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Improving Language Access and Language Justice: All-Spanish Administrative Hearings in Washington State

Donald N. Dowie, Marek E. Falk** & Domingo G. Alvarez****

Individuals with limited English proficiency need accommodations to have access to justice in legal proceedings. Interpreters can sometimes bridge

* Donald N. Dowie joined the Washington State Office of Administrative Hearings (“OAH”) in 2019 and serves as a lead administrative law judge there. He held the first all-Spanish hearings on the agency’s unemployment insurance and public assistance caseloads, and alongside his fellow co-authors, continues to do so. He received his J.D. from the University of California at Berkeley in 1993 and a B.A. from Central Washington University in 1988. He previously worked for the U.S. Department of Justice and the U.S. Securities and Exchange Commission as a civil litigator. He learned Spanish while living in Chile for three years, and from his wife, Evelyn, who is Chilean.

** Marek E. Falk has served as an OAH administrative law judge since 2021. He was the agency’s second judge to hold Spanish hearings, beginning in late 2022. He previously practiced criminal defense for nine years, primarily as a trial and appellate public defender, representing many Spanish speakers. He holds a J.D. from the University of Washington (2012) and a B.A. from the University of Texas at Austin (2000). He speaks Spanish as a second language, which he learned as a young adult through travel, work, and friendship.

*** Domingo G. Alvarez is a 1981 graduate of Emory University School of Law and an active member of both the Washington and Florida Bars. Before becoming an administrative law judge at OAH, he spent most of his career in private practice and has extensive litigation experience in the areas of personal injury, wrongful death, and criminal defense. A native Spanish speaker, he was born in Cuba and came to the United States at age ten. Throughout his years in law, he has communicated with many Spanish-speaking clients in their native language.

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the gap in understanding. However, interpretation often has drawbacks, particularly with Spanish. These drawbacks can result in a less accurate record and create mistrust of the system among participants. For these reasons, the Washington State Office of Administrative Hearings holds certain hearings entirely in Spanish, without interpreters. This Feature discusses why this program is important and details its progression from the pilot phase to operational status. Also discussed are the essential elements that made the program a success and policy considerations relevant to establishing such a program. The authors hope this information will help other jurisdictions initiate similar programs, to provide increased access to justice through an equitable hearing process with fewer barriers.

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“[L]itigants who cannot understand or communicate to the court can hardly be said to be on equal footing with those who speak and understand English as their native language.”¹

INTRODUCTION

The Washington State Office of Administrative Hearings (“OAH”), created in 1981,² is an independent state agency that hears administrative appeals from a number of other state agencies.³ OAH provides neutral decision-making to resolve disputes between state agencies and the public and provides parties “an impartial, quick, and easy to access process.”⁴ The office counts among its core values the continual improvement of its processes to better serve the parties that appear before it.⁵ Creating a culture of diversity, equity, inclusion, and respect also ranks highly among the office’s goals.⁶

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1. Kwai Hang Ng, *Beyond Court Interpreters: Exploring the Idea of Designated Spanish-Speaking Courtrooms to Address Language Barriers to Justice in the United States*, in 12 SOCIOLOGY OF CRIME, LAW AND DEVIANCE 97, 114 (Rebecca L. Sandefur ed., 2009).
 2. Act of Apr. 25, 1981, 1981 Wash. Sess. Laws 280, 280-81 (codified at WASH. REV. CODE § 34.12.010 (2024)); see also Johnette Sullivan, *40 Years of Administrative Justice*, WASH. STATE BAR NEWS (June 12, 2023), <https://wabarnews.org/2023/06/12/40-years-of-administrative-justice> [<https://perma.cc/3XFN-EA7Z>] (discussing the creation of OAH).
 3. WASH. REV. CODE § 34.12.010 (2024). The state agencies that OAH holds hearings for include, but are not limited to: the Employment Security Department; the Division of Child Support; the Department of Health and Human Services; the Department of Children, Youth, and Families; the Office of the Superintendent of Public Instruction; the Department of Labor and Industries; the Liquor and Cannabis Board; and the Office of the Insurance Commissioner.
 4. *About the Office of Administrative Hearings*, WASH. STATE OFF. OF ADMIN. HEARINGS, <https://oah.wa.gov/about-oah/about-office-administrative-hearings> [<https://perma.cc/E5VA-EK3Z>].
 5. *Our Core Values*, WASH. STATE OFF. OF ADMIN. HEARINGS (Aug. 10, 2021), <https://oah.wa.gov/sites/default/files/2024-03/corevalues.pdf> [<https://perma.cc/BX9K-XLAG>].
 6. *Id.*

One of the ways OAH seeks to accomplish its mission and goals and fulfill its values is to provide greater language access to people with limited English proficiency (“LEP”). In July 2021, OAH began an ambitious project to provide hearings held entirely in Spanish to Spanish-speaking appellants with LEP.

OAH’s all-Spanish hearing project continues to this day. From November 2021 through March 2025, OAH has scheduled 1,274 all-Spanish hearings and adjudicated 495 of these cases (not all scheduled hearings were held, as some appellants failed to appear, withdrew their appeals, or obtained postponements). This project saves OAH the significant cost of interpreters and staff time. During 2024, the agency saved between 15% and 20% on its interpreter fees and substantial Administrative Law Judge (“ALJ”) time from these proceedings. The project also significantly improves language access and customer satisfaction for the participants in these proceedings. Additionally, it relieves pressure on the interpreter system, alleviating the shortage of certified court interpreters.

In Part II, this Feature examines the need for bilingual services in legal proceedings, discusses some inherent problems with interpretation in those proceedings, and identifies examples of solutions from the United States and other countries. Part III discusses the origins of OAH’s all-Spanish project, the project’s pilot and operational phases, the benefits of the project, and plans for its future. Part IV examines some practical and policy considerations that may assist others interested in developing a similar program.

Given the success of the program in benefiting both hearing participants and OAH, as well as its potential to help the broader community by reducing stress on the interpreter system, the authors hope that courts and administrative agencies in other jurisdictions will find this information helpful in creating similar programs.⁷

7. The authors welcome questions from those who are interested in pursuing similar programs.

II. THE NEED FOR IMPROVED LANGUAGE ACCESS IN U.S. COURTS

A. LEP Populations, Including Spanish Speakers, Are Increasing in the United States

The need to provide language services for LEP individuals has been growing for many years.⁸ In 2019, 67.8 million people in the United States spoke a language other than English at home.⁹ This represents nearly 20% of the U.S. population, nearly triple the 1980 figure of 23.1 million people.¹⁰ In 2019, Spanish was the second most common language spoken at home in the United States, spoken by about 41.8 million people—12 times more than the next most common language.¹¹

As of 2023, more than 21% of Washington State residents spoke a language other than English at home, and 9.3% spoke Spanish at home.¹² This made Spanish the most spoken language at home in Washington State, after English.¹³ An estimated 6.2% of the state's population are Spanish speakers with LEP.¹⁴

8. Nearly 25 years ago, for example, President Clinton signed an executive order setting forth goals and requirements for federal agencies to provide better services for those with LEP. Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 11, 2000).

9. Sandy Dietrich & Erik Hernandez, *Language Use in the United States: 2019*, U.S. CENSUS BUREAU 2, 3 (Aug. 2022), <https://www.census.gov/content/dam/Census/library/publications/2022/acs/acs-50.pdf> [<https://perma.cc/K7ND-9FG8>].

10. *Id.*

11. *Id.*

12. *Washington*, U.S. CENSUS BUREAU, <https://data.census.gov/profile/Washington?g=040XX00US53> [<https://perma.cc/VZT3-SF2V>]. In addition, 11.4% of public-school students in Washington as of the fall of 2021 were learning English as a second language, exceeding the U.S. average of 10.6%. *See English Learners*, NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=96> [<https://perma.cc/4K2F-HFDV>].

13. *Id.*

14. *2021 Limited English Proficiency Population Estimates*, WASH. STATE OFF. OF FIN. MGMT. (Aug. 18, 2022), <https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/limited-english-proficiency-population-estimates> [<https://perma.cc/65UV-BX82>] (estimating 482,625 Washingtonians were LEP Spanish speakers in 2021);

Unsurprisingly, Spanish is also by far the most common language of LEP individuals in OAH hearings. For example, from July 2023 through June 2024, OAH scheduled 2,829 Spanish interpreter hearings. In that same period, OAH scheduled 593 all-Spanish hearings with no interpreter, bringing the total to 3,422 Spanish hearings. The next closest language was Russian, with 245 interpreter hearings scheduled.

B. Several Problems Accompany the Use of Interpreters in Legal Proceedings

“Non-English-speaking”¹⁵ participants have a right to a “qualified interpreter” in Washington State’s constitutionally created courts¹⁶ as well as in administrative proceedings.¹⁷ A “qualified” interpreter is one “able readily to interpret or translate spoken and written” statements.¹⁸ In legal proceedings, interpretation poses significant challenges and requires specialized knowledge and skills beyond mere bilingual ability.¹⁹

The increase in the provision of qualified interpreters in many U.S. courts over the past several decades constitutes a monumental improvement over prior practices.²⁰ However, the system remains

State Population Steadily Increases, Tops 7.7 Million Residents in 2021, WASH. STATE OFF. OF FIN. MGMT. (June 30, 2021), <https://ofm.wa.gov/about/news/2021/06/state-population-steadily-increases-tops-77-million-residents-2021> [https://perma.cc/UWR5-3EZ7] (estimating Washington’s population reached 7,766,925 by April 1, 2021).

15. WASH. REV. CODE § 2.43.020(4) (2024) (defining non-English-speaking persons as those “who cannot readily speak or understand the English language”).
16. *Id.* § 2.43.060(1)(b) (noting that a waiver of the right to an interpreter must be made “knowingly, voluntarily, and intelligently”); *id.* § 2.42.150(1) (same); *see also id.* § 2.43.090(1)(c) (requiring that trial courts must post notice of the right to interpreter services).
17. WASH. ADMIN. CODE § 10-08-150(1) (2024).
18. WASH. REV. CODE § 2.43.020 (2024).
19. Maxwell Alan Miller, Lynn W. Davis, Adam Prestidge & William G. Eggington, *Finding Justice in Translation: American Jurisprudence Affecting Due Process for People with Limited English Proficiency Together with Practical Suggestions*, 14 HARV. LATINO L. REV. 117, 123 (2011).
20. Compare Lupe S. Salinas & Janelle Martinez, *The Right to Confrontation Compromised: Monolingual Jurists Subjectively Assessing the English-Language Abilities of Spanish-Dominant Accused*, 18 AM. U. J. GENDER, SOC. POL’Y & L. 543,

imperfect.²¹ First, access to high-quality interpretation is not equal across the United States. Second, the many variants of Spanish make interpreter accuracy more difficult. Third, interpretation, particularly between Spanish and English, has several intrinsic drawbacks that improved funding, laws, and policies cannot correct.²²

1. Interpretation Quality Varies Nationwide

Access to qualified interpreters varies greatly across the United States.²³ Some states and court systems require oral and written certification exams for court interpreters for one or more languages, which may ensure a baseline of performance among all certified interpreters.²⁴

543-45 (2010) (discussing very limited access to qualified interpreters for LEP individuals accused of crimes in the United States from 1942 to the 1970s), *with* 28 U.S.C. § 1827(d) (2018) (judges “shall” use certified or qualified interpreters for LEP participants), *and* WASH. REV. CODE § 2.43.030(1)(c) (2024) (same).

21. See Catherine M. Schu, Note, *Interpreting Justicia Para Todos: The Need for a Bilingual Justice System in the United States*, 74 RUTGERS U. L. REV. 1341, 1348-52 (2022) (describing multiple interpretation problems in reported cases); Sébastien Grammond & Mark Power, *Should Supreme Court Judges Be Required to Be Bilingual?*, in THE DEMOCRATIC DILEMMA: REFORMING CANADA’S SUPREME COURT, 49, 52-53 (Nadia Verrelli ed., 2013) (detailing several interpretation errors in a 2010 case argued before Canada’s Supreme Court); Miller et al., *supra* note 19, at 150-54 (listing practical suggestions for courts and attorneys to address common interpretation-related mistakes and to improve language access in the courts).
22. See Luna Filipović, *The Role of Language in Legal Contexts: A Forensic Cross-Linguistic Viewpoint*, in 15 LAW AND LANGUAGE: CURRENT LEGAL ISSUES 328, 330-41 (Michael Freeman & Fiona Smith eds., 2013).
23. See Erin Elizabeth Day, *Meaningful Access: A Proposal for Spanish Language Proceedings in Hidalgo County, Texas* (2012) (M.A. & J.D. thesis, University of Texas at Austin), <https://repositories.lib.utexas.edu/server/api/core/bitstreams/1e0c0372-fe06-42cf-a58c-33aac4fc89c5/content> [<https://perma.cc/D3A7-CPZJ>] (citing the author’s interviews with attorneys with LEP clients).
24. See, e.g., *Certified Interpreters*, WASH. CTS., https://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=certifiedinterpreters [<https://perma.cc/K8KF-QC3P>] (listing certification steps and requirements); *Interpreter Categories*, U.S. CTS., <https://www.uscourts.gov/court-programs/federal-court-interpreters/>

However, not all states certify interpreters through testing, leaving decisions on whether an untested interpreter has sufficient skill to individual judges, even in serious criminal cases.²⁵ Even states that certify court interpreters through testing often face a shortage of qualified legal interpreters.²⁶

In jurisdictions lacking qualified interpreters, inexperienced interpreters—whether inadequate professional interpreters or untrained members of court or jail staff—may be substituted.²⁷ Interpretation mistakes are more prevalent when courts use uncertified interpreters.²⁸ Those without training and experience interpreting in the legal field are far less likely to interpret each word and nuance correctly, leading to substandard interpretation²⁹ and, sometimes, to a denial of justice.³⁰ Given varying

interpreter-categories [<https://perma.cc/BCM5-XVLY>] (explaining three categories of interpreters and that federal certification is only available for Spanish).

25. *See, e.g.*, N.D. SUP. CT. ADMIN. R. 50, §§ 3-4 (indicating that North Dakota has no state interpreter certification for hearing LEP participants and permitting untrained, uncertified interpreters in any legal proceeding when an interpreter certified in another jurisdiction “is not available”).
26. *See, e.g.*, Elaine Chan, *Pilot Program to Address Court Interpreters Shortage*, CAL. CTS. NEWSROOM (Aug. 27, 2024), <https://newsroom.courts.ca.gov/news/pilot-program-address-court-interpreters-shortage> [<https://perma.cc/KZV5-9DT3>]; ADMIN. OFF. OF THE CTS., WASH. STATE JUDICIAL BRANCH 2025-27 BIENNIAL BUDGET: STABILIZE INTERPRETER REIMBURSEMENT PROGRAM 2 (2024), https://www.courts.wa.gov/content/Financial%20Services/documents/2025_2027/Biennial/30%20BD%20Stabilize%20Interpreter%20Reimbursement%20Program.pdf [<https://perma.cc/6ASR-R3R8>]; *see also infra* notes 135-136.
27. *See* Katrijn Maryns, *Multilingualism in Legal Settings*, in THE ROUTLEDGE HANDBOOK OF MULTILINGUALISM 297, 299-304, 305-08 (Marilyn Martin-Jones Adrian Blackledge & Angela Creese eds., 2012); Day, *supra* note 23, at 20, 25 (citing the author’s interview with an attorney and discussing the author’s observations); Schu, *supra* note 21, at 1348-49.
28. *See* Grammond & Power, *supra* note 21, at 52-53; Rebecca Beitsch, *In Many Courtrooms, Bad Interpreters Can Mean Justice Denied*, STATELINE (Aug. 17, 2016), <https://stateline.org/2016/08/17/in-many-courtrooms-bad-interpreters-can-mean-justice-denied> [<https://perma.cc/5GV2-3P22>].
29. *See* Filipović, *supra* note 22, at 332-34; Beitsch, *supra* note 28; Schu, *supra* note 21, at 1348-49; Day, *supra* note 23, at 24, 25.
30. *See, e.g.*, United States *ex rel.* Negron v. New York, 434 F.2d 386, 389-91 (2d Cir. 1970); Miller et al., *supra* note 19, at 128-29.

interpreter requirements and qualified interpreter availability, interpreter quality can vary widely by locale.

Someday, trained and certified interpreters may be required more widely throughout the United States if each jurisdiction has sufficient funding and political will. Even if this occurs, qualified interpreter shortages in some locations could render the use of inadequate interpreters inevitable.³¹ Further, additional disadvantages of interpretation would remain, as discussed below.

2. Regional Variations in Spanish Pose Additional Challenges for Interpreters.

Spanish presents particular challenges for interpreters.³² Spanish is an official language in 22 countries.³³ Numerous regional variants have developed; regional vocabularies, idioms, slang, grammars, accents, and cultures have evolved in different directions.³⁴ This makes it inherently difficult for Spanish language interpreters to expertly interpret the slang, idioms, accent, vocabulary, culture, and grammar of every regional variant.³⁵ Judges may also experience difficulty with these issues. However, judges are free to ask clarifying questions as needed to resolve such misunderstandings, while interpreters do not have the same flexibility.

31. See Ng, *supra* note 1, at 110 (discussing interpreter shortage).

32. See RALPH JOHN PENNY, VARIATION AND CHANGE IN SPANISH 74-193 (2000) (discussing language variation within Spain, within the Americas, and within Ladino, or Judeo-Spanish); Rodolfo Mendoza-Denton, *Linguistic Forensics: Hidden Bias Creeps into Spanish-English Courtroom Translations*, PSYCH. TODAY (Dec. 16, 2010), <https://www.psychologytoday.com/ca/blog/are-we-born-racist/201012/linguistic-forensics> [<https://perma.cc/V4YK-DREK>].

33. *Spanish Language*, BRITANNICA, <https://www.britannica.com/topic/Spanish-language> [<https://perma.cc/F8AS-C977>].

34. See PENNY, *supra* note 32, at 74-193; Adrian Castaneda, *Paraguayan Slang: Spanish Words You'll Only Hear in Paraguay*, BASELANG, <https://baselang.com/blog/travel/paraguayan-slang> [<https://perma.cc/3EDH-KQTB>] (linking to articles on local slang in twenty different countries and regions).

35. See Salinas & Martinez, *supra* note 20, at 543-61, 558-59; see generally *The Challenge of Interpreting*, LINGOSTAR LANGUAGE SERVS. (Mar. 26, 2019), <https://lingo-star.com/the-challenge-of-interpreting> [<https://perma.cc/856R-UCTA>].

Even small errors in interpretation can have significant consequences. For example, in one case, the incorrect interpretation of a single regional term altered the outcome, resulting in a felony conviction.³⁶ A Cuban man was recorded responding to a loan request with “*Hombre, ni tengo diez kilos!*”³⁷ This was interpreted in the courtroom as if it were standard Spanish, in which it means, “Man, I don’t even have ten kilos.”³⁸ The accused man was convicted of federal drug charges as a result.³⁹ On appeal, an interpreter familiar with Cuban slang provided the accurate interpretation of the accused’s statement, given the context of the loan request: The man had said, “I don’t even have ten cents.”⁴⁰ As in most U.S. trial courts, the official record was the English-language transcript created by the court reporter.⁴¹ If the statement had been misinterpreted from live testimony in court, there would have been no incontrovertible proof that this error occurred, and the error may never have been discovered or corrected.⁴²

Inadequate interpretation that prevents comprehension or clear communication can constitute a denial of justice for a participant. Appellate courts recognize how detrimental poor interpretation is for parties. In the criminal context, courts have held that providing inadequate interpreter services to an accused person with LEP violates the Sixth Amendment right

36. Salinas & Martinez, *supra* note 20, at 558-59 (citing Michael B. Shulman, *No Hablo Inglés: Court Interpretation as a Major Obstacle to Fairness for Non-English Speaking Defendants*, 46 VAND. L. REV. 175, 176 (1993)).

37. *Id.* at 558; Susan Garland, *Hispanic Court Cases: The Verdict Is All in the Translation*, CHRISTIAN SCI. MONITOR, Dec. 7, 1981, at 23.

38. Salinas and Martinez, *supra* note 20, at 558-59.

39. Alain L. Sanders, *Law: Libertad and Justicia for All*, TIME (May 29, 1989), <https://time.com/archive/6702680/law-libertad-and-justicia-for-all> [<https://perma.cc/ZPW6-4NCD>].

40. Salinas and Martinez, *supra* note 20, at 558-59.

41. Shulman, *supra* note 36, at 185 (“For all practical purposes, therefore, the defendant’s testimony is not part of the case because it is not written into the record.”).

42. *Id.* at 176 n.5 (“If the same error had occurred during an interpretation of the defendant’s testimony, rather than a translation of a tape recorded conversation, it probably never would have been discovered unless another interpreter was present.”).

to confrontation and the “even more consequential” right to be present, to understand the proceedings, and to consult with one’s attorney.⁴³

A well-trained interpreter and a well-educated judge will both be aware of dialectal differences and alert to their potential occurrence. In court proceedings, both individuals must seek clarification as needed. Courtroom interpreters following best practices must request permission from the judge to clarify meaning or request repetition.⁴⁴ This process necessarily interrupts the flow of the proceedings and takes time.⁴⁵ However, it is necessary not only for the interpreter to provide accurate interpretation, but also for the judge to know and the record to reflect what is happening.⁴⁶

In the authors’ opinion, compared to the more formal interpreter requirements, the single-language format allows for easier and simpler clarification of content and confirmation of understanding. Simple clarifying questions can be easily asked, substituting a more standard word or an alternate phrase to convey what the ALJ thinks was said in order to know whether the ALJ’s understanding was correct. Requests for repetition or for more information to ensure comprehension are also easily and quickly made. The single-language format allows for a faster and more natural clarification process than that required for a court interpreter. Court interpreters must interrupt the proceedings for clarification, first asking permission to clarify, then having a clarification conversation with the witness, and then reporting the result back to the courtroom.⁴⁷

43. United States *ex rel. Negron v. New York*, 434 F.2d 386, 389-91 (2d Cir. 1970); *see* State v. Natividad, 526 P.2d 730, 733 (Ariz. 1974) (explaining that a trial without an interpreter was “fundamentally unfair” because it “limit[ed] [the defense] attorney’s effectiveness . . . as though a defendant were forced to observe the proceedings from a soundproof booth or seated out of hearing at the rear of the courtroom, being able to observe but not comprehend the criminal processes whereby the state had put his freedom in jeopardy”); *see also* Miller et al., *supra* 19, at 128-29 (noting that, in criminal cases, having a qualified interpreter allows the accused to participate meaningfully in their own defense and sometimes prevents material errors).

44. *See, e.g.*, CT. INTERPRETER PROGRAM, WASH. CTS., STANDARDS OF PRACTICE AND ETHICS FOR WASHINGTON STATE JUDICIARY INTERPRETERS 11, 19-22 (2021) [hereinafter STANDARDS OF PRACTICE AND ETHICS], <https://www.courts.wa.gov/content/publicUpload/Interpreters/StandardsofPracticeandEthics-Online.pdf> [<https://perma.cc/J3N9-LQMU>].

45. *See id.*

46. *See id.*

47. *See id.*

In informal settings, like in OAH's administrative hearings, the single language format also allows restatement in different words ("reformulation") to continually confirm understanding when the ALJ has any reason to doubt.⁴⁸ It also permits direct repetition ("imitation") of statements when an accent difference causes any doubt for the ALJ.⁴⁹ These methods of reformulation and imitation have the added benefits of making the ALJ appear to be a better listener and helping a witness feel heard.⁵⁰ However, they may not be permitted in more formal court settings without clarification of their purpose due to evidence rules barring cumulative, "asked and answered" questions.⁵¹

Trained court interpreters and trained judges also have an ethical duty, at least in Washington State, to be forthright if they are unable to proceed with a witness or understand a specific statement due to language difficulty.⁵² Additionally, judges have a duty to ensure the right to be heard, which cannot be done with inadequate communication due to language unintelligibility or errors.⁵³ Bilingual judges chosen for single language proceedings will have varying backgrounds, but the authors believe agencies and courts should require the judge to use an interpreter whenever they have concerns about their ability to accurately understand a witness, as OAH does of its ALJs.

48. See Jacques Fischer-Lokou, Lubomir Lamy, Nicolas Guéguen & Alexandre Dubarry, *Effects of Active Listening, Reformulation, and Imitation on Mediator Success: Preliminary Results*, 118 PSYCH. REPS. 994, 996 (2016).

49. *Id.* at 996-97.

50. *Id.* at 1003.

51. See FED. R. EVID. 403 ("The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . needlessly presenting cumulative evidence."); WASH. R. EVID. 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of . . . needless presentation of cumulative evidence.").

52. See WASH. R. GEN. APPLICATION 11.2 cmt. (1)[3] ("Interpreters have the duty to immediately address any situation or condition that impedes their ability to accurately interpret. Examples include, but are not limited to, linguistic ambiguities, unfamiliar terms, inaudible speech, inability to see a speaker, background noise or distraction, and pace of speech."); STANDARDS OF PRACTICE AND ETHICS, *supra* note 44, at 19-23; WASH. CODE JUD. CONDUCT canon 1 ("A judge shall . . . promote . . . integrity . . ."); WASH. CODE JUD. CONDUCT canon 2 ("A judge should perform the duties of judicial office impartially, competently, and diligently.").

53. See WASH. CODE JUD. CONDUCT 2.6.

Untrained interpreters may be less aware of dialectical differences than trained interpreters or judges, leading to potential errors. Jurisdictions and presiding judges permitting the use of untrained interpreters may be unaware of the best practices for accurate interpretation. Further, courts with no systematic vetting of interpreters and no standards for best practices, if they are also overscheduled, overcrowded, or underfunded, may be disinclined to have interpreters slow proceedings to seek clarification or repetition. As a result, untrained interpreters, including bilingual employees recruited on the spot, may be disincentivized to make the clarifications necessary for accurate interpretations.

3. Interpretation Has Intrinsic Drawbacks

When compared to fluent speakers conversing in the same language, interpretation has intrinsic disadvantages. These disadvantages include higher costs, inevitable human error, unintentional insertion of implicit bias, disruption in thought processes, decreased effectiveness of testimony, and increased likelihood of wrong decisions. While improved training and vetting processes for interpreters can partially alleviate some of these problems, strong certification requirements cannot wholly overcome these inevitable disadvantages.

First, for courts and other tribunals, the use of interpreters increases the expense and time of proceedings. These costs can be substantial for hearings and trials.⁵⁴ Additionally, many appeals have challenged the provision and adequacy of courtroom interpreter services.⁵⁵ Whether an appellant wins or loses, such appeals also put more financial burdens on the system.⁵⁶ In many cases, such litigation is a necessary cost of providing due process through qualified interpreters.

Further, mistakes in word choice can change a declarant's meaning and affect the case. For example, even skilled courtroom interpreters can insert their own stereotypes or unconscious biases into their word choices when interpreting.⁵⁷ This could happen with interpretation of any language. However, unconscious biases in language translation often occur with

54. See Ng, *supra* note 1, at 105-06, 110 (discussing high costs of and demand for interpretation in California and other locations with high numbers of Spanish-speaking residents).

55. See, e.g., Miller et al., *supra* note 19, at 118-19, 124-50.

56. See *id.*; Schu, *supra* note 21, at 1350-52.

57. See Filipović, *supra* note 22, at 331, 332-35, 340; Mendoza-Denton, *supra* note 32.

Spanish to English translations because common verbs of motion do not directly translate, creating opportunities for the interpreter to insert a new meaning, an error which is not uncommon.⁵⁸ Subtle shifts can dramatically change meaning and inferences, causing decision-makers to reach a different decision.⁵⁹

Consecutive interpretation, where a speaker says a few sentences that are then interpreted before the speaker continues, has an additional drawback: It requires many breaks and interruptions.⁶⁰ Several pauses for interpretation are needed every minute for maximum accuracy. Disruptions in the flow of ideas are caused when the interpreter needs to clarify a statement or needs a statement repeated. Further, as many participants in OAH proceedings are unfamiliar with consecutive interpretation, repeated forcible interruptions of LEP participants are nearly inevitable so the interpreter can keep up.

Even with well-qualified, wholly unbiased interpreters, LEP participants are still more likely to be interrupted than dominant language speakers.⁶¹ If LEP participants pause for the interpreter on their own, for example, other hearing participants, such as the tribunal, may think they are finished speaking and move on. When LEP participants are interrupted, they may lose their train of thought or provide testimony that seems less coherent.⁶² Participants may not feel heard when they are interrupted frequently, and such fragmented testimony can seem “less compelling or credible.”⁶³

Additionally, for participants who require an interpreter’s services yet understand some English, processing what they hear in English can distract them from focusing on the interpreter’s words in the participant’s primary

58. Filipović, *supra* note 22, at 331, 332-35, 340.

59. *Id.*, at 339-40; Mendoza-Denton, *supra* note 32.

60. See Olivia C. Caputo, *Consecutive vs. Simultaneous Interpreting: What’s the Difference?*, AM. TRANSLATORS ASS’N: ATA COMPASS (July 19, 2023), <https://www.atanet.org/client-assistance/consecutive-vs-simultaneous-interpreting-whats-the-difference> [<https://perma.cc/K7VU-G8BH>].

61. Philipp Sebastian Angermeyer, *Translation as Discrimination: Sociolinguistics and Inequality in Multilingual Institutional Contexts*, 52 LANGUAGE SOC’Y 837, 842 (2023) [hereinafter Angermeyer, *Translation as Discrimination*].

62. In 2020, interviewing Spanish speaking participants in OAH proceedings, OAH learned that many were unfamiliar with consecutive interpretation. The style of interpretation caused these individuals to lose their train of thought and feel like they were not communicating effectively.

63. Angermeyer, *Translation as Discrimination*, *supra* note 61, at 842.

language.⁶⁴ The same distraction occurs for bilingual attorneys, judges, witnesses, and jurors.⁶⁵ This is because “any verbal information that is seen or heard [and understood] is processed,” thus interfering with other cognitive functions.⁶⁶

Moreover, when LEP participants do not understand the dominant language, they cannot know if they are being interpreted accurately. This may cause them to mistrust the quality or accuracy of the interpretation and the fairness of the whole proceeding. Mistrust can be even more likely when a participant has had a previous experience with poor interpretation services.⁶⁷

Similarly, judges who speak only English are unlikely to know if an interpreter is making material mistakes.⁶⁸ When a decision-maker relies upon a flawed interpretation, they are more likely to make a flawed decision. The potential for error in this situation can be very serious. As noted above regarding the wrongfully convicted Cuban man, the incorrect interpretation of a single word has resulted in a felony conviction.⁶⁹

A bilingual observer can note an interpreter’s errors and alert the court. The three authors have all noted and corrected Spanish interpretation errors during their careers. But not all LEP participants have access to such

64. See FRANÇOIS GROSJEAN, *LIFE AS A BILINGUAL: KNOWING AND USING TWO OR MORE LANGUAGES* 266-68 (2021) [hereinafter GROSJEAN, *LIFE AS A BILINGUAL*]; see also François Grosjean, *The Day the Supreme Court Ruled on the Bilingual Mind*, PSYCH. TODAY (Feb. 7, 2011) [hereinafter Grosjean, *Bilingual Mind*], <https://www.psychologytoday.com/us/blog/life-bilingual/201102/the-day-the-supreme-court-ruled-the-bilingual-mind> [https://perma.cc/JE74-RHJM].

65. See GROSJEAN, *LIFE AS A BILINGUAL*, *supra* note 64, at 266-68.

66. *Id.*

67. See Leo S. Morales et al., *A Qualitative Study of Latino Workers’ Experiences with Washington State’s Department of Labor and Industries Healthcare Benefits*, LATINO CTR. FOR HEALTH 21 (Sept. 2019), https://latinocenterforhealth.org/wordpress_latcntr/wp-content/uploads/2021/01/LCH_Workers-Report_Final_ENGLISH.pdf [https://perma.cc/K8AD-YSL2]; see also Angermeyer, *Translation as Discrimination*, *supra* note 61, at 845 (discussing the potential for both subordinated and dominant language speakers to mistrust interpreters).

68. Lois M. Collins, *Team Probing Language Barrier in Court*, DESERET NEWS (Mar. 27, 1998), <https://www.deseret.com/1998/3/27/19371199/team-probing-language-barrier-in-court> [https://perma.cc/49QM-J8J4].

69. Salinas & Martinez, *supra* note 20, at 558-59.

advocates in the courtroom. While the authors cannot know what errors have gone unnoticed in the courtroom or on appeal, the following are real examples from one author's experience. In these examples, his bilingual ability prevented multiple, potentially grievous errors:

1. In a felony aggravated battery jury trial, where the Spanish-speaking defendant was facing prison time, the defendant testified at trial that he had hit the alleged victim because the victim had *told* the defendant that he was going to hurt him. That statement was interpreted to the jury that the defendant had hit the alleged victim because the defendant *thought* the victim was going to hurt him. This is a very significant distinction for a self-defense argument. Being *threatened* with injury and *thinking* that one will be hurt reflect very different states of mind, a factor critical when determining the reasonableness of one's actions.
2. In a deposition for a trial on the termination of parental rights, the Spanish-speaking parent testified about his contacts with a *social* worker. This was mistranslated as the parent's contacts with a *sexual* worker. If left uncorrected, that error could have weighed heavily on the decision of whether to permanently terminate the parent's rights.
3. In a murder trial, the Spanish-speaking defendant testified that he *had not meant to kill* the deceased. The interpreter rendered the testimony as stating that the defendant *had meant to kill* the deceased. After the error was caught, the trial resumed with a different and competent interpreter.
4. In an administrative child support case, the Spanish-speaking parent was asked if he saw his child *every weekend*. The interpreter changed the question and asked the parent if he saw his child *every other weekend*. The parent said no (because he saw his child every weekend). Left uncorrected, the ALJ would have made incorrect findings and conclusions, with financial implications for the parent.

As a result of human error, insufficient funding, policy choices, the difficulty in accurately interpreting Spanish, and inherent features of consecutive interpretation, this form of interpretation has several flaws. Skilled interpreters indeed are—and no doubt will remain—critical to legal proceedings. However, in appropriate circumstances, other options are available and should be considered.

C. Multilingual Legal Proceedings in the United States and Other Countries Show Single Language Proceedings Are Possible

Several countries hold legal proceedings in different languages depending on the language of the participants.⁷⁰ For example, Canada's federal courts conduct proceedings in either French or English, depending on the languages spoken by the parties.⁷¹ Finland, Hong Kong, and Ireland, all of which have multiple official languages, afford parties the right to be heard in the official language of their choosing.⁷² German is the official language of Austria,⁷³ but in three Austrian states, citizens who speak Slovenian or Croatian are entitled to judicial and administrative proceedings in their own languages.⁷⁴ In China, the Tibet Autonomous Region, which has a mostly Tibetan-speaking population but is politically dominated by Mandarin speakers, has expanded its number of judges who speak both Mandarin and Tibetan to provide proceedings in Tibetan for the majority populace.⁷⁵

In 2019, the number of people in the United States who spoke a language at home other than English was 67.8 million,⁷⁶ 22% of the U.S.

70. *See generally* JANNY H.C. LEUNG, *SHALLOW EQUALITY AND SYMBOLIC JURISPRUDENCE IN MULTILINGUAL LEGAL ORDERS* (2019).

71. Canada Official Languages Act, R.S.C. 1985, c 31, § 14(1). *But see also* Grammond & Power, *supra* note 21, at 49-50 (noting that Canada's Supreme Court Justices are not required to be bilingual, despite the Court's requirement to hold proceedings in French and English).

72. *See* LEUNG, *supra* note 70, at 216.

73. BUNDES-VERFASSUNGSGESETZ [B-VG] [CONSTITUTION] BGBl. No. 1/1930, as amended, Bundesverfassungsgesetz [BVG] BGBl. I No. 68/2000, art. 8, https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.pdf [<https://perma.cc/P3MG-NVH3>] (Austria).

74. State Treaty for the Re-Establishment of an Independent and Democratic Austria art. 7, May 15, 1955, 217 U.N.T.S. 223.

75. China Tibet Online, *Tibet to Accelerate Training of Bilingual Judges to Promote Rule of Law*, FOUND. FOR NON-VIOLENT ALTS. (June 3, 2015), <https://fnvaworld.org/tibet-to-accelerate-training-of-bilingual-judges-to-promote-rule-of-law> [<https://perma.cc/B9MU-6T5D>]; BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP'T OF STATE, CHINA (INCLUDES TIBET, HONG KONG, AND MACAU) 2018 HUMAN RIGHTS REPORT 73 (2018), <https://www.state.gov/wp-content/uploads/2019/03/CHINA-INCLUDES-TIBET-HONG-KONG-AND-MACAU-2018.pdf> [<https://perma.cc/ET5K-B59R>].

76. Dietrich & Hernandez, *supra* note 9, at 2, 3.

population.⁷⁷ As of 2022, over 42 million people spoke Spanish in their homes,⁷⁸ approximately 12.6% of the total U.S. population, making Spanish speakers the single largest group speaking a language other than English at home.⁷⁹ However, despite this reality, only the U.S. territory of Puerto Rico offers legal proceedings in Spanish as a matter of right. Furthermore, this right only exists in the local courts; the federal courts in Puerto Rico conduct proceedings only in English.⁸⁰

In the United States, nearly every legal tribunal conducts proceedings for LEP participants using interpreters. While proposals have been made for more non-English proceedings, few implemented examples exist.⁸¹ However, some Spanish-speaking arbitrators in New York City's small-

77. *Id.* at 4.

78. *Language Spoken at Home*, U.S. CENSUS BUREAU (2022), <https://data.census.gov/table/ACSST1Y2022.S1601?q=Language> [<https://perma.cc/EN5D-FG4H>] (estimating that 42,032,538 people speak Spanish in their homes within the United States). The 42-million figure is likely an undercount, as the American Community Survey 1-Year estimates—used to develop that figure—only count speakers in areas with a population of 65,000 or more. *See id.*

79. *Id.*; *see also* Press Release, U.S. Census Bureau, Growth in U.S. Population Shows Early Indication of Recovery Amid COVID-19 Pandemic (Dec. 22, 2022), <https://www.census.gov/newsroom/press-releases/2022/2022-population-estimates.html> [<https://perma.cc/WZ3W-Y4GX>].

80. Valeria M. Pelet del Toro, Note, *Beyond the Critique of Rights: The Puerto Rico Legal Project and Civil Rights Litigation in America's Colony*, 128 YALE L.J. 792, 818 n.150 (2019); *see also* Jasmine B. Gonzales Rose, *The Exclusion of Non-English-Speaking Jurors: Remediating a Century of Denial of the Sixth Amendment in the Federal Courts of Puerto Rico*, 46 HARV. C.R.-C.L. L. REV. 497, 498 (2011) (estimating that 90% of Puerto Rico's citizens are excluded from federal jury service due to English fluency requirements, which functions "as a proxy for race, color, class, and educational level" and which denies many criminal defendants their right to a jury of their peers under the Sixth Amendment).

81. *See* Ng, *supra* note 1, at 98 (proposing state courts with interpreter shortages implement "Spanish-speaking courtrooms"); *see generally* Schu, *supra* note 21 (proposing a "fully bilingual English-Spanish court system"); Day, *supra* note 23 (proposing Spanish-language proceedings be adopted in a Texas border county where Spanish speakers outnumber English speakers, including among judges and attorneys).

claims courts have held proceedings entirely in Spanish.⁸² One judge in Utah performed numerous marriages in Spanish and in Brazilian Portuguese during his career.⁸³

In Washington State, where OAH is located, one judge held Spanish-language proceedings for Des Moines Municipal Court traffic violations.⁸⁴ This program arose unplanned when one day, a Spanish interpreter did not appear, and the bilingual judge realized she could hold the proceeding in Spanish.⁸⁵ The program continued semi-monthly for seven years until the judge was appointed to King County Superior Court.⁸⁶

The examples given show that various U.S. courts and case types could be suitable for single-language proceedings in a language other than English, with sufficient will and resources.

III. THE OAH SPANISH-LANGUAGE HEARING PROJECT

A. The Genesis of the All-Spanish Hearing Project

Until 2021, OAH relied exclusively on interpreters for individuals with LEP. However, the law does not prevent a party to a legal proceeding from choosing to proceed in their first language or from retaining the option to request an interpreter at any time during the hearing.⁸⁷

82. Philipp Sebastian Angermeyer, *Monolingual Ideologies and Multilingual Practices in Small Claims Court: The Case of Spanish-Speaking Arbitrators*, 11 INT'L J. MULTILINGUALISM 430, 432 (2014).

83. See Miller et al., *supra* note 19, at 117 n.2; Judge Lynn Davis, BYU OFF. OF CIVIC ENGAGEMENT, <https://civicengagement.byu.edu/judge-lynn-davis> [https://perma.cc/NRB4-U5W2].

84. Sarah Stuteville, *For Bilingual Judge, There's No Translating the Language of Justice*, SEATTLE GLOBALIST (Jan. 9, 2015), <https://seattleglobalist.com/2015/01/09/bilingual-judge-des-moines-galvan-spanish/32125> [https://perma.cc/PX34-6RWL].

85. *Id.*

86. *Id.*; Judge Veronica Galván—Superior Court, KING CNTY. SUPERIOR CT., <https://kingcounty.gov/en/court/superior-court/about-superior-court/judges-staff/judges/galvan> [https://perma.cc/SB89-AAZ9].

87. WASH. REV. CODE §§ 2.43.010, 2.43.040, 2.43.090, 74.04.025 (2024); WASH. ADMIN. CODE § 10-08-150 (2024).

The most important consideration when exploring alternative options to interpreters is ensuring due process requirements for a fair hearing.⁸⁸ As we will show, due process requirements can be met without providing an interpreter when conducting hearings in a non-English language. Another important consideration is whether any changes to proceedings can align with OAH's somewhat unique legislative mandate to conduct hearings "with the greatest degree of informality consistent with fairness and the nature of the proceeding."⁸⁹ Removing an interpreter from a hearing, whenever appropriate, helps to advance this legislative requirement by allowing for a more natural, uninterrupted dialogue between participants and the judge, thereby improving comprehension for both.

In late 2019, hoping to provide better access to justice for people with LEP, OAH organized a focus group to determine how to better serve the parties that come before it. Part of the group consisted of persons with LEP who previously participated in OAH proceedings.⁹⁰ Among other things, OAH wanted to learn what challenges, if any, these participants had faced in their hearings.⁹¹ This initiative was part of Governor Jay Inslee's Agency Design Challenge, which called for state agencies to improve services for their customers.⁹² It was also in line with then-pending state legislation that would ultimately direct state agencies to "apply[] an equity lens in all aspects of agency decision making, including service delivery, program development, policy development and budgeting."⁹³ Consistent with the information discussed in Part II, OAH personnel learned from the focus group that some participants were uncomfortable with interpreters in their hearings.

88. See 29 C.F.R. § 38.9 (2024); *B.C. v. Att'y Gen. U.S.*, 12 F.4th 306, 316 (3d Cir. 2021) ("Failing to provide an interpreter when needed makes meaningless a noncitizen's right to due process.").

89. WASH. REV. CODE § 34.12.010 (2024).

90. Telephone Interview with Lorraine Lee, Former Chief Admin. L. Judge (retired), OAH (Aug. 27, 2024) [hereinafter Lee Interview] (Former Chief ALJ Lee was instrumental in the initiation of OAH's all-Spanish hearings project; she relayed her memories of the entire process to one of our authors).

91. *Id.*

92. WA Governor's Office, *Results Washington Improves Agency Customer Experience*, MEDIUM (Feb. 19, 2020), <https://medium.com/wagovernor/results-washington-improves-agency-customer-experience-65e13433a4d9> [https://perma.cc/3GQE-DCKR].

93. WASH. REV. CODE § 43.06D.040(1)(a) (2024).

OAH hearings use consecutive interpretation,⁹⁴ which is the most common type of interpretative service in legal proceedings.⁹⁵ Ideally, in consecutive interpretation, one participant in the communication will speak one or two sentences at a time.⁹⁶ The interpreter will then interpret what was said.⁹⁷ In practice, however, interpretation does not always flow so smoothly.

OAH learned from some focus group participants that consecutive interpretation was sometimes not ideal, and some participants were not comfortable with that style of interpretation. When visiting healthcare providers and other government offices, for example, the participants often used an English-proficient friend or family member who could summarize what was said. This method allows for longer statements and a more natural flow of speech, as word-for-word accuracy is not always required.⁹⁸

Summarizing is not possible in most legal proceedings, which require a full translation of everything said in either language and a complete record of all that is said.⁹⁹ Consequently, participants' longer statements may be interrupted for better-quality interpretation.¹⁰⁰ Some participants complained that being interrupted by an interpreter distracted them and caused them to feel they were not communicating effectively.

94. WASH. ADMIN. CODE § 10-08-150(8)(b) (2024) (stating that in OAH hearings, “[i]nterpreters for non-English-speaking persons shall use the simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used”). However, consecutive interpreting is typically more suitable for legal proceedings, whereas simultaneous interpretation works better with large audiences. *See* Caputo, *supra* note 60.

95. Caputo, *supra* note 60.

96. *Id.*

97. *Id.*

98. *Id.*

99. *See, e.g.*, WASH. ADMIN. CODE § 10-08-10-08-170 (2024) (requiring recording of all hearings); WASH. REV. CODE § 34.05.449 (2024) (same); *see also* United States v. Antoine, 906 F.2d 1379, 1381 (9th Cir. 1990) (“When a court reporter has failed to record part of the trial proceedings, ‘the appropriate procedure is to vacate the judgment and remand for a hearing to determine whether appellant was prejudiced by the error in failing to record the arguments.’”).

100. *See* Angermeyer, *Translation as Discrimination*, *supra* note 61, at 842; Caputo, *supra* note 60.

Additionally, in Washington State, interpreters for legal proceedings must be neutral parties qualified to serve based upon training, experience, or both.¹⁰¹ Relatives of hearing participants and others with conflicts of interest may not serve as interpreters in OAH hearings.¹⁰²

Finally, some participants were also concerned that the interpreter was not accurately capturing their testimony.¹⁰³

This feedback led then-agency head Lorraine Lee to propose a novel program: holding evidentiary hearings entirely in Spanish.¹⁰⁴ And so began a pilot program that would determine the feasibility and efficacy of the proposal.

101. WASH. REV. CODE § 2.43.030 (2024); WASH. ADMIN. CODE § 10-08-150 (2024); *see also In re Dependency of J.E.D.A.*, 413 P.3d 574, 576 (Wash. Ct. App. 2018) (reversing for failing to use qualified interpreter). In this regard, WASH. REV. CODE § 2.43.030 provides:

(1) Whenever an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a certified or a qualified interpreter to assist the person throughout the proceedings.

(a) Except as otherwise provided for in (b) of this subsection, the interpreter appointed shall be a qualified interpreter.

(b) Beginning on July 1, 1990, when a non-English-speaking person is a party to a legal proceeding, or is subpoenaed or summoned by an appointing authority or is otherwise compelled by an appointing authority to appear at a legal proceeding, the appointing authority shall use the services of only those language interpreters who have been certified by the administrative office of the courts, unless good cause is found and noted on the record by the appointing authority.

102. WASH. ADMIN. CODE § 10-08-150(4) (2024) (using persons as interpreters who are not qualified could “result in a breach of confidentiality; a conflict of interest; or inaccurate, impartial, or incorrect interpretation . . .”); U.S. DEP’T JUST., LANGUAGE ACCESS PLAN 7 (2023), <https://www.justice.gov/atj/media/1310441/dl?inline> [<https://perma.cc/84EF-RMV7>].

103. As discussed above, interpretation can be especially problematic with Spanish, particularly as certain verbs do not directly translate, creating the potential for inaccurate interpretations. Filipović, *supra* note 22, at 330-41.

104. Lee Interview, *supra* note 90.

1. The First Steps

Before the agency could hold the first evidentiary hearing, it needed to make several decisions and implement new processes. Since after English, Spanish is the most common language spoken by participants in OAH hearings, Spanish was the logical first language for the pilot program.

One of the first agenda items was to select an appropriate caseload. Multi-party hearings with numerous witnesses would require an interpreter if all participants did not speak Spanish. Therefore, OAH focused instead on caseloads with single-party hearings in which parties often appear pro se. This would eliminate the need for an interpreter. The unemployment insurance (“UI”) caseload was ideal for this project. Although some hearings in this caseload involve multiple parties,¹⁰⁵ many do not,¹⁰⁶ depending on the issues presented. In single-party UI cases, the presiding ALJ could hold hearings in Spanish without an interpreter if everyone involved were fluent and could understand each other. Additionally, as UI cases comprise the agency’s largest caseload by far,¹⁰⁷ focusing on this caseload would potentially benefit the largest number of appellants.¹⁰⁸

At the outset, OAH personnel identified several items the agency needed to complete before a pilot project could move forward:

- Determining the feasibility of holding the pilot project;
- Working with stakeholders to explore the needs of the pilot project;
- Creating a certification process;
- Creating a process for holding Spanish UI hearings;

105. In unemployment hearings in Washington, job-separation cases involving qualification to receive unemployment benefits and a few others are two-party (or more) cases. *See e.g., In re Blaney*, Case No. 1042, 2024 WL 3271231, WASH. STATE EMP. SEC. DEP’T (Mar. 8, 2024) (deciding unemployment benefits for a claimant who quit work); *In re Marquart*, Case No. 999, 2015 WL 12573385, WASH. STATE EMP. SEC. DEP’T (May 29, 2015) (deciding unemployment benefits for a claimant who was fired).

106. Single-party cases at the evidentiary hearing level include, for example, work-search and availability cases, *see* WASH. REV. CODE § 50.20.010(1)(c) (2024); late claims, *see id.* § 50.04.030; and commissioner-approved training, *see id.* § 50.20.04.

107. WASH. STATE OFF. OF ADMIN. HEARINGS, ANNUAL REPORT 2023, at 23 (2024), <https://oah.wa.gov/sites/default/files/2024-03/annual%20report%202023.pdf> [<https://perma.cc/BC9U-RRJY>].

108. *See id.*

- Modifying the “Notice of Hearing”;
- Creating a process for interpreting the record (the audio recording of the hearing);
- Exploring any translations of documents;
- Deciding whether the order would be written in English; and
- Determining financial feasibility for larger-scale implementation.

Additionally, the Washington State Employment Security Department administers the state’s UI program,¹⁰⁹ making it a key stakeholder. In particular, the agency’s Commissioner’s Review Office hears appeals from OAH in UI matters.¹¹⁰ Support from that office was thus critical to the project’s success.¹¹¹ Other stakeholder groups were also involved in discussions about implementing an all-Spanish pilot project, including groups both inside and outside of state government. These included the Office of the Governor, immigrants’ rights groups, interpreter organizations, and the DEIR (Diversity, Equity, Inclusion, and Respect) Committee within OAH.¹¹² Ultimately, OAH and the other stakeholders agreed that the all-Spanish pilot project had the potential to better serve hearing participants and that the project should move forward.¹¹³

2. The Agency Developed an ALJ Certification for Conducting All-Spanish Hearings

OAH personnel next developed several systems to ensure competence in the hearings and due process for participants. Chief among these was that agency’s development of a certification program for ALJs who would conduct the hearings. The agency needed to ensure that any participating judge could communicate fully with Spanish-speaking participants.

109. WASH. REV. CODE § 50.01.010 (2024); *id.* § 50.08.010.

110. Lee Interview, *supra* note 90.

111. Normally, the Commissioner’s Review Office decides appeals based on a review of audio recordings from hearings, as this is the official record of the hearings. With all-Spanish cases, the Commissioner’s Review Office agreed to use a certified interpreter to orally interpret the hearings into English on separate audio recordings, which then provided the record for the appeals. Appeals to higher authority—beginning with state superior court and then to the courts of appeals—require a written transcription.

112. Lee Interview, *supra* note 90.

113. *Id.*

Thus, to start, the agency created a glossary of legal terms to ensure consistency during hearings. This involved further collaboration with the Employment Security Department, drawing from over 140 terms that Employment Security had already developed and used in its communications with Spanish-speaking persons filing claims for unemployment benefits.¹¹⁴ From these, OAH selected a list of terms commonly arising in evidentiary hearings for its judges to master.

To certify judges, agency staff (including native Spanish speakers) developed six areas to test. These included proficiency in several areas:

- OAH Concepts Spanish Glossary;
- OAH Spanish scripts;
- Situational issues as demonstrated via three reviewed mock hearings;
- Sight translation testing from printed English to oral Spanish; and
- The Spanish language as demonstrated through a comprehensive oral evaluation in pronunciation, fluency, vocabulary, and grammar.¹¹⁵

To test these areas, each judge was required to complete (1) a written Spanish vocabulary test with words from the OAH Concepts Spanish Glossary, (2) a conversational interview in Spanish with a native speaker employed by the agency, (3) at least three mock hearings in Spanish, and (4) a sight translation of a document containing vocabulary used in proceedings.¹¹⁶ To pass, judges needed to obtain a score of 80% or higher in each category.¹¹⁷

114. When a claimant seeking unemployment benefits submits an application, the Employment Security Department “shall promptly make an initial determination which shall be a statement of the applicant’s base year wages, weekly benefit amount, maximum amount of benefits potentially payable, and benefit year.” WASH. REV. CODE § 50.20.140(5) (2024). When a claimant appeals an Employment Security Department determination, the appeal goes to OAH for an evidentiary hearing. WASH. ADMIN. CODE § 192-04-020(1) (2024); WASH. ADMIN. CODE § 192-04-060(1) (2024).

115. Customer Serv. Ctr., Telephone Interview with Laura Sanchez, Former Bilingual Supervisor, WASH. STATE OFF. OF ADMIN. HEARINGS (Aug. 16, 2024).

116. *Id.*

117. *Id.* With the expansion of all-Spanish hearings, OAH is implementing a new process for certification. A portion of the process will use an outside vendor for testing. Telephone Interview with Cristina Labra, Language Access Coordinator, OAH (Aug. 16, 2024). This will also involve listening, speaking, and writing components, along with an in-house vocabulary test. *Id.*

3. The Project Team Crafted Scripts for the Hearings

As part of this process, a team created a variety of scripts to help with different issues arising in the all-Spanish unemployment benefits hearings. The goal was not to create a rigid script, but to systematically ensure that the judges holding the hearings would remain organized, on track, and able to clearly convey key information to participants.

In general, the all-Spanish hearing scripts follow the same processes and procedures that OAH judges follow in all-English proceedings, with important additions.¹¹⁸ These additions are important to ensure due process under the law and fundamental fairness to all participants.

These key items include the following, to be established on the hearing record:

- Confirming that all hearing participants speak Spanish fluently;
- Disclosing if the judge's first language is not Spanish;
- Confirming that all participants understand the judge;
- Confirming that the judge understands all participants; and
- Providing participants with the option of an interpreter at any time during the hearing.

4. Confirming All Hearing Participants Speak Spanish Fluently

Although most people from Spanish-speaking countries speak Spanish fluently, not all do. For example, over 30% of the population of Guatemala speak a language other than the official language of Spanish.¹¹⁹ As a further example, some people in Spain speak Catalan rather than Castilian Spanish.¹²⁰ Spanish fluency cannot be taken for granted. Therefore, a judge must identify at the beginning whether participants are Spanish-fluent. This takes place on the record so that in the event of an appeal, the reviewing

118. See OFF. OF UNEMPLOYMENT INS., U.S. DEP'T OF LAB., ET HANDBOOK NO. 382, HANDBOOK FOR MEASURING UNEMPLOYMENT INSURANCE LOWER AUTHORITY APPEALS QUALITY 11-67 (3d ed. 2011), https://www.dol.gov/sites/dolgov/files/ETA/handbooks/2011/ET_Handbook_No_382_3rd_Edition.pdf [<https://perma.cc/WF23-4XSZ>] (listing federal standards for unemployment insurance appeals, most of which OAH requires in all its caseloads).

119. *The World Factbook: Guatemala*, CENT. INTEL. AGENCY, <https://www.cia.gov/the-world-factbook/countries/guatemala> [<https://perma.cc/VXA2-YE32>]. Most of these are indigenous languages.

120. *The World Factbook: Spain*, CENT. INTEL. AGENCY, <https://www.cia.gov/the-world-factbook/countries/spain> [<https://perma.cc/TF6Y-QUJE>].

tribunal has that information. Of course, if a participant is not Spanish-fluent, the hearing must include an interpreter.

5. Disclosing If the Judge's First Language Is Not Spanish

To ensure a fair hearing, a judge whose first language is not Spanish discloses this to participants on the record. Understandably, some participants may not feel comfortable in a legal proceeding speaking without an interpreter to an adjudicator who is not a native Spanish speaker. Disclosing this fact helps participants make a meaningful, informed choice as to whether they would rather have an interpreter.

6. Confirming that All Participants Understand the Judge

The judge must also ensure that all participants understand the judge. This means asking at various points early in the proceeding, prior to the evidentiary portion, whether each participant understands the judge well. Attendees of this hearing may include the appellant, their family members and friends, as well as individuals who provide testimony or representation. The judge's issuance of general information and instructions for the hearing typically provides a sufficient opportunity for participants to determine whether any communication problems exist. This process also becomes a part of the record.

7. Confirming that the Judge Understands All Participants

Due process interests also require that the judge understand the participants. Accordingly, the judge asks the appellant and any other participants neutral questions. These can be questions about favorite foods, pets, the weather, and so forth – as long as they do not relate to any of the substantive issues in the hearing. Establishing mutual understanding before evidence is taken before the tribunal is important for due process purposes. The judge then makes a finding of understanding on the record, typically along the following lines (in Spanish):

I feel completely confident that I can understand what you are telling me, including the meaning of what you are saying. I am confident that we can conduct the hearing in this manner. And you, do you understand me well? Are you comfortable continuing in this way, without an interpreter?

[If all participants answer yes, it continues.] So, for the record, I am able to fully understand and engage with you, and you are comfortable understanding me and speaking with me. We will continue with the hearing in Spanish, without an interpreter. However, if you change your mind and you want an interpreter at any time, you can stop the hearing and request an interpreter. That will not be a problem.

If the judge cannot make the necessary finding of mutual understanding, however, the matter is continued for a hearing using an interpreter.

8. Providing Participants the Option of an Interpreter at Any Time During the Hearing

Moreover, the judge repeatedly informs participants of the right to obtain an interpreter at any time. State law requires agencies to provide access to interpreters in legal proceedings. For this reason, participants in the all-Spanish hearings are not asked to waive their right to an interpreter at any point.¹²¹ For example, below is an excerpt from a script where a judge who does not speak Spanish as a first language offers the appellant the opportunity to have an interpreter at any point in the proceeding:

Spanish	English Translation
<p>Obviamente, hablo español. Pero no es mi primer idioma. Quiero, si es posible, conducir la audiencia totalmente en español, sin intérprete. Pero, solamente si podemos entendernos el uno al otro. Si usted prefiere un intérprete en cualquier momento, dígamelo por favor. Si en algún momento tiene preocupación por no entenderme, usted puede pedir un intérprete. No hay problema.</p> <p>¿Puede entenderme hasta ahora? ¿Podemos continuar así por ahora, o prefiere un intérprete?</p>	<p>Obviously, I speak Spanish. But it's not my first language. I want, if possible, to conduct the hearing entirely in Spanish, without an interpreter. But only if we can understand each other. If you prefer an interpreter at any time, please let me know. If at any time you are concerned about not understanding me, you can ask for an interpreter. There is no problem.</p> <p>Can you understand me so far? Can we continue like this for now, or would you prefer an interpreter?</p>

121. See WASH. REV. CODE § 2.43.030 (2024); WASH. ADMIN. CODE § 10-08-150 (2024).

Once the judge has addressed these threshold items, the hearing proceeds like all other hearings with testimony and other evidence. One place where all-English and all-Spanish hearings may differ, though, is regarding documents provided as evidence. Many documents from the Employment Security Department's files are written and admitted into evidence in English. Frequently, only the appellant's appeal and the determination letter reducing or denying unemployment benefits are in Spanish. Therefore, before a judge offers documents into the record as evidence, the judge must verbally translate the documents from English to Spanish if the appellant cannot read English well enough to understand them fully.¹²² The judge's translation allows a party to make an informed decision about whether to object to the admission of documents into the record. This practice, again, is an important element in providing meaningful access to justice.

B. The Pilot Phase

During the pilot phase, OAH completed 101 hearings.¹²³ These hearings arose through a standard process for UI appeals that the agencies still follow today. First, the Employment Security Department issued a determination letter, typically in Spanish, reducing or denying an unemployment claimant's benefits. The claimant ("appellant") then filed an appeal with Employment Security.

Second, Employment Security sent the case to OAH for adjudication. At that point, OAH issued a notice of hearing, setting the matter for a telephonic hearing at a particular date and time. Although the notice was in English, it included a language access notice in Spanish with a telephone number that the appellant could call to receive information about the hearing in Spanish. OAH also notified the appellant via email in Spanish that the hearing would take place in Spanish.

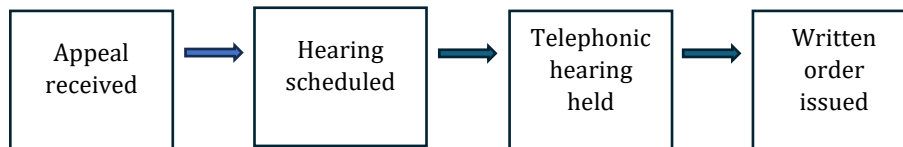
122. In all-Spanish unemployment hearings, the judge translates the documents to Spanish rather than the parties, unless a party also has documentary evidence of their own to offer.

123. This number represents hearings where a judge issued an order deciding at least one substantive issue in the case; it does not include hearings where a party failed to appear (resulting in dismissal of the appeal), withdrew their appeal, or obtained a continuance of their hearing. During the same period, OAH *scheduled* a total of 234 all Spanish hearings.

Third, the ALJ assigned to the case conducted the hearing. At the end of the hearing, the judge informed the appellant of the right to appeal if the decision was not ultimately in the appellant's favor¹²⁴ and told the appellant that they could call OAH to have a member of the bilingual team read the order to the appellant in Spanish.

Finally, once the hearing concluded, the assigned ALJ issued the written decision order in English. The order was sent to the appellant with another language access notice and a telephone number to call to have the order read aloud in Spanish or explained to the appellant through an interpreter.

The chart below shows the progression of an all-Spanish case once it reached OAH.



Perhaps the most critical part of the pilot phase was gathering participants' feedback. This allowed OAH to gauge success and implement data-driven improvements. The agency's bilingual Customer Service Center team conducted feedback surveys immediately following each hearing and before the presiding judge issued an order, to maintain the integrity of the process. Judges could only access the results after publishing their orders.

The eight survey questions focused primarily on whether participants understood the judge and felt understood by the judge. Bilingual team members also asked participants how the hearings compared with their experiences with interpreters and whether they would prefer an all-Spanish hearing in the future. For each question, participants answered whether they agreed with each statement on a scale of one to ten, with ten corresponding to "completely agree" and one to "not at all."

Participant responses supported the hypothesis that all-Spanish hearings were mostly preferable to interpreter hearings. During the pilot phase, the agency conducted 101 hearings¹²⁵ and completed 87 participant surveys. Of those surveyed, 86.25% reported an "excellent" experience, while 11.5% reported a "good" experience with the all-Spanish hearings. Only 2.3% characterized the experience as poor.

Comments included:

124 Typically, OAH judges do not announce results during the hearing but instead prepare a written order that is issued within five business days.

125. The actual number of scheduled hearings was 234, as discussed in note 123.

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"I was able to express what I wanted. Even if the decision does not go my way, I feel satisfied with the hearing."

"At first I thought it was going to be a tense conversation, but it was a pleasure being able to have a conversation with the judge in my own language."

"I felt proud, and the judge did a great job understanding me in my own language. I feel proud to know a judge cares to speak to me in my own language. That shows he cares."

"It was best to speak in my native language without fear of misusing words to express my thoughts. I am always afraid an English word may not mean the same as the one I have in mind in Spanish."

"Not using an interpreter allowed me to express myself with my own words and have my own voice. I was able to express my point of view and have the judge understand me, which gave me confidence. The judge had lots of patience with me, and he always reminded me that I had the option of an interpreter if I felt I was no longer understanding him."

As an additional measure of efficacy, and as a means for judges to measure their own performance, judges completed a self-evaluation for each hearing. Judges rated themselves on (1) fluency; (2) familiarity with Spanish legal terms; (3) flow of speech (e.g., whether the judge's speech flowed naturally without long pauses or abrupt stops and starts); (4) adequate presentation of instructions and other preliminary information; (5) statement of the issues; (6) confirmation of understanding; (7) question phrasing; and (8) adequacy of responses to participant questions.

This self-evaluation form helped judges track their own improvement and identify any problem areas. It also allowed the judges to make comments, providing a means to resolve any questions that might later arise concerning the conduct of a particular hearing.

In addition, OAH bilingual staff performed spot checks of the audio records from all-Spanish hearings. These were objective evaluations focusing on pronunciation, fluency, vocabulary, grammar, document translation, and other areas relating to oral delivery.

As a final layer of quality control, OAH included all-Spanish hearings in its random selection process for quality review.

C. The Operational Phase

The pilot phase continued until December 2022. A post-pilot phase continued through June 2023. Then, based upon the positive feedback from participants, and after careful evaluation, OAH made the all-Spanish hearings a permanent part of normal operations in July 2023.

While ALJ self-evaluations and audio spot-checks are no longer held in the operational phase, OAH continues to include its all-Spanish hearings in its quarterly review process.

OAH has also periodically conducted additional surveys of the participants. Whereas just over 97% rated their experience as “excellent” or “good” during the pilot phase, 99% of the appellants rated their experience as either “excellent” or “good” in November and December 2023, during the operational phase.

At present, three different judges hear all-Spanish cases. As of March 31, 2025, the agency has adjudicated a total of 495 cases entirely in Spanish.¹²⁶

D. Pilot & Operational Stage Results Show Advantages for All-Spanish Hearings

The all-Spanish hearing project demonstrates that when legal proceedings are offered in a single language native to people with LEP, both the participants and the tribunal benefit.

1. Increased Customer Satisfaction

As noted above, parties have provided largely positive feedback. In general, appellants reported a high level of satisfaction with the process. Most felt they had a full and fair opportunity to present their cases and were understood. In addition, parties appealed fewer of the orders issued in all-Spanish hearings compared to hearings with interpreters.¹²⁷ Although the data is not conclusive, this may well be due to increased satisfaction with the hearing process.

126. The total number of scheduled hearings for this period was 1,274.

127. U.S. DEP'T LAB., WASHINGTON STATE – UNEMPLOYMENT INSURANCE SPANISH HEARINGS PILOT PROJECT (Feb. 7, 2024).

2. Improved Quality of Testimony

Part II discussed many drawbacks of interpretation. Removing interpretation through all-Spanish hearings reduces these drawbacks. The authors see particular benefits for the quality and coherence of testimony. Single-language hearings remove the many interruptions required in consecutive interpretation,¹²⁸ as well as the distraction caused when a listener understands some of the other language.¹²⁹ Each of these factors can interrupt a person's train of thought and disrupt testimony's coherence.

In the authors' observations, without interruptions and distractions, participants' testimony is clearer, more concise, and more precisely directed at the questions asked. It is more natural and less choppy. Participants also seem to be able to follow their own ideas in a more logical fashion than when they are constantly interrupted. Consequently, the all-Spanish hearings result in improved testimony and a clearer record.

The authors have personally observed that when participants can converse directly with the judge, they understand the hearing process better, express themselves more fully, and appear more comfortable. The authors believe these benefits improve not only language access but also access to justice.¹³⁰

3. Prevention of Interpreter Miscommunication

All-Spanish proceedings remove one source of miscommunication, namely interpreters, and greatly reduce the risk of harmful miscommunication. As discussed above, UI proceedings are done *pro se*. Interpreters can make costly mistakes in translation that risk going undetected by a judge who does not understand the interpreted language. Uncorrected miscommunications risk affecting material findings of fact. Also, given the delays inherent in consecutive interpretation, appellants may forgo corrections or clarifications when they do not understand a speaker's statements or word choice to save time on explanations and responses. The all-Spanish program greatly reduces this risk by removing the intermediary and allowing direct conversations where speakers can more naturally, comfortably, and quickly seek and provide clarification or explanations. Additionally, having bilingual ALJs hold these hearings

128. See Angermeyer, *Translation as Discrimination*, *supra* note 61, at 841-42.

129. See GROSJEAN, *LIFE AS A BILINGUAL*, *supra* note 64, at 266-68.

130. See LEUNG, *supra* note 70, at 216.

reduces the number of English-only ALJs hearing cases where they may not detect interpreter errors.

Agency Time and Cost Savings. All-Spanish hearings also conserve resources. Each hearing takes less time than it would if using an interpreter. All-Spanish hearings tend to last approximately 45 minutes, while hearings of the same types with an interpreter average over an hour.¹³¹ Having every statement repeated during the hearing naturally extends the time needed to complete it. In a sample of 142 hearings, the agency saved approximately 104 hours that would have been spent had interpreters been used.¹³² All-Spanish hearings allowed parties to finish their hearings sooner and freed the judges for other work.

Although cost did not drive OAH's decision to pursue the all-Spanish hearing project,¹³³ Spanish-speaking judges have saved the agency money that would otherwise fund interpreters. Because the state, rather than participants, pays for interpreters,¹³⁴ conducting the hearings in Spanish eliminates interpreter costs. In addition, because the agency must schedule interpretation services in advance of hearings, the agency must pay a fee even if an appellant fails to appear. When judges hold the hearings without an interpreter, this is not a concern.

Alleviation of Interpreter Shortages. In several parts of the United States, courts have a shortage of legal interpreters for many languages, including

131. U.S. DEP'T LAB., *supra* note 127, at 3.

132. *Id.*

133. Lee Interview, *supra* note 90.

134. WASH. REV. CODE §§ 2.43.010, 2.43.030 (2024). Proceedings where the state bears the cost for interpreters include "criminal proceedings, grand jury proceedings, coroner's inquests, mental health commitment proceedings, and other legal proceedings initiated by agencies of government...." *Id.* § 2.43.040(2). For all other legal proceedings, "the cost of providing the interpreter shall be borne by the non-English-speaking person unless such person is indigent...." *Id.* § 2.43.040(3).

Spanish.¹³⁵ These shortages can extend beyond courtrooms to many other services.¹³⁶

As discussed above, when agencies and courts can use bilingual judges, ALJs, or hearing officers to hold proceedings, no interpreter needs to appear. From the project's inception through March 2025, OAH scheduled 1,274 all-Spanish hearings (although not all were held; sometimes appellants failed to appear, withdrew their appeals, or obtained continuances). As the agency did not need to schedule over 1,274 interpreter-hours for those hearings,¹³⁷ the interpreters who would have blocked their calendars for those hearings were able to provide services in other courtrooms or locations where their skills were needed.

Beyond the cost and time savings for courts that can hold single language proceedings, increasing the availability of court certified interpreters will reverberate to the broader court system and the community. Increased availability of court interpreters where shortages exist means fewer cases would need to be continued (or dismissed) due to interpreter unavailability. This promotes justice for parties while saving

135. See Sarah Lehr, *SCOWIS Critical of Request to Require Municipal Courts to Appoint Interpreters*, WIS. PUB. RADIO (Dec. 30, 2024), <https://www.wpr.org/news/wisconsin-supreme-court-hearing-interpreter-shortage> [<https://perma.cc/A6WN-7TXT>]; PUB. TR. & CONFIDENCE COMM., TEX. JUD. COUNCIL, REPORT AND RECOMMENDATIONS 5 (2024), <https://www.txcourts.gov/media/1459239/public-trust-and-confidence-committee-report-2024.pdf> [<https://perma.cc/F7T2-L9V2>]; Chan, *supra* note 26; Makenzie Huber, *SD Courts Aim to Improve Language Access as Diversity, Interpreter Needs Grow*, S.D. SEARCHLIGHT (June 16, 2024), <https://southdakotasearchlight.com/2024/06/16/sd-courts-aim-to-improve-language-access-as-diversity-interpreter-needs-grow> [<https://perma.cc/8TVC-VGFF>]; *Filling the Communication Gap*, CT. NEWS OHIO (June 11, 2024), https://www.courtnewsorio.gov/happening/2024/LanguageInterpreters_061124.asp [<https://perma.cc/TTP6-STTP>]; Beth Wang, *New York Migrant Surge Sparks Need for Legal Interpreters*, BLOOMBERG L. (Dec. 20, 2023), <https://news.bloomberglaw.com/litigation/new-york-migrant-surge-sparks-need-for-legal-interpreters> [<https://perma.cc/64W4-LQZV>].

136. See, e.g., Carrie Stetler, *Lives in Translation Program Helps Hundreds of State Residents Be Heard and Understood*, RUTGERS-NEWARK (July 19, 2024), <https://www.newark.rutgers.edu/news/lives-translation-helps-hundreds-state-residents-be-heard-and-understood> [<https://perma.cc/TJE6-UPYJ>].

137. OAH schedules interpreters for single-party unemployment-insurance hearings for a minimum of one hour, though interpreters for multi-case hearings and complicated issues are often scheduled for longer.

time and costs for everyone involved.¹³⁸ Increased interpreter availability may also mean other, non-court services will face fewer shortages.¹³⁹ Consequently, single language proceedings, where possible, can improve language access, access to justice, and cost savings in many other venues.

Decreased Formality and Lower Potential for Intimidation. As noted, OAH has a legislative mandate to hold hearings “with the greatest degree of informality consistent with fairness and the nature of the proceeding.”¹⁴⁰ Given that fact, and the pro se, single-party nature of OAH’s Spanish unemployment hearings, these proceedings are closer in some ways to a conversation between two people than to a formal court proceeding. This decreased formality is in line with OAH’s operating directive.¹⁴¹

OAH’s directive to hold hearings with relative informality was designed to make OAH proceedings more accessible to pro se parties of any level of education and experience. Regardless of this mandate, the authors believe removing formal consecutive interpretation from any proceeding reduces the potential for the intimidation of inexperienced LEP participants and reduces the power differential between the various participants.¹⁴² The authors believe the goals of increased accessibility of proceedings to pro se litigants and the reduction of potential intimidation and power differentials would benefit all court systems in the United States.

Benefits to the ALJs. Holding these hearings gives the authors, who are all ALJs, great personal satisfaction in providing hearing participants improved access to justice. It also provides the authors with increased

138. See Laura Abel, *Language Access in State Courts*, BRENNAN CTR. FOR JUST. 3-5 (2009), https://www.brennancenter.org/sites/default/files/legacy/publications/154142_LangWhite.pdf [<https://perma.cc/F2XF-AYLY>] (discussing problems arising from “the lack of qualified court interpreters,” including prejudicial continuances as well as the dismissal of a serious criminal charge because no interpreter was available in time to satisfy the accused’s right to a speedy trial).

139. See, e.g., Stetler, *supra* note 136; Riya Dahima, Melinda Luo & Vrushali Dhongade, *Medical Interpretation in the U.S. Is Inadequate and Harming Patients*, HASTINGS CTR. (May 22, 2023), <https://www.thehastingscenter.org/medical-interpretation-in-the-u-s-is-inadequate-and-harming-patients> [<https://perma.cc/P5MN-CNSH>].

140. WASH. REV. CODE § 34.12.010 (2024).

141. See *id.*

142. See Angermeyer, *supra* note 61, *Translation as Discrimination*, at 841-44 (discussing the power differential created between dominant- and subordinated-language speakers by courtroom interpretation practices).

opportunities to learn. It helps their language skills grow and gives them greater exposure to legal issues less common for English-speaking participants, such as federal work-authorization issues.

The authors also enjoy having fewer interpreter hearings, which, while potentially rewarding, can be very long and sometimes tedious compared to single-language hearings that cover the same ground faster. Additionally, in contrast to interpreted Spanish hearings, all-Spanish hearings free the authors' minds to focus on the content of participants' speech, removing the task of listening for interpreter errors in each language.¹⁴³

Overall Takeaways from Pilot & Operational Stages. The authors believe these hearings provide significant benefits for the participants, OAH, and ALJs. No known drawbacks exist, as either the appellant or the ALJ may decide to include an interpreter at any time, should doing so improve mutual comprehension. From the authors' perspective, whenever communication between all speakers is fully comprehensible, a single language all-Spanish hearing is always preferable to holding the same hearing with an interpreter.

IV. POLICY AND PRACTICAL CONSIDERATIONS IN IMPLEMENTING A PROGRAM

For those who wish to develop a single language hearing program of their own, the following is an overview of some policy and practical considerations.

A. Political Climate

From a broad perspective, Washington's political climate favors this type of project. As discussed above, the Governor's office sponsored the initial outreach to hearing participants that led to the all-Spanish hearings project. In addition, Washington has no laws mandating English as the official language in governmental business. This, of course, is not true in all jurisdictions.

On March 1, 2025, President Trump declared English the official language of the United States.¹⁴⁴ His executive order provides, in part, the following reasons for the designation:

To promote unity, cultivate a shared American culture for all citizens, *ensure consistency in government operations*, and create a

143. See GROSJEAN, *supra* note 64, at 266-68.

144 Exec. Order 14224, 90 Fed. Reg. 11363 (Mar. 1, 2025).

pathway to civic engagement, it is in America's best interest for the Federal Government to designate one—and only one—official language. Establishing English as the official language will not only streamline communication but also reinforce shared national values, and create a more cohesive and efficient society.¹⁴⁵

While the order does not specifically address legal proceedings in other languages, its emphasis on “consistency in government operations”¹⁴⁶ and President Trump's anti-immigrant policies¹⁴⁷ strongly suggest the Trump administration would not welcome proposals for such proceedings.

In addition, many states designate English as the only official language.¹⁴⁸ This does not necessarily mean that a state will refuse to allow legal proceedings conducted entirely in another language, but it may create additional barriers toward such proposals.

Along the same lines, today's highly charged and often bitter politics around immigration and immigrants may increase resistance to all-Spanish hearings (or hearings in languages other than English) in some jurisdictions.¹⁴⁹

For example, several state legislatures within the past few years have considered anti-immigration bills – an area typically reserved for the federal government.¹⁵⁰ In late 2023, Texas enacted a law that would

145 *Id.* (emphasis added).

146 *Id.*

147 See Exec. Order 14160, 90 Fed. Reg. 8449 (Jan. 20, 2025) (concerning birthright citizenship); *infra* note 154 (discussing Exec. Order 14160); CHILDREN'S IMMIGRATION LAW ACADEMY, *Trump Administration 2.0 Immigration Updates*, AMERICAN BAR ASSOCIATION (Feb. 25, 2025), <https://cilacademy.org/2025/02/24/trump-administration-2-0-immigration-updates/> [https://perma.cc/SWE6-48QC].

148. See *e.g.*, ARIZ. CONST. art. XXVIII, § 1; FLA. CONST. art. II, § 9; IND. CODE § 1-2-10-1 (2024).

149. See *e.g.*, *Fact-Checking Donald Trump's RNC Speech on Immigration, the Economy, World Affairs and More*, ABC NEWS (July 19, 2024), <https://abcnews.go.com/Politics/fact-checking-donald-trumps-rnc-speech-immigration-economy/story?id=112091019> [https://perma.cc/S6YA-FRBK].

150. Dan Gooding, *Map Shows Anti-Immigration Policies Surging Nationally*, NEWSWEEK (Sept. 21, 2024), <https://www.newsweek.com/immigration-policies-state-map-illegal-immigrants-border-1957199> [https://perma.cc/JLM7-CTLY].

empower the state to arrest and even deport undocumented immigrants.¹⁵¹ Nationally, a recent poll found that 54% of Americans favor mass deportation of undocumented immigrants,¹⁵² and 55% of Americans favor decreasing immigration as a whole.¹⁵³ Consequently, some jurisdictions may face significant headwinds if attempting to hold legal proceedings entirely or even primarily in a language other than English.

However, the authors wish to emphasize that anti-immigrant sentiments need not prevent jurisdictions from implementing legal proceedings held entirely in languages other than English. First, as discussed above, eliminating interpreters in some types of cases is a cost efficiency that can lead to significant monetary savings. Second, holding hearings in a participant's first language eliminates some of the risks of miscommunication, thereby increasing the odds of reaching a just result.

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151. Lauren Villagran, *Gov. Abbott Signs Controversial Law, SB4, Allowing Texas Law Enforcement to Arrest Migrants*, USA TODAY (Dec. 19, 2023), <https://www.usatoday.com/story/news/nation/2023/12/18/texas-immigration-law-sb-4/71816160007> [https://perma.cc/7FA4-N7KF]. However, the U.S. District Court for the Western District of Texas enjoined enforcement of the bill, *United States v. Texas*, 719 F. Supp. 3d 640 (W.D. Tex. 2024), and the Fifth Circuit affirmed. *United States v. Texas*, 97 F.4th 268 (5th Cir. 2024).
152. Elizabeth Crisp, *54 Percent of Americans Back Mass Deportation of Immigrants: Poll*, THE HILL (Sept. 18, 2024), <https://thehill.com/homenews/campaign/4885895-mass-deportation-immigration-poll> [https://perma.cc/CPB3-VGKZ].
153. Jeffrey M. Jones, *Sharply More Americans Want to Curb Immigration to U.S.*, GALLUP (July 17, 2024), <https://news.gallup.com/poll/647123/sharply-americans-curb-immigration.aspx> [https://perma.cc/E55C-L7EU]. For his part, President Trump has attempted, under the rubric of “protecting the meaning and value of American citizenship,” to end birthright citizenship as a further means of limiting immigration. Exec. Order 14160. 90 Fed. Reg. 8449 (Jan. 20, 2025). The order, however, generated numerous lawsuits. See Rebecca Boone, *Appeals court won't lift block on Trump's executive order attempting to end birthright citizenship*, ASSOCIATED PRESS (Mar. 11, 2025), <https://apnews.com/article/birthright-citizenship-immigration-trump-lawsuit-adbcd235c6594a9019fa752dabd08104> [https://perma.cc/3NZN-AJXR]. To date, at least three federal appellate courts have denied the Trump Administration's requests to stay preliminary injunctions blocking the order. See *Casa, Inc. v. Trump*, 2025 U.S. App. LEXIS 4856 (4th Cir. 2025); *New Jersey v. Trump*, 2025 U.S. App. LEXIS 5580 (1st Cir. 2025); *Washington v. Trump*, 2025 U.S. App. LEXIS 3983 (9th Cir. 2025).

Third, the vast majority of LEP persons in the United States are here lawfully.¹⁵⁴

In other words, even if animus against undocumented immigrants might undermine support for such proceedings, it need not. Most people would probably view governmental cost savings and just legal proceedings as desirable goals. Regardless of one's view on immigrants and immigration, strong financial and policy reasons exist to hold certain types of legal proceedings in languages other than English. Anti-immigrant sentiment need not prevent jurisdictions from moving forward in this regard.

B. Agency Support

Another critical factor in the project's favor was that it had the full support of agency leadership. In fact, our then-Chief ALJ, Lorraine Lee, spearheaded the idea and acted as the project sponsor, while our in-house project manager, Diane Jennings, coordinated and managed the project with support from each of the agency's executive management team members. This allowed prompt decision-making at key points and enabled the project to move through each phase relatively smoothly. Without this kind of support, the project could easily have taken much longer to implement, or it might have even failed entirely.

Not all adjudicatory bodies are independent agencies like OAH. Some are embedded within larger agencies. Thus, it could prove more complicated to obtain necessary permissions and support for such a project. Regardless, one thing is clear: Full management support from within the agency and from the governor's office was critical to the project's success. For this reason, the authors recommend ensuring full support before beginning a similar project.

C. Existing In-House Spanish Resources

OAH also had an advantage at the outset because we were able to use many existing in-house resources. First, we had a bilingual team in the office's call center with several Spanish speakers, including several native speakers. This group aided us in several ways. The team reviewed and made

154. Christopher Ingraham, *Millions of U.S. Citizens Don't Speak English to One Another. That's Not a Problem*, WASH. POST (May 21, 2018), <https://www.washingtonpost.com/news/wonk/wp/2018/05/21/millions-of-u-s-citizens-dont-speak-english-to-each-other-thats-not-a-problem> [https://perma.cc/A2RB-6QJP].

recommendations for hearing scripts, ensuring clarity and grammatical accuracy. The team also participated in the ALJ certification process, role-playing as unemployment claimants in mock hearings and crafting and scoring vocabulary tests. The process would have been more costly if OAH had needed to hire a third-party contractor to perform these functions. Further, the team conducted post-hearing surveys to determine participant satisfaction with the process. Having all these resources under one roof made many aspects of the project manageable and economical.

In addition, because the official OAH record for these proceedings is an audio recording, it was fairly simple and cost-effective to provide a record for appeals to the next higher tribunal. Rather than needing to have a court reporter's written record translated, we simply had the audio interpreted into English by a court-certified interpreter. This proved far less expensive than paying for a translation of a written record.

Still, the agency has incurred various costs in developing and maintaining this program. Developing the pilot program required significant time of many employees, including upper management, the project manager, and bilingual customer service staff. Testing each new ALJ for the program has required staff time as well as the ALJs' time, and in the future, the agency will incur costs for outsourcing a part of this certification process. Interpreting audio records for appeals entails a cost. The agency also gives its bilingual customer service staff and ALJs with dual-language job descriptions a 5% salary increase.

However, the cost savings from not using interpreters outweigh the agency's ongoing operating costs for this project. In OAH's situation, after weighing the costs and benefits, the agency has determined the program is very cost-effective, in addition to increasing access to justice and improving the quality of justice.

Having said this, we recognize that not all governmental entities are similarly situated. In developing a similar program, some may face challenges that OAH did not. For example, some may require third-party providers for some of the services needed. Others may face significant political opposition. We hope, however, that the OAH experience will provide ideas and potential solutions for those who desire a program of their own.

V. GOING FORWARD FOR WASHINGTON OAH

Under current Chief ALJ RaShelle Davis, OAH continues to hold all-Spanish hearings. The agency also seeks to add at least one more judge who can hold all-Spanish hearings on the UI caseload. Moreover, in early 2025, the agency expanded all-Spanish hearings to the public assistance caseload.

OAH continues to explore the feasibility of broadening this service to more caseloads. Additional languages may be added if resources permit.

CONCLUSION

The Office of Administrative hearings for the State of Washington has come a long way since the all-Spanish hearings pilot program began. From the original single ALJ, there are now three judges who work on the all-Spanish caseloads. As of March 31, 2025, OAH has saved at least 1,274 interpreter hours and completed 495 hearings entirely in Spanish, with more cases adjudicated daily.

The original vision of retired OAH Chief ALJ Lorraine Lee has come to fruition. In articulating her original intent, she stated that:

[The program] supports OAH's strategic DEI objective of expanding language access. Results indicate improvements in claimants' participation, access, and understanding of the hearing process when the Administrative Law Judge communicated directly with them in Spanish. This innovative approach is a new tool for promoting equitable access for parties in OAH hearings.¹⁵⁵

The authors are proud to be part of this innovative new program and very proud that the agency chose to focus time and resources for this to happen. While the agency benefits through the conservation of its resources, the real winners are the parties, who now have better access to justice through an equitable hearing process with fewer barriers.

Under current OAH Chief ALJ RaShelle Davis, the reality of holding all-Spanish hearings has not only thrived but continues to expand. The agency recently hired a fourth judge who will also be holding all-Spanish hearings on the UI caseload. Moreover, OAH is expanding all-Spanish hearings to new subject matters: One of the authors is holding all-Spanish hearings in a second caseload, and another is cross-training on a third case type. Finally, OAH is exploring the possibility of holding hearings in additional languages.

The authors hope that this Feature may serve as an inspiration and a paradigm for other government entities to hold legal proceedings of their own in parties' first languages.

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155. ANNUAL REPORT 2023, *supra* note 107.