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Enhancing the Accuracy of Proceedings Through Effective Translation

Interpreters play a critical role in Immigration Courts. More than 85 percent of the people who come before Immigration Courts rely on interpreters to tell their story to the Immigration Judge in the same way as they have told it themselves. Given the central role that translators can play, courts have found, "Due process requires that an applicant be given competent translation services."

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All too frequently, however, interpreters in Immigration Court fail in their role, and rather than allowing a person to tell his or her story, an incompetent translator can actually get the person deported. Even a seemingly small error in translation can have devastating consequences. One interviewee recounted an experience with an interpreter who paraphrased a Buddhist woman's reaction to being persecuted as "Oh, my God." The Immigration Judge relied on this inaccurate translation of her reaction in finding that she was not credible, stating that Buddhists do not believe in God and, therefore, a Buddhist would not have used that phrase. Another told us how an inaccurate translation led an Immigration Judge to believe mistakenly that the immigrant had started fires at a demonstration, when in fact the immigrant testified that fire trucks were called to hose down political demonstrators. Unfortunately, catastrophic translation errors such as these often are not subject to appellate review because they go

undetected by lawyers, Immigration Judges and immigrants alike.

Appleseed therefore recommends the following action items to ensure that immigrants have access to competent translation.

Mandate simultaneous translation of everything said in Immigration Court.

At the hearing that will determine whether a person can stay in the United States or must leave the country (and indeed, at any hearing), the immigrant often has no idea what is going on or being said in the courtroom because the interpreter is translating only direct discussions between the Immigration Judge and the immigrant. Statements by the DHS Trial Attorney, the immigrant's lawyer and the Immigration Judge not directed to the immigrant often go untranslated. Immigrants placed in this situation feel vulnerable and frustrated, a perception that makes losing immigrants more likely to believe that they did not receive a fair hearing. But even beyond this perceptual problem, this practice also places immigrants at a real disadvantage because they cannot understand the context of questions that Immigration Judges pose or courtroom proceedings in general. To help ensure that every hearing is a fair one, in both perception and fact, EOIR should immediately mandate that Immigration Judges instruct interpreters to translate everything that is said in open court and not simply exchanges between the Immigration Judge and the immigrant. Immigration Judges and attorneys should be vigilant about ensuring interpreters comply with this full translation mandate.

Additionally, interpreters should translate everything simultaneously, rather than wait until the end to summarize what has been said. Simultaneous translation will help immigrants understand the discussion and proceedings in context and will reduce the risk that an important point will go untranslated. While we recognize that simultaneous, full translations will make hearings a bit longer than simply translating direct exchanges between the Immigration Judge and the immigrant, the enormous safeguard full translations will provide to an immigrant's due process rights outweighs this cost.

Establish an improved certification system for interpreters.

Private companies provide translation services in Immigration Court for all languages other than Spanish (for which the government generally provides translations). These companies are responsible for selecting and certifying their own interpreters, and several of our interviewees expressed dismay over the quality of the interpreters they provide. Furthermore, a number of federal courts of appeals have commented on the poor quality of translation in Immigration Court proceedings, particularly in instances where the Immigration Judge cannot understand the interpreter's English, or the interpreter and the immigrant are unable to communicate clearly because they speak different dialects of the same language. As one interviewee told us, the perception is "that if you cannot pass the federal court interpreter certification test, you become an Immigration Court interpreter."

To help improve the quality of private interpreters in Immigration Court, EOIR should ensure in the next translation services contract that the service provider establish an improved certification system for court-provided interpreters, with an emphasis on dialectical differences, general competency in both English and the foreign language for which the interpreter is certified and

the ability to translate simultaneously. Improved certification standards will result in better interpreters, which, in turn, will lead to fairer results in Immigration Court. It may also improve court efficiency as there will be fewer delays caused by unqualified interpreters and fewer appeals based on sub-par translation.

Improve the complaint-tracking procedure for interpreters.

EOIR maintains an online system for individuals to report any complaints, issues or concerns regarding an Immigration Court interpreter. Immigration Judges also may seek to have an interpreter disqualified for "substandard foreign language or English proficiency; lack of knowledge of Immigration Court terminology; [or an] inability to interpret accurately or completely." An interpreter can be disqualified from translating a particular language or dialect, appearing on an individual matter or appearing before an individual Immigration Judge or in any Immigration Court. Although the contractors track complaints and disqualifications, EOIR itself has no way of knowing whether the contractor is supplying an Immigration Court with an interpreter who has been previously disqualified. EOIR should close this loophole.

EOIR should compile its own database of disqualified interpreters and track interpreter orders by interpreter name to ensure that disqualified interpreters do not appear in Immigration Court. In addition, EOIR should feature the link to complain about an interpreter prominently on the main page of its website; right now, it is almost impossible to figure out where to submit a complaint about an interpreter on the website. By making it easier to file complaints against interpreters and monitoring interpreters who have been disqualified, EOIR will be better able to ensure that only competent interpreters appear in Immigration Courts.

Enforce the prohibition on paraphrasing or opining.

Interviewees also complained that interpreters often violate current rules by paraphrasing or opining, rather than providing an accurate translation. One practitioner told us about an interpreter who flatly refused to translate his client's testimony about being attacked and disfigured by anti-Semites in the Ukraine; the interpreter opined, "That sort of stuff doesn't happen in the Ukraine." Another practitioner indicated that he believed that his clients' testimony was frequently made less powerful because interpreters were uncomfortable literally translating slurs or insults. Watering down the stories of persecution or torture told in Immigration Court impedes the judge's ability to determine the person's credibility. Immigration Judges should therefore frequently remind interpreters not to opine or paraphrase during translation and remove an interpreter if it appears that he or she is interjecting opinion or paraphrasing testimony. In appropriate cases, the Immigration Judge should report the translator's dereliction to EOIR for it to consider disqualification.

Question and, if necessary, remove an interpreter when the translation appears to hinder an immigrant's ability to testify fully and openly.

Some interpreters exhibit the very intolerance that originally caused immigrants to flee their homelands. Immigrants should not have to confront these prejudices in an American courtroom. It is difficult enough for a person to recount the minute details of a traumatic experience in front of a judge and government attorney through the conduit of a foreign-language interpreter. This process becomes all the more intimidating when the very prejudice from which an immigrant fled is embodied by the interpreter she is relying on to tell her story.

"That sort of stuff doesn't happen in the Ukraine."

An interpreter's opinion of an asylum seeker's testimony, according to an interviewee.

Immigration Judges should ensure that the interpreter's bias, linguistic differences, ethnic background or other attributes do not interfere with the witness's full and open testimony in court. The Immigration Judge and counsel (both the immigrant's lawyer and the Trial Attorney) should be vigilant in observing the interaction between the interpreter and immigrant. If it appears that an interpreter is making an immigrant uncomfortable, the Immigration Judge should probe to determine the reason. Depending on the nature of the problem, the Immigration Judge should either instruct the interpreter regarding his role in the proceeding or, if necessary, replace him. By using these tools, Immigration Judges will help ensure that interpreters serve as a conduit to a fair hearing and not an impediment to justice.

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