification
27

1 examination). The contract to develop the certification
2 examination was to be awarded in February, 1992 and the entire
3 examination development process would take between six and twelve
4 months. The quarterly reports filed with the Court reflect the
5 progress made to date.

6 Defendants agreed to put in place interim measures to
7 improve the quality of interpretation during the time the various
8 steps toward a certification examination were underway. EOIR
9 interpreters have received interim training and have been
10 monitored and evaluated by a panel of federal-court certified
11 interpreters. In addition, EOIR has agreed to reassign any
12 interpreter found by the panel to be unable to perform
13 interpreter duties to do clerical work only. New interpreters
14 hired are required to take an interim test. To date, no new
15 interpreters have been hired.

16 In addition to the development of a certification
17 examination for Spanish language interpreters, defendants have
18 also agreed to institute new quality controls for contract
19 interpreters who provide interpreting services in other
20 languages. On September 23, 1991 Berlitz Translation Services
21 ("Berlitz") was awarded the contract to perform interpreting
22 services in languages other than Spanish. Berlitz was to begin
23 developing an interpreting exam for its employees and other
24 quality control measures.

25 While plaintiffs are satisfied with the remedial plan
26 developed by EOIR, areas of concern still remain. Of primary
27

1 concern is the delay in the development of the certification
2 examination. A contract for the development of the examination
3 was to be awarded in February of this year. To date, there has
4 not even been a request for bids on the contract. Plaintiffs are
5 concerned that once the certification examination is in place it
6 will only be administered to newly hired interpreters, thus
7 grandfathering existing EOIR interpreters.

8
9 DISCOVERY

10 A discovery cut-off date has previously been set in this
11 case, but a Stipulation approved by the Court on December 28,
12 1990 reopened discovery. No discovery cut-off date exists at the
13 present time.

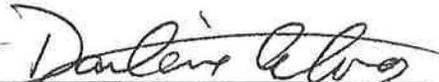
14 Extensive discovery has been conducted by plaintiffs.
15 However, with the exception of limited discovery conducted for
16 the purposes of the Motion to Compel Compliance, no discovery has
17 been conducted since early-1990. Plaintiffs' discovery relating
18 to the completeness issue predates the Memorandum of
19 Understanding which was entered into on June 17, 1991. EOIR has
20 been informing plaintiffs of the steps it is taking in regard to
21 developing an interpreter certification examination and other
22 remedial measures. This process should continue until a new
23 system for interpretation is in place and completely functioning.

1 LIKELIHOOD OF SETTLEMENT

2 The parties are willing to explore settlement of both the
3 completeness and competency issues.
4

5 Respectfully submitted,
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8 Dated: April 27, 1992

9 BY: 
10 DARLINE M. ALVAREZ
11 Legal Aid Foundation of
12 Los Angeles
13 One of the Attorneys for Plaintiffs

14 Dated: April 27, 1992

15 BY: 
16 STAN BLUMENFELD
17 Assistant United States Attorney
18 One of the Attorneys for Defendants
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