



National Association of Judiciary Interpreters & Translators
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May 4, 2023

David L. Neal, Director
Executive Office for Immigration Review
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Dear Mr. Neal,

NAJIT, which was founded in 1978 and has over 1,100 members, is the nation's only association that brings together interpreters working in legal environments to enhance their professional contributions to the agencies they serve and to promote their own professional development. We monitor language policy in federal and state judiciaries as well as tribunals in the Executive Branch and, in that capacity, have become aware of Attorney General Garland's memorandum dated November 21, 2022 re "Strengthening the Federal Government's Commitment to Language Access." We are particularly interested in his request that each agency "provide an updated language access plan within 180 days of this memorandum."

We write to offer some suggestions for the Executive Office for Immigration Review (EOIR) to consider as you work to fulfill that request. These suggestions are drawn from the vast experiences of federal and state courts with providing effective resolution of language-based impediments to justice since the implementation of the federal Court Interpreters Act by the Administrative Office of the United States Courts (AOUSC) in 1980 and the beginning of state court interpreter certification programs under the auspices of the National Center for State Courts (NCSC) in 1995. Those efforts have matured over the decades and are now coordinated, respectively, by the Court Services Office of the AOUSC and the Language Access Services Section of the NCSC.

We respectfully offer two sets of suggestions. First, there are four areas of particular concern that NAJIT wants to highlight. Second, we refer you to a publication that offers additional suggestions. All are offered in the hopes of facilitating the best possible update of EOIR's "Plan for Ensuring Limited English Proficient Persons Have Meaningful Access to EOIR Courts."

ISSUES OF PARTICULAR CONCERN TO NAJIT

Re qualifications of interpreters: The information in the existing plan on pp. 3-4 about how EOIR qualifies interpreters could benefit from being more specific. The universal experience in federal and state judiciaries has been that the only way to assess competency in a valid and reliable manner is to develop and administer exams that objectively measure the documented knowledge, skills,

and abilities (KSAs) that are required for successful performance of court interpreting duties. The low passing rates of federal and state court interpreter certification exams suggest that the profession's KSAs are quite formidable and must be measured according to accepted psychometric standards. In an effort to understand your testing standards, we found a posting by SOSI (citations are attached to this letter) that describes the following "preferred qualifications" that suggests a lack of familiarity with existing court interpreter certification programs:

- "Federal, State, National Association of Judiciary Interpreters and Translators (NAJIT)/Judiciary Interpreters and Translators Certification Examination (JITCE)." While there are federal and state court interpreter certification examinations, NAJIT ended this testing program many years ago and there is no "JITCE."
- "American Translators Association (ATA) certification in interpretation." The ATA has never certified interpreters.

Suggestions:

- Provide documentation of the validity and reliability of the tests upon which you rely and review whether your tests adequately assess your performance expectations. Note that the Interagency Language Round Table scale, which EOIR seems to rely on, plays no role whatsoever in the federal and state certification exams.
- Clarify whether all staff and contract interpreters are subject to certification testing and, if not, what provisions for quality control for any given set of interpreters are in place other than monitoring contract interpreter performance. We especially want to know how the "private company" and the "two telephonic services" you contract with determine the qualifications of the interpreters they provide.
- Identify the languages in which such tests are available and the plans for developing tests in additional languages.

Re compensation of interpreters: We all know that meeting the requirements of equal access in the nation's courts is an expensive endeavor. It's just as important to emphasize that competent interpreters possess substantial knowledge, skills and abilities that should command compensation commensurate with their professional standing. This includes appropriate salary ranges for staff interpreters, appropriate pay for contract interpreters including annual inflation adjustments and fair cancellation policies for contract interpreters. Courts of all kinds have great difficulty setting an appropriate starting point for base pay and find it even more challenging to adjust compensation to keep up with inflation. There is an almost universal problem of stagnant compensation practices, which has the unintended effect of causing considerable discontent and dissatisfaction among an extremely rare and skilled class of workers the nation's courts need to provide language access. In extreme cases, the issue of low compensation has had the unintended result of interpreters leaving the field or geographical area seeking higher wages.

Perhaps looking at the salary structures for the federal court staff in relation to your staff positions would be helpful. For instance, in the federal courts, the court interpreter job title is compensated as much as the law clerk job title and above the job titles of court reporter and courtroom clerk. This valuation in job-title compensation is consistent with the Equal Employment Opportunity Commission's [job classifications](#), which lists both interpreters and lawyers as professionals, and court reporters and court clerks as "administrative support workers."

Suggestion:

- Consider how to address this as part of your management plan. We identify two resources we think will help frame the analysis on the page attached to this letter.

Re qualifications of translators: We don't see any information about how EOIR determines the competence of translators. We suspect it may be assumed that anyone who has passed your interpreting tests may be determined to be competent translators as well. Unfortunately, that is not necessarily the case. The New Jersey Judiciary is the only jurisdiction that tests for both court interpretation and legal translation. Their data show that of the persons who have taken the legal translation test (most of whom have already passed the interpreting test), 34% of examinees pass in both directions, with 60% passing into English and 37% passing into Spanish.

Suggestion:

- Address how translation competency will be established going forward.

Re professional practice standards and working conditions: There are many important aspects of working conditions that affect how well court interpreters can effectively perform their duties. It is not clear from the existing plan what the EOIR supports or requires with respect to professional interpreting practice.

Suggestions:

- We see in the literature reference to an EOIR Code of Professional Responsibility for Interpreters but cannot find it on your website or elsewhere on the web. If there still is such a code, consider seeking ways to make it readily accessible. We also suggest it be reviewed in the context of codes of conduct in the state and federal courts. If there is none, we are happy to provide the link to the NAJIT Code to help you develop one.
- In order to promote meaningful access to proceedings, there are many steps courts must take to accomplish that goal. We will mention just a few of them here:
 - To enable interpreters to come to an assignment being ready to work, provide background information on cases and any other information that may be useful for preparing interpreters.
 - To minimize diminishing levels of interpreter performance due to mental and physical fatigue, ensure compliance of the "full and complete" mandate as a standard across the board and adhere with the standard professional code of ethics (see NAJIT canons 1 and 8, Accuracy, and Impediments to Compliance respectively), develop a policy providing for team interpreting and other methods of sustaining an appropriate level of performance.
 - To ensure that interpreters can perform their duties, train judges and other personnel on the proper use of interpreting services and create effective mechanisms for processing feedback from interpreters who experience demands from judges and others who inhibit professional interpreter practice.

BRENNAN CENTER FOR JUSTICE'S REPORT,
LANGUAGE ACCESS IN IMMIGRATION COURTS

We have not conducted any original research in the preparation of this letter but want to make sure you are familiar with the 2011 report mentioned above authored by Laura Abel. Although we have not verified the current accuracy of the report's findings and recommendations, NAJIT supports all the "suggestions for reform" presented therein and invites you to review and, where appropriate, address them. The link to that report is on the attached page and you can find those suggestions on pages 10-14.

Conclusion

Managing access for the nation's LEP populations is a great challenge that all levels of government—especially its courts and tribunals—must address and resolve to fulfill the promises of equal access for these constituents. We hope the suggestions we have offered are useful and are available to provide any assistance you might find helpful. Best wishes as you tackle this important mandate.

Sincerely yours,

The NAJIT Board

c: Ana Paula Noguez Mercado, Language Access Coordinator, Office for Access to Justice, Department of Justice [AnaPaula.Noguez@usdoj.gov]

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RESOURCES

Cited or referred to in the letter (in order of mention):

<https://careers-sosi.icims.com/jobs/6215/court-interpreter---multiple-languages/job>

NAJIT's Code of Professional Ethics and Professional Responsibilities, <https://najit.org/wp-content/uploads/2016/09/NAJITCodeofEthicsFINAL.pdf>

https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language_Access_in_Immigration_Courts.pdf

Resources that would be helpful to consult:

William E. Hewitt, Court Interpretation: Model Guides for Policy and Practice in the State Courts, National Center for State Courts, 1995.

https://www.txcourts.gov/media/907023/Court_Interpretation_Model_Guides_for_Policy_and_Practice_in_the_State_Courts.pdf

Re compensation:

- Article, “Interpreter Compensation in the Courts: A Descriptive Study”, and additional extensive tables on compensation practices in the nation’s federal, state and local courts: <https://courtinterpretingresearch.com/compensation-database>
- “Compensation of Court Interpreters in the State of New York,” <https://jimdo-storage.global.ssl.fastly.net/file/dd411fde-f0ac-4986-8190-5d00c693dfc5/Compensation%20New%20%20York.pdf>

NAJIT position papers, especially “Team Interpreting in Court-Related Proceedings,”

<https://najit.org/position-papers/>

New Mexico Rules of Civil Procedure for the Metropolitan Courts, especially Rule 3-113.E(7) Use of team court interpreters, <https://casetext.com/rule/new-mexico-court-rules/new-mexico-rules-of-civil-procedure-for-the-metropolitan-courts/article-1-general-provisions/rule-3-113-court-interpreters>

Model language access plans for state courts:

- New Jersey, <https://www.njcourts.gov/sites/default/files/notices/2022/09/n221013a.pdf>
- Oregon, <https://www.courts.oregon.gov/about/Documents/LanguageAccessPlan.pdf>

Discussion of working conditions in immigration courts

- A post entitled “Why Interpret at Immigration Court?” appeared in the April 5, 2019 issue of The NAJIT Observer. Many animated responses from interpreters over a period of two years! Reading through those responses would provide insight into their views of working for immigration courts. <https://najit.org/why-interpret-at-immigration-court/>