

*via Regular U.S. Mail and email*

December 23, 2015

Honorable Risë Jones Pichon, Presiding Judge  
Superior Court of California, County of Santa Clara  
191 North First Street  
San Jose, CA 95113

RE: Spanish Language Access in Crisis

Dear Judge Jones Pichon:

As you are surely aware, the Santa Clara court is having serious problems providing interpreter services in Spanish. A shortage of competent interpreters in all languages has been a long-term concern in Santa Clara County. Although the situation had begun to improve in recent years, it has deteriorated rapidly over the past eighteen months for reasons discussed below.

For at least the past year, the court has not been able to attract and retain sufficient numbers of certified Spanish interpreters to meet court needs. Impacts on staff interpreters and court functions have been at a point of crisis for some time, and are getting worse. In addition to putting a strain on the entire system by creating significant delays for courtrooms and overworking interpreters, services to the public are inevitably compromised resulting in disparate treatment of language minorities.

The chronic shortage of Spanish interpreters becomes more extreme when demand for these services spikes due to the need for interpreters in evidentiary hearings.<sup>1</sup> To address these situations, the court has resorted to hiring interpreters through a private agency, paying nearly four times the salary paid to staff interpreters or contractors hired directly by the court.<sup>2</sup>

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<sup>1</sup> A survey of interpreter schedules at the Hall of Justice over four months (May-Aug 2015) showed a pattern of extreme understaffing on days that interpreters were also needed for evidentiary hearings. Administration and the union agreed in 2014 that HOJ needs 7 Spanish interpreters every day just to cover regular daily calendars, and additional interpreters are needed to cover evidentiary hearings. During the survey period, on days when evidentiary hearings also required interpreters, the average total staffing was 5.5 Spanish interpreters, frequently leaving only two or three interpreters to cover regular calendars, and requiring interpreters to work alone on trials.

<sup>2</sup> The union obtained copies of invoices showing the court spent \$29,610 over six months to hire interpreters through a private agency, at a cost of \$140 per hour – nearly four times the cost of staff interpreters (12/8/14 to 6/11/15). 86% of these costs (\$25,480) were for Spanish interpreters hired to cover specific evidentiary hearings due to the shortage. Staff interpreter workloads were severe during this period. The court received 182 hours of services at the inflated rate, equivalent to approximately 4.5 weeks of full time work. A staff interpreter would provide more than 700 hours of services, or nearly 18 weeks of full time work, for the same cost.

This situation requires immediate intervention, and identifying effective solutions requires a thorough understanding of the problem. We hope the level of detail and background provided in this letter will assist the court in evaluating key factors contributing to this crisis. We have a mutual interest in identifying effective solutions for the good of the court, our members, and the public we all serve.

### Impacts on Court Functions and the Public

In addition to the adverse health impacts and general stress on interpreters (a serious concern in and of itself), the shortage has impacted court services as follows:

- Judges are experiencing significant delays in processing cases and getting through daily calendars.
- Litigants are being denied language access and their fundamental rights are being compromised:
  - Criminal cases are heard without an interpreter or with irregularities that may lead to reversal, including improper waivers, and defendants sharing interpreters with other defendants or witnesses.<sup>3</sup>
  - Parties are using unqualified family members or acquaintances to “interpret,” effectively denying due process to LEP court users and undermining the integrity of judicial proceedings.
  - Interpreters are rushed and pressured to cover too many courtrooms and multiple facilities and are unable to provide full and meaningful access under these conditions.
- Spanish-speaking parties are being subjected to disparate treatment, as their cases are delayed to the afternoon, put over to another date, or left to the end of calendars.
- Attorneys are experiencing significant delays, which also interferes with other cases for which they are needed.
- Notre Dame and Family Law courts are being left without any coverage on a regular basis.
- The elimination of family court services in South County has been attributed in part to the shortage of interpreters in an area where these services are in high demand.
- The court’s resources are being wasted by hiring interpreters through agencies at almost four times the cost of hiring interpreters directly.

These impacts represent significant costs related to delays and court time, and gravely compromise the quality of access and justice available to Spanish-speaking communities in Santa Clara County. Those costs must be considered and factored into the evaluation of solutions to remedy the shortage and recruit more Spanish interpreters to serve the court. Efforts to recruit more Spanish language interpreters, and to improve working conditions overall, will also yield benefits to the court and communities it serves by increasing access to interpreter services in other languages.

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<sup>3</sup> On December 15, 2015, a child molestation trial in South County proceeded with the defendant and witnesses sharing an interpreter. This practice has been found in case law to be a reversible error. *People v. Aguilar* (1984) 35 Cal.3d 785 [200 Cal.Rptr. 908, 677 P.2d 1198].

On December 16, 2015, the Hall of Justice had only three Spanish interpreters assigned to cover all regular calendars. Reportedly, numerous cases were continued due to lack of interpreter services.

Only one Spanish interpreter was assigned on several dates to cover a pending felony case in South County with 10-12 Spanish-speaking co-defendants, including August 20, 2015, and December 10, 2015. Counsel have requested enough Spanish interpreters be assigned so they can speak with their clients during the proceedings.

### Interpreter Attrition and Service Expansion Expectations Collide

The court increased its pool of available, certified interpreters briefly in 2013 and early 2014. However, a series of retirements and resignations by Spanish interpreters in 2014 and 2015 quickly reversed that progress. Four full time staff interpreters retired, and additional retirements are anticipated. Two full time interpreters resigned to accept jobs with courts in areas with a lower cost of living. Several potential applicants (who had been working for the court on a per diem basis) accepted positions in other Bay Area courts with better working conditions.

The court has several unfilled vacancies for full time Spanish interpreters, is having increasing difficulty filling vacancies for full or part time positions, and has been unable to bring in enough per diem staff or contract interpreters to meet court needs.

The expectation that courts would begin expansion of interpreter services to civil proceedings effective January 2015 adds a further complication and challenge that the court is simply not rising to meet. The Santa Clara court is behind other Bay Area courts with respect to providing access to limited-English-proficient (LEP) parties in civil matters.<sup>4</sup>

A series of criminal trials and other evidentiary proceedings in early 2015 required interpreters, and the court was unable to properly cover these matters and the daily calendars. For several months, staff interpreters were stretched thin covering too many departments, and the practice of providing team interpreting – an important professional standard established to protect the accuracy of interpretations – was abdicated once again. These conditions caused ripple effects that quickly exacerbated an already serious shortage:

- One interpreter damaged her voice and was put on voice rest by her doctor; others lost their voices and had to take time off.
- A staff interpreter was put on disability related to workload stress and impacts on her pregnancy.
- Contract interpreters and as-needed interpreters began reducing their availability in response to the unacceptable working conditions.
- A recently hired per diem interpreter resigned due to workload stress.

Another full time interpreter has recently gone on medical leave. With additional retirements anticipated in 2016, this already drastic shortage is expected to get worse.

### Recruitment Challenges and Prior Efforts to Improve Working Conditions

The response by Interpreter Services Manager Karen Jones has been grossly inadequate, and there has been inadequate attention paid to this issue at higher levels of court administration. Ms. Jones

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<sup>4</sup> Unlawful detainer, small claims, and other civil calendars are not staffed with interpreters in Santa Clara County, and interpreters are being borrowed from other departments and facilities on an ad hoc basis. Often interpreters are not provided or there are lengthy delays. Other large courts, including Alameda and San Francisco, are staffing courtrooms with Spanish interpreters for these civil matters and providing interpreters on request in other languages.

maintains practices that in fact exacerbate the shortage and reduce the availability of interpreters.<sup>5</sup> Suggestions by the union in February 2014 to improve recruitment were not pursued for many months. Ms. Jones instead required remaining interpreters to cover more and more departments, resulting in the impacts discussed above. Moreover, rather than being supportive of interpreters working under stressful conditions, Jones has demonstrated a lack of concern for the impacts of the shortage. Jones misinformed a judge that interpreters working alone in a trial need “the same breaks as a court reporter,” ignoring information she is well aware of about interpreter fatigue and its impact on interpreter accuracy.<sup>6</sup> Ms. Jones also said she did not think the interpreter services office has any problems except that “some interpreters do not want to work.”<sup>7</sup> In November, Ms. Jones made the incomprehensible decision to reject the services of a certified contract interpreter who indicated she was available to work in family law and civil matters (where the court has significant unmet needs) but would not accept assignment at the Hall of Justice due to the working conditions. Ms. Jones’ solution was to leave the entire county with fewer resources rather than hire an available interpreter.<sup>8</sup>

Poor working conditions in the Santa Clara courts have long contributed to the shortage of interpreters available to work for this court. With the support of several judges, the union and court administration held meetings from August 2012 through early 2014 to address working conditions, MOU compliance and assignment issues, among other topics. Despite the investment of significant time and effort, the court’s ongoing posting for full time interpreters has not attracted enough applicants. We attribute this to multiple factors: The high cost of living in Santa Clara County without concomitant pay increases is likely a stumbling block affecting the availability of interpreters. However, we also attribute the recruitment problems in large part to the fact that the Santa Clara court has developed a reputation among court interpreters as one of the worst places to work in the greater Bay Area.

CFI has repeatedly explained to court administration that Karen Jones’ management, specifically, is a major factor responsible for the poor reputation this court has among contractors and potential employees. Ms. Jones has been an obstacle to improving working conditions and implementing best practices in Santa Clara County.<sup>9</sup> She has maintained an adversarial posture toward the interpreters she manages, using favoritism and retaliation in work assignments, and creating a hostile work environment for interpreters who stand up for best practices and fair treatment, or participate in

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<sup>5</sup> Employee and contract interpreters report that Ms. Jones rejects information from interpreters about known interpreter needs, maintains a policy of delaying contracting interpreters, and puts the court at a disadvantage in finding available interpreters due to these practices. (August 18, 2015, email from Russian interpreter Marina Brodskaya to Melinda Fort and Karen Jones includes specific examples).

<sup>6</sup> The reasons for team interpreting and the effect of fatigue had been discussed at length in meetings with Ms. Jones in 2013 and 2014. In a July 16, 2015 letter to Lisa Galdos, CFI discussed in detail an incident in which an interpreter was denied adequate breaks because Ms. Jones misinformed a bench officer on standards for breaks when no team is available. The interpreter had correctly informed the bench officer of the need for breaks and the impediments to her performance caused by working alone, as required in the court interpreter code of ethics.

<sup>7</sup> July 25, 2015, letter from Spanish interpreter David Ortíz.

<sup>8</sup> November 5, 2015, email from Carmen Ramos to Melinda Fort.

<sup>9</sup> CFI letter to Presiding Judge Risë Jones Pichon (11/19/12) and follow-up letter from Marta Duncan (1/23/13) on the issue of ensuring that after-arraignment orders and paperwork are properly sight translated to LEP defendants, and Ms. Jones’ failure to ensure appropriate guidelines for interpreters that protect LEP rights; and CFI letter of July 16, 2015, related to Ms. Jones misinforming a judge about appropriate breaks for interpreters working alone in trials.

protected activities. For many years, Ms. Jones made it difficult for certified interpreters to go through clearance processes, resisted compliance with statutory provisions and procedures that give hiring priority to certified and staff interpreters, and ignored limitations on the use of non-certified interpreters.

These issues are well documented in complaints by individual interpreters and the union, and in grievances brought by the union.<sup>10</sup> Ms. Jones' approach to managing these services is antithetical to productive employer-employee relations, and dealing with these complaints represents a drain of time and resources for the court.

It has been clear in our meetings with court administrators that those involved have not had the level of authority to address issues with court interpreter management. The negative work environment Ms. Jones has created is well entrenched through her own practices and through the staff she has trained in the assignment office. Although an interpreter was recently hired to manage interpreter services, Ms. Jones supervises the new manager. As such, day-to-day recruitment and assignments of interpreter services remain under Ms. Jones' authority, although she has shown an utter disregard for the interpreters she manages and the services that the court and public need.

The failure by court administration to address this long-term problem directly has contributed to the severity of this shortage. Ms. Jones' continued oversight of these services is anathema to solving the court's interpreter recruitment problems.

#### Funds Aren't the Problem: The Interpreter Budget Surplus

We understand that at least some judges have been misinformed about the court's inability to hire more interpreters, and are under the impression that the shortage of interpreters is related to budget constraints.<sup>11</sup> This is not the case.

The court's local budget is separate from interpreter services expenditures and is therefore not impacted by increases in interpreter costs. Interpreter services are funded on a reimbursement basis from a separate, statewide budget item (Program 45:45). Courts are reimbursed based on actual expenditures, and have been fully reimbursed for interpreter services expenses each year for the past decade. In fact, there are accumulated reserve funds in this budget item based on annual surpluses generated over the past decade. The Judicial Council approved a policy in October 2010 that court interpreter budget surpluses could no longer be redirected to other programs and are set aside for future court interpreter expenditures.

The surplus was \$12 million dollars in April 2014.<sup>12</sup> At an October 20, 2015, public meeting of the

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<sup>10</sup> Grievances were filed and suspended in an effort to resolve matters through meetings in which multiple issues were discussed, including inadequate staffing and equipment, the need for team interpreting, use of non-certified interpreters, and problems with favoritism and discrimination in assignment practices. See Attachment 1: *Chronology of Interpreter Services Management Issues: August 2012 to December 2015*.

<sup>11</sup> In a domestic violence case in Department 75 in early December, Karen Jones reportedly told assigned Judge Bernardini that she could not order a Korean interpreter for the next hearing two weeks in advance because of budget constraints (Case No. 2015-1-DV-019302). There is no basis for such a policy.

<sup>12</sup> Judicial Council Report dated April 18, 2014: *Trial Court Allocations: Maximum Reimbursement of Unused Savings from Program 45.45 for Court Interpreter Expenditures*.

Language Access Plan Implementation Task Force, Hon. Steve Austin, chair of the task force budget committee, said the surplus was estimated to be approximately \$14 million at that time.

This funding mechanism and separate budget allows a court to hire as many interpreters (either full time or on an as-needed, per-diem basis) as are necessary to meet court needs, provided the court is able to attract enough employment applicants or per diem contractors. Increased interpreter expenditures and staff positions will not affect other local budget items.

Judicial Council representatives and members of the Language Access Plan task force have repeatedly acknowledged that the courts need to spend down the interpreter budget surplus. The Judicial Council is seeking additional funding for interpreter services that will be needed to fully expand interpreter services to cover all civil proceedings. The unspent budget surplus will in fact make it harder for the judicial branch to get approval for new funding that will be needed over the next two years to implement the statewide Language Access Plan.

#### Restoring Services and Solving the Recruitment Problem

The Santa Clara Superior Court has the discretion and resources to take the following measures to recruit more interpreters:

- 1) Reorganize the management structure over the interpreter services division, and have the new interpreter manager (David Ortiz) report to Melinda Fort.
- 2) Provide support to the interpreter services division to develop better tools to identify interpreter services needs and ensure adequate coverage and timely services to courtrooms.
- 3) Commit the resources required to expand language access countywide in criminal and civil court proceedings, and related services.
- 4) Commit to implementing best practices for language access in accordance with the ABA Language Access Standards and the Judicial Council's statewide Language Access Plan.
- 5) Use the court's discretion to increase the per diem rate for contract interpreters to match the federal pay rate and hire contractors directly rather than through an agency.<sup>13</sup>
- 6) In connection with increasing the contractor per diem, provide a concomitant retention stipend to staff interpreters to ensure the court has enough fulltime and as-needed staff interpreters available to work.

Judicial Council policy gives courts discretion to pay over the rate set as a base rate. Many courts exercise this discretion regularly in order to obtain the services of qualified contract interpreters, as this court has already done by contracting interpreters through a private agency at nearly four times the base rate for contract interpreters. The concern that increasing the contractor per diem may result in further attrition by employees is valid, but can be remedied by negotiating a retention, or scarcity, stipend with the union that takes into account benefit costs but incentivizes employment. The severe difficulty the court is experiencing attracting and retaining certified interpreters (both employees and contractors) warrants taking these measures.

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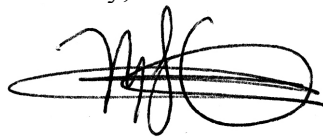
<sup>13</sup> The current federal rate for court interpreters is \$418/day (63% less than what the court has been paying for interpreters contracted through an agency). The interpreter budget item explicitly allows the Judicial Council to set rates "up to the federal rate," and Judicial Council payment policies for court interpreters give the courts discretion to pay premiums over the state rate (\$288/day) as needed to meet court needs.

Making these changes is the responsible thing to do to. It will alleviate the immediate crisis and ensure that competent language access services are available in the long term. Bringing interpreter compensation in line with demand and the market<sup>14</sup> for these services will have an immediate effect on interpreter availability and provide the following benefits to the court and public:

- Provide timely services to judges and parties;
- Ensure that meaningful language access is available in criminal matters;
- Protect due process, fairness and access in the courts for language minorities in Santa Clara County; and
- Allow the court to expand services to cover civil proceedings in accordance with statutory changes and the statewide Language Access Plan.

We are available to discuss these matters further to address this very serious crisis and restore fundamental services to the public.

Sincerely,



Mary Lou Aranguren  
Legislative and Bargaining Representative

cc: Hon. Thang Barrett, Supervising Judge, Criminal Division  
Supervising Judges of Family, Juvenile and Civil Divisions  
David Yamasaki, Court Executive Officer

Ariel Torrone, CFI President  
Molly O'Neal, Public Defender  
Jeffrey F. Rosen, District Attorney  
Sylvia Perez-MacDonald, Director, Independent Defense Counsel Office  
Ignacio J. Guerrero, Director, County of Santa Clara Department of Child Support Services  
Eugene Flemate, La Raza Lawyers Association of Santa Clara County  
Alex R. Gulotta – Executive Director, Bay Area Legal Aid  
Christopher Punongbayan, Executive Director, Asian Americans Advancing Justice-ALC  
Maricela Gutierrez, Executive Director, SIREN (Services, Immigrant Rights, and Education Network)

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<sup>14</sup> Immigration courts have just increased the daily rate to \$425/day. Certified Spanish-language interpreters earn between \$75 and \$100 per hour in the private sector. Certified/registered interpreters for languages other than Spanish earn more. State courts compete directly with these other sectors for the services of certified interpreters.

Attachment 1: Santa Clara Superior Court: Interpreter Services Management Issues  
August 2012 – December 2015, Page 8

*Documentation related to these events is available on request.*

	Date	
1.	Aug 2012	Grievance over lack of team interpreting (TI). Resolved with eventual agreement by court to recognize TI and make good faith efforts to provide TI. Implementation of TI began in January 2014.
2.	Nov 2012	Letter to PJ Jones Pichon re: Karen Jones' improper handling of sight translation of after-arraignment paper and impact on LEP parties of being issued orders in English that are not translated by court interpreters.
3.	Jan 2013	Follow-up letter from Marta Duncan to PJ Walsh re: need to address after-arraignment papers issue and provide clear guidance to interpreters, which Ms. Jones had failed to do, to ensure that LEP defendants were getting the information they need to comply with court orders.
4.	Feb-Oct 2013	Series of meetings with court administration over multiple issues (lack of adequate equipment, compliance with MOU assignment provisions, team interpreting). Grievances suspended to work out resolution of issues in meetings with Dawn Saidon, Melinda Fort and Karen Jones. Problems with favoritism and discrimination in assignment practices, inadequate staffing and equipment, need for team interpreting, and use of non-certified interpreters discussed at length.
5.	Mar 2013	Complaint re: Karen Jones and assignment staff, hostile conduct at March 15 meeting and "resistance to following the MOU and to letting go of practices that are in appropriate and contrary to law and language access standards."
6.	April 2013	Memo to administration re: issues related to implementation of new assignment system. Failure by Karen Jones and interpreter services office to implement assignment and scheduling changes in good faith as agreed to with union.
7.	May 2013	Letter to PJ re: compensation and need to recruit more interpreters and increase access to certified interpreters.
8.	June 2013	Carmen Ramos complaint about Karen Jones for anti-union discrimination.
9.	Oct 2013	Staffing: 21 Spanish (19 full time / 2 part time)
10.	Sept-Dec 2013	Complaints by multiple interpreters of hostile work environment submitted to human resources. Karen Jones makes threats related to protected activities to probationary employees during contract negotiations.
11.	Jan 2014	Union complaint to HR regarding anti-union comments and Karen Jones participation in creating a hostile work environment.
12.	Jan 2014	Implementation of team interpreting.
13.	Feb 2014	Meeting with court administration about need to recruit more interpreters for team interpreting. Karen Jones provides call list for Spanish that includes interpreters who are not certified and deceased. Jones admits that the court's practice has been to rely on interpreters offering availability and court does not conduct diligent search in accordance with statutory requirements. Union provides a set of concrete suggestions for recruitment to increase the pool of interpreters available for as-needed work and for employment.



	Date	
14.	June 2015	Staffing: 19 Spanish (15 full time and 5 part time/as-needed) The court has lost 6 FT and 2 PT interpreters in 1 year due to retirements and resignations. Not enough applicants to fill vacancies. Interpreters are covering too many departments, working without breaks, working without teams. Health impacts are documented and the court's ability to recruit interpreters is worsening.
15.	Dec 08, 2014- Jun 11, 2015	Court spends 29,610 in six months for interpreter services through agency @\$140 per hour (four times the cost of staff interpreters who earn \$36/hour). 86% of these hours are for Spanish interpreters hired only for certain cases. Staff workload is severe.
16.	Jun 22, 2015	Met with Melinda Fort and Karen Jones re: shortage. Administration requested CFI resend the suggestions submitted in February re: recruitment.
17.	Jul 16, 2015	Email to M. Fort and Lisa Galdos re: shortage, emphasized Santa Clara has reputation as the worst place to work in Bay Area. Resent suggestions from Feb 2014 that had not been implemented.
18.	Jul 16, 2015	Letter to Lisa Galdos re: shortage, requesting urgent attention and discussing issue in Dept. 50 where K Jones misinformed a judge about appropriate need for breaks. (copied to supervising judges)
19.	Jul 27, 2015	Union email to L. Galdos and supervising judges advising of serious impact of shortage on employees and court operations with documentation (C. Ramos email to KJ and 7/25/15 letter from D. Ortiz re: Karen Jones statement dismissing his concern about problems in the unit, stating that everything is fine except that, "some interpreters don't want to work.")
20.	Aug 2015	Met again with court administration re: shortage. Court said it hoped that hiring an interpreter into management position may help. Union asked that interpreter coordinator/manager not report to Karen Jones.
21.	Sept 2015	Union files grievance alleging health and safety risks to interpreters due to shortage and working conditions, with multiple declarations from interpreters.
22.	Oct 2015	Union files grievance alleging discrimination and favoritism in assignments for Vietnamese interpreters.
23.	Nov 2015	Karen Jones tells certified interpreter who is available to work that she will not use her for civil cases if the interpreter is not available to work criminal matters. Interpreter recently resigned from staff position due to working conditions. Court has unmet need for more interpreters in family and other civil matters.