IRAP Presentation: From Access to Sign Language to Access to Safety – September 26, 2024

Question: As a hard of hearing attorney with interest and background in immigration, what is your observation on experience of deaf and hard of hearing people in the US justice and immigration systems?

Do we have sufficient regulations and policies at place?

What is missing and what lawyers, advocates, refugee rights organizations should do to address current challenges?

Outline:

- Background about me: born deaf, growing up both my deaf sister and I were mainstreamed in hearing schools, parents wanted us to learn how to navigate a hearing world. I am not fluent in ASL (although I would like to be!). Currently on Board of Deaf and Hard of Hearing Bar Association.
- (live in Oregon with husband and two kids, solo practitioner specializing in immigration law, work mostly with Spanish-speaking clients)
- Framework for legal infrastructure in the U.S. and what the current reality is for language access in the courts, including sign language in the legal system.
- Case study: real-life examples of deaf/HOH client barriers to language access
- Recommendations: what we should do to improve things (connect with local DEI bar groups for training, recognition of disability as a minority/diverse group), advocacy with courts and judges, helping lawyers communicate with their clients

There are NOT sufficient regulations and policies in place

- **No enforcement mechanism**: Americans with Disabilities Act and Section 504 of Rehabilitation act do not apply to federal judiciary (immigration courts are federal courts)

- Executive Order 13166 requires all federal agencies to provide **"meaningful access**" to LEP individuals

- The Department of Justice (DOJ) has made clear that in the context of courts, "meaningful access" requires, at a minimum: a) the provision of interpreters "during all hearings, trials, and motions during which the LEP individual must and/or may be present,"4 b) screening to ensure that the interpreters possess the specialized skills and knowledge necessary for court interpretation, c) training so that judges and other court personnel who come into contact with LEP litigants or witnesses know when and how to use interpreters,5 and d) translation of all "vital documents," including "key forms" and documents providing information regarding rights and responsibilities.

- "Meaningful access:" Immigration Courts have failed in significant ways to provide meaningful access to LEP individuals. They routinely fail to provide interpretation for parts of court proceedings and critical encounters. They also fail to ensure that when interpretation is provided it is of sufficient quality to allow for "meaningful access."

- **Lack of certified interpreters:** Immigration Courts' decision not to require their interpreters to obtain the rigorous certifications administered by either the Administrative Office of the U.S. Courts or the state courts' Consortium for Language Access in the Courts. Basic screening for competency often not adequate to interpret specialized vocabulary in the context of immigration hearings, regional/dialect differences, etc.

- Immigration court uses staff interpreters, contract interpreters, and telephonic interpretation services.

- **Video/telephone interpretation**: The quality of interpretation is often compromised because it is performed remotely, via telephone or video equipment lacking the technical capabilities necessary for court interpretation.

- **Uneven consistency/access**: In February 2011, Attorney General Holder wrote to the head of each executive agency, warning that "the implementation of comprehensive Language Access in Immigration Courts language access programs remains uneven throughout the federal government . . . ."10 His letter "request[s] that [each] agency join DOJ in recommitting to the implementation of Executive Order 13166."

- **IJ quotas** – in 2018, AG Sessions issued policy requiring immigration judges to complete a minimum of 700 cases per fiscal year. Intent was to pressure judges to order more removals and deportations as quickly as possible. In a system already biased against immigrants, this adds greater difficulty of making court proceedings rushed, lack of patience, flexibility. Quota was revoked under Biden in 2021, but could be put back into place in future

- **Political tensions/variability** – constant policy changes depending on who is in office and their stance on immigration (bigger immigration picture, not focused on smaller nuances of accommodations and disability within courts)

<u>Real life examples:</u>

- **Real life cases:** Santiago Ventura – Mixtec farmworker in Oregon wrongly convicted of murder. Spent five years in prison before judge overturned conviction in 1991. Mixtec witnesses were unable to respond intelligibly to questions posed in Spanish. Not deaf, but shows dire consequence when there is a communication barrier due to lack of adequate interpretation.

- **ORDONEZ QUINO v. HOLDER (2014)** – indigenous Mayan whose first language is Quiche, spoke very little Spanish. Grew up during Guatemalan Civil War, became deaf after a bomb dropped nearby where his father was carrying him to safety in the mountains. Applied for asylum, had great difficulty testifying because he could not hear his attorney or the judge's questions well (used a hearing aid). Obtained one hearing aid in U.S. prior to appearing before IJ, could not afford a second one. IJ denied asylum claim, BIA affirmed, 1st Cir. vacated BIA's decision and

remanded. Failure to apply before OYFD excused because of hearing loss and inability to communicate. Demonstrates issues with testifying credibly, outcome of case.

- **My own deaf teenage Guatemalan indigenous client –** difficulties communicating between attorney/client when client not literate in a written language, or a recognized sign language.

Moving forward – What can we do?

- Training more certified interpreters for less common languages, including ASL and other types of sign language (esp. dialects/indigenous languages)
- Training/continuing legal education classes offered to educate judges, attorneys within legal community
- System in immigration courts to request accommodation (no current process)
- Inclusion of disability in DEI outreach, advocacy efforts by local bar groups

Articles:

- https://philanthropynewsdigest.org/features/research-briefs/you-suffer-a-lot-immigrants-with-disabilities-face-barriers-in-immigration-court
- https://humanrightsfirst.org/wp-content/uploads/2023/07/Disability-Report_Formatted_Final.pdf