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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW, et al.,

Defendants.

NO. CV 88-1201-WPG

JOINT STATUS REPORT



149

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1                                    JOINT STATUS REPORT

2            Pursuant to the Court's Order of March 26, 1992 and Local  
3 Rule 6, counsel for plaintiffs and defendants have conferred and  
4 present this Joint Status Report.

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6                                    INTRODUCTION AND BACKGROUND

7            This action was commenced on March 3, 1988 by five named  
8 representatives and two organizational plaintiffs to challenge  
9 the system for the provision of interpreters in the immigration  
10 courts in the Los Angeles and San Diego Immigration and  
11 Naturalization Service districts. The court-certified class  
12 consists of all non-English and limited-English-speaking persons  
13 who are or will be subject to immigration court proceedings in  
14 the immigration courts in Los Angeles, San Diego, or El Centro,  
15 California.

16           Plaintiffs' causes of action fall into two general  
17 categories and have been jointly referred to as the "Competency"  
18 and the "Completeness" aspects of the case. Plaintiffs allege  
19 that EOIR's failure to require that the entire immigration court  
20 proceedings be interpreted for the benefit of the individual who  
21 is the subject of the proceedings (completeness issue) is  
22 violative of that individual's statutory and constitutional  
23 rights. Plaintiffs allege that EOIR's failure to utilize  
24 competent, trained, and certified interpreters (competency issue)  
25 similarly violates the class-members' statutory and  
26 constitutional rights.

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.<sup>1</sup>  
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  
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24 <sup>1</sup> 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.<sup>2</sup> 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

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24 <sup>2</sup> 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  
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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  
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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  
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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.

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5                                    Respectfully submitted,  
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8            Dated: April 27, 1992

9            By: 

DARLINE M. ALVAREZ

10            Legal Aid Foundation of  
11            Los Angeles

12            One of the Attorneys for Plaintiffs

13  
14            Dated: April 27, 1992

15            By: 

16            STAN BLUMENTFELD

17            Assistant United States Attorney

18            One of the Attorneys for Defendants  
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