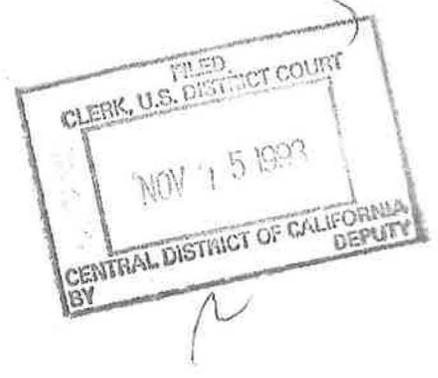


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14
 15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA
 17

18 EL RESCATE LEGAL SERVICES et al.,)
 19 Plaintiffs,)
 20 v.)
 21 EXECUTIVE OFFICE FOR)
 22 IMMIGRATION REVIEW, et al.)
 23 Defendants.)

Case No. CV 88-1201-Kn
 DEFENDANTS' RESPONSE
 TO PLAINTIFFS' MOTION
 FOR VOLUNTARY DISMISSAL
 OF ACTION AND NOTICE
 TO CLASS MEMBERS
 Date: November 29, 1993
 Time: 9:30 a.m.
 Judge David V. Kenyon

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1 DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR
2 VOLUNTARY DISMISSAL OF ACTION AND CLASS NOTICE

3 Defendants hereby respond to plaintiffs' motion for voluntary
4 dismissal of their complaint in this action. Believing that the
5 issues raised by the complaint have become moot,¹ defendants are
6 not opposed to dismissal of the action. However, defendants
7 object to the description of defendants' policy with respect to
8 the "completeness" issue in plaintiffs' proposed notice to class
9 members on the ground that it is misleading and inaccurate.
10 Unless corrected, it is likely to create confusion among class
11 members and their counsel.

12 The paragraph of the proposed notice headed "Complete
13 Interpretation Is Required," states:

14 In 1992, the Immigration Courts in Los Angeles,
15 San Diego and El Centro, adopted a policy which
16 requires complete interpretation in most
17 circumstances, of everything that is said during
18 your immigration court hearing. You presently
19 have the right to complete interpretation in
20 immigration court pursuant to this official policy.

21 Both the heading and the statement are inaccurate and should
22 be rewritten by plaintiffs.

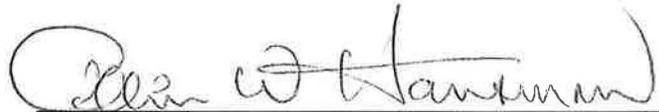
23
24 _____
25 ¹ Defendants expressly dispute plaintiffs' contention that
26 all of the changes relating to interpretation in Los Angeles, San
27 Diego and El Centro, California, that have occurred since the
28 action was filed were undertaken "as a result of the lawsuit."
Plaintiffs' Memorandum, p. 3.

1 Defendants' current policy is expressed in the memorandum
2 dated May 1, 1992, as amended May 12, 1992, issued by then Chief
3 Immigration Judge William R. Robie (hereafter, the "Robie memo").
4 See Exhibit 1 attached. It stresses the need to keep the alien
5 respondent who does not speak or understand English informed about
6 "things that may be occurring in the courtroom regarding the case,
7 [including] discussions of legal, procedural, or administrative
8 matters." It identifies portions of the proceeding that must be
9 interpreted and other matters that may, in the immigration judge's
10 discretion, either be interpreted or summarized. The Robie memo
11 is intended to assure the fundamentally fair hearing required by
12 the due process clause.

13 Informing class members, that they possess a "right" to
14 "complete interpretation" is inaccurate, and likely to promote
15 misunderstanding and confusion in the immigration court, and
16 further litigation. Accordingly, the notice should be revised to
17 accurately reflect the substance of defendants' policy.

18 Respectfully submitted,

19 FRANK W. HUNGER
20 Assistant Attorney General

21 

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Dated: November 12, 1993



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2545

Falls Church, Virginia 22041

May 1, 1992

(AMENDED effective May 12, 1992)

MEMORANDUM

TO: Immigration Judges
Office of the Immigration Judge
Los Angeles, San Diego, and
El Centro, California

FROM: William R. Robie *William R. Robie*
Chief Immigration Judge

SUBJECT: El Rescate v. EOIR

On March 10, 1992, the United States Court of Appeals for the Ninth Circuit decided the case of El Rescate et al. v. EOIR, et al. That decision by the Ninth Circuit obviates the need for many of the procedures embodied in the Memorandum of Understanding which we agreed to as an interim measure in order to comply with Judge Gray's original Order in the case. Because of the fact that the totality of the Memorandum of Understanding is no longer applicable in Immigration Judge proceedings, this memorandum is intended to establish EOIR policy regarding the interpretation of Immigration Judge proceedings in the affected cities of Los Angeles, San Diego, and El Centro, California. The provisions of this memorandum will be effective in all proceedings which come before an Immigration Court in which the alien is not an English speaker or is a limited English speaker.

Although the Memorandum of Understanding is no longer applicable, Immigration Judges must continue to be mindful of the due process requirement that all respondents/applicants be provided a fundamentally fair hearing. Toward that end, Immigration Judges must continue to be sensitive to the confusion and anxiety experienced by a respondent/applicant whose future, to a large extent, is being determined by a proceeding conducted in a language which he or she does not understand. All respondents/applicants must be made aware of what is transpiring during the hearing of their case.

Upon commencing a hearing, the Immigration Judge's first responsibility will continue to be to determine the need for interpretation and the language interpretation which will be necessary to satisfy that need. This "need determination" must be made on the record.

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Once the proceedings have begun and the "need determination" has become a matter of record, the testimony of each witness should be interpreted for the respondent/applicant. If the respondent/applicant is unrepresented, the Judge should be aware of the need to keep the respondent/applicant advised as to things that may be occurring in the courtroom regarding the case, to include discussions of legal, procedural, or administrative matters. This advisal may take the form of having these matters interpreted for the alien, or the Judge may summarize these matters for the respondent/applicant. Any discussions between the Judge and counsel for the Government as well as the Immigration Judge's decision must be translated for the unrepresented respondent/applicant.

When the alien is represented, the interpretation of social or extraneous matters not substantively related to the case generally should not be interpreted. If not interpreted, the Judge may explain that the conversation is not related to the respondent's/applicant's case. Exchanges between counsel or between counsel and the Judge regarding procedural or administrative matters, such as scheduling, need not be interpreted unless the Judge in his or her discretion decides that interpretation would be appropriate. When such statements or exchanges are not interpreted, the Judge or the interpreter shall inform the respondent/applicant regarding their nature. Legal arguments, objections of counsel and the Immigration Judge's decision must be interpreted.

If you have any questions regarding this memorandum or other matters regarding interpretation with which I can assist you, please call me or Judge Armstrong directly.

MAILING LIST

EL RESCATE LEGAL SERVICES ET AL., v. EOIR ET AL.
NO. CV 88-1201-Kn

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