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16 UNITED STATES DISTRICT COURT  
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
18

19 EL RESCATE LEGAL SERVICES,  
20 INC., et al.,

21 Plaintiffs,

22 vs.

23 EXECUTIVE OFFICE FOR IMMIGRATION  
24 REVIEW, et al.,

25 Defendants.

No. CV 88-1201 WPG

MEMORANDUM OF UNDERSTANDING

1 Attorneys for Plaintiffs (continued)

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1 WHEREAS, on November 5, 1990, plaintiffs filed a Motion  
2 to Compel Compliance by defendants with the Permanent Injunction  
3 ("Injunction") entered in this case on January 2, 1990, and for  
4 Civil Contempt;

5 WHEREAS, the parties and individual Immigration Court  
6 judges have held differing interpretations of the Injunction;

7 WHEREAS, the parties agree that clarification of the  
8 Injunction would help to resolve issues that have become apparent  
9 regarding the interpretation of the Injunction;

10 WHEREAS, the Court has considered the positions and  
11 arguments of the parties and has provided specific guidance to  
12 respond to the issues that have arisen; and

13 WHEREAS, the parties acknowledge that the defendants have  
14 appealed the Injunction and that the defendants, by entering into  
15 this agreement, in no way concede or acquiesce in the legal  
16 validity of the Injunction, in its original or any modified form;

17 THEREFORE, plaintiffs and defendants hereby enter into  
18 the following understanding regarding the Injunction considering  
19 the issues which have arisen and the guidance the Court has  
20 provided to address these issues:

21 I. The Proceedings Covered

22 The Injunction requiring complete interpretation of "the  
23 entire proceedings in immigration court" for respondents<sup>1</sup> who  
24 are non-English or limited-English speakers encompasses all

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26 <sup>1</sup>For convenience, the term "respondent" is used herein to  
27 refer to all persons subject to Immigration Court proceedings,  
28 including exclusion, deportation, rescission and bond  
redetermination proceedings.

1 proceedings that come before the Immigration Court, including but  
2 not limited to individual calendar proceedings, master calendar  
3 proceedings, group hearings, and bond redetermination  
4 proceedings. The Injunction covers only oral communication  
5 (except as set forth in Section III.D. herein) and applies only  
6 when the respondent is present at the proceedings.

7 II. The Scope of Interpretation Within Each Proceeding

8 A. The determination that a respondent requires interpretation  
9 ("need determination") shall be the Immigration Judge's first  
10 order of business after taking the bench and introducing<sup>2</sup> a  
11 respondent's case. However, any discussion about a respondent's  
12 case before it is introduced shall be interpreted. If  
13 interpretation is required, subject to provision II.B. below,  
14 complete interpretation must commence immediately after the need  
15 determination is made. The right to complete interpretation  
16 applies throughout the entire proceeding until the Immigration  
17 Judge adjourns the proceeding.<sup>3</sup> At each and every proceeding  
18 subsequent to the proceeding where the need determination was  
19 made, complete interpretation shall commence when the Immigration  
20 Judge introduces the case.

21 B. If interpretation is required and an interpreter is not  
22 available, the presiding Immigration Judge shall continue the  
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24 <sup>2</sup>The Immigration Judge "introduces" the case by identifying  
25 the type of proceeding, the file number, the date and place of  
26 the proceeding, and the presence of relevant courtroom  
27 participants.

28 <sup>3</sup>For purposes of the injunction, the Immigration Judge  
"adjourns the proceeding" when he/she ceases discussing the case.

1 matter so that an appropriate interpreter can be obtained. In  
2 such circumstances, the Immigration Judge may communicate the  
3 rescheduling information to the respondent and/or his counsel in  
4 any manner practicable.

5 C. The right to complete interpretation includes interpretation  
6 of all on-the-record and off-the-record oral communication  
7 occurring during the respondent's proceeding (as defined in  
8 Section II.A.). Under the right to complete interpretation,  
9 audible social, administrative, and extraneous conversations  
10 involving participants to a proceeding shall be interpreted.  
11 Nothing herein shall limit the discretion of an Immigration Judge  
12 to schedule a pretrial or status conference without requiring the  
13 respondent to be present. Nor shall anything herein preclude an  
14 Immigration Judge from temporarily adjourning or recessing a  
15 proceeding to discuss with other EOIR personnel an administrative  
16 matter unrelated to the substance of the respondent's case.

### 17 III. Waiver

18 A. The Immigration Judge shall not accept waivers of the right  
19 to complete interpretation from unrepresented respondents.

20 B. A represented respondent may waive the right to complete  
21 interpretation, provided the Immigration Judge determines on the  
22 record that the waiver is made knowingly, intelligently, and  
23 voluntarily.

24 1. The Immigration Judge, in his/her discretion, may  
25 raise the question of waiver;

26 2. The Immigration Judge, in the exercise of his/her  
27 discretion, may make the knowing, intelligent, and voluntary

1 determination by speaking with counsel and/or respondent, as  
2 warranted by the circumstances;

3 3. The questions the Immigration Judge asks to make this  
4 determination are left to the Immigration Judge's discretion.

5 C. In any case where the Immigration Judge determines to accept  
6 a waiver of the right to complete interpretation through  
7 inquiries made of counsel, this determination shall be made on  
8 the record and with complete interpretation of the inquiries to  
9 and responses of counsel.

10 D. In bond redetermination proceedings only, a respondent's  
11 counsel may execute a written waiver of the right to complete  
12 interpretation. Such written waiver shall be interpreted or  
13 translated for the respondent. In the limited case of a bond  
14 hearing for a represented respondent who speaks only a language  
15 other than English or Spanish, and for whom an interpreter is not  
16 available on the day of the hearing, the bond hearing may proceed  
17 without interpretation based on a written waiver executed by  
18 counsel. Such a written waiver shall apply only to that single  
19 appearance. Notwithstanding this provision, defendants shall  
20 make all reasonable efforts to obtain interpreters for these  
21 proceedings.

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1 IV. Effective Date of Memorandum of Understanding

2 This Memorandum of Understanding will take effect two  
3 weeks after the Court signs the Stipulation and Order which is  
4 filed concurrently with this Memorandum of Understanding.

5 It is so agreed.

6  
7 For Plaintiffs:

8 PUBLIC COUNSEL

9  
10 By: 

11 NIELS W. FRENZEN  
One of Plaintiffs'  
Attorneys

12  
13 Date: JUNE 12, 1991

For Defendants:

LOURDES G. BAIRD  
United States Attorney

By: 

14 STAN BLUMENFELD  
Assistant U.S. Attorney  
One of Defendants'  
Attorneys

15  
16 Date: 6/17/91