

# Interpreters play a vital role in immigration courts — but their rights are being violated, labor board says



Patricia Rivadeneira, a longtime Spanish interpreter in immigration court in Southern California, lost her job after attempting to organize for better pay and working conditions. (Christina House / For The Times)



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The company tapped by the federal government to provide interpreters in immigration court wrongly classified employees as independent contractors and fired those who spoke out, the National Labor Relations Board said in a complaint issued Wednesday.

The complaint alleges that SOS International, also known as SOSi, misclassified workers and engaged in unfair labor practices under the National Labor Relations Act, including coercion and retaliation. By misclassifying workers, SOSi circumvented labor laws that would require it to pay overtime and to provide certain benefits, such as workers' compensation.

The NLRB's complaint marks the first time a federal agency has recognized the contract interpreters as employees.

"At a time when the climate is not union friendly, this is a major victory," said Hilda Estrada of Los Angeles, an interpreter who accused SOSi of retaliation. "I'm elated."

The [Justice Department](#) — which in 2015 awarded a contract to SOSi for up to five years and a maximum of \$80 million — declined to comment on contract interpreters' employment status. Kathryn Mattingly, a spokeswoman for the department, said SOSi was selected in a competitive process based on "technical evaluation and the best value to the government."

SOSi, based in Reston, Va., said in a statement before the NLRB filed its complaint that subcontracting interpreters “is not a new practice” and that the views of “the small handful of disgruntled interpreters who have filed protests in various venues do not represent ... the majority of qualified professional interpreters.”

The case, which now goes to a hearing before an administrative law judge of the NLRB, will affect hundreds of interpreters who work in immigration courts nationwide. Those courts are currently saddled with a backlog of 585,000 cases, according to the Transactional Records Access Clearinghouse at Syracuse University, and they are set to become even busier as President Trump pursues an agenda of mass deportation.

Interpreters play a crucial role in immigration court cases: Only 11% of such cases were completed in English in 2015, according to a Justice Department report.

Though the department directly employs 65 interpreters to staff immigration courts, the vast majority — about 700 — are subcontracted by SOSi. The contractors who complained to the NLRB said they should have been classified as employees because SOSi controlled the means and manner in which they worked — a key test in determining whether a worker is an employee.

“I had no freedom at all,” said Patricia Rivadeneira, 61, formerly a Spanish interpreter for SOSi. “There’s no way you can be an independent contractor when you are ordered to be in at a certain time. You cannot leave when you’re ready to leave ... You were told which restrooms to use. You were told how to dress. You were told you had to wear a badge. You were told you could not even say good morning to anybody.”

The distinction between employee and contractor is “the dividing line between benefits applying to you and obligations being met by your employer, and essentially no legal protections or mandated benefits,” said Seth Harris, a former secretary of Labor under President Obama.

Employers are legally required to pay workers’ compensation and unemployment insurance premiums for their employees, adhere to minimum wage and overtime laws, and allow employees to organize and seek remedy from discrimination. In some circumstances they must provide health insurance and family leave, and they often offer paid time off, vacation and retirement benefits.

In general, there are no such requirements for contractors.

That a federal contractor is accused of skirting the law is particularly outrageous, Harris said. “You expect companies that are doing business with the federal government — and carrying out important government functions, getting paid with taxpayer money — would be held to a higher standard,” he said.

SOSi was not the first company commissioned by the Justice Department to provide interpreters that treated them as contractors. But some say it committed the worst offenses — and that’s why they took up a fight.

Rivadeneira, for example, had worked in immigration court since 2002. She said she worked 4½ days a week, first at Mira Loma Detention Center in Lancaster and later at Adelanto Detention Center, earning \$60 per hour, with a guaranteed minimum of two hours' pay for each assignment.

Though Rivadeneira relied on Medi-Cal for health insurance and never took vacation, she was able to support herself and her husband and rent a two-story house in Lancaster. But when SOSi took over the contract and offered her \$35 an hour, with no guaranteed minimum, Rivadeneira balked.

"The wage was so low that it was not worth my time," she said.

Rivadeneira and others began organizing and eventually negotiated a higher flat rate. They went to work for SOSi starting in December 2015. After that, Rivadeneira continued to organize, collecting interpreters' names, passing out fliers about their rights and trying to form a union — activities that cost her her job nine months later, according to the complaint.

Rivadeneira is not the only one. The Times spoke to five other interpreters who alleged retaliation, coercion and unfair discharge, and a lawyer for the interpreters said that as many as 40 directly participated in the NLRB action.

"We treated our jobs as full-time jobs," said Diana Ilarraza of Los Angeles, who became an interpreter in 1999 and said she was retaliated against for complaining about not being paid on time. "It was very hard and disheartening for us to see our careers go away just like that — it was a loss of dignity."

The complaint names nine employees, including Estrada and Rivadeneira, who were allegedly terminated because of their organizing activities. It also alleges that SOSi interrogated and threatened employees over these activities, conducted surveillance, and ordered them not to communicate with one another or the media about the company or their work.

Not all of the interpreters who work for SOSi are dissatisfied.

Ramesh "Ray" Shrestha, a Nepali interpreter based outside San Francisco, travels weekly for SOSi, earning a flat day rate of \$500 each time. He said he likes the flexibility and pay, which give him time to spend with his wife and two kids.

Shrestha has one advantage Spanish interpreters do not: He speaks what is known as an "exotic" language and could not be easily replaced. "I don't think there's a huge pool of Nepali interpreters," he said. "I do have more negotiating power."

The dispute has had an effect in the courts. Ten immigration attorneys and one judge interviewed for this report said the quality of interpretation in immigration court has suffered since SOSi took over the contract, citing anecdotal evidence of no-shows and poor-quality interpretations as the ranks of veteran interpreters have thinned.

Helen Sklar, an attorney based in Los Angeles, said she flew to Miami in January for a hearing that had been scheduled months earlier, only to find out the case couldn't go forward because there was no Spanish interpreter. "No Spanish. In Miami," she said in disbelief.

According to Justice Department data, in 2016 — the first full year for which SOSI provided interpreters nationwide — 2,457 hearings were adjourned due to interpreter no-shows. That number was up from 1,101 in 2015, when SOSi was being phased in, and 512 in 2014, when a different company, Lionbridge Technologies, held the contract.

Not having an interpreter disrupts court cases and causes costly delays. It also wears on clients.

"Every time they come to court they lose a school day, they lose a day of work, they pay for parking. Their friends and family come. And then finally they give up," Sklar said. "They stop asking their family and friends to come — and then they don't have witnesses."

Attorneys also cited examples of interpreters who summarized rather than interpreted complete sentences, or interpreters who used the wrong word — such as "firearm" instead of "assault rifle," "beaten" instead of "killed," "inconvenient" instead of "not in my best interest."

Those distinctions matter in immigration court, where a single inconsistency in a claim can mean the difference between staying in the U.S. and getting deported.

"Nuance is everything," said Dana Marks, a veteran judge in San Francisco and president of the National Assn. of Immigration Judges. "If things are said in different ways at different times, that can be an interpreter's fault, and yet, it makes the person look not credible."

Not only must interpreters render testimony in a second language in real time, they must convey the class, education level, emotion and authority of the speaker, requiring a wide range of vocabulary.

Many of the interpreters who had those skills have left immigration court since SOSi took over the contract, Marks said. But now that the NLRB has said they are employees who have the right to organize for better pay and working conditions, they hope to return.

"I plan to go back to work as soon as possible," Estrada said.

<http://www.latimes.com/business/la-fi-immigration-interpreters-20170601-story.html#nt=oft12aH-2gp2>