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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

EL RESCATE LEGAL SERVICES et al., )  
Plaintiffs, )  
v. )  
EXECUTIVE OFFICE FOR )  
IMMIGRATION REVIEW, et al. )  
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,<sup>1</sup> 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                   

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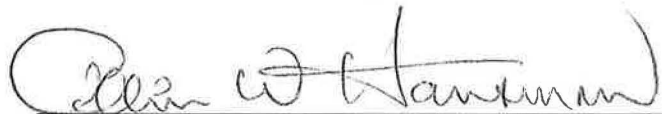
25           <sup>1</sup> Defendants expressly dispute plaintiffs' contention that  
26 all of the changes relating to interpretation in Los Angeles, San  
27 Diego and El Centro, California, that have occurred since the  
28 action was filed were undertaken "as a result of the lawsuit."  
Plaintiffs'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

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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.

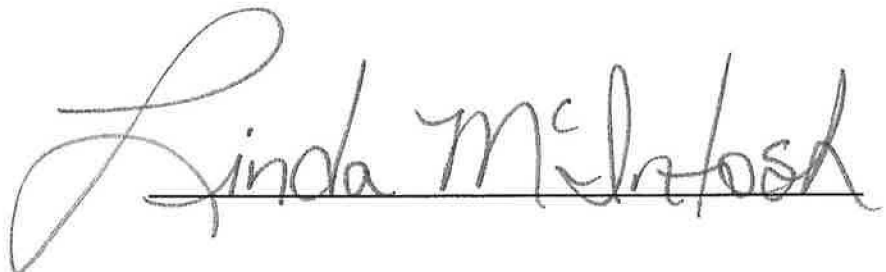
1 CERTIFICATE OF SERVICE BY MAIL

2 I, Linda McIntosh, declare:

3 That I am a citizen of the United States and a resident or  
4 employed in Los Angeles County, California; that my business  
5 address is Office of the United States Attorney, Room 7516,  
6 Federal Building, 300 North Los Angeles Street, Los Angeles,  
7 California 90012; that I am over the age of eighteen years, and  
8 am not a party to the above-entitled action.

9 That I am employed by the United States Attorney for the  
10 Central District of California who is a member of the Bar of the  
11 United States District Court for the Central District of  
12 California; at whose direction the service by mail described in  
13 this Certificate was made; that on November 15, 1993, I  
14 deposited in the United States mails in the Federal Building at  
15 300 North Los Angeles Street, Los Angeles, California, in the  
16 above-entitled action, in an envelope bearing the requisite  
17 postage a copy of: **DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION**  
18 **FOR VOLUNTARY DISMISSAL OF ACTION AND NOTICE TO CLASS MEMBERS**  
19 addressed to: **See Attached Mailing List**  
20 at his last known address, at which place there is a  
21 delivery service by United States mail.

22 This Certificate is executed on November 15, 1993 at  
23 Los Angeles, California. I declare under penalty of perjury  
24 that the foregoing is true and correct.

25  
26   
27  
28

MAILING LIST

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

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