

The Executive Office for Immigration Review's Plan for Ensuring Limited English Proficient Persons Have Meaningful Access to EOIR Services

I. Introduction

The Attorney General created the Executive Office for Immigration Review (EOIR) in 1983 as a separate agency within the United States Department of Justice (Department) to adjudicate cases arising under the Immigration and Nationality Act and its implementing regulations. EOIR is composed of three administrative tribunals.

The Office of the Chief Immigration Judge (OCIJ), maintains approximately 59 immigration courts, made up of more than 250 immigration judges located across the nation. The immigration courts primarily adjudicate cases involving the removal of aliens from the United States. In most cases, the Department of Homeland Security (DHS), a separate federal agency, is seeking to remove an alien from the United States. In many cases, the alien is contesting removal.

The Board of Immigration Appeals (BIA) is located at EOIR headquarters in Falls Church, Virginia. The BIA reviews appeals from the immigration courts as well as certain DHS immigration decisions. The BIA is also responsible for EOIR's Certification Program and Recognition and Accreditation Program.

The Office of the Chief Administrative Hearing Officer (OCAHO) determines whether to impose civil monetary penalties on individuals or businesses for violating employment-related immigration laws and decides claims of unfair immigration-related employment practices.

EOIR also has five non-adjudicating components, which are the Office of the Director (OOD), the Administration Division, the Office of the General Counsel (OGC), the Office of Management Programs (OMP), and the Office of Planning, Analysis, and Technology (OPAT). OOD consists of the Director's staff, including the Office of Legal Access Programs (OLAP). The Administration Division consists of the following offices: property management, budget, contracts, and human resources. OGC consists of the following units: attorney discipline, employee/labor relations, ethics, immigration fraud and abuse, Freedom of Information Act (FOIA), and immigration. OMP consists of the following offices: legislative and public affairs, security, and space and facilities. OPAT consists of the following units: Information Resource Management (IRM), planning, and statistics.

Executive Order (EO) 13166 directs each federal agency to: "examine the services it provides and develop and implement a system by which [limited English proficient] LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency." 65 Fed. Reg. 50,121 (Aug. 16, 2000). The Department's Civil Rights Division (CRT) subsequently issued guidance concerning the EO. 67 Fed. Reg. 41,455, 41,459 (June 18, 2002). The guidance defines LEP persons as "[i]ndividuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English."

Due to the nature of EOIR's mission, it has had a long history of interacting with LEP persons. As a neutral arbiter, EOIR has strived to provide fair, impartial, and timely adjudication of immigration proceedings since its inception in 1983. Fundamental to this goal, EOIR seeks to ensure that LEP persons can have meaningful access to immigration proceedings. In fact, in 2000 and 2003, EOIR conducted language access assessments that it submitted to the CRT. In both assessments, EOIR concluded that it provided LEP persons with meaningful access to immigration proceedings.

The Department recently embarked on an initiative that requires all of its agencies to draft a language access plan (LAP). EOIR fully supports the Department's initiative and drafted this LAP to further ensure that LEP persons have meaningful access to EOIR services.

This LAP provides a detailed summary of EOIR's current efforts to ensure meaningful access to LEP persons and an analysis of language access at EOIR. Further, the LAP provides specific policy guidance for EOIR's components and employees concerning LEP access. Through this LAP, EOIR formally commits to continue to periodically assess the language access needs of LEP persons seeking EOIR services and to expand access for LEP persons to these services.

II. Current Efforts to Provide Language Access to LEP Persons

EOIR takes seriously its obligation to provide LEP persons with meaningful access to its services. In fiscal year 2011, EOIR budgeted over twenty-four million dollars to provide language access for LEP persons. This figure constitutes over eight percent of EOIR's annual budget. The following is a summary of EOIR's current efforts to provide language access to LEP persons.

A. Interpretation of Immigration Court Proceedings

Many of the aliens who appear in EOIR's immigration courts for their immigration proceedings are LEP and require an interpreter to understand and participate in the proceedings. EOIR has a policy that provides interpreters for these LEP persons to ensure they receive meaningful access to EOIR's most critical service:

“Interpreters are provided at government expense to individuals whose command of the English language is inadequate to fully understand and participate in removal proceedings. In general, the Immigration Court endeavors to accommodate the language needs of all respondents and witnesses.”

[Immigration Court Practice Manual](#), Chapter 4.11, 4.12(f) (April 1, 2008). Immigration courts arrange for an interpreter both during master calendar hearings (i.e., scheduling hearings) and individual hearings (i.e., merit hearings). EOIR encourages the parties to an immigration proceeding to request interpreters either orally at a master calendar hearing or by written motion. Moreover, EOIR requests that the parties provide specific information, such as the name of the language, the dialect, and the geographic location where the dialect is spoken to ensure that EOIR provides interpreters with the correct linguistic skills. *See* Immigration Court Practice Manual, Chapter 4.12(o)(i).

Immigration judges regularly determine whether an interpreter is necessary even when the alien does not request one. EOIR's [Immigration Judge Bench Book](#) provides scripted questions for initial hearings and other master calendar hearings to elicit from the alien whether he or she needs an interpreter and the language the alien best understands. In practice, immigration judges regularly ask these questions at each hearing. EOIR also provides training to immigration judges to assist them in ascertaining the best language that each alien who appears before them understands.

To provide LEP persons with interpreters at all hearings, EOIR employs over 90 staff interpreters, who work in the immigration courts. Because the overwhelming language spoken by LEP persons is Spanish, most of EOIR's interpreters speak Spanish. EOIR also employs an interpreter that speaks Chinese, Mandarin (hereinafter "Mandarin") in the New York Immigration Court, where there is a large Mandarin-speaking LEP population and two Haitian, Creole (hereinafter "Creole") interpreters at the Miami Immigration Court, where there is a need for Creole interpreters.

In addition to these full-time federal employees, EOIR has a contract with a private company to provide interpreter assistance in whatever language is needed at any of its immigration courts. Alternatively, if an interpreter is needed immediately, EOIR contracts with two telephonic interpreter services. Through these combined efforts, EOIR ensures that all LEP persons have an interpreter at their hearings.

Due to the importance of providing accurate interpretations, EOIR only allows qualified individuals to serve as court interpreters. EOIR does not permit the family or friends of an LEP person to act as court interpreters. Rather, interpreters permitted to interpret in court must meet specific qualifications. For example, they must have at least one year of specialized experience interpreting non-routine material consecutively in a judicial environment.¹ They must also have at least one year of specialized experience interpreting non-routine material simultaneously in a judicial environment.² Additionally, interpreters must have comprehensive knowledge of the linguistic aspects of court interpretation and a mastery of vocabulary, grammar, syntax, idiom, colloquialism, culturally-based terms, and technical terms in English and a foreign language.

EOIR interpreters must also pass a test and skills assessment, which is modeled on the requirements used by the federal judiciary and many state courts. In order to pass, an individual must attain a score that is the equivalent to 3+ on the Interagency Language Round Table scale. Further, EOIR staff interpreters must take an oath when they commence their employment with EOIR that they will interpret and translate accurately; all contract court interpreters must swear

¹ "In consecutive interpreting, the interpreter waits until the speaker has finished before rendering speech into another language. Consecutive interpreting is a true and accurate interpretation of one language to another, spoken in brief sound bites successively, without omissions or embellishments, so that the parties can understand each other slowly and deliberately." *Modes of Interpreting: Simultaneous, Consecutive & Sight Translation*, National Association of Judiciary Interpreters & Translators (May 15, 2006), http://www.najit.org/publications/Modes_of_Interpreting200609.pdf

² "Simultaneous interpreting is the rendering of one spoken language into another when running renditions are needed at the same time as the English language communication. The interpreter speaks virtually at the same time as the LEP person." *Id.*

or affirm the same at the commencement of each hearing they are assigned. *See* 8 C.F.R. § 1003.22; Immigration Court Practice Manual, Chapter 4.11.

EOIR is committed to providing accurate interpretations at its hearings. Within OCIJ, EOIR has a Language Services Unit (LSU) that manages all of the interpreter services available at the immigration courts. The LSU continually strives to improve interpreter services. Most recently, based on a 2008 plan to improve interpreter services at EOIR, the LSU further enhanced biannual reviews of EOIR's staff interpreters and established a quality assurance team that monitors contract interpreter performance. Also, in addition to its own review of interpreter quality, EOIR created a webpage that provides the public with instructions on how to [file a complaint](#) against an interpreter.³ OCIJ also encourages its immigration judges to inform the LSU, through established reporting procedures, of interpretation concerns they observe during immigration proceedings.

B. Contact with LEP Persons Outside the Courtroom

i. Service Window

EOIR recognizes that it provides services outside of its immigration courtrooms and is likewise committed to ensuring that LEP persons have meaningful access to these services. EOIR has employees who are multilingual and can speak to LEP persons at service windows to provide basic information. Although these employees primarily speak English and Spanish, EOIR identified employees who speak 27 other languages. EOIR also relies on contracted telephonic interpreter services that provide qualified interpreters for numerous languages on an unscheduled basis within three minutes of EOIR's request.

ii. Telephone

LEP persons routinely contact EOIR by telephone. All EOIR components and offices have access to the contracted telephonic interpreter services. Therefore, when LEP persons call one of the components or offices in the field or at EOIR headquarters, EOIR employees can obtain an interpreter in many languages. EOIR also maintains an automated toll-free telephone service that provides aliens and their attorneys with specific information about their cases. This service is available in Spanish. Many of the immigration courts and EOIR's OGC also have translated their automated messages into Spanish.

iii. Correspondence

LEP persons communicate with EOIR in writing. EOIR is capable of responding to correspondence it receives in a language other than English when sent to its non-adjudicatory components. Regarding the adjudicating components, *i.e.*, the immigration courts, the BIA, and OCAHO, the regulations allow an individual to submit a document in a foreign language, but it must be accompanied by a certified English translation. *See* 8 C.F.R. §§ 1003.2(g)(1), 1003.3(a)(3), 1003.33; 28 C.F.R. § 68.7(e).

³ <http://www.justice.gov/eoir/sibpages/InterpComplaint.htm>

iv. Website

EOIR recognizes that more and more persons seek information via the internet. EOIR translated into Spanish and posted on its website a number of documents that warn aliens how to avoid being victims of fraud or paying for legal advice or representation from individuals who are not authorized to practice immigration law. Further, EOIR's website has translated information concerning the ethical obligations of immigration practitioners (i.e., attorneys and representatives) and how aliens may file complaints against practitioners who fail to discharge those obligations. Below is a list of translated documents that are accessible from EOIR's website, www.justice.gov/eoir/:

[List of Currently Disciplined Practitioners](#)

[List of Previously Disciplined Practitioners](#)

[Fact Sheet for EOIR's Disciplinary Program for Attorneys and Representatives](#)

[Immigration Practitioner Complaint Form \(Form EOIR-44\)](#)

[Periodic news releases informing the public of recently disciplined practitioners](#)

[Notice warning aliens how to avoid immigration fraud](#)

[Notice warning aliens that notarios and visa consultants cannot provide immigration law advice](#)

C. Office of Legal Access Programs

EOIR's OLAP provides detained aliens who are in removal proceedings with basic information on immigration law and court procedures. The OLAP contracts with non-governmental organizations to conduct group orientations concerning general immigration law issues, individual orientations, and follow-up services such as self-help workshops or referrals for pro bono representation.

If an alien needs assistance because he or she is LEP, EOIR, by contract, requires the OLAP provider to provide the orientation materials in a language the alien understands either verbally, through an interpreter or audio recording, or in writing. OLAP providers also must provide interpreters at individual orientations for LEP persons. The OLAP providers demonstrated their commitment to providing LEP persons with meaningful access to services by translating documents, such as self-help legal materials, into over a dozen languages, including Spanish, Arabic, Chinese, Russian, Korean, Vietnamese, French, Haitian Creole, Somali, Tigrinya, Punjabi, Farsi, and Gujarati.

D. Immigration Practitioner Communication with LEP Clients

EOIR also realizes that it is important for LEP aliens appearing in immigration courts to be able to communicate with the immigration practitioners who represent them. Therefore, in January 2009, EOIR added a requirement in its professional conduct rules for practitioners that requires the following: "It is the obligation of the practitioner to take reasonable steps to communicate with clients in a language that the client understands." 8 C.F.R. § 1003.102(r). The regulation allows EOIR to impose disciplinary sanctions on anyone who violates the rule. *See* 8 C.F.R. §§ 1003.101(a), 1003.104(c).

III. Development of EOIR’s Language Access Plan

In order to develop this LAP, EOIR created a Language Access Workgroup consisting of representatives from each of its adjudicatory components and administrative offices. The Workgroup collected information concerning EOIR’s interactions with LEP persons and completed a CRT language access survey. Further, the Language Access Workgroup held a stakeholder meeting with non-governmental organizations regularly involved in immigration and/or LEP issues. Finally, as provided in detail below, the Workgroup analyzed LEP access to EOIR services using CRT’s published guidance. *See* 67 Fed. Reg. at 41459-61; 65 Fed. Reg. 50,123, 50,124-50,125 (Aug. 16, 2000).

Factor 1: The number or proportion of LEP persons served or encountered by EOIR.

With limited exceptions, the members of the public who most need meaningful access to EOIR’s services are the aliens against whom DHS has initiated removal proceedings. Therefore, EOIR’s best guide for determining the number and proportion of LEP persons it serves or encounters is the statistical data that EOIR collects concerning aliens in immigration proceedings. In part, immigration judges ensure LEP persons are provided meaningful access to participate and understand their proceedings by asking them to state the language that they best understand. The data in the following table reflects the languages that aliens have identified.

<u>FY 2010 Court Proceedings Completed by Language</u>				
<u>Languages</u>	<u>FY 2009</u>	<u>%</u>	<u>FY 2010</u>	<u>%</u>
Spanish	199,119	69	190,659	66
English	44,362	15	49,090	17
Mandarin	8,693	3	8,821	3
Creole	4,217	1	4,900	2
Other	25,433	9	26,179	9
Unknown ⁴	8,409	3	7,558	3
Total	290,233	100	287,207	100

The data suggests that a significant majority of aliens in immigration proceedings are LEP. The overwhelming language spoken by aliens in immigration proceedings is Spanish. Spanish accounts for approximately two-thirds of the languages spoken by the aliens in immigration proceedings; in contrast, only about one-sixth of the aliens proceed in English. The remaining

⁴ “Unknown language” refers to cases in the EOIR database that do not identify a specific language. This code is used when the Notice to Appear, obtained from DHS, does not indicate the respondent’s preferred language. In other cases, EOIR is unable to determine the language because the alien fails to appear at a scheduled hearing.

one-sixth of individuals identified nearly 300 other languages as their primary languages, with Mandarin and Creole constituting approximately three percent and one or two percent respectively. Based on this data, EOIR's contact with the public primarily involves LEP persons, and Spanish is by far the primary language they speak.

Factor 2: The frequency with which LEP persons come into contact with EOIR.

EOIR's statistical records also provide the best data to determine the frequency with which EOIR encounters LEP persons. Immigration court proceedings primarily consist of master calendar hearings and individual hearings. The data below reflects the number of hearings held based on the language identified by aliens. Because each case may have more than one hearing, the number of hearings held by language is a strong indicator of the frequency of EOIR's encounters with LEP persons. The data displayed in the table below is consistent with factor one: EOIR, overwhelmingly, has the most frequent contact with Spanish-speaking aliens, 57%. EOIR's second and third most frequent encounters are with Mandarin-speaking and Creole-speaking aliens, although they are a distant second and third, and in FY 2010 comprised only four and one percent of all encounters, respectively.

<u>Top Three Foreign Languages at Hearings for FY09 and FY10</u>				
<u>Languages</u>	<u>FY 2009</u>	<u>%</u>	<u>FY 2010</u>	<u>%</u>
Spanish	510,556	57	523,213	57
Mandarin	38,574	4	38,480	4
Creole	15,819	2	12,428	1

Factor 3: The nature and importance of the program, activity, or service EOIR provides.

EOIR is responsible for the adjudication of cases involving the removal of aliens from the United States, the assessment of civil monetary penalties against individuals and companies that allegedly violated federal law, and the determination as to whether an employer discriminated against an alien based on nationality or citizenship. All of the functions that EOIR performs are important to LEP persons appearing before EOIR.

As previously stated, most EOIR encounters with LEP persons arise because the LEP person is in removal proceedings. In each of these cases, DHS is seeking to remove the person from the United States, and EOIR will order the person removed if the alien is found subject to removal and ineligible for any forms of relief. One way in which an alien may avoid removal is if he or she can establish eligibility for asylum or a likelihood of being tortured upon return to his or her country of nationality. Further, aliens who have been legal permanent residents in the United States for many years can be removed to their countries of origin. Therefore, meaningful access

to EOIR’s adjudication process at the immigration court and appellate level is critical for LEP persons in removal proceedings.

EOIR’s adjudications involving civil monetary penalties and allegations of employment discrimination are also important because these cases can result in civil fines or the loss of a job without recourse. LEP persons need to be able to fully participate in these hearings.

Factor 4: The resources available to EOIR and the costs.

In fiscal year 2011, approximately 8% of EOIR’s overall budget was dedicated to language services for LEP persons.

<u>Language Services Budget Versus EOIR Budget for FY2011</u>	
EOIR’s Budget Amount for FY2011	\$297,359,000.00
Total for Language Services	\$24,271,174.00
% of EOIR’s Budget Allocated to Language Services	8.2%

This figure, more than \$24 million, represents a tremendous commitment of EOIR resources to ensure LEP persons have meaningful access to EOIR services. Most of EOIR’s language access resources, over \$17 million, are allocated to providing in-person interpreter services. EOIR also spends significant financial resources on telephone interpreter service contracts.

<u>Language Services Budget for FY2011</u>	
<u>Services</u>	<u>Costs</u>
In-person Interpreter	\$17,532,398.00
Government Employed Interpreter	\$6,376,305.00
Telephone Interpreter Contract	\$345,271.00
Document translation	\$17,200.00
Total:	\$24, 271,174.00

IV. EOIR's LEP Policy Directive

A. Policy Statement

- i. It is the policy of EOIR that its staff will take reasonable steps to provide LEP persons with meaningful access to EOIR services.
- ii. It is the responsibility of EOIR and not the LEP person to ensure that communications between EOIR and the LEP person are not impaired as a result of the limited English proficiency of the person.
- iii. EOIR staff will take reasonable steps to effectively inform the public of the availability of EOIR's language assistance resources.

B. Purpose and Authority

The purpose of this policy is to eliminate or reduce – to the maximum extent practicable – limited English proficiency as a barrier to accessing EOIR's services. This policy establishes guidelines, consistent with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), implementing regulations, guidance documents, and Executive Order 13166, for EOIR personnel to follow when providing services to, or interacting with, LEP persons.

C. Definitions

- i. *Direct "In-Language" Communication* – Monolingual communication in a language other than English between a multilingual staff and an LEP person (e.g., Korean to Korean).
- ii. *Interpretation* – The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.
- iii. *Language Assistance Services* – Services that encompass all oral and written language services needed to assist LEP persons to communicate effectively with staff, and to provide LEP persons with meaningful access to, and an equal opportunity to participate fully in the services, activities, or other programs administered by the agency. Oral language assistance services may come in the form of "in-language" communication or interpreting. Written language assistance services are called translation.
- iv. *Limited English Proficient (LEP)* – Persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. LEP persons may be competent in certain types of

communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).

- v. *Meaningful Access* – Language assistance that results in accurate, timely, and effective communication at no cost to the LEP person. For LEP persons, meaningful access denotes access that is not restricted, delayed, or inferior as compared to programs or activities provided to English proficient persons.
- vi. *Multilingual staff or employee* – A staff person who has demonstrated proficiency in speaking, reading, and/or writing English and at least one other language.
- vii. *Primary Language* – A person’s primary language is the language in which the person most effectively communicates. Staff should avoid assumptions about a person’s primary language. For example, LEP persons from Latin American countries may speak an indigenous or non-Spanish language as their primary language. Some countries have multiple distinct languages, which are often misperceived as different dialects with only a slight variance.
- viii. *Translation* – The conversion of written text from one language (source language) into an equivalent written text in another language (target language) and vice versa.
- ix. *Vital Document* – Paper or electronic written material that contains information that is critical for accessing EOIR’s programs or is required by law.

D. Scope of Policy/Staff Compliance

To the extent permitted by, and consistent with, Department regulations, EOIR staff will take all practicable steps to use EOIR-funded language assistance services to communicate with an LEP person in the course of their duties. EOIR staff will ask the party to a proceeding whether he or she needs an interpreter for the hearing. If the party responds affirmatively, then EOIR will provide an EOIR-funded interpreter at the hearing. Only staff authorized as multilingual employees, interpreters, or translators will provide language assistance services on behalf of EOIR. An EOIR employee will be determined to be a multilingual employee within the meaning of this policy directive upon (i) completion of a language skills assessment as established by the employee’s component, and (ii) approval of the employee’s supervisor. Further, EOIR may contract with professional interpretation or translation services to assist EOIR in providing language access for LEP persons.

The Director of EOIR will establish a standing language access committee (LAC). Within 30 days of adopting the LAP, the head of each EOIR component will appoint a component language access coordinator. The component coordinators will report on language access issues to the respective heads of their components. The component language access coordinators will be members of EOIR’s LAC. The Director will designate a member of the LAC as its chair, who will also serve as EOIR’s language access coordinator.

Each component language access coordinator will be responsible for implementing EOIR's LAP for his or her component. This includes providing training and evaluating his or her component's efforts to ensure language access for LEP persons.

The LAC will periodically meet so that the component coordinators can report and consult with each other on LEP issues and complaints, consider EOIR-wide language access issues, and draft an annual language access report for the Director and the heads of EOIR's components. Each component will provide EOIR's language access coordinator with the information necessary to complete the language access report.

If a person has a language access concern or complaint as it relates to an EOIR component, then that person should communicate that concern or complaint to the component's language access coordinator. EOIR will post on its internet website information on how to contact the language access coordinator for each component. Further, EOIR will train employees to direct such communications from members of the public to the appropriate component language access coordinator or, in the case of general concerns about language access at EOIR, to EOIR's language access coordinator.

This directive is intended only to improve the internal management of EOIR's language access program, and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person. Any individual who wishes to raise concerns regarding EOIR's implementation of this policy may do so by submitting the relevant information to EOIR's language access coordinator.

E. Requirement to Translate "Vital" Documents

EOIR will prioritize the translation of vital documents, including which language to translate the documents into, as permitted by statute or regulation. Classification of a document as "vital" depends upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Upon adoption of this LAP, EOIR intends to begin identifying which of its documents are vital to the public and determine whether pertinent statutes and regulations permit it to translate these documents. EOIR intends to complete its review within two years of adopting the LAP. After the first two-year period, EOIR's LAC will annually consider whether there are additional vital documents that it should translate.

EOIR's LAC will continue to consider the feasibility of translating EOIR's forms and/or instructions for its forms into different languages given its regulatory restrictions.

Within a year of adopting the LAP, each Immigration Court will review the signs that it posts and recommend to OCIJ's language access coordinator whether signs in additional languages are necessary.

Upon adopting the LAP, EOIR's LAC will begin to review EOIR's internet website (found at <http://www.justice.gov/eoir/>) to determine which additional pages should be translated and into which language(s). Documents that EOIR will consider for translation include, but are not

limited to, basic information about EOIR, press releases that significantly affect a particular LEP community, and information about language access at EOIR. When EOIR translates its pages from English into another language(s), EOIR will strive to create an easily accessible webpage(s).

F. Translations for Outreach and Education Documents

EOIR's vital documents intended for public outreach and education campaigns shall, at a minimum, be translated into Spanish. EOIR's LAC will consider, within a year of adopting the LAP, whether these documents ought to be translated into additional languages. Under most circumstances, materials primarily directed to attorneys, representatives, or other professionals will not be considered "vital" for these purposes.

G. Provision of Language Assistance Services

Staff designated as multilingual employees, interpreters, or translators within the meaning of this policy directive will provide language assistance services on behalf of EOIR. Further, EOIR may contract with professional interpretation or translation services to assist EOIR in providing language access for LEP persons. [Operating Policies and Procedures Memorandum No. 04-08](#) provides guidance to the Immigration Courts concerning the use of contract interpreters.⁵

- i. EOIR will continue to furnish interpreters at all Immigration Court proceedings when a party to a case is an LEP person. Within a year of adopting the LAP, EOIR will ensure that when an interpreter is present at an immigration proceeding, the interpreter will provide a full and complete interpretation of the proceeding.
- ii. EOIR will continue to use interpreters, whether in-house or contracted, and multilingual staff to communicate with LEP persons outside the courtroom setting in the language in which the staff and LEP person are proficient. EOIR will not permit an employee to perform this function if EOIR has not assessed and determined that the staff member is proficient in the corresponding language under criteria established by the LAC within a year of implementing this LAP.

H. Assessing Language Capabilities

All EOIR employees who meaningfully communicate in a non-English language with LEP persons on behalf of EOIR shall undergo a language assessment. The language assessment applied to an employee will depend on the type of assignment or role contemplated for the multilingual employee:

- i. The LSU will continue to test staff interpreters, assess staff interpreters, and monitor contract interpreters as already indicated above in section II. A.

⁵ <http://www.justice.gov/eoir/efoia/ocj/oppm04/04-08.pdf>

- ii. Each EOIR component is responsible for coordinating assessments of EOIR employees who indicate that they are proficient in a language other than English and volunteer to use that linguistic skill to meaningfully communicate with LEP persons. EOIR will articulate to each multilingual employee approved to provide language assistance: (1) the parameters of the language assistance that the employee can provide (e.g., speaking, writing, reading) and (2) the ethical responsibilities associated with providing such assistance. For example, a component may approve a multilingual employee to communicate orally over the phone or in-person with LEP persons to respond to common inquiries, but may not permit an employee who lacks the speaking skills to serve as an interpreter. Alternatively, a component may approve an employee to complete tasks such as reading a written document for important information, but may not allow an employee who does not have the skills to translate a non-English document into English or vice versa. Self-identified multilingual employees will not be penalized for their decision to forego assessment but the component will not approve these employees to communicate with LEP persons on behalf of EOIR. Each component will maintain a list of EOIR employees approved to communicate meaningfully with LEP persons. The components will provide their lists annually to the LAC and EOIR's language access coordinator.

I. Identification of LEP Persons

EOIR staff at the point of first contact with a LEP person needing EOIR assistance or service will make an initial assessment of the need for language assistance services, and will obtain such services if the person is LEP.

As summarized above in section II. A., the Immigration Judge Bench Book will continue to serve as a reference for the types of questions that immigration judges may ask to determine whether a person appearing in court is LEP.

When EOIR staff interact with a person who may be LEP, EOIR staff will first determine whether the person needs language assistance. EOIR staff will make this determination in one of the following ways:

- i. Inquiring as to the primary language of the person;
- ii. Self-identification by the person, or his or her companion (if any);
- iii. Asking a multi-lingual employee or qualified interpreter to verify the person's primary language; and
- iv. Using an "I speak" language identification card (see U.S. Census Bureau flash cards at <http://www.lep.gov/resources/ISpeakCards2004.pdf>).

Staff who receive a telephone call and do not know how to identify the language spoken by the caller will either refer the call to an approved multilingual employee or access EOIR's contracted telephone interpretation services to seek assistance in identifying the non-English language.

When an LEP person appearing in person is not able to convey his or her primary language, staff will use language identification cards to identify the person's language need. Staff and other employees who EOIR may reasonably expect to have contact with LEP persons will keep a copy of the identification cards readily accessible.

- i. If relatives, friends, acquaintances, or neighbors are present with the person, the staff member may inquire as to the primary language of the LEP person. However, EOIR staff will not use family members, neighbors, friends, acquaintances, or bystanders to provide interpretation services. EOIR will also not use witnesses, representatives, or parties to a case as interpreters.
- ii. If the LEP person's language cannot be identified, staff will access telephonic interpretation services to seek assistance in identifying the non-English language.

J. Staff Training

Each EOIR component is responsible for ensuring that its staff receive annual training on EOIR's language access policies, plan, and procedures. EOIR's LAC will provide the components with training materials that will cover the nature and scope of language assistance services and the specific procedures through which each employee can access those services.

Training will include, but is not limited to:

- i. Identifying the language needs of an LEP person;
- ii. Working with an interpreter in person or on the telephone;
- iii. Translations;
- iv. Accessing and providing language assistance services through multilingual employees, in-house interpreters/translators, or contracted personnel; and
- v. Best practices for providing effective assistance to LEP persons.

EOIR will continue to require technical training for Immigration Court interpreters to maintain and improve their language and interpreting skills. EOIR may provide this training through an annual training conference or through other means, such as online language access courses or video presentations. The Chief of the LSU will determine the schedule and content of any technical training.

New EOIR employees will receive information on EOIR's language access policies, plan, and procedures during their initial administrative orientation program.

K. Quality Control

Quality and accuracy of the language assistance service provided by EOIR's Immigration Court interpreters is very important to LEP persons appearing before immigration judges. EOIR will ensure that all staff or contracted personnel who serve as Immigration Court interpreters for LEP persons:

- i. Demonstrate proficiency in and ability to communicate information accurately and consistently in both English and the language in which the LEP person is proficient;
- ii. Identify and employ the appropriate mode of interpreting (e.g. consecutive, simultaneous, or sight translation⁶) and translating;
- iii. Have command of both languages and knowledge of any specialized terms or concepts peculiar to EOIR's adjudications and any particularized vocabulary used by the LEP person;
- iv. Understand and follow confidentiality, impartiality, and ethics rules; and
- v. Understand and adhere to their role as interpreters or translators.

L. Tracking/Reporting

OPAT will continue to track EOIR's encounters with LEP persons during immigration proceedings. EOIR's data from the recent past appears in section III above. Because the vast majority of EOIR's LEP contact occurs during immigration proceedings, EOIR anticipates using this type of data in the future. EOIR also tracks its encounters with LEP persons when it provides them with a telephonic interpreter. Additionally, EOIR's OLAP providers share with EOIR language data that they are continually collecting. Within a year of adopting the LAP, EOIR's LAC will consider whether additional steps are necessary to track encounters with LEP persons, such as LEP contact logs.

OPAT will continue to cooperate with EOIR's LAC and provide data from its records for the LAC's annual report to the Director and the heads of components.

M. Outreach Regarding Availability of Language Assistance Services

EOIR will inform the public that language assistance services funded by EOIR are available to LEP persons. This includes informing the public that EOIR will provide an LEP person with an interpreter for all Immigration Court proceedings. EOIR will provide notice about the availability of language assistance services in print and electronic material and in outreach and

⁶ "Sight translation is the rendering of material written in one language into spoken speech in another language. It is a true and accurate verbal translation of written material into the spoken form so that the parties can understand what documents written in foreign languages say." National Association of Judiciary Interpreters & Translators, *supra* note 1.

education resources. EOIR will provide information in English and in other languages using, for example, websites, translated documents, and community-focused outreach. EOIR will strive to meet at least once a year with stakeholders to specifically discuss language access issues.

N. Performance Measurement/Evaluation

EOIR's LAC will annually assess the effectiveness of EOIR's language assistance services, including by conducting an inventory of languages most frequently encountered, identifying the primary channels of contact with LEP community members (whether telephonic, in person, correspondence, web-based, etc.), reviewing EOIR's components for language accessibility, reviewing plans and protocols, reviewing the annual cost of translation and interpreter services, and consulting with outside stakeholders.

O. Availability of LAP to Public

EOIR will make this LAP available to the public by posting it on its website.