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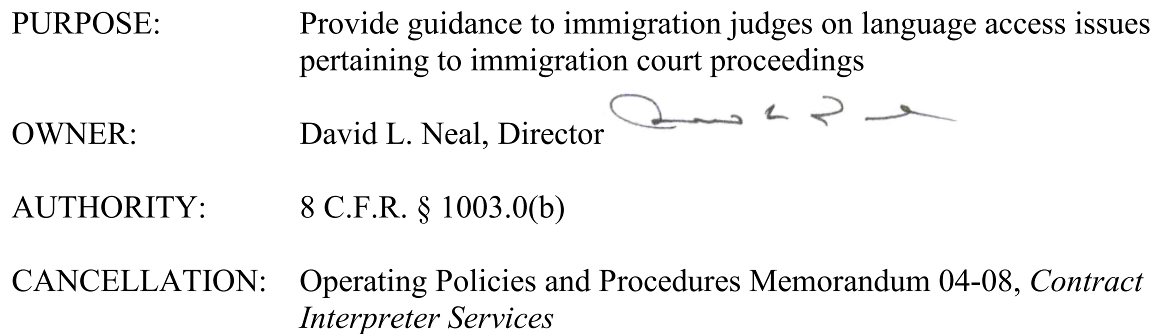
LANGUAGE ACCESS IN IMMIGRATION COURT



PURPOSE:	Provide guidance to immigration judges on language access issues pertaining to immigration court proceedings
OWNER:	David L. Neal, Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Operating Policies and Procedures Memorandum 04-08, *Contract Interpreter Services*

I. Introduction

Noncitizens with limited proficiency in English routinely appear before the Executive Office for Immigration Review's (EOIR's) immigration courts. EOIR must ensure that every noncitizen who appears before an immigration court has a full and fair opportunity to present their case. *See, e.g.*, *Matter of R-C-R-*, 28 I&N Dec. 74, 77 (BIA 2020) (stating that a noncitizen "who faces removal is entitled to a full and fair removal hearing under both the [Immigration and Nationality] Act and the Due Process Clause of the Fifth Amendment"). For EOIR to meet this objective, noncitizens with limited proficiency in English must be provided with in-court interpretation into their preferred language. In many cases, such noncitizens must also have reasonable access to out-of-court translation services. Given the demographics of noncitizens in immigration court proceedings, interpretation and translation services must be provided into a wide range of languages. This memo will discuss interpretation and access to these other services. It supersedes and rescinds Operating Policies and Procedures Memorandum 04-08, *Contract Interpreter Services*.[1]

II. Interpretation

Noncitizens whose best language is not English must be provided with complete and accurate interpretation during all immigration court hearings. In practice, most noncitizens who appear in

[1] Immigration judges should be aware that some noncitizens appearing before the immigration court have communication disabilities. These include vision, hearing, and speech disabilities. Such noncitizens may or may not be proficient English speakers. Specific guidelines on communicating in court with noncitizens who have communication disabilities are beyond the scope of this memorandum, but immigration judges must ensure that noncitizens with such disabilities have full and fair opportunities to present their cases.

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immigration courts require such interpretation. Immigration judges must ensure that interpretation into an appropriate language is provided whenever needed. Guidelines for doing so are set forth below.

At the start of each case, the immigration judge should identify the noncitizen's preferred language or languages. Immigration judges should do this by asking, on the record at the initial hearing, open-ended questions such as "What is the language you prefer communicating in?" or "What is the language you speak and understand the best?" Immigration judges should not present a noncitizen with a binary choice, such as by asking "Do you speak Spanish?" or "What language do you prefer, Spanish or English?" Where a noncitizen is represented by counsel, the immigration judge should ask counsel for the noncitizen's preferred language and then confirm counsel's answer with the noncitizen. In certain cases, a noncitizen's preferred language will be a sign language.

Where a noncitizen represents at the initial hearing that their preferred language is not English, the immigration judge should ensure that the noncitizen is provided with interpretation into their preferred language going forward.[2] At the start of subsequent hearings, the immigration judge should, on the record, verify with the noncitizen their preferred language. An immigration judge should not encourage a noncitizen to proceed in a language other than the one the noncitizen identified as their preference. Doing so raises fairness concerns and may cause complications later in the proceedings. This principle applies even where an interpreter in the noncitizen's preferred language is not immediately available. In order to facilitate interpreting, immigration courts should, to the greatest extent possible, group cases by language when scheduling master calendar hearings. Where no interpreter in a noncitizen's preferred language is available at a particular hearing, whether an initial hearing or a subsequent hearing, there may be "good cause" to continue the case under the regulatory standard. *See* 8 C.F.R. § 1003.29.

In addressing language issues in court, immigration judges should be cognizant that some noncitizens have limited proficiency in the dominant language spoken in their country of origin (for example, Spanish in Mexico and most Central and South American countries) and are fluent only in an Indigenous language. Further, some languages have multiple variants, and speakers of one variant may not fully understand speakers of another. Given these facts, determinations as to the best language in which to proceed sometimes require the immigration judge to engage in an in-depth inquiry. For example, where a noncitizen from a Central American country reports speaking Spanish, an immigration judge may need to inquire into whether they also speak an Indigenous language and, if they do, whether they prefer to speak Spanish or the Indigenous language. Where a noncitizen's preferred language is one with multiple variants, the immigration judge may need to inquire into which variant the noncitizen speaks. In such a case, the immigration judge should be cognizant that an interpreter and a noncitizen may speak different variants from one another. Accordingly, before a noncitizen starts testifying through an interpreter, the immigration judge should verify with both the noncitizen and the interpreter that they understand one another fully. Once the noncitizen starts testifying, if the interpreter and the

[2] Some people are fluent in more than one language. Where a noncitizen reports that they speak and understand more than one language equally well, the immigration judge should inquire which of those languages the noncitizen prefers to use in immigration court, and then ensure the noncitizen is provided interpretation into that language going forward.

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noncitizen appear to be having problems communicating, the immigration judge should stop the testimony and assess how to proceed.

III. Out-of-Court Translation

Noncitizens in proceedings before EOIR whose preferred language is not English often require not just in-court interpretation but also access to out-of-court translation services. For example, a noncitizen may require such services to assist them in completing an application, accessing self-help or other legal resources, or reading case-related documents. Immigration judges must use the powers at their disposal to facilitate access to such services, under the guidelines below.

Immigration judges presiding over dockets of detained noncitizens must familiarize themselves with resources available to noncitizens at the detention facility. They should learn, for example, whether there is an on-site library where detainees can access assistance in filling out applications. If such a library exists, immigration judges should be familiar with (1) what its hours are, (2) whether the facility places restrictions on detainees' access to the library, and how to address any such restrictions, and (3) what translation services, including pertaining to Indigenous or rare languages, are available to detainees through the library. Assistant Chief Immigration Judges should coordinate with local Department of Homeland Security officials to promote familiarity with the library and access to language assistance services.

Immigration judges generally have "broad discretion to conduct and control immigration proceedings." *Matter of Interiano-Rosa*, 25 I&N Dec. 264, 265 (BIA 2010). They may, in the exercise of this discretion, set and enforce deadlines for filing applications and other documents. *See* 8 C.F.R. § 1003.31(h) ("The immigration judge may set and extend time limits for the filing of applications and related documents and responses thereto, if any. If an application or document is not filed within the time set by the immigration judge, the opportunity to file that application or document shall be deemed waived."); *Matter of Interiano-Rosa*, 25 I&N Dec. at 265 (stating that "Immigration Judges have authority to set filing deadlines for applications and related documents," and that "[a]n application or document that is not filed within the time established by the Immigration Judge may be deemed waived").

That said, deadlines set by immigration judges should be reasonable given the circumstances of the case. Applications filed in immigration court must be completed in English,[3] and foreign language documents must be accompanied by an English translation. *See* 8 C.F.R. § 1003.33 ("Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation and a certification signed by the translator that must be printed legibly or typed. Such certification must include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities."). In determining reasonable filing deadlines, an immigration judge should consider the noncitizen's proficiency in speaking and writing English. Where a noncitizen lacks English proficiency, the immigration judge should consider the availability of translation services to the

[3] *See, e.g.*, Instructions, Form I-589, Application for Asylum and for Withholding of Removal, *available at* https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf.

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noncitizen, including at the detention facility in cases where the noncitizen is detained.[4] Where a noncitizen's preferred language is an Indigenous or rare language, more time may be needed to find language assistance and complete an application than in other cases. This is partly because some Indigenous languages have no written form, potentially complicating the translation process. There will sometimes be reason to extend a filing deadline where a noncitizen has made diligent efforts to prepare documents for filing but where they have been unable to access translation services or the translation process has taken longer than forecast.

IV. Conclusion

Fairness considerations dictate that noncitizens with limited proficiency in English who appear before the immigration courts always be provided with in-court interpretation, and with reasonable access to out-of-court translation services where needed. Immigration judges must, to the extent their authority allows, ensure these dictates are met. This memorandum is intended to set out best practices related to language access for immigration judges and other EOIR personnel to follow. If you have any questions, please contact your supervisor.[5]

[4] Internet-based translation services such as Google Translate are not sufficiently accurate for translating official documents or statements submitted under penalty of perjury. Immigration judges should therefore not advise noncitizens to use such services for immigration court filings.

[5] This memorandum is not intended to, does not, and may not be relied up on to, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States; its departments, agencies, or entities; its officers, employees, or agents; or any other person. In adjudicating cases, immigration judges and appellate immigration judges must always exercise their independent judgment and discretion, consistent with the law. *See* 8 C.F.R. §§ 1003.1(d)(1)(ii), 1003.10(b).

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