

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SOS INTERNATIONAL, LLC

and

Cases 21-CA-178096
21-CA-185345
21-CA-187995

PACIFIC MEDIA WORKERS GUILD
COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 39521,
AFL-CIO

Lara Haddad, Bryan Lopez, and Lindsay Parker, Esqs.,
for the General Counsel
Charles P. Roberts, III, Esq. (Constangy, Brooks,
Smith & Prophete, LLP), Winston-Salem, N.C.,
for the Respondent
Lorrie E. Bradley, Esq. (Beeson, Taylor & Bodine),
Oakland, CA, for the Charging Party

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Los Angeles, California and Washington, D.C. over the course of 9 days between September 25 and October 13, 2017. The threshold issue in this case is whether or not non-staff interpreters in the United States immigration courts are employees within the meaning of Section 2(3) of the National Labor Relations Act (the Act)¹ or exempt from the Act as independent contractors. If they are employees, it is essentially undisputed that SOS International, LLC (SOSi or Respondent), terminated or reduced the work assignments of several interpreters and reassigned others in August 2016² in violation of Section 8(a)(3) and (1) of the Act because they engaged in protected concerted and pro-union conduct. SOSi is also charged with violating Section 8(a)(1) by interrogating and surveilling interpreters, giving interpreters the impression that they were under surveillance, making coercive statements to employees, maintaining unlawful rules and misclassifying employees as independent contractors.³

¹ 29 U.S.C. §§ 151-169.

² All dates are in 2016 unless otherwise indicated.

³ The General Counsel withdrew, without objection, the allegations at paragraphs 16 and 18 of the complaint (maintenance of a confidentiality agreement and code of professional responsibility).

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, SOSi and the Pacific Media Workers Guild Communications Workers of America, Local 39521, AFL-CIO (the Union), I make the following

FINDINGS OF FACT

I. JURISDICTION

SOSi, a corporation, is engaged in the business of contracting services to the United States government from its operational headquarters in Reston, Virginia, where it annually provides services valued in excess of \$50,000 to the Executive Office of Immigration Review (EOIR), an agency within the United States Department of Justice (DOJ), which is directly involved in interstate commerce. SOSi admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Company's Operations*

SOSi provides linguistics, logistics, construction, training, intelligence and information technology services in the government contract industry throughout the United States and internationally. After prevailing on its bid, SOSi entered into a contract with EOIR on July 13, 2015, to provide the “management and supervision, labor, and supplies necessary to perform on-site and scheduled telephone interpreter services in multiple foreign languages” at immigration courts and hearing locations throughout the United States “on an indefinite delivery, indefinite quantity task order basis.” (EOIR contract) SOSi did not commence work immediately, however, as there was a transition of the work from its predecessor, Lionbridge, through November 30, 2015. During that period, SOSi performed work in the Baltimore, Maryland and Philadelphia, Pennsylvania immigration courts. SOSi began performing work at immigration courts nationwide on December 1, 2015.

SOSi’s administration of the EOIR contract falls under the Intel Solutions Group, a division headed by Stephen Iwicki, a senior vice president. The EOIR group is overseen by a senior program manager who supervises various functions, including recruiting, testing, procurement, regional coordinators, quality management, and financial business operations. At the outset of the EOIR contract, interpreter operations were overseen by two senior program managers, Claudia Thornton and Martin Valencia. They were succeeded by the current senior program manager, Charles O’Brien, on October 31, 2016.

While regional coordinators schedule assignments in various regions throughout the country, all but one of SOSi’s 17 regional coordinators work out of its Virginia headquarters; one works remotely from Oregon. None are based at EOIR facilities. They communicate directly with interpreters by email and mobile phone, and are primarily responsible to ensure that all EOIR work orders are assigned to interpreters.

SOSi also utilizes EOIR contract interpreters to function as liaisons between EOIR court personnel and interpreters. Liaisons explain the check-in process and courthouse security procedures to new interpreters and train them in the use of courtroom equipment. In addition, liaisons switch assignments whenever necessary to ensure that hearings are covered and conduct on-site evaluations of other interpreters.

B. The Discriminatees

The discriminatees are all experienced Spanish language interpreters who worked for SOSi under the EOIR contract. All were tested, mentored, EOIR-certified and qualified to work as interpreters and translators in immigration court proceedings by Lionbridge. Although some did business and/or were registered as sole proprietors, all worked for SOSi in their individual capacities. While working for SOSi, the discriminatees accepted a majority of cases assigned to them and some declined to take travel cases.⁴

(1) Hilda Estrada

Estrada worked for Lionbridge at the Los Angeles immigration courts. She was court-certified with a vocational degree in interpreting and translation. Estrada is registered as a sole proprietor and has, on occasion, employed other individuals. However, while working for Lionbridge and then SOSi, she was always employed in her individual capacity. Estrada worked for SOSi from December 2015 through August 2016. During that time, she worked for SOSi at least 3-4 days per week. Estrada worked for other entities the rest of the week.

(2) Jo Ann Gutierrez-Bejar

Gutierrez-Bejar also worked for Lionbridge at the Los Angeles immigration courts. She was a court-certified interpreter and registered under a business name. Gutierrez-Bejar worked for SOSi, however, in her individual capacity from January to August 2016. During the time she worked for SOSi, Gutierrez-Bejar also worked 1-2 days per week for other interpreting agencies under her business name.

(3) Maria Portillo

Portillo worked for Lionbridge at the Los Angeles immigration courts. She was a court-certified court reporter and registered under a business name. From January to August 2016, however, Portillo worked 4-5 days per week exclusively for SOSi in her individual capacity.

(4) Stephany Magaña

Magaña also worked for Lionbridge at the Los Angeles immigration courts. She has a business license but never employed anyone under that name. Magaña worked for SOSi from

⁴ The testimony of Gutierrez-Bejar, Estrada, Magaña, Portillo, Morris, Rivandeneira and Rosas was credible and virtually undisputed. As indicated below, the pertinent testimony of Espinosa regarding the circumstances relating to the rescission of her contract was less than credible and contrary to the weight of the evidence.

December 2015 through August 2016. During that time, she worked most weekdays on SOSi assignments. Magaña worked the rest of the week for other interpreting agencies.

5 (5) Patricia Rivandeneira

Rivandeneira worked for Lionbridge at the Adelanto Detention Center in Adelanto, California. She received vocational training as an interpreter. Rivandeneira worked for SOSi from December 2015 through August 2016. During that time, she did not work for any other interpreting agencies. In July 2016, she was disqualified by EOIR from taking Adelanto cases due to a perceived potential conflict of interest with one of the immigration judges at that facility. Thereafter, Rivandeneira was assigned only cases at the Los Angeles facilities.

15 (6) Kathleen Morris

Morris, a court-certified interpreter, worked for Lionbridge at the immigration courts in Chicago, Illinois. She worked for SOSi in her individual capacity about 3-4 days per week from December 2015 through August 2016. During that time, she also worked for the United States district court and state courts about 1 to 2 days per week.

20 (7) Irma Rosas

Rosas also worked for Lionbridge at Adelanto and, occasionally, at the Los Angeles and San Diego immigration courts. She has an associate college degree and certifications in language interpretation. Rosas was registered, performed services for other entities as a sole proprietor and employs interpreters from time to time. However, she worked in her individual capacity for SOSi about 4-5 days per week from December 2015 through September 2016.

30 (8) Rosario Espinosa

Espinosa worked for Lionbridge at the immigration court in San Francisco. She was an attorney in Argentina, received vocational training in interpreting and is a court-certified interpreter. Espinosa worked for SOSi from March through September 27, 2016. During that time, she worked for SOSi 3-4 days per week. In addition to occasional work with other clients, Espinosa also worked for worked for Stanford University during weekends.

C. *The EOIR Contract*

40 (1) Immigration Proceedings

EOIR's immigration proceedings are carried out in immigration courts, which are overseen by the Office of the Chief Immigration Judge. As of 2017, there were approximately 325 immigration judges located in 58 immigration court facilities. Immigration courts vary in size from 1 to 33 judges, depending on the caseload. Approximately 300,000 immigration cases are heard annually. The majority of hearings are removal proceedings, which consist of brief master calendar hearings and merit hearings, which last between one and three hours. Morning and afternoon sessions each last about 3 1/2 to 4 hours with a one hour lunch break in between.

Immigration hearings are conducted in English with EOIR providing either staff or contract interpreters as needed. EOIR employs approximately 63 staff interpreters, primarily Spanish language, but relies substantially on contract interpreter services to augment staff interpreters and interpret in proceedings involving other languages. The Chief of the Language Services Unit (LSU) oversees in-house interpreters and contract interpreters.

(2) Administrative Requirements

The 2015 EOIR contract is a five year contract which provided for a base period of September 1, 2015, through August 31, 2016, with four additional option years. After the base year, EOIR has the option of extending for each option year. In addition, the EOIR contract enables EOIR to unilaterally modify the terms of the contract. Since July 2015, EOIR has modified the contract five times. The modifications related to the exercise of options for contract extensions or protocols for security background checks of individuals employed by SOSi.

Under the EOIR contract, SOSi is required to “provide all management and supervision, labor, and supplies necessary to perform on-site and scheduled telephonic interpreter services in multiple foreign languages for the EOIR.” Individuals assigned must be “qualified contract interpreters as required by the Government” and provided in the languages, times and locations required by the EOIR. Interpreters must remain at hearing locations until dismissed by EOIR. Nothing in the contract requires that SOSi interpreters be designated as independent contractors.

The EOIR contract requires that SOSi interpreters appear on time at assigned hearings and remain until released, with lunch and other breaks not guaranteed. SOSi is required to provide interpreters with identification cards and Certificate of Interpretation (COI) forms for all assignments, which interpreters must have stamped upon arrival and returned to an EOIR clerk after each assignment. Interpreters are also required to sign EOIR confidentiality agreements.

EOIR also reserves the right to disqualify interpreters for poor performance, appearance, conduct, security concerns or any other behavior. After a complaint from an attorney, judge or other EOIR staff, the complaint is reviewed by the LSU and SOSi is notified. Once an interpreter is disqualified, LSU determines the conditions for reinstatement, which may include additional training and retesting. SOSi is required to submit a monthly report to EOIR on any disqualifications listing remedial measures taken towards reinstating the interpreter.

The EOIR contract lists the unit price for each work order on an hourly, half day, daily, weekly and monthly basis. These provisions, however, do not cap or otherwise restrict SOSi’s ability to pay interpreters any rate. Nor is SOSi required to provide copies of ICAs to EOIR for review or approval. The contract also entitles SOSi to reimburse air and train fare incurred by interpreters of uncommon languages. SOSi is responsible for all other travel related costs.

Certain performance pay premiums, penalties and deductions are included in the EOIR contract. Pay premiums issue whenever SOSi covers assignments on short notice, while penalties issue whenever interpreters fail to appear for assignments. In either instance, however, SOSi is not required to pass down the premium pay, penalties or deductions to interpreters.

(3) Interpreter Qualifications and Training

5 The EOIR contract sets forth certain interpreter qualifications. They include United
 States citizenship, residency, security background checks, and knowledge of the EOIR
 Immigration Court Interpreter Handbook, Code of Professional Responsibility for Interpreters
 and Immigration Court Operating Guidelines for Contract Interpreters. SOSi must also ensure
 10 that interpreters, prior to their first assignment, view two immigration court proceedings and an
 immigration court orientation video, sign EOIR's confidentiality agreement, are provided with
 the Immigration Court Terminology list, have language dictionaries, and meet specific language
 proficiency requirements. Language proficiency is defined as follows:

- 15 (1) Either certified or have one year of experience interpreting in a judicial environment.
 Federal, State or the National Association of Judiciary Interpreters and Translators
 (NAJIT) Judiciary Interpreters and Translators Certification Examination (JITCE)
 certification will be accepted. Contractor may request a waiver of this requirement.
- 20 (2) Highly proficient in both English and the foreign language vocabularies typically used in
 formal, consultative, and casual modes of communication in justice system contexts,
 including colloquial slang, idiosyncratic slang, and regionalisms.
- 25 (3) Knowledgeable of specialized vocabulary (terminology) in both English and the foreign
 language related to legal and criminal justice system terminology and immigration
 procedures, particularly with regard to terminology typically used in immigration court
 hearings.
- 30 (4) Able to speak English and the foreign language fluently, including high to low levels of
 language register, regional colloquialisms and slang expressions, and do so with clear and
 intelligible pronunciation.
- 35 (5) Adept at simultaneous and consecutive interpretation, and sight translation.
- 40 (6) Able to perform and complete interpretation (everything is interpreted using a
 combination of consecutive and simultaneous modes of interpretation) that is factually
 and conceptually accurate without changes, omissions or additions. For a specific
 language that, as a result of a its grammatical structure, simultaneous interpretation is not
 feasible, the Contractor shall immediately, to the extent he/she wishes to accept an order
 in such language, submit a written waiver request, via email, of the requirement for
 simultaneous interpretation with the appropriate justification for such language. SOSi
 will respond in writing via email.
- 45 (7) Able to preserve the tone and emotional level of the speaker, as well as manage the
 delivery, speed and length of the statement (projection, pace and pausing) of the speaker.
- (8) Able to maintain appropriate speed and projection while rendering interpretation, and
 request and incorporate clarification of speaker's statements only when justified.

With EOIR's approval, SOSi's initial recruitment focused on interpreters contracted by Lionbridge under the predecessor contract since they were already qualified and familiar with EOIR requirements and procedures. As such, no additional screening, training or approval was required of incumbent interpreters. Many non-incumbent interpreters, however, did not have the one year judicial experience or certification required by EOIR. Thus, SOSi, over time, developed, with EOIR's approval, a process for testing and qualifying new interpreters.

SOSi's training program was implemented in May 2016. It involved an initial screening test developed and administered by the Southern California School of Interpretation (SCSI), and approved by SOSi. Interpreters who passed the test were eligible to receive EOIR training and take a final test to ensure familiarity with EOIR protocol and terminology, and sufficient language skills to meet EOIR standards. The program requires a certain number of training hours depending upon whether interpreters have (1) state, federal or NAJIT certified or returning interpreters (i.e. Lionbridge incumbents); (2) non-certified but with 1 year judiciary experience; or (3) no judiciary experience. With EOIR approval, SOSi set a minimum passing score of 70% requirement for the final test. Candidates who score between 60-69% can retake the test after 30 days. Those scoring lower than 60% must wait up to 6 months before retaking it. SOSi pays for the program's costs, but if interpreters fail, requires them to pay for the retraining and testing.

In the case of interpreters who have not performed work in immigration courts, the EOIR contract requires SOSi to produce a written evaluation of an interpreter's first court assignment to certify that his/her interpretation skills are sufficiently proficient. EOIR provides SOSi with a recording of the interpreter's first case, which SOSi must have evaluated by a qualified interpreter. SOSi currently contracts out that function nationwide to the SCSI.

With respect to annual evaluations, SOSi initially designated certain interpreters to evaluate interpreter compliance with procedural aspects such as dress, checking in with clerks, and use of courtroom equipment. More recently, SOSi has used its quality assurance personnel to perform those functions. Annual evaluations of interpreters' skill levels, however, are performed by the SCSI based on tape recordings of hearings. In accordance with EOIR requirements, SOSi's personnel also maintain master files of interpreters' current qualifications, which must be furnished to the LSU upon request.

D. The Initial Independent Contractor Agreement

The first ICA version, running from September 21, 2015 through August 31, 2016, was the lengthiest version:

1. Scope of Work: The Company hereby retains the Contractor to provide language interpretation and translation services in connection with SOSi's prime contract DJJ15-C-2610 ("Prime Contract") with the United States ("U.S.") Department of Justice ("DOJ") Executive Office of Immigration Review ("EOIR"). The DOJ EOIR is referred to herein as the "Government" or the "Customer." Services provided by the Contractor are required for immigration court proceedings on an as needed basis.

The Contractor shall only be authorized to work under this Agreement pursuant to issuance by the Company of one or more Interpretation Service Requirements (ISR's) or Translation Service Requirements (TSR's). A detailed description of the work ("Work") to be performed by the Contractor under this Agreement, as well as prerequisites for performance of such Work, are set forth in Attachment A – Statement of Work (SOW).⁵

2. Place of Performance: Interpretation services shall be provided either telephonically or at Government sites located throughout the fifty (50) United States, the District of Columbia, and U.S. Territories including, but not limited to, the Commonwealth of Puerto Rico, the Virgin Islands, the Mariana Islands and Guam. The specific place of performance shall be specified in each ISR. If translation services require performance at a specified location, such information will be included in the relevant TSR at time of issuance.
3. Period of Performance: This Agreement shall commence on 21 September 2015 and terminate, subject to the provisions in Section 4 (Conditions for Termination) below, on 31 August 2016. Prior to termination, the Company and the Contractor may negotiate to extend the term of this Agreement and the terms and conditions under which the relationship will continue.
4. Conditions for Termination: The Company shall have the right to terminate this Agreement at any time for its convenience upon written notification to the Contractor, with such advance notice as the Company deems appropriate under the circumstances. Without limiting the foregoing, the Company shall have the right to terminate this Agreement at any time, without advance notice to the Contractor, upon the occurrence of any of the following: 1) breach by the Contractor of any provision of this Agreement, including any provision contained in the SOW, 2) commitment by the Contractor of any act that is injurious to the business or reputation of the Company, 3) conviction of the Contractor with respect to a felony, 4) possession and/or use by the Contractor of alcohol, narcotics, illicit drugs or weapons in violation of SOSi policy or the laws of any country in which the Contractor is performing services for SOSi, or 5) the death or incapacity of the Contractor. Upon termination for any reason, the Company's liability to the Contractor shall be limited to payment for services provided by the Contractor and approved by the Company through the effective date of termination. The Contractor shall not be permitted to terminate this Agreement or discontinue the services provided in connection with any active ISR or TSR issued hereunder except with the Company's advance written consent, which shall not be unreasonably withheld, and with such advance notice as the Company deems appropriate under the circumstances.

⁵ The Statement of Work requires, in pertinent part, that interpreters be on-time and bring personal identification, a COI form, a bilingual dictionary and a copy of an Immigration Court Terminology List, and follow steps to obtain a DOJ-issued badge.

5. Ordering Procedures

SOSi will place ISRs and TSRs against this Agreement electronically, primarily via its Integrated Case Management System (“ICMS”), a web based portal. In the event that the ICMS is not available, ISRs and TSRs will be placed via email, facsimile, or telephone.

When SOSi receives a court interpretation or translation assignment from the Customer, it will release a notice in IMCS targeted to all SOSi independent contractors who possess the qualifications, language skills/certifications and proximity to the hearing location, if applicable, asking them to accept the assignment.

In the case of interpretation services, SOSi, in coordination with the Customer, will make every attempt whenever possible to issue notices of requirements (e.g., language, hearing location, hearing date/time) at least five (5) working days prior to the scheduled interpretation delivery start time. However, notices of requirements for interpretation services may be issued at any time prior to an assignment, including the day of the assignment. Interpretation services can be required up to the hearing start time. All assignments accepted by the Contractor are expected to be filled, regardless of the order timing; however, pursuant to Section 6 (Premium for Requirements with Short Lead Times), SOSi will pay a ten percent (10%) premium fee for short order lead times for on-site requirements.

In the case of translation services, SOSi will issue notices of requirements as it receives them from the Customer. Requirements will be for written certified translation of documents of varying lengths for different components at EOIR headquarters.

If the Contractor accepts an assignment by replying back to a notice of an interpretation or translation requirement, a message shall be generated and sent to him/her. The Contractor shall confirm acceptance of the interpretation or translation requirement, subsequent to which ICMS will generate an ISR or TSR (as applicable) which summarizes pertinent Work details, and will forward it to the Contractor.

6. Premium for Requirements with Short Lead Times: A requirement with a short lead time is defined as a requirement for on-site (i.e., not telephonic) service issued on the day of the assignment, the working day prior to the assignment or the second working day prior to the assignment. If the Contractor provides satisfactory services under an ISR issued with a short lead time, the Contractor will be entitled to a ten percent (10%) premium rounded to the nearest dollar . . . For example, if an ISR is placed anytime on Monday for an assignment anytime on Thursday, no premium would be paid. However, if a requirement is placed Tuesday, Wednesday or Thursday for a Thursday assignment, the Contractor would be entitled to the 10% premium fee.
7. SOSi will make every attempt to notify the Contractor of requirement cancellations as soon as that information is made available by the Government. However, there will

likely be cases where a requirement is cancelled on very short notice. Payment for cancelled requirements shall be specified in Table 7 below. . . . (Table omitted)⁶

- 5 8. Delivery Times: The Work required under this Agreement shall be delivered in
accordance with the scheduled date and time of the EOIR hearing specified in an
individual ISR or per instructions contained in a TSR, as applicable. Since hearings vary
in length, SOSi cannot predict at the time an ISR is placed how long the Contractor will
be required. The Contractor shall remain at the hearing location until dismissed by the
EOIR. The Contractor shall fulfill each and every requirement for interpretation services
10 issued under this Agreement on time as required or be subject to payment deductions as
specified under Section 12 (Payment Deductions).

15 The term “working days” as used herein is defined as Monday through Friday excluding
the U.S. Federal Government holidays listed below. The holidays listed below are the
only holidays that are recognized under this Agreement. . . .

20 In addition to the aforementioned holidays, there may certain types of irregularly
occurring circumstances (e.g., bomb threats, inclement weather, power outages, death of
a national figure, funding lapses, or other similar circumstances) that prompt the
Government to close one or more of its office(s); such closures are not counted as
working days.

- 25 9. Deliverables: It shall be the responsibility of the Contractor to perform each ISR or TSR
strictly in accordance with the terms thereof. The Contractor shall take all actions
necessary to ensure that he/she fulfills the requirements of an ISR or TSR assigned to
him/her.

30 If the Contractor is unable to meet all of the requirements in an ISR or TSR, he/she shall
notify SOSi immediately via a designated program email address. In the case of inability
to meet the requirements of an ISR for an EOIR hearing, such notice shall be received by
SOSi not later than twenty-four (24) hours prior to the hearing. Notification shall be
considered informational only and shall not be construed as a waiver by SOSi of any
delivery schedule or date, or any rights or remedies provided by law under this
Agreement. . . .

35 Each physical deliverable shall be accompanied by a cover letter from the Contractor.
Multiple deliverables may be delivered with a single cover letter describing the contents
of the complete package.

- 40 10. Postage, Fees, Preservation and Packaging: All postage and fees relating to submitting
information or Work to SOSi shall be paid by the Contractor. Unless otherwise specified,
all material sent to SOSi or the Customer shall be preserved and packed in accordance

⁶ Table 7 specified “two (2) times the hourly rate for the language required” in instances where SOSi provided a cancellation notice after 6 p.m. on the day prior to the scheduled hearing date. In instances where SOSi cancelled prior to 6 p.m. on the day before the hearing or where court personnel instructed the interpreter not to return for additional assignments on the same day, there was no additional payment.

with normal commercial practices to ensure acceptance by common carrier and safe arrival at destination.

- 5 11. Inspection and Acceptance of Work: Inspection and acceptance of Work performed in connection with each ISR will be performed at the place of performance or destination, by an immigration judge acting on behalf of the Government, in accordance with Federal Acquisition Regulation (FAR) clause 52.246-4. Inspection will consist of an examination of the Work for compliance with the SOW which shall serve as the basis for completion by the immigration judge of the bottom portion of a Certification of Interpretation (‘‘COI’’) Form and the ‘‘Interpreter Performance’’ sections of the Contract Interpreter Performance (CIP) Form (see Exhibits 5 and 6 of the SOW, respectively).
- 10

Inspection and acceptance of Work under each TSR will be performed at the place and by the person designated by the Government.

15

12. Payment Deductions: This Section 12 describes the circumstances under which Contractor’s compensation, as computed from the actual start time of the interpretation requirement to the end time of the requirement and multiplied by a unit price, is assessed a deduction. ‘‘Deductions’’ will be made from the Contractor’s compensation when performance is completed by the Contractor (e.g., an interpretation is performed) but performance fails to conform with SOW requirements in any of the ways described in the Payment Deduction Table below.⁷
- 20

Notwithstanding any monetary deductions made for deficiencies, nothing in this Section 12 shall be construed to abrogate the performance requirements of this Agreement or to permit the Contractor to fail to perform or to delay in performing services. Failure to perform or delay performance may subject the Contractor to the termination provisions of this Agreement.

25

- 30 13. Force Majeure: Neither party to this Agreement shall be responsible for any failure to perform for any delay in performance of the terms of this Agreement where the failure or delay is due to acts of God or the public enemy, war, riot, embargo, fire, explosion, sabotage, flood, accident, strikes, lockouts or other labor disturbances, from whatever cause arising; enactment, promulgation or issuance of any laws, regulations, orders or decrees of any competent governmental, regulatory or judicial authority. . .
- 35

- 40 14. Recording of Work Time and Compensation: The Contractor is required to enter his/her time in SOSi’s timekeeping system within twelve (12) hours after completion of an interpretation or translation assignment.

The unit prices the Contractor will receive for Work performed under this Agreement are set forth in Attachment B – Compensation. . .

⁷ The Payment Deduction Table authorizes SOSi to deduct ‘‘one (1) time the hourly rate for the language required per occurrence’’ in instances where the Contactor is late, delays a hearing or fails to perform in conformity with the SOW.

The amount payable by the Company to the Contractor for a given ISR for which Work was completed shall be based on a combination of the following:

- 5 a) Entry of Contractor's time, as computed from the start time of the interpretation requirement to the end time of the requirement, in SOSi's timekeeping system and verified by a COI Form . . . completed by an immigration judge.
- b) Selection by the Customer of the applicable unit price contained in the Unit Price Table set forth in Attachment B – Compensation. . . and
- 10 c) Deduction taken by the Government, if any, based on evaluation of the Contractor by the immigration judge on a CIP Form . . .

The amount payable by the Company to the Contractor for a given TSR for which Work was completed shall be based on the per word price included in Attachment B – Compensation.

15 In the event the Company incurs unplanned costs for the direct benefit of the Contractor, including but not limited to costs of medical care, evacuation, and/or travel, the Contractor shall reimburse the Company for all such costs.

20 The Contractor authorizes SOSi at any time to withhold from any compensation owed to Contractor by SOSi (including but not limited to payment for Work and expense requirements, if any) for any amounts owed by the Contractor to the Company.

- 25 15. Travel: Local travel expenses will not be reimbursed under this Agreement. The only allowable travel cost, which must be approved in advance by the Customer and SOSi, is airfare, or train fare, if it is less expensive than airfare, for "Uncommon languages" . . . Travel requirements under this Agreement shall be met using the most economical form of transportation available. All travel must be requested, approved and scheduled sufficiently in advance to be able to take advantage of offered discount rates, but in any event no later than six (6) full working days prior to the hearing date, or as soon as possible if the scheduled hearing is within six (6) working days of issuance of the ISR. In addition, all reservations shall be routed through SOSi to the Government's travel agency, whereby all approved travel costs shall be borne directly by the Government. The Contractor shall coordinate his/her airfare or train fare with SOSi via email or by calling the SOSi toll-free Call Center number to be provided under separate cover.
- 30
- 35

SOSi will set off against amounts payable to the Contractor under this Agreement for any travel costs incurred as a result of failure of the Contractor to appear at a designated hearing at no fault of the Government. Should setoff not be an option because amounts payable to the Contractor fall short of the travel costs, the Contractor shall reimburse SOSi within fifteen (15) days of written notice.

40 Even in cases where airfare or train fare has been approved, the Contractor is responsible for all other travel related costs associated with performance of Work at the designated location (e.g., per diem to include lodging and meals, any other form of transportation, parking, mileage, etc.) . . .

5 16. Independent Contractor: The Contractor is not an employee of the Company. The manner in which the Contractor's language interpretation and translation services are rendered shall be within the Contractor's sole control and discretion, provided the work is provided in accordance with the SOW.

10 The Contractor shall be responsible for all taxes arising from compensation and other amounts paid under the Agreement. Neither federal nor state nor local income tax, nor payroll tax of any kind (including, but not limited to Social Security, Medicare and any state unemployment taxes) shall be withheld or paid by the Company on behalf of the Contractor. The Contractor understands that he/she is responsible to pay, according to law, his/her taxes, and agrees to indemnify and hold SOSi harmless from and against all liability (financial or otherwise) for liabilities associated with taxes, filing fees, late charges, penalties, attorneys' fees, consulting and court fees that may be incurred in connection with compensation for Work performed under this Agreement.

20 The Contractor will not be eligible for, and shall not participate in, any employee benefit plan of the Company. No unemployment, disability or U.S. domestic workers' compensation insurance shall be obtained by the Company to cover the Contractor.

25 17. Relationship of Parties: This Agreement shall neither be construed to form a partnership between the parties nor create any form of employment relationship or any legal association that would impose liability upon one party for the act or failure to act of the other party. It is also expressly understood that neither the Contractor nor the Contractor's employees and agents, if any, are agents or employees of, or have authority whatsoever to bind the Company by contract or otherwise.

30 18. No Outside Services: The Contractor shall not use the service of any other person, entity or organization in the performance of the Contractor's duties under this Agreement.

35 19. Citizenship and Residency Requirements: The Contractor must meet a DOJ "Residency Requirement" to ensure an adequate background investigation can be completed. . .

40 20. Security: The Work to be performed under this Agreement will involve access to unclassified information. Duplication or disclosure of the data and other information to which the Contractor may have access as a result of this Agreement is prohibited by law and is subject to criminal penalties.

45 The Contractor will be subject to a Public Trust Investigation (PTI). Except where specifically noted otherwise, the Government will be responsible for conducting the investigation and the cost of the investigation. . . .

SOSi's security representative (SSR), in coordination with the Government Contracting Officer's Security Representative (COSR), is responsible for certifying that Customer security policies and procedures are met . . . The SSR and COSR are not authorized to alter the terms of this Agreement.

5 This Agreement shall be subject to immediate termination when it has been determined by SOSi that the Contractor has failed to fully comply with the security requirements of this Agreement.

10 21. Limitation of Liability: At no time will SOSi's liability to the Contractor exceed the value of Work already performed and accepted by the Customer under the ISR or TSR under which the liability arose. . . .

15 22. Indemnification/Insurance: The Contractor shall indemnify, defend and hold harmless the Company and its affiliates, and all directors, officers, employees and agents thereof, from and against any and all claims, demands, lawsuits, liability, costs and fees (including attorneys' fees) threatened or incurred as a result of the Contractor's acts or omissions . . . except to the extent that any such damage or injury is due solely and directly to the gross negligence of the Company.

20 In the event that the Contractor's failure to maintain commercially reasonable medical insurance results in any claim, demand, liability, cost, fee (including attorneys' fees) or assessment against the Company of any amount that was reasonably likely to have been included in such coverage had it been maintained, the Contractor shall indemnify, defend and hold harmless the Company and its affiliates, and all directors, officers, employees and agents thereof . . .

25 23. Compliance With Laws and Regulations: The Contractor must comply with all relevant U.S. and foreign, federal, state, and local laws and regulations, and all applicable orders and regulations of the executive and other departments, agencies and instrumentalities of the U.S. and foreign countries . . .

30 24. Compliance with Customer and Government Policies: The Contractor must comply with all Customer policies and procedures described in the SOW, including but not limited to those included in the following:

- 35 a) DOJ Code of Professional Responsibility for Interpreters . . .
- b) Immigration Court Operating Guidelines for Contract Interpreters . . .
- c) DOJ Confidentiality Agreement for Contract Employees
- d) Executive Office for Immigration Review Court Interpreter Handbook . . .

40 Prior to commencement of Work, the Contractor must provide SOSi with signed copies of the forms referenced in a), b) and c) above. In addition, the Contractor acknowledges that he/she has received a copy of the Executive Office for Immigration Review Court Interpreter Handbook and as well as the SOSi Code of Business Ethics and Conduct . . . and agrees to adhere to the policies and procedures contained therein. In rendering interpretation or translation services under this Agreement, the Contractor shall confirm

45 to high professional standards of work and business ethics.

25. Facilities: In the course of performing work under this Agreement, the Contractor may be given access to SOSi and/or U.S. Government work facilities and computer networks. While at any SOSi or U.S. Government facility, or connected to any SOSi or U.S. Government computer network, the Contractor shall observe and follow SOSi or U.S. Government site rules, policies, and standards, including, without limitation, those rules, policies, and standards relating to security of and access to the facility and its telephone systems, electronic mail systems, and computer systems. In addition, the Contractor shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such Work.

While performing Work at any SOSi or U.S. Government facility, the Contractor shall be subject to the standards of conduct applicable to U.S. Government employees. Special site specific regulations regarding access to classified or sensitive materials, access to computer facilities, issuance of security badges, etc., shall be provided by either SOSi or the U.S. Government.

SOSi reserves the right to expel the Contractor from any of the premises or facilities under SOSi's control for any reasonable cause.

26. Property: All property used by the Contractor in connection with this Agreement which is owned, furnished, charged to or paid for by SOSi/Customer including, but not limited to, materials, equipment, drawings and other technical information, specifications, and any replacement thereof (SOSi/Customer Property), shall be and remain the property of SOSi/Customer, as applicable, subject to removal and inspection by SOSi/Customer at any time without cost or expense to SOSi/Customer, and SOSi/Customer shall have free access to the Contractor's premises for the purpose of inspecting or removing such property. All such property shall be . . . used only for this Agreement and adequately insured by the Contractor at its expense for SOSi/Customer's protection. . . The Contractor shall be liable for loss, damage, destruction or theft to the extent allowed by FAR 52.245-1 and FAR 45-104. The Contractor shall return all property to SOSi/Customer in its original condition, reasonable wear and tear excepted. When such property is no longer required under this Agreement, the Contractor shall furnish SOSi with a list of such property and shall comply with any disposition instructions provided by the SOSi Human Resources Representative.

27. Publicity: The Contractor shall not disclose information concerning Work under this Agreement to any third party unless such disclosure is necessary for the performance of the Work required by this Agreement. . . . without the prior written consent of SOSi. . . .

28. Confidentiality; Non-Solicitation: Duplication or disclosure of the data and other information to which the Contractor may have access as a result of this Agreement is prohibited. . . . The Contractor agrees to maintain the confidentiality of all data to which access may be gained throughout the period of performance of this Agreement. . . .

The Contractor agrees that upon termination of this Agreement, he/she shall have no property or possessory right to any of the correspondence, files or materials, of whatever kind or description . . . whether developed/prepared by himself/herself or furnished by the

Customer . . . in connection with the performance of this Agreement, and that, upon demand, the Contractor will surrender immediately to the Customer such items, matters, materials, and copies.

5 The Contractor will be asked to sign U.S. DOJ Confidentiality Agreement for Contract Employees . . .

10 Except as required in the performance of Work under this Agreement, or as authorized by SOSi in writing, the Contractor will not during the performance of this Agreement or any other time thereafter, use, disclose, transfer to others, or remove from the premises of SOSi, any SOSi Confidential Information. . . . This Agreement constitutes SOSi Confidential Information. . . .

15 During the period of performance of this Agreement and for a period of one year thereafter, the Contractor will not knowingly solicit or recruit SOSi's employees or consultants to terminate their employment relationship.

20 29. Exclusivity: During the period of performance of this Agreement, except as authorized by SOSi in writing, the Contractor shall not accept work from, or perform work for, any company other than SOSi in connection with SOSi's prime contract.

25 The initial ICA also included several attachments and exhibits. Attachment A encompassed the detailed scope of work, including qualifications and language proficiency requirements required by the EOIR contract. Attachment B listed a unit pricing table with hourly, half day or full day rates.⁸ The exhibits included: (1) Language list; (2) the Code of Professional Responsibility for Interpreters; (3) Immigration Court Operating Guidelines for Contract Interpreters; (4) Immigration Court Terminology; (5) COI Form; (6) Contract Interpreter Performance Form; (7) Confidentiality Agreement for Contract Interpreters; (8) EOIR Court Interpreter Handbook; and the (9) SOSi Code of Business Ethic and Conduct.

30 Interpreters were required to sign and acknowledge receipt of the Code of Business Ethics and Conduct and were subject to a warning or termination if they failed to comply with it:

35 *Protection of Personal Information*

SOSi personnel must protect their colleagues' personal information and adhere to all applicable data privacy laws. Confidential and/or sensitive information such as a person's contact details, identification numbers, health status, or compensation data should only be used for legitimate business purposes and be accessed by, and communicated to, only those individuals who have a need to know such information.

Use of Company Assets

Except as indicated below, SOSi personnel are not permitted to use Company assets

⁸ The initial pricing table varied depending on the languages, with Spanish interpreters receiving \$55 per hour with a two hour minimum, and other languages, e.g., Burmese, affording a half day rate of \$130 and full day rate of \$260.

including, but not limited to phones, computers, copy machines, fax machines, software, logos, photos or videos, email accounts, office supplies, or vehicles for other than legitimate business purposes. Occasional use of Company equipment or resources for personal reasons is permitted as long as such use is reasonable, does not interfere with the accomplishments of work assignments, is not in support of a personal business, and does not constitute an immoral or illegal activity. All Company-issued tools and equipment must be returned upon separation from SOSi. SOSi reserves the right, subject to applicable laws, to access, review, monitor and disclose any information transmitted, received or stored using Company equipment, with or without an individual's knowledge or consent.

Use of Social Media

Social media should never be used to discuss any information concerning SOSi business or to disclose confidential or proprietary information of the Company or any third party with whom the Company has a relationship. When communicating via social media, SOSi personnel should make clear that any views expressed are their own and not those of the Company. Also, individuals who use social media must refrain from sending any messages that are offensive or embarrassing to the Company or to other people.

Communication with News Media

SOSi personnel may occasionally be contacted by media representatives who wish to obtain information about the Company's people, business or other matters. All such inquiries must be directed to SOSi's Media Department. SOSi personnel are not permitted to communicate directly with the media unless explicitly authorized to do so. Public statements about SOSi should only be made by designated Company spokespersons.

E. SOSi's Initial Implementation of the EOIR Contract

Chaos reigned during the early months of the EOIR contract, as SOSi experienced challenges putting the organizational pieces in place and recruiting former Lionbridge interpreters to cover all of the immigration court hearings. Initially, SOSi sought to subcontract with interpretation companies to supply interpreters, but abandoned that strategy when many interpreters refused to work with those companies. Initial recruitment fell flat as most incumbent interpreters were unimpressed by the terms of the proposed ICAs, particularly the hourly rates. As a result, there was a shortage of interpreters to cover all of the hearings, double-booking of assignments, and the issuance of incorrect and late payments to interpreters.

F. SOSi Negotiates With Interpreters

SOSi's initial recruitment fell short as most incumbent interpreters balked at the terms of the proposed ICAs, particularly the hourly rates. In August, in response to SOSi's proposed rates and other terms, a group of Lionbridge incumbents in Los Angeles talked amongst themselves regarding the proposed contract terms. The group of approximately 30 interpreters based out of Southern California, including Estrada, Portillo, Magaña, Gutierrez-Bejar and Rivandeneira, reached out to other interpreters throughout California by telephone, electronic communications, including the WhatsApp messaging services. The interpreters agreed not to accept the \$35 wage

offered and agreed on the rates they would demand. In September, Estrada contacted the Union, and began attending and soliciting participation in Union organizational meetings. At these meetings, Southern California interpreters sought advice and assistance in negotiating with SOSi, and signed membership cards.

5

The Southern California group formed committees to deal with specific areas such as contracts, media, social media, negotiations, and food and beverages. Estrada, Diana Illaraza and Angel Garay were chosen by the group to engage in direct negotiations with SOSi on behalf the group. Magaña, Gutierrez-Behar and Rivandeneira constituted the social media committee. Estrada was the most active, issuing frequent emails and press releases. On August 29, 2015, she emailed the group's California interpreters:

10

I am reaching out to all of you because at some point we personally discussed the attack on our jobs.

15

Please assist me in providing me with emails and/or phone numbers of all of our colleagues interested in a collaborative, factually based effort to assist each other. I have a very limited amount of emails and contact information for our team. As you all may have noticed over the years, I am not one to spend much time on the 15th floor. However, this is a very dear and near issue to me as I know it is for many of you.

20

A special THANK YOU to those of you who have recently reached out, you know who you are.

25

All language providers [are] welcomed and needed, from all regions. Please do not hesitate to reach out to me and share my contact information with other colleagues. Please do not reveal my effort to any press related group or social media at this time. I prefer email and texts.

30

On September 3, 2015, Estrada began sending nearly daily emails to interpreters nationally. On that day she reported the progress made with SOSi:

Dear Heroes and Heroines (LA, San Diego, Adelanto, San Bernardino and Beyond)

35

Every lunch meeting is incredibly meaningful and helpful. THANK YOU. Here is our latest:

SOSi is increasing their outreach and FINALLY contacting (more) current [Lionbridge] interpreters.

40

Changes (and improvements) in negotiations are occurring daily. Please share.

Some colleagues are getting the rates they have requested. There is still resistance towards a cancellation fee. We can teach SOSi what they need to learn.

45

We do not have any updates on special, travel rates.

All languages continue to have set hourly rates with a minimum, half day and full day and cancellation fee. Be ready with your answers, THEY WILL PLAY RATE GAMES. Follow up with your language team. Remember, they are asking about “rate per language per area.”

5

Everyone has agreed to share contracts via screen shots, e mails or hard copies at gatherings.

10

WE ALL AGREE TO CAREFULLY READ AND NOT SIGN ANY CONTRACTS until we have shared information with our language teams and have read the fine print!

15

We still face a new model of case assignments. SECTION 5, part two, describes a web portal where assignments will be listed daily and assigned on a first come basis. Most of you agree this is OPPOSITE from our predictable and reliable weekly assignment schedule.

WE MUST REJECT THIS WHEN ADDRESSING REPRESENTATIVES.

20

THIS IS AN OPPORTUNITY TO SET AN INDUSTRY STANDARD.

All we have is each other to protect our rates, our profession and our futures.

25

I will be available again tomorrow Friday after my AM assignment across the street. Pershing Square. Please bring updates so that we may share. Please text me at xxx-xxx-xxxx if you would like to meet in person. All languages are welcomed!
Respectfully, Your Colleague, Hilda

30

A short while later, Estrada followed up by apprising the email group that she submitted her “resume and rates as discussed in our language team to our current SOSi representative. I will share my . . . whole experience with all of you. Stay strong and remember you specialized in this field. We can teach employers how we should be treated.”

35

The following day, September 4, 2015, Estrada emailed the “LA Team (Adelanto, San Bernardino, San Diego, WE STILL NEED SAN FRANCISCO):”

Our colleagues in Texas, led by Jesus Alberto have confirmed that indeed, this is our opportunity to create a change and improve our working conditions and of course rates!

40

Following the Texas Team, we will choose ONE NEGOTIATOR PER LANGUAGE TEAM.

The goal is for everyone to have the same rate. There is PROVEN strength in unity.

45

Moving forward, all communication during negotiations will be carried out by each language team representative.

Our colleagues, Diana and Angel will conduct research regarding cost of living, transportation expenses, 24 hour cancellation policies, per diem compensation, and special travel rates.

5 You can field your questions to Diana . . . [or] Angel . . .

Please continue to email and submit your resumes to kaila.northcutt@sosi.com.

10 If you are called on the phone by any SOSi representative, kindly direct them to your language team representative.

All contracts must be shared, read carefully and DO NOT SIGN until each language team reaches a consensus.

15 If you have any reservations or questions regarding our next step, please reply on this thread.

I, your colleague Hilda will continue to represent our California team in our National Ad Hoc Committee.

20

Please continue to be cautious, our incredible momentum and strides have made us a target for other groups that may or may not align themselves with our goals.

PLEASE SHARE THIS EMAIL WITH ALL OF OUR CALIFORNIA COLLEAGUES.

25

Our unity, professionalism and friendship has been exemplary during these times of uncertainty. Our commitment to each other, our goals and professionalism IS PAYING OFF!

30

On September 8, 2015, Rosas sent a mass email objecting to several clauses in SOSi's proposed ICA. Rosas disagreed with the proposed terms of one year, while SOSi's EOIR contract was for 5 ½ years. She also objected to a provision permitting SOSi to cancel an assignment the night before a hearing:

35

Where do I begin?? They will notify us by 6:00 p.m.??? Where are we going to find another job to cover for this cancelled assignment?? They must think we are idiots or that we are crazy...

40

With respect to an "exclusivity" clause stating that the "Contractor shall not accept work from, or perform work for, any company other than SOSI in connection with SOSI'S Prime Contract," Rosas queried: "ARE WE NOW BEING CONSIDERED EMPLOYEES???" They cannot tell us who to work for or not." Rosas characterized SOSi's proposed rates as "stupid" and objected to the absence of any provision describing payment terms.

45

On September 12, 2015, Estrada sent SOSi recruiter Kaila Northcutt an email with the subject "Fwd: Revise Draft." To this email, Estrada attached a one-page document containing actual draft terms, including the following:

Compensation and Payment. Company agrees to pay Contractor the fee(s) set forth in each project assignment for Services.

5 a. Contractor is entitled to reimbursement of agreed upon expenses, such as mileage, airfare, parking, tolls, ground transportation, lodging, per diem allowance, and compensation for travel time, as applicable, except for any expenses which are pre-paid by Company.

10 b. In the event an assignment is cancelled after being confirmed, where Contractor is expected to reserve the scheduled time, or while assignment is in progress, then Contractor's fee is payable in whole or in part according to terms agreed upon in advance for each assignment, unless Company offers another similar work assignment and schedule.

15 c. Payment in full of interpreting fees must be made by Company to Contractor bi-weekly, but no later than 1st and 15th days of each month. Contractor shall not be subject to any additional fees or charges for the processing of the bi-weekly payments.

20 d. In no event should payment to Contractor be contingent upon payment to Company by the party who commissioned the work.

25 Term. This Agreement remains in effect for the duration of Company's contract with EOIR. Contractor understands and agrees that Company will be utilizing Contractor's Services only on an as needed basis and at Company's discretion. Contractor may, without penalty, decline to accept any offered assignment from Company.

30 Termination. Either Party may terminate this Agreement upon written notice to the other Party 30 days prior to the expiration of the Term of this Agreement. In the event of termination of this Agreement, Contractor must provide Company, and Company must pay Contractor for all Services performed and expenses incurred through the date of termination; Company is not obligated to pay Contractor any other compensation, severance, or other benefit whatsoever.

35 Non-Exclusivity. Company acknowledges that Contractor may perform services for other customers, persons, or companies during the term of this Agreement except while on assignment for Contractor.

40 In her email, Estrada laid out the additional terms that "[o]ur contracts will describe." The included half-day and full-day rates, less than 24-hour cancellations resulting in full pay, an hour of additional pay if a case exceeded a scheduled half-day or full-day by any amount of time, travel per diems, and a provision prohibiting the de-assignment of any case unless "cancelled by EOIR or mutual agreement." Northcutt replied on September 16, 2015, stating that she forwarded Estrada's email to management for consideration and would get back to her.

In October 2015, SOSi reached out and negotiated with the leaders of the Southern California interpreters. Three sessions took place in October 2015 via emails and conference calls. Thornton and Valencia represented SOSi. Estrada, Garay and Illaraza, as lead negotiators for the interpreters, communicated with SOSi from a rented office across the street from the Los Angeles immigration court. They were accompanied by or in touch with 20-30 Southern California interpreters, including Rosas, who kept about 100 other interpreters throughout the country updated by email, text, WhatsApp messaging and telephone calls.

The final negotiation took place on October 31 via conference call. The half day and full day rates were the main topic of discussion. The California group expressed concerned over the “exclusivity” clause set forth in the initially proposed ICA due to the impression of some who interpreted it mean that they could not perform work for other agencies while under contract with SOSi. They reached agreement on rates of \$225 for a half day and \$425 for a full day. SOSi also agreed to interpreters’ demand for full payment for cases cancelled on less than 24-hours’ notice. For travel cases, the parties agreed that SOSi and interpreters would negotiate on a case-by-case basis. The ICA also contained additional language confirming that interpreters could work for other entities when not working for SOSi.⁹ Otherwise, the ICA included terms required by EOIR, as well as additional terms demanded by SOSi. It was also agreed that the term of the agreements would run through August 2016.

While the California interpreters negotiated the terms of the ICA, SOSi was also negotiating with interpreters elsewhere throughout the country. Morris, the Chicago-based interpreter, negotiated a half-day rate of \$201, a full-day rate of \$320, and a provision guaranteeing her full pay for cases cancelled on less than 24 hours’ notice. She was given the right to work for other entities during periods when she was not working for SOSi.¹⁰ Other interpreters negotiated a range of hourly rates and/or half-day, full-day and flat rates, as well as cancellation notices and fees. For example, Marlar Swe, a California Burmese interpreter initially accepted a half day rate of \$130 and full day rate of \$260. She eventually learned of the discrepancy between her rates and those paid others, negotiated with SOSi and her contract was amended in March to compensate her at a rate of \$225 for a half day and \$425 for a full day.

By the end of February 2016, SOSi was finally able to fully staff all Immigration Court hearings and resolve most payment problems.

G. The Subsequent ICAs

The agreed upon ICA sent to California interpreters included several attachments: EOIR Code of Professional Responsibility; Immigration Court Operating Guidelines for Contract Interpreters; Office of Chief Immigration Judge Confidentiality Agreement for Contractor Employees; Office of the Chief Immigration Judge Interpreters Handbook and other resources; Immigration Court Terminology; COI Form; and SOSi Code of Business Ethics and Conduct,

⁹ Claudia Thornton testified, without contradiction, that the interpreters “wanted to be independent contractors because just about all of them had other jobs. So they didn’t want to be tied strictly to the contract. They wanted the ability to work at other places” (Tr. 1369-1370.)

¹⁰ Morris conceded that during her discussion with the SOSi negotiator “there was an understanding” that she “would be deemed an independent contractor.” (Tr. 1026-1027; GC Exh. 222.)

Declaration for Federal Employment, and bank payment information.

5 Despite the numerous ICA versions that followed, there are continuing similarities with respect to the major terms, with the exception of discretionary provisions that are not the result of flow-down requirements under the EOIR contract. Those provisions include wage rates, terms of payment for canceled assignments, pay deductions due to deficient performance or lateness, and the terms of travel cost reimbursement

10 The ICA version for the period of October 26, 2015 to August 31, 2016 was a streamlined version and became the model for most ICAs throughout the country. The scope of work stated, in pertinent part, that SOSi retained the right “to terminate this Agreement at any time for its convenience upon written notification to the Contractor, with such advance notice as the Company deems appropriate under the circumstances. . . . The Contractor shall not be permitted to terminate this Agreement or discontinue the services provided in connection with an active ISR or TSR issued hereunder except with the Company’s advance written consent, which shall not be unreasonably withheld, and with such advance notice as the Company deems appropriate under the circumstances.” Local travel expenses would not be reimbursed and, where required, travel cost reimbursement would be negotiated “on a case-by-case basis.”

20 Section 5 reiterated SOSi’s declaration that the interpreter was retained as an independent contractor and not an employee. This was identical to the same provision in the initial ICA, except for the deletion of a provision requiring interpreters to pay all taxes and indemnify SOSi for any liability resulting from their failure to pay taxes.

25 Section 6 stated that the ICA does not create a partnership or employment relationship “that would impose liability upon one party for the act or failure to act of the other party . . . Contractor shall not use the service of any other person, entity or organization in the performance of the Contractor’s duties under this Agreement.”

30 Section 7, referencing interpreters’ access to “unclassified information” and responsibility to undergo a “Public Trust Investigation,” stated:

35 Duplication or disclosure of the data and other information to which the Contractor may have access as a result of this Agreement is prohibited. This includes, without limitation, any information which is identified by SOSi at the time of disclosure as being proprietary or confidential or that due to its character and nature, or the circumstances of its disclosure, a reasonable person would recognize as being confidential or competitively sensitive. “Data” in this context includes any information about the cases or investigations the Contractor is working on, including the names and subject matters of the cases or investigations. The Contractor agrees not to disclose or divulge any such data, any interpretations and/or translations thereof, or data derivative therefrom, to unauthorized parties in contravention of these provisions.

45 Section 8 stated that SOSi’s liability to the interpreter will not “exceed the value of the Work already performed and accepted by the Customer” and “neither party to this Agreement shall be liable to the other for indirect, special, incidental, or punitive damages in connection with, performance of any obligations under this Agreement, regardless of whether the parties

have been advised of the possibility of such damages.”

Section 9 requires interpreters to “comply with all relevant U.S. and foreign, federal, state, and local laws and regulations, including but not limited to the Drug-Free Workplace Regulations and applicable anti-corruption requirements.” Further, interpreters “shall indemnify, defend and hold harmless the Company from and against any and all claims, demands, lawsuits, liability, costs and fees (including attorneys’ fees) threatened or incurred as a result of Contractor’s breach of or failure to perform his/her obligations under this Agreement.”

Section 10 required interpreters to “comply with all Company and Customer policies and procedures described in the SOW, including the EOIR Court Interpreter Handbook and the SOSi Code of Business Ethics and Conduct. In rendering . . . services under this Agreement, the Contractor shall conform to high professional standards of work and business ethics.”

Section 11 provided that while “at any SOSi or U.S. Government facility, or connected to any SOSi or U.S. Government network, the Contractor shall observe and follow SOSi or U.S. Government site rules, policies, and standards, including, without limitation, those rules, policies, and standards relating to security of and access to the facility and its telephone systems, electronic mail systems, and computer systems.”

Section 12 prohibited interpreters from making any “news release or other public announcement shall be made about this Agreement without the prior written consent of SOSi. Contractor shall direct to SOSi (without further response) any media inquiries concerning SOSi, this Agreement or the Contractor’s Work for or engagement by SOSi.”

Section 13 provided that “Contractor shall not accept work under the Prime Contract from any company other than SOSi unless previously approved in writing by SOSi, but clarified (as requested by interpreters) that this “restriction relates only to work to be performed by Contractor under the Prime Contract with DOJ EOIR,” and that nothing in the ICA would “preclude Contractor from performing work under any other DOJ program or under any federal, state or local agency contract.”

The October 14 version of the ICA, expiring March 31, 2017, included a pay rate for Spanish at \$35 per hour and a \$75 stipend for travel cases. Travel rates consisted of 8 hours of pay on the first and last travels days, a regular hourly rate for a 2-hour minimum plus a \$50 stipend for in-between days, and a minimum distance of 50 miles required for reimbursement. It included conditions for payment deductions and assessed penalties for lateness and non-performance. Interpreters were also prohibited from issuing “any news release or other public announcement about this Agreement or the Work performed hereunder without the prior written consent of SOSi. Contractor shall direct to SOSi (without further response) any media inquiries concerning SOSi, this Agreement, or Contractor's performance of the work for or engagement by SOSi.” This version no longer included the Code of Business Ethics and Conduct. It did include, for the first time, an EOIR-required Annual Compliance Representations and Certifications (CRC) form. The CRC forms included statements that interpreters needed to certify themselves as small businesses and woman-owned small businesses, if applicable, regardless of whether they were sole proprietors acting as independent contractors.

The November 29 version, expiring August 31, 2017, included the same publicity clause. The attachments were identical and included the same CRC form and cancellation payment, and the penalty deductions of \$250 and \$750. The travel rates were virtually identical to earlier versions. The most significant difference in was in Attachment B: “Compensation, Cancellation and Deductions” setting “maximum rates possible” of \$35 for Spanish, \$44 for Common languages and \$50 for Uncommon languages. An accompanying note stated: “Do not propose rates over maximum rates. Contractors will only be compensated up to the maximum rates.” Similarly, the December 23 version, expiring August 31, 2017, provided identical rates but changed the reference from “Proposed Hourly Rate” to ““Max Rate possible.””

The August 22, 2017 version, expiring August 31, 2018, was similar, including the same publicity clause, attachments and CRC forms. This ICA, however, offers interpreters additional option years beyond the first year, through 2020. The pay structure, which is not negotiable,¹¹ also establishes a 3-hour minimum and maximum hourly rates based on whether an interpreter is “certified” (possessing certifications in interpretations), “qualified” (at least 12 months experience working in a judicial setting) or “skilled” (competent interpreter who has met the pertinent testing and qualification requirements), as well as a daily commuting stipend based on distance. The minimum distance for reimbursement is 25 miles. Payment for assignments cancelled on less than 24 hours’ notice was increased to a rate of 3 times the hourly rate. Penalties charged for no-shows, last minute cancellations or leaving early without dismissal from EOIR was reduced to a rate of 3-times the hourly rate. Finally, a referral incentive of \$250 was offered to interpreters who referred experienced interpreters and/or worked at least 20 cases.

H. Interpreters Duties and Responsibilities

(1) Scheduling

SOSi interpreters are required to send regional coordinators their availability one month in advance. Based on EOIR orders, coordinators typically offer weekly or monthly assignments based on availability. If an interpreter declines an assignment, the coordinator will offer it to another interpreter who is also free to accept or decline. Once an interpreter accepts an assignment, the coordinator sends email confirmation.¹² If travel is involved, depending on the terms of the ICA, the rate will either be established or negotiated with the coordinator. Confirmation would be followed by automatic reminders sent to interpreters about cases assigned to them along with notes or messages from program managers.

Occasionally, coordinators offered last minute assignments, changed, reassigned or cancelled assignments after they have been accepted by interpreters. If an assignment was cancelled or reassigned within 24 hours prior to the scheduled hearing, the interpreter is still

¹¹ As evidenced by SOSi emails rejecting proposed counteroffered pay and travel rates and cancellation notifications in August 2017, the rates were not negotiable for Spanish and common language interpreters. (GC Exh. 235-265.) With respect to rare language interpreters, however, a high demand for and low supply of those individuals led SOSi to negotiate over their pay and travel rates.

¹² Interpreters could not schedule to work with another client on a day that they scheduled to work for SOSi because they did not know what time the hearing would finish. Essentially this meant that accepting even a half day assignment meant that the interpreter’s entire day was dedicated to SOSi. Most clients who needed interpreting services typically required services in the morning.

supposed to be paid for the cancelled sessions. However, while paid for cancelled morning sessions, interpreters have not always been paid for scheduled afternoon sessions.

5 Interpreters are permitted to swap cases, but must first get the approval of their regional coordinator in order to ensure that case and payment information are updated. Approval was routinely granted, but there were occasions when coordinators would deny the requests.¹³ Interpreters are also free to communicate their scheduling preferences, including locations and judges, to regional coordinators. Coordinators retained control over the assignment process and expressed displeasure with interpreters who were unavailable during certain periods, declined travel assignments or cancelled assignments on relatively short notice.

(2) Initial Administrative Requirements

15 SOSi instructs interpreters to arrive at the EOIR facilities 30 to 45 minutes prior to assigned hearings in order to clear building security, check in with the EOIR clerk to get their COIs stamped and sign the EOIR's interpreters log book. SOSi also instructs interpreters to dress professionally and provides them with SOSi badges that they must wear while in the courtroom. The badge bears the SOSi logo and phrase, "Challenge Accepted," along with the interpreter's photograph, name, and title, "EOIR COURT INTERPRETER." In instances where
20 EOIR complains to SOSi about inappropriate dress or failure to wear badges by interpreters at hearing locations, program managers have warned that they risked being released by court personnel if not dressed appropriately.

25 Pursuant to the EOIR contract, SOSi interpreters are prohibited from speaking to "aliens or attorneys awaiting hearings," using telephones while in the court office area without the approval of court personnel and from soliciting employment during their assignments. Interpreters who violate these conditions risk disqualification from present and future assignments. In addition, the ICA's exclusivity provisions prohibit interpreters, while performing for SOSi, from working for any other immigration-related entities without SOSi's
30 prior written approval of SOSi.

(3) Performance

35 Once in EOIR courtrooms, SOSi interpreters work until their case assignments conclude, with lunch and other breaks at the sole discretion of the judge. Interpretation is performed in one of two ways – consecutive (interprets after the speaker pauses) or simultaneous (interprets at the same time as the speaker). The mode of interpretation is left to the discretion of the judge. Many immigration judges require simultaneous interpretation, which is more intense and mentally exhausting. As a result, EOIR staff interpreters periodically relieve each other and, in
40 some instances, EOIR interpreters have SOSi interpreters relieve them. However, SOSi's EOIR contract does not permit a team interpreting arrangement for the benefit of its interpreters.

45 Interpreters are required to use EOIR's digital audio recording system, which consists of a transmitter, receiver and microphone, during the course of hearings. A SOSi interpreter liaison trains each interpreter in the use of the equipment, which is secured by courtroom personnel at

¹³ GC Exh. 10, 60-61.

the end of each day and charged for use the next hearing day. Any other supplies or equipment required by interpreters, including pens, notebooks and dictionaries, are the cost and responsibility of the interpreters. SOSi program managers routinely pass along EOIR complaints about the inappropriate handling of EOIR equipment by interpreters.

5

In some cases, interpreters of an uncommon indigenous language speak a common language, such as Spanish or French, but not English. Referred to as relay cases, these cases require an additional interpreter to interpret the indigenous language interpreter's common language into English, and vice versa. This process takes additional time and is more stressful for the interpreters. At times, the indigenous interpreter is not able to interpret every single word and has to stop and ask the respondent to explain the word used to assist the indigenous interpreter with the translation to Spanish. The whole process is more intense, longer and there are many more pauses.

10

15

In the case of telephonic interpretation, the interpreter is required to use his/her land-line based telephone connection and may not use a wireless telephone. The interpreter is released from the assignment if he/she has not been contacted by the EOIR for more than one hour from the scheduled start time and paid for one hour of service.

20

(4) Additional Administrative Requirements and Payment

25

After completing an assignment, an interpreter must return to the EOIR clerk to verify whether his/her services are still required. If an interpreter's services are no longer required, he/she must have court staff note the departure time on the COI. One COI is retained by EOIR, another is forwarded to SOSi and the interpreter retains a copy. In addition, the judge comments on the interpreter's performance on a Contract Interpreter Performance Form that is provided to SOSi. SOSi, in turn, submits any EOIR requests for further review and action to the interpreter.

30

After leaving EOIR facilities, interpreters are required to send a copy of the COI, along with a SOSi spreadsheet listing the cases and amounts owed for each, to SOSi for payment. Interpreters should be paid within 30 days of submitting their paperwork. SOSi's preferred method of payment is by direct bank deposit. Interpreters are not paid more or less based on the number of cases that they work during half-day or full-day sessions. SOSi does not withhold taxes or provide interpreters with benefits. Interpreters complete 1099 forms for tax purposes.

35

I. Discriminatees Are Denied Contract Renewal

(1) SOSi's Reasons For Not Renewing Contracts

40

When it came time to renew the interpreter contracts after August 31, SOSi decided to sever its relationship with Estrada, Portillo, Rivandeneira, Bejar, Magaña and Morris. Thornton, clearly agitated by the fact that these interpreters "were constantly working against the interest of the company" by making "public statements" and "rallying interpreters across the country with allegations" felt that they should not "continue to be rewarded with more work when they were pretty much trying to sabotage what [SOSi was] doing."¹⁴ The performance of the work under

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¹⁴ This finding is based on Thornton's testimony. (Tr. 1393-1394.)

their respective ICAs was not a factor in SOSi's decision.¹⁵

(2) Hilda Estrada

5 Estrada was the most active interpreter in advocating with SOSi. She became involved with the Union in August 2015, and thereafter began attending Union meetings and reaching out to her fellow interpreters about getting involved with the Union. In addition to speaking with fellow interpreters, in-person by phone and by email, Estrada was active on the WhatsApp messaging group. Estrada sent out press releases to media contacts in the United States and the
10 United Kingdom regarding the interpreter's problems with SOSi.

Estrada was chosen by her fellow interpreters to be one of the leaders to engage in negotiations with SOSi along with colleagues Illarraza and Garay. After negotiations concluded, Estrada continued organizing and advocating on behalf of the interpreters. She helped organize
15 an event for interpreters in mid-January 2016, to work on proposals to present to SOSi regarding entrance exams; recruitment, evaluations, hiring, orientation and other matters. Estrada also reached out to Siddiqi on behalf of herself and other interpreters to inquire about missing payments. He apologized and asked her to have interpreters resubmit their direct deposit and invoice forms. Estrada complied and communicated his request to affected interpreters.
20

On February 21, Estrada emailed a group of interpreters providing designated representatives for different Union committees, and announcing Estrada and Illarraza as the spokespersons and an upcoming Union meeting in April.

25 Estrada also helped draft, signed and collected signatures for petitions presented to SOSi and EOIR concerning quality control issues, including entrance exams, orientation, evaluation, wrongdoing by another interpreter, and the interpreters' objection to SOSi's affiliation with the Southern California School of Interpretation. On February 16, Estrada sent a letter to human resource manager Anderson in support of the petitions previously submitted by the interpreters.
30 On February 23, Anderson responded to Estrada, Illarraza and Garay:

35 Thank you for providing the contractor statements last week in support of your letter dated January 14, 2016, which raised concerns regarding Maria Elena Walker. Please know that we take the allegations that you raised very seriously, and will be conducting a full, fair, and impartial investigation. Should our investigation reveal any wrongdoing, the company will take prompt and appropriate remedial action. Thank you for bringing this matter to the company's attention.

40 Estrada filed an unfair labor practice charge (21-CA-173402) on April 6 and amended it on May 3 alleging that SOSi constructively suspended her and Illarraza, subcontracted out the

¹⁵ Thornton's testimony on cross-examination – that the interpreter's unsatisfactory performance was the reason for non-renewal – was unsupported by any credible evidence and evidently contrived as part of the subsequent litigation strategy regarding the "Group of 7." (Tr. 1401-1403; GC Exh. 8, 49, 292, 295.)

hiring of new interpreters and hired them at lower rates, and reduced certain interpreters' hours during certain periods, all because they engaged in protected concerted and union activities.¹⁶

On April 14, Anderson sent a follow up email to Estrada, Illaraza and Garay, stating that SOSi investigated the issues raised in their petitions and that the claims regarding Walker occurred prior to SOSi's contract or were unsubstantiated. She added, however, that Walker would no longer perform interpreter evaluations. Anderson concluded with a warning that retaliation against participants in the investigation would not be tolerated.

In June, Estrada engaged in an email exchange with Thornton regarding interpreters' concerns about assignments and pay rates for the more grueling relay cases. During a follow-up telephone call about these and some quality control issues, Thornton expressed dismay at the numerous letters and petitions, adding that while she appreciated Estrada's help during the transition, she noted that Estrada's concerted actions would increase SOSi's costs.¹⁷

On August 24, Estrada received an email from Thornton informing her that SOSi would not extend her ICA, which expired on August 31. The next day, she participated in a two-day demonstration outside of the Los Angeles EOIR courts. Photographs of the event were posted on the WhatsApp site depicting interpreters, including Estrada, holding signs stating: "Shame on the DOJ for hiring SOSi" and "Shame on the DOJ for turning a blind eye to injustice."

(3) Jo Ann Gutierrez-Bejar

Gutierrez-Bejar joined the Union in January. Thereafter, she attended union meetings and joined the social media committee and issued press releases that appeared in publications. Gutierrez-Bejar spoke frequently with other interpreters about work conditions and efforts to get reclassified as employees. Through group emails, WhatsApp and other modes of communication, Gutierrez-Bejar and Estrada and kept other interpreters informed of their efforts.

In January, Gutierrez-Bejar began discussing the payment issues experienced by many interpreters. She personally experienced late payments in February, March and April. On January 21, Gutierrez-Bejar drafted a press release, which was sent to media sources and referenced in an article published BuzzFeed, an internet publication, entitled: "Hundreds of Immigration Court Interpreters say they Haven't Been Paid Since Last Year." In addition, Estrada and Gutierrez-Bejar drafted a notice regarding unfair labor practice charges filed against SOSi. These notices were posted on various social media, union and interpreter group sites.

Gutierrez-Bejar also signed several petitions. One set of petitions related to complaints about interpreter Maria Elena Walker's conduct towards other interpreters and conflicts of interest between her, SCSi and SOSi. Gutierrez-Bejar also expressed these concerns in emails to Anderson. She also signed another petition in March complaining about disqualification of

¹⁶ On September 30, the Regional Director dismissed charge 21-CA-173402 on the grounds that the suspensions resulted from temporary disqualifications directed by EOIR, the lower rates were offered by SOSi prior to the interpreters' union and/or protected concerted activities, and the reduction in hours during certain periods coincided with a reduction in business.

¹⁷ Estrada's credible testimony regarding this conversation with Thornton was not disputed. (Tr. 644-645, 1389-1394.)

Illarraza and demanding her reinstatement. In July, Gutierrez-Bejar sent a group email to interpreters soliciting funds for the training of the group's union leadership.

5 On August 24, Behar received an email from Thornton informing her that SOSi would not renew her contract, without further explanation.

(4) Maria Portillo

10 Portillo assisted group leaders during negotiations leading to the first ICA. She called interpreters, met with the leaders, sent emails, researched and lent other assistance. Portillo also assisted in preparing and signed petitions critical of SOSi's recruitment process and the disqualification of certain interpreters in February. She also declined to take relay cases unless the pay rates were increased.

15 Portillo communicated with other interpreters and complained to SOSi about missing payments. In January, she assisted in preparing and signed the petition complaining about Walker's conduct towards other interpreters and the conflict of interest resulting from her relationship with the SCSI. Portillo reiterated those concerns in a February 16 letter to SOSi.

20 On August 23, about a week before her ICA expired, Portillo inquired about her contract extension. The following day, without explanation, Thornton replied that Portillo's contract would not be extended. Portillo protested that decision along with other interpreters by demonstrating outside the Los Angeles Immigration Court on August 25 and 26.

25 On September 14, Portillo received an email from Siddiqi offering assignments for the week of September 19. Portillo responded that her contract had not been renewed. Siddiqi was under the impression that her contract had been renewed and said he would investigate. On September 15, Portillo received a contract extension, which she executed and returned. Siddiqi followed with a travel assignment to Tucson, Arizona on September 16 and local cases for the week of September 19.

30 On the same day that Portillo received her contract extension, Valencia called to explain that she was not offered a contract extension earlier for numerous reasons: her refusal to take a relay case, complaints about the pay rate, breach of SOSi data, membership in the Union, photographs of her participation in the protests and critical statements about SOSi to the press. He explained that his ability to address the pay rate was hamstrung due to the litigious nature of the interpreters and the involvement of the Board, and asked why she participated in the demonstration. Portillo defended all of her actions, including the alleged data breach, which she denied, and asked Valencia to address the lack of respect that some coordinators showed interpreters. Valencia declined to address the respect issue, mentioning that the interpreters gave SOSi a hard time during the 2015 contract negotiations. The call concluded with Valencia welcoming Portillo back and Portillo informing Valencia that she confirmed her assignments and was preparing to leave for her travel assignment.

45 A short while later, just before leaving for the airport, Valencia called Portillo back and regretfully informed her that SOSi was cancelling her contract extension because she was one of eight interpreters that Iwicki's section did not want working for SOSi.

(5) Stephany Magaña

5 After communicating with a SOSi recruiter regarding proposed compensation in August
2015, Magaña reached out to other Lionbridge interpreters, including Estrada, Illaraza, and
Gutierrez-Bejar. Magaña became involved by providing logistical support to the interpreters'
negotiating committee at their rented office space across from the Los Angeles immigration
courts and assisted in the issuance of press releases that ended up in publications. She joined the
10 Union, attended organizing and strategy meetings, and recruited Union members.

15 Magaña, along with Rivandeneira, volunteered to assist other interpreters reach out to
SOSi personnel regarding their missing payments. On January 19, she emailed numerous
interpreters scheduling a meeting to discuss various issues that interpreters were experiencing,
including late payments. On February 2, Magaña emailed a SOSi payroll specialist and
characterized the late payments as disrespectful of interpreters. The next day, Magaña shared
those sentiments on internet media:

20 "It's not just about us but the people who are going to suffer are the respondents, the
immigrants in these proceedings. Magaña said. "What's going to happen when they don't
have an interpreter there or don't have a qualified interpreter in court?"

25 "When I ask them when they're going to pay me the rest of the money they owe me
there's no answer," Magaña said. "Then they'll ask me if I can tell them what days I
worked and which cases. Why do I have to provide that information when they're the
ones giving us work?"

30 Magaña and other interpreters believe the issues they've had are a concerted effort by
SOSi to remove qualified and senior interpreters from their roster in order to replace them
with inexperienced and lower paid workers.

"We definitely feel that they're trying to undermine us and get us out of the picture so
they can hire cheaper interpreters," Magaña said.

35 In addition to the above, Magaña signed the petition regarding interpreter concerns about
Walker. Magaña also signed the petition regarding quality control and opposing SOSi's
relationship with the SCSI as a conflict of interest. Finally she signed a petition protesting the
disqualifications of several interpreters.

40 Magaña entered into her initial ICA with SOSi in November 2015 and it set to expire on
August 31. On August 24, Thornton emailed Magaña informing her that SOSi would not be
extending her ICA and thanking her for her support.

45 Magaña canceled her scheduled assignments for August 25 and 26 in order to participate
in the Los Angeles demonstration concerning SOSi's decision not to renew her contract and that
of other interpreters.

(6) Patricia Rivandeneira

After being contacted by a SOSi recruiter, Rivandeneira communicated with Estrada about the negotiations and provided her with the rates desired by Adelanto interpreters. On August 31, 2015, Rivandeneira emailed Estrada their laundry list of demands, including pay rates of \$350.00 for a full day, \$200 for a half day, and full payment for cases cancelled on less than. As justification for their demands, Rivandeneira explained that Adelanto interpreters worked under “horrible” working conditions, oftentimes with no breaks and only very brief lunch breaks.

On October 7, 2015, during contract negotiations, Rivandeneira was quoted in a local Spanish language newspaper complaining about the pay and working conditions of Adelanto interpreters. She joined the Union in December 2015, attended union meetings, became a member of the Union’s media committee, recruited members in California and other states, and joined Magaña in pestering SOSi about the payroll issues experienced by many interpreters.

On January 11, Rivandeneira complained about Walker in a letter to interpreter liaison Angel Garay. On February 16, she forwarded that letter to Anderson and expressed concern that the letter had not been kept confidential and possible retaliation by Walker.

On August 23, Rivandeneira emailed Thornton inquiring about her contract extension. On August 24, Thornton sent an email response to Rivandeneira informing her that SOSi would not extend her contract beyond August 31.

(7) Kathleen Morris

During the time she worked for SOSi, and especially in the initial transitional period, Morris began discussing the various issues that she and other interpreters were experiencing. Morris also communicated with SOSi interpreters around the country through the WhatsApp messaging site. After consultations with other Chicago-based interpreters, Morris took the lead in writing to EOIR on February 4, about their problems in working for SOSi. The letter, which was copied to Thornton and Valencia, and posted on the interpreters’ WhatsApp site, complained about non-payment for services, an erratic payment process, frequent miscommunications and mass confusion over assignments. Morris warned that the Chicago interpreters could not guarantee their continued services unless they were paid by February 19.

On February 19, Morris received an email from Jessica Bailey, an Accounts Payable Specialist within SOSi, which responded to Morris’s letter. This letter was addressed to both Estrada and Morris and stated as follows:

You both have been paid for all of your COIs, we currently have nothing outstanding for both of you. So I don’t understand the reason for this letter, and the constantly going to social media to tarnish the name of the company. SOSi has been nothing but grateful for your services. Just as an FYI it is a breach of contract to be discussing your rates and financial agreements that you have made with SOSi with other interpreters. Correct me if I am wrong but didn’t you all sign a non-disclosure agreement? If you both no longer want to do business with SOSi we understand but please refrain from defamation. It is very unprofessional. I am forwarding our email to our HR legal department for review.

Following her receipt of this letter, Morris continued to be involved in discussing workplace terms and conditions with other interpreters. Morris joined the Union in about the spring of 2016. In the summer of 2016, Morris drafted and distributed a flyer advertising a
 5 WhatsApp contract issues forum – a Union event – to discuss the various issues experienced by the interpreters nationwide. The flyer ended with the sentences: “One easy phone call, instant solidarity with colleagues nationwide. End the isolation. Fellow forum colleagues work TOGETHER for improved compensation, work, and travel job conditions.”

10 From about March through June, Morris also engaged in several email exchanges with SOSi personnel, including Thornton, on behalf of herself and other interpreters about various issues, including the difficulty in obtaining access to particular courtrooms and interpreting equipment not being charged properly.

15 In late August, before her ICA expired, Morris reached out to Thornton, who informed her that SOSi would not renew her contract. Thornton told Morris that SOSi had to spend an inordinate amount of time investigating, and resolving the simultaneous equipment and lack of courtroom access issues. She also told Morris that when the latter corresponded with EOIR
 20 personnel, she indicated incorrectly that she was an EOIR interpreter, rather than a SOSI interpreter. Morris asked Thornton to reconsider, but Thornton responded that SOSi was busy sending out the RFQs and could not deal with that request until completing that process. Morris spoke with Thornton again at some point later and asked whether SOSi reconsidered her status. Thornton informed Morris that the decision had been made not to renew her contract.

25 (8) State Unemployment Compensation Awards

After SOSi refused to renew their contracts, Portillo, Estrada, Rivandeneira, Morris, and another interpreter, Waracely Weiherer, applied for State unemployment compensation. All
 30 were determined by their respective State agencies to be common law employees.¹⁸

J. The August 25-26, 2016 Demonstrations

35 (1) Interpreters Protest The Non-Renewal of Discriminatees’ Contracts

On August 25 and 26, about 15 interpreters, including Gutierrez-Bejar, Estrada, Rosas, Rivandeneira and Magaña, demonstrated outside the Los Angeles immigration court. They held
 40 signs and complained about their terminations and working conditions. The demonstration received televised media coverage.

(2) Siddiqi’s Conversation With Weiherer

45 Siddiqi contacted Weiherer, a Spanish language interpreter, on August 25 inquiring whether she could work at one of the downtown Los Angeles courts. Weiherer usually worked in the Lancaster and Adelanto courts, but sometimes covered the Los Angeles EOIR locations. She was not in Los Angeles at the time, but had been sent a text photograph of the interpreters

¹⁸ SOSi contested only the applications submitted by Rivandeneira and Weiherer.

demonstrating. Weiherer responded to Siddiqi by forwarding to him the photograph with the comment that she would “be [eaten] alive if [she went] to Los Angeles. Sad!!!” Siddiqi followed up 40 minutes later:

5 Hi Aracely thanks [sic] you so much for sharing the info. Can you please find out who participated in this and if you can recognize the faces.

10 Weiherer responded to Siddiqi about 30 minutes later with two text messages and a photograph of the demonstrators holding a banner, which read: “Shame on DOJ for turning a blind eye on justice.”

 There are more signs, but the majority are encrypted on what’s up chat. On this pic is Diana Illaraza and Irma rosas.

15 On the first sign I can only recognized [sic] odaliz, Diana, hilda. I only know a few people from Los Angeles Court.

20 The following morning, Siddiqi acknowledged Weiherer’s message from the previous day, stating “Ok. That’s helpful.” Weiherer followed up about 30 minutes, stating that she “also recognized Stephany Magaña.” Siddiqi replied by asking, “Which one is Hilda?” One minute later, he asked if Weiherer had “a clearer picture of her?” Weiherer responded one minute later: “Hilda is the one with the baseball cap and sunglasses” and “I can get some more pics from the whats up later today.” A few minutes later, Weiherer added, “You can see her on television. They came out last night on [Telemundo]. I’ll find the link later. I am at work right now.”

25 Almost immediately, Siddiqi replied: “Thank you Aracely. Please send me the link.” Weiherer replied by sending Siddiqi a photograph of three women sitting at a lunch counter in a restaurant.

30 The one in blue is [Hilda]. The one across is odaliz and the lady in glasses is Paola. I took this pic a couple weeks ago when we took the prep for an interpreters’ exam. Paola and I didn’t know that they were going to be there, and she asked to sit with them.

35 A short while later, Siddiqi told Weiherer that Rosas “was being difficult with me. If you hear anything out there let me know.” Weiherer responded, “[w]ill do my friend. I know she is very involved against SOSi and she had a lot of issues with Lionbridge previously because she didn’t follow the rules and her and patricia wanted to [sic] whatever they wanted. Ask francis she will be able to confirm it.” Siddiqi replied, “Yeah that’s right.”¹⁹

(3) SOSi’s Treatment of Rosas After the Demonstrations

40 Adelanto, Rosas’ preferred location, was 25 miles closer than Los Angeles to her home. Although she often insisted on the higher travel rate whenever she was assigned Los Angeles cases, she regularly accepted them whenever she was not assigned Adelanto cases. Although her desired rate was the same rate paid to Los Angeles interpreters who traveled to Adelanto, Rosas’ stance eventually incurred the ire of operations manager Sergey Romanov. On December 30,

¹⁹ Siddiqi asserted that he never asked Weiherer to text him information about the August demonstrations, but it is undisputed that she brought up the subject and he then asked for her to identify the interpreters involved. (Tr. 1462-1464; GC Exh. 191).

2015, he warned that she was “shooting [herself] in the foot” and would fall to the bottom of the assignment list. Rosas’ assignments fell by half in January, but she backpedaled, agreed to take Los Angeles cases at the negotiated rate and her caseload returned to normal in February.

5 Rosas was very involved early on in the organizing efforts with other interpreters who were concerned about the terms of the initial ICA. She was present during the October 2015 contract negotiations with SOSi. Rosas attended union meetings and remained involved with other interpreters relating to the terms and conditions of her employment, including signing petitions complaining about SOSi’s relationship with the SCSi and Illaraza’s disqualification.

10 After receiving a contract extension, Rosas participated in the August 25-26 demonstrations in support of the non-renewed interpreters. In a photograph of the event shared on the WhatsApp messaging site, Rosas could be seen wearing a sign which read “SOSi charges the DOJ a \$1,000 markup and wants to [hire] underqualified interpreters paying them peanuts.”

15 Rosas, who was not scheduled to work on August 25 and 26. However, a substantial number of Los Angeles interpreters suddenly cancelled their assignments and SOSi took steps to ensure that Los Angeles cases were covered during those days and the following week. Aware that Rosas was available to cover Los Angeles cases, Siddiqi switched Rosas’ Adelanto cases to another interpreter who only covered Adelanto. He called her on the morning of August 26 and asked if she would be working for SOSi the following week and Rosas confirmed that she would cover any assigned cases.

20 Later that day, Siddiqi emailed her a schedule for the following week and Los Angeles. Except for one Adelanto assignment, the rest were in Los Angeles. Rosas, still at the demonstration, called Siddiqi for an explanation. Siddiqi responded that he knew she was participating in the demonstration based on photographs someone sent him. Rosas confirmed she was at the event. Siddiqi told her that he sent her assignments but she rejected them. Rosas explained he had not initially assigned her anything so by the time he tried to assign her something she had already accepted work from another agency. Siddiqi asked Rosas why she resisted Los Angeles assignments when she covered cases in Los Angeles assignments for other clients. Rosas told Siddiqi that she accepted Los Angeles cases one or two days a week but not an entire week due to child care issues. The conversation concluded without Rosas confirming the Los Angeles assignments, but Siddiqi called Rosas a short while later to say he would try to find her some Adelanto cases.²⁰

35 Later that evening, Rosas had an email exchange with Siddiqi in which she informed him that she would only cover Los Angeles cases if she were going to be paid the \$550 travel rate in light of the 140 mile round trip commute from her home to Los Angeles. She said that she would not accept any more Los Angeles cases unless she was paid the travel rate. Siddiqi replied that Rosas “covered the same cases at your regular rate over the past 10-odd months and now all of a sudden you are asking for \$550 for a case that you covered for \$225, I will reassign the LA cases. I will just keep you assigned for the [Adelanto] cases. Thank you.”

²⁰ I credit Rosas’ testimony regarding her conversation with Siddiqi, who had no recollection of the telephone call. (Tr. 785, 832, 834-840, 1459-1460.)

The next day, Siddiqi sent Rosas two contentious emails with information showing that she worked at the Los Angeles locations on numerous occasions at her regular rate, and questioning why she suddenly resisted these assignments. Following this exchange, Rosas was assigned 20 cases during September and, contrary to Siddiqi's usual practice of assigning her cases the prior month, Siddiqi assigned Rosas cases sporadically.

On September 8, Rosas was sent an email from SOSi directing her to submit a completed Annual Compliance Form. On September 12, she received SOSi's email giving her until September 19 to return her RFQ. On September 19, Rosas emailed Iwicki and informed him that SOSi's rates were unacceptable and she would only accept the same rate that she had been receiving (half and full day rates previously negotiated by the California interpreters). She also demanded a higher mileage reimbursement. On September 27, Rosas received an email response informing her that her proposed rates were not hourly, exceeded the \$35 maximum hourly rate allowed and needed to be revised. Rosas' last day of work with SOSi was September 29.

K. SOSi's ICA Modifications After August 31, 2016

(1) Requests for Quotation

SOSi lost a lot of money during the first year of the EOIR contract due to the fact that the pay rates and travel costs for interpreter services significantly exceeded the amounts it estimated when bidding on the contract and could bill to EOIR. As a result, SOSi emailed interpreters that it was eliminating half and full day rates and would only accept hourly rate proposals.

In August 2016, SOSi began offering interpreters the option to enter into a new contract or accept an extension of their old contract with a shorter contract term after many of the initial ICAs expired on August 31. SOSi issued an "RFQ" – a request for quotations or proposals. The RFQ and related compliance documentation was transmitted through a secured shared file system on the internet cloud that could only be accessed through a link sent to the recipient. The system enabled interpreters to download the RFQ and related documents on their own computers and return them completed to SOSi through the shared file system.

SOSi's distributed the RFQs in stages to four groups: California Spanish; California non-Spanish; the rest of the United States; and a group of interpreters in the SCSI testing and training program. The ICA terms were the same for all four groups. On August 19, SOSi sent the first RFQs to the California Spanish group. SOSi also issued proposed 30-day extensions to allow enough time for interpreters to provide quotes. The RFQ stated, in pertinent part:

All independent contractors officers submitting a quote in response to this solicitation will be considered for a subcontract award. Independent Contractors are considered subcontractors consistent with the definition of subcontractor in the Federal Acquisition Regulation (FAR) Part 44.

There are three significant changes if your organization currently has an Independent Contractor Agreement with SOSi supporting this effort. First, SOSi has eliminated 1/2 day and full day fee rates from the program and will only accept hourly for services provided.

Second, SOSi has provided a not to exceed hourly rate maximum. Any response that exceeds that maximum rate will be considered technically unacceptable and ineligible for subcontract award. The hourly rate bid will establish the subcontractor's rate for the entire period of performance and will serve as the basis for priority case assignments in the future. All bidders are encouraged to bid lower than the not to exceed rate to ensure maximum competitiveness for future case assignments throughout the period of performance.

Third, travel reimbursement is now standardized across the program and will not be individually negotiated.

... Only hourly rate quotes will be considered for award. This hourly rate will apply to all cases assigned to you during the Period of Performance of the Agreement awarded as a result of your quote.

The fillable PDF form of the ICA allowed interpreters to select a rate from a pull down menu. However, the form did not allow one to select an hourly rate in excess of \$35 for Spanish, \$44 for common languages, and \$50 for uncommon languages.

(2) Negotiations between SOSi and Interpreters

SOSi's proposal did not go over well with many interpreters and some expressed their disagreement. Interpreters who failed to provide a compliant response received a letter informing that their proposal was unacceptable for one of three reasons: (1) the rates quoted not hourly; (2) the rates proposed were significantly higher than the maximum rate; or (3) that other mandatory documents were not provided. SOSi's concluded by asking them for their best and final offer. Incumbent interpreters who wished to keep their previous wage rates in their previous ICA had the option to extend their contracts. SOSi eventually agreed to a series of extensions lasting through August 31, 2017.

With many interpreters resisting SOSi's ultimatum, negotiations continued with individual interpreters. Some refused to accept SOSi's hourly rates and continued working for SOSi on contract extensions of their initial ICAs, including the half day and full day rates previously negotiated. Over time, however, SOSi weeded out interpreters who stuck with their initial ICAs because of the ample supply of other interpreters. Others agreed to hourly rates, but negotiated rates higher than the maximum rate offered. Over the next year, SOSi entered into ICAs that included a wide range of pay rates. Most interpreters agreed to hourly rates, including SOSi's proposed maximums, but some obtained slightly higher hourly rates. About one-third of interpreters negotiated forms of compensation other than hourly pay rates, including payment for a half-day, full-day, flat amount for travel, weekly, monthly or other basis.²¹

²¹ SOSi's current list of interpreters reveals a variance in their pay rates, with approximately 2/3 of interpreters paid based on a range of hourly rates and the rest compensated on the basis of half day, full day, flat, weekly, monthly or other rates. (Jt. Exh. 1(ggg); GC Exh. 269-291.)

(3) The Rescission of Rosario Espinosa's ICA

Beginning in September 2015, Espinosa, a San Francisco-based interpreter, communicated and coordinated with the Southern California group regarding their efforts to negotiate collectively with SOSi over rates and other contract terms. Ultimately, Espinosa entered into an ICA on the same terms and conditions as those agreed to by the Southern California group. Subsequently, she entered into several extensions of her ICA through September 31, 2016. Prior to that expiration date, on September 12, Espinosa received an email from SOSi with a message that "I've shared a folder with you." The email requested a quotation for EOIR interpreter services and stated as follows:

Dear Potential Subcontractor,

[SOSi] invites you to submit a quote for subcontract Spanish interpreter support on the above-referenced opportunity. Quotation procedures and instructions are included in the download folder link below marked "DOJ EOIR RFQ."

All Independent Contractors/Offerors submitting a quote in response to this solicitation will be considered for a subcontract award. Independent Contractors are considered subcontractors consistent with the definition of subcontractor in the [FAR] Part 44.

There are three significant changes if your organization currently has an Independent Contractor Agreement (ICA) with SOSi supporting this effort. First, SOSi has eliminated 1/2 day and full day fee rates from the program and will only accept hourly rates for services provided.

Second, SOSi has provided a not to exceed hourly rate maximum. Any response that exceeds the maximum rate will be considered technically unacceptable and ineligible for subcontract award. The hourly rate bid will establish the subcontractor's rate for the entire period of performance and will serve as the basis for priority of case assignments in the future. All bidders are encouraged to bid lower than the not to exceed rate to ensure maximum competitiveness for future case assignments throughout the period of performance.

Third, travel reimbursement is now standardized across the program and will not be individually negotiated.

Your quote must be received no later than 5 PM EDT, Monday, September 19, 2016. Only hourly rate quotes will be considered for award. This hourly rate will apply to all cases assigned to you during the Period of Performance of the Agreement awarded as a result of your quote. Please submit your hourly price quote in Attachment B and all other documents by uploading your documents in our secure Egnyte portal here:

<https://globalcloud.sosi.com/ul/75cHr36ouR>

Also, we have created training slides to guide you through the process. It was sent to you in a previous email and is available to download at the link below.

If after you view that tutorial you have questions, please email them to DOJIC@SOSi.com, or leave a message on our help line at 703-774-1831.²²

At the bottom of the email was a link to an attachment from SOSi's file sharing system. 5
Espinosa opened the link, which contained the proposed pay rates and other contractual terms, including steep penalties for the late arrival or failure to appear for an assignment, as well certain personal information. On September 14, Espinosa contacted Hatchette and expressed her concerns over the maximum pay rate of \$35 per hour and advised that she would submit a counteroffer. Espinosa also contacted Estrada and other interpreters to discuss her response. On 10
September 19, after emailing Hatchette about the difficulty encountered in uploading and editing the RFQ, Espinosa simply responded by attaching a counterproposal of the same half and full day rates that she had under her initial ICA.

In the meantime, a SOSi employee erroneously forwarded the RFQ links and personal 15
information of another interpreter to Espinosa and other interpreters. On September 18 and 19, Espinosa forwarded that interpreter's RFQ and personal information to at least 129 other SOSi interpreters. SOSi learned of the errant email on September 20 when interpreters posted the information on the WhatsApp Messenger site. Hatchette took immediate measures to ensure that the information was no longer accessible, informed interpreters of this development and 20
instructed them not to share or download the information:

We have discovered that some SOSi independent contractors received a link to an Egnyte folder with contract documents from other independent contractors. Upon learning of this, SOSi promptly took action to ensure the information is no longer accessible. We are 25
currently investigating this incident and are taking action to remediate. If you received such a link, either from SOSi or from another independent contractor, please do not access it, do not share it with anyone else, and do not use it to download any documents. Further, if you already downloaded any documents using this link that contain information about any other independent contractor, please delete the downloaded 30
materials immediately.

As a reminder, links provided during the contract renewal process connect to each contractor's online folder and are not to be shared or forwarded. We are working quickly to evaluate the situation and will be in direct contact with any independent contractors 35
whose personal information may have been compromised in this incident. In the meantime, please work with us to help maintain the confidentiality of your colleagues' information.

Later that day, SOSi's IT department informed Hatchette that Espinosa downloaded and 40
shared the errant link with others. Hatchette then called Espinosa and accused her of unauthorized disclosure. Espinosa gave inconsistent, shifting denials and concessions with explanations. On September 27, Hatchette emailed Espinosa with a detailed indictment of Espinosa's actions:

²² Contrary to the assertions by SOSi counsel on October 6, 2016, the September 12th email to Espinosa did not contain a statement prohibiting the documents from being shared. (GC Exh. 99, 104.) A statement to that effect, however, did appear in Hatchette's September 20th email. (GC Exh. 102.)

SOSi's IT department has been tracing your unique Request for Quote email link and we have determined that you improperly forwarded and shared this link with other third parties despite clear instructions not to do so. When SOSi questioned you about your actions, you were not forthcoming or truthful. Initially, you denied sharing the link. Then, you claimed that you could not recall whether you shared the link. Then, you stated that you shared it with a friend to help you, and later admitted that you shared it with another interpreter. However, SOSi's computer tracing records show that you, in fact, shared the link repeatedly with others the previous day.

Your conduct and, particularly your lack of candor, are not acceptable and violate your obligations to SOSi under your Independent Contractor Agreement. Accordingly, SOSi has made the decision to terminate your Independent Contractor Agreement, effective immediately. SOSi also will be considering possible legal proceedings for improper disclosure and downloading of information that is clearly confidential and proprietary in nature.²³

On October 6, SOSi counsel sent Espinosa the following letter regarding the security breach resulting from her mass distribution of another interpreter's personal information.

We represent [SOSi] . . . As you may be aware, SOSi has been investigating an incident where links sent to contractors to facilitate the transmission of their own contracting documents (which contain personal information) were improperly forwarded. We write to advise you that forensic analysis has determined that you are one of the contractors who engaged in this wrongful conduct. By doing so, you either exposed or accessed personal information in contract documents that did not pertain to you.

Specific instructions that accompanied the contract extension links that were sent to you stated: "Please do not share the link with anyone." Not only did you violate this instruction, you also violated your obligations in paragraph 7 of your [ICA], which provides in pertinent part "Duplication or disclosure of the data and information to which the contractor may have access as a result of this Agreement is prohibited," including, "without limitation," information that "due to its character and nature, or the circumstances of the disclosure, a reasonable person would recognize as being confidential." Your conduct also breached your contractual obligation in paragraph 10 of your ICA to "conform to high professional standards of work and business ethics," and paragraph 9 of your ICA, which obligates you to comply with "federal, state, and local laws and regulations," which include laws that prohibit the public communication of social security numbers, among other prohibitions.

SOSi is taking this matter very seriously and its investigation is ongoing. No final conclusions have been reached, or decisions made about what action, if any, may be taken. At this time, we ask that you cooperate fully with the company's investigation, as

²³ I credit Hatchette's factual assertions in the September 27 email, which was consistent with her testimony, and SOSi's IT records, as well as Espinosa's concession that she forwarded links to Estrada and another individual. (R. Exh. 17; GC Exh. 100, 103; Tr. 531, 555, 1352-1354.)

you are obligated to do under your ICA. Please provide to us by no later than 5 p.m. EST on October 10 (1) a list of individuals (including email addresses) to whom you forwarded any SOSi links for uploading or downloading contract documents; (2) a list of individuals (including email addresses) who sent to you any SOSi links for uploading or downloading contract documents; and (3) written confirmation that you have deleted and/or destroyed any confidential or proprietary documents about other contractors that you may have accessed or downloaded from SOSi links. You may provide the requested information to us either by letter or by email [to apierce@akingump.com](mailto:to_apierce@akingump.com).

SOSi expects your full cooperation with its investigation. This letter is not intended to be a complete statement of SOSi's rights or the facts. Additionally, this letter shall not be construed as a waiver of any legal or equitable rights or remedies, all of which are expressly reserved.

Notwithstanding the acrimony over Espinosa's distribution of another interpreter's RFQ, her regional coordinator, Ashley Ferro, reached out to her on October 11 with an offer to pay her an hourly rate of \$35 for either 4-hour or 8-hour minimum assignments, with lower travel rates than those in the expired ICA, and the steep penalties for no shows. After consulting with other San Francisco-based interpreters who received the same offers, Espinosa and the others counteroffered \$50 an hour with a 4-hour minimum, eliminating the late/no show penalty provision and rejecting the proposed travel rates. After receiving no response, Espinosa contacted Ferro, who informed her that the counterproposal was unacceptable.

L. SOSi's ICA Modifications After August 31, 2017

On July 10, 2017, SOSi emailed interpreters announcing upcoming changes in the new contracts, including offers to renew their contracts for the period of September 1, 2017 through August 31, 2018, followed by two option years running through the end of SOSi's EOIR contract on August 31, 2020. SOSi also announced that there would be rate variations based on the following interpreter skill levels: (1) certified (under federal, state, and/or NAJIT court interpreter certification); (2) qualified (minimum of one year of judicial interpreting experience but not certified); or (3) language skilled (less than one year of formal judicial interpreting experience but not certified, but meets all other competencies required by the contract). In addition, SOSi announced that there would be a three hour minimum for hourly work orders, and an assurance that morning assignments would end by noon and afternoon assignments would end by 5:00 p.m. Finally SOSi announced it would be conducting annual evaluations of interpreters.

On July 20, 2017, SOSi emailed interpreters the sixth modification of the ICA. In this email, interpreters were invited to submit a quote for a new ICA or sign a modification to their agreement incorporating the key changes identified on July 10. SOSi gave the interpreters two options. Option A was to sign a new ICA at an hourly rate assigned to the interpreter based on his/her skill level and the terms set forth in the July 10 email. Option B enabled interpreters to stay at their current rates and extend their contract through August 31, 2018.

In addition to the standardized travel rates set forth in the new ICA, SOSi booked and paid for airfare, hotel, and car rentals. However, incidentals costs such as parking, tolls, gasoline, mileage, meals were not covered. For travel cases, SOSi sends the traveling interpreter

the itinerary via email once the travel arrangements have been made. Typically SOSi sends the interpreter to the case location a day in advance of the assignment. Interpreters are not paid for travel time to and from the destination or idle days in between assignments.

5 Interpreters who sought to negotiate the rates and other terms for travel cases were denied. Burmese interpreter Marlar Swe, after opting to renew her current ICA through August 2018, submitted a proposal for flat rates for travel cases. SOSi initially rejected her proposal on August 3 and again on August 25, when SOSi informed her that she could either opt to extend her contract with travel to be arranged on a case-by-case basis or enter into a new ICA and
10 accept an hourly rate of \$58 with a travel rate equivalent to \$539 per day for the first and last day (which was based on SOSi's standardized travel rate of the hourly rate multiplied by 8 and added to the standard stipend of \$75 (i.e. \$58 times 8= \$464 + \$75=\$539). Swe's contract was thus extended based on Option B without any standardization of the travel rates.

15 LEGAL ANALYSIS

I. EMPLOYMENT STATUS OF INTERPRETERS

20 The overriding issue in this case is whether SOSi interpreters are employees or independent contractors. If they work as employees as defined at Section 2(3) of the Act, they are entitled to the protections of the Act. If determined to be independent contractors, the interpreters are without recourse under the Act with respect to SOSi's adverse actions.

25 Although it is admittedly a close question, based on extant Board precedent and longstanding interpretive principles in the area of worker classification, SOSi interpreters are employees as defined in Section 2(3) of the Act.

A. *Applicable Legal Principles*

30 SOSi, as the party contesting the classification of its workers and asserting that they are independent contractors, bears the burden of proof. *FedEx Home Delivery*, 361 NLRB 610, 610-611 (2014), enf. denied, No. 14-1196 (D.C. Cir. 2017); *see also BKN, Inc.*, 333 NLRB 143, 144 (2001); *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 710-712 (2001).

35 In determining whether a worker is properly classified as an employee or independent contractor, the Board traditionally applies general agency principles. *FedEx*, 361 NLRB at 611; *N.L.R.B. v. United Ins. Co. of Am.*, 390 U.S. 254, 256 (1968). In identifying the relevant common-law agency principles, "the Board must also conform to the Supreme Court decisions that have applied the same common-law test under other Federal statutes. In those cases, the
40 Court has cited with approval the nonexhaustive, multifactor test articulated in the Restatement (Second) of Agency § 220 (1958)." *FedEx*, 361 NLRB at 611. The relevant factors from § 220 of the Restatement are as follows:

- 45 (a) the extent of control which, by the agreement, the master may exercise over the details of the work;
- (b) whether or not the one employed is engaged in a distinct occupation or business;

- 5
- (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- (d) the skill required in the particular occupation;
- 10 (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (f) the length of time for which the person is employed;
- (g) the method of payment, whether by the time or by the job;
- 15 (h) whether or not the work is a part of the regular business of the employer;
- (i) whether or not the parties believe they are creating the relation of master and servant; and
- 20 (j) whether the principal is or is not in the business.

The Supreme Court has emphasized that in analyzing whether a worker is an employee under common-law agency principles, there is “no shorthand formula or magic phrase that can be applied... all of the incidents of the relationship must be assessed and weighed with no one factor being decisive.” *United Insurance*, 390 U.S. at 258. In accordance with this standard, the Board adheres to the following principles in assessing whether a worker is properly classified as an employee or as an independent contractor: “(1) all factors must be assessed and weighed; (2) no one factor is decisive; (3) other relevant factors may be considered, depending on the circumstances; and (4) the weight to be given a particular factor or group of factors depends on the factual circumstances of each case.” *FedEx*, 361 NLRB at 611.

The ultimate determination depends upon the combined weight of all of the relevant factors, and the inquiry “requires more than simply tallying factors on each side and selecting the winner on the basis of a point score.” *Lancaster Symphony Orchestra*, 357 NLRB 1761, 1763 (2011) (quoting *Schwieger v. Farm Bureau Insurance Co. of NE*, 207 F.3d 480, 487 (8th Cir. 2000)). Consequently, “the same set of factors that was decisive in one case may be unpersuasive when balanced against a different set of opposing factors in another case.” *Lancaster Symphony*, 357 NLRB at 1763; see also *Roadway Package* 326 NLRB 842, 850 (1998); *Austin Tupler Trucking*, 261 NLRB 183, 184 (1982).

In addition to the Restatement factors, the Board has also considered whether a worker has “significant entrepreneurial opportunity for gain or loss.” *Roadway Package*, 326 NLRB at 851 (1998). Related to that issue is whether the workers “have ability to work for other companies, can hire their own employees, and have a proprietary interest in their work.” *Fedex*, 361 NLRB at 612. In this regard, only “actual opportunities” for entrepreneurial independence will weigh in favor of independent contractors status. *Id.* In other words, “if a company offers its workers entrepreneurial opportunities that they cannot realistically take, then that does not add

any weight to the company’s claim that the workers are independent contractors.” *Id.* (quoting *C.C. Eastern, Inc. v. NLRB*, 60 F.3d 855, 860 (D.C. Cir. 1995)). In considering the worker’s actual entrepreneurial opportunities, the ultimate question is “whether the putative independent contractor is, in fact, rendering services as part of an independent business.” *Id.*

5

B. Application of the Restatement Factors to Interpreters

(1) Extent of Control over the Details of the Work

10 The General Counsel contends that SOSi maintained greater control than the interpreters did over the details of their work, but acknowledges that much of that control derived from EOIR requirements. In such instances, control cannot be imputed to SOSi if it emanates from government regulatory or contractual requirements. *See Air Transit*, 271 NLRB 1108, 1111 (when analyzing company’s degree of control over cab drivers, Board refused to consider requirements imposed on drivers stemming from company’s contract with the Federal Aviation Administration); *Cardinal McCloskey Servs.*, 298 NLRB 434, 435 (1990) (“Enforcement of laws or government regulations... is not considered control over the manner and means by which results are accomplished, because such enforcement is, in reality, supervision by the government, not by the employer”) (internal quotations omitted).

20 Nevertheless, the General Counsel contends that the control factor favors employee status because SOSi asserted additional controls over the details of interpreters’ work beyond those required under the EOIR contract. Relying on *People Care, Inc.*, 311 NLRB 1075, 1077 (1993), the General Counsel argues that “where the government requirements are general in form and allow the employer to retain flexibility to assert meaningful control according to the employer’s needs and requirements, control so asserted is attributable to the employer.” The General Counsel further asserts that SOSi exercises control by deciding when and where interpreters will be offered assignments, citing *Minn. Timberwolves*, 365 NLRB No. 124, slip. op. at 6 (2017) and *Sisters’ Camelot*, 363 NLRB No. 13, slip op. at 2 (2015), and by threatening to withhold future assignments if interpreters are unavailable or unwilling to accept an assignment offered, citing *Lancaster Symphony*, 357 NLRB at 1763.

35 SOSi maintains that essentially all supervision of interpreters is exercised by EOIR and the immigration courts. The consequence of such control, in SOSi’s view, is that control exercised by the government cannot be attributed to the company, citing *Don Bass Trucking, Inc.*, 275 NLRB 1172, 1174 (1985) and *Air Transit, Inc.*, 271 NLRB 1108, 1110 (1984). In support, the company emphasizes that SOSi’s managerial and administrative personnel neither speak the interpreters’ foreign languages nor have experience in courtroom interpreting. The company also notes that only EOIR’s Language Services Unit can disqualify an interpreter, and that nearly all instructions given to interpreters come from immigration judges, not SOSi. With respect to control over assignments, the company explains that all assignment dates and times are determined by EOIR, and that the company only offers assignments to interpreters, who are always free to reject them. The company also argues that a worker may be required to perform work within a certain time frame, while still remaining an independent contractor, citing *The Comedy Store*, 265 NLRB 1422, 1422, 1449-1450 (1982), and *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 752-753 (1989).

45

The very nature of courtroom interpreting requires interpreters to exercise instantaneous skilled, ethical and independent judgment. See *Standard Oil Co.*, 230 NLRB 967, 972 (1977) (suggesting that worker’s regular exercise of independent judgment indicates independent contractor status). See also, *Metcalf & Eddy v. Mitchell*, 269 U.S. 514, 521 (1926) (consulting engineers were independent contractors because their work “involved the use of judgment and discretion on their part... This permitted to them liberty of action which excludes the idea that control or right of control by the employer which characterizes the relation of employer and employee and differentiates the employee or servant from the independent contractor”).

Interpreters must make quick, difficult and critical choices, such as how to properly phrase an idiomatic expression or capture a speaker’s tone and emotion. These are not “minor facets” of interpreting. See *FedEx*, 361 NLRB at 622. Such decisions, given to the interpreters’ discretion, are at the core of what they are required to do essential to ensure that immigration hearings are conducted fairly. SOSi does not provide any direction to the interpreters as they carry out their core functions, nor would it be practicable for the company to do so.

On the other hand, the General Counsel correctly notes that SOSi exercised control beyond what was required under its contract with EOIR, and that such control asserted should be attributed to the company. *People Care, Inc.*, 311 NLRB 1075, 1077–78 (1993). See also *Stamford Taxi*, 332 NLRB 1372, 1385 (2000) (stating that employer control exceeding government regulations favors employee status). The Code of Business Ethics contained significant restrictions on interpreters’ use of social and media and ability to talk to the media about SOSi business. The more recent ICAs continue prohibiting interpreters from transferring assignments without SOSi approval, and from performing additional work for EOIR beyond the scope of the ICAs. All of these requirements exceed SOSi’s legal obligations. The General Counsel also notes that employer retaliation for a worker’s refusal to accept an assignment suggests employee status. *Cf. The Comedy Store*, 265 NLRB at 1428-1429, 1450 (comedians found to be independent contractors in part because record *did not support* finding that employer deliberately denied future performances to comedians who refused offers to perform).

In addition, over time SOSi has begun to take a more active role in ensuring that interpreters meet EOIR’s requirements. SOSi first employed interpreters as liaisons to evaluate interpreters’ dress, professionalism and use of equipment, but now has its employees conduct annual on-site evaluations of interpreters’ compliance with EOIR’s procedural requirements. SOSi also uses SCSi to evaluate interpreters’ performance. Although SOSi’s EOIR contract requires it to provide “qualified contract interpreters,” these supervisory measures go beyond what is mandated by the contract, and thus may be imputed to SOSi.

This factor slightly favors independent contractor status. The interpreters work in the courtroom independently and without direction from SOSi. The extensive skills, certification, and ethics required of interpreters all flow-down from EOIR. In addition, while in the courtroom, interpreters are subject to the instruction, supervision, and evaluation of immigration judges, not SOSi. As previously stated, such incidents of control cannot be attributed to SOSi because they are exclusively the result of governmental requirements. See, e.g., *Air Transit*, 271 NLRB 1108, 1111; *Cardinal McCloskey Servs.*, 298 NLRB 434, 435 (1990).

Distinguishing *Minnesota Timberwolves*, *Sisters' Camelot*, and *Lancaster Symphony*, the Board found the workers in those cases to be employees, even though all of them had the freedom to choose which work assignments they accepted, as is the case with the interpreters. Importantly, however, in those cases the dates and times of assignments were determined by the employer, rather than the government, and none of the workers were subject strictly to government control while working.

In conclusion, the evidence reveals that SOSi exercised a certain degree of control over the administrative aspects of interpreters' work by retaliating against those who refused assignments, through its Code of Business Ethics, and through its limitations on interpreters' rights to pursue other assignments for EOIR. However, the fact that interpreters are given significant independence and discretion in performing their core functions ultimately favors a finding of independent contractor status. See *Pennsylvania Acad. of the Fine Arts*, 343 NLRB 846, 847 (2004) ("the models retain significant discretion over how they perform their work, which strongly supports independent contractor status").

(2) Whether Interpreters are Engaged in a Distinct Occupation or Business

The General Counsel emphasizes that interpreters must wear an SOSi-branded identification badge and are not allowed to solicit work for themselves while on an SOSi assignment or compete with SOSi for EOIR interpretation work. Relying on *Sisters' Camelot*, 363 NLRB No. 13, slip op. at 3, and *FedEx*, 361 NLRB at 618, the General Counsel argues that these facts support a finding of employee status. The General Counsel also argues that interpreters received significant on-the-job assistance from SOSi, including ongoing training, scheduling assistance, and periodic guidance as to EOIR's requirements relating courtroom demeanor, dress code, setting up equipment and completing COI forms. In the General Counsel's view, this establishes that interpreters are "fully integrated into SOSi's organization," and are therefore not engaged in a distinct occupation or business.

Asserting that "[c]ertain factors often overlap and are best discussed together," SOSi groups this factor with the skill required in courtroom interpretation and the nature of the interpretation occupation. SOSi essentially argues that interpreters are engaged in a distinct business because they are skilled, many operate as sole proprietors, and it is common for interpreters to act as independent contractors. The company also notes that while under contract with SOSi, several interpreters performed interpretation services for other entities, maintained business licenses in their states of residence, made business cards, and filed tax returns as sole proprietors. SOSi also argues that even if some interpreters received a significant portion of their income from SOSi assignments, this does not necessarily favor employee status.

The fact that interpreters were prevented from passing out business cards or otherwise soliciting business for themselves while working for SOSi evidences employee status. *Sisters' Camelot*, 363 NLRB No. 13, slip op. at 2-3 (canvassers found to be employees when they could not solicit for any other organization while canvassing for employer). The General Counsel is also correct that the interpreters' ability to work for other organizations when not on SOSi assignments is not dispositive of independent contractor status. *Id.* at 3 ("the ability to work for multiple employers does not make an individual an independent contractor").

In addition, interpreters were at least relatively integrated into SOSi's operation. Their work was important; indeed, it was essential to SOSi's fulfillment of its contractual obligations with EOIR. *See id.* (importance of canvassers' fundraising activities was evidence of integration into employer's operation). The interpreters also rely on SOSi personnel for guidance on EOIR requirements, and use SOSi resources to schedule assignments, submit COI forms, and complete training. *FedEx*, 361 NLRB at 622 (drivers were integrated into employer's operation because they relied on employer's scanner system and package handlers, and received "considerable assistance and guidance from the company") (quoting *United Insurance*, 390 U.S. at 259).

This factor favors employee status. SOSi's argument is based largely on the interpreters' outside business registrations and tax filings. While interpreting in the courtroom, interpreters wear SOSi-branded badges with a company motto.²⁴ In so doing, the interpreters effectively operate in SOSi's name, rather than their own. *FedEx*, 361 NLRB at 611. This is true even though some interpreters operated as sole proprietors when not working for SOSi. *See id.* (even drivers who operated as incorporated businesses were found to be employees in part because they did business in company's name); *cf. Argix Direct, Inc.*, 343 NLRB 1017, 1020-21 (finding independent-contractor status where drivers could place their own names or logos on trucks).

(3) Kind of Occupation and Extent to which Work is Done Under Direction of the Employer

As evidence of employee status, the General Counsel repeats examples of control exercised by SOSi, including requirements interpreters faced under the company's Code of Business Ethics, SOSi's monitoring of interpreters' compliance with EOIR requirements, and SOSi's inquiries with EOIR regarding interpreters' performance. In support, the General Counsel again relies on *Sisters' Camelot* and *FedEx*.

SOSi, on the other hand, relies on its continuation of Lionbridge's longstanding practice of treating interpreters as independent contractors.²⁵ SOSi also reiterates that essentially all supervision and direction of interpreters is conducted by the immigration courts, not SOSi.

SOSi is in the business of government contracting. It monitors and appraises performance through recorded observations by interpreter liaisons, annual performance evaluations conducted by company personnel, and by sending recordings of interpreters' courtroom performances to SCSi for evaluation. *See FedEx*, 361 NLRB at 622 (company's periodic audits and appraisals of drivers' performance indicated employee status). However, this case is distinguishable from the cases cited by the General Counsel because SOSi does not direct interpreters to the same degree that employers directed the employees in those cases. In *Sisters' Camelot*, for example, canvassers were required to record each house they visited, indicate the location of each house on a map, and compile statistics on the total number of houses visited and total amount of donations collected. They were subject to discipline and required to redo their recording form if they made errors in completing it. That interpreters are required to submit a COI form for each case, as required by EOIR, is neither attributable to or indicative of a

²⁴ Although the EOIR contract states that "Interpreters shall have a Contractor-issued photo," the badges given to interpreters do more to identify interpreters with SOSi than is required.

²⁵ In its brief, SOSi also referenced a survey of linguists indicating that a majority of interpreters work as independent contractors. Because the survey was entered into evidence, I decline to consider it.

comparable level of direction by SOSi. See *Don Bass Trucking*, 275 NLRB at 1172, 1174 (1985) (government regulations requiring compliance with administrative requirements afford less opportunity for control by the company).

5 As stated previously, interpreters are ultimately given significant discretion and independence when interpreting. *Pennsylvania Acad. of the Fine Arts*, 343 NLRB at 846; *Century Broadcasting Corp.*, 198 NLRB 923, 924 (1972) (radio announcers were independent contractors where the “inflections, pauses, idiom, and mood projected” when making announcements was left entirely to their discretion). Certainly, interpreters still face many
10 substantive requirements and guidelines regarding proper interpretation practices. Again, however, these come from the government, not SOSi, which distinguishes this case from those cited by the General Counsel.

15 This factor favors independent contractor status for reasons similar to those stated in the control factor. Interpreters are given significant independence and discretion in carrying out their work. To the extent that they are directed and supervised, nearly all direction and supervision is carried out by the immigration courts, rather than SOSi.

(4) The Skill Required in the Particular Occupation

20 Both parties acknowledge that courtroom interpretation is a skilled profession, and that this factor weighs in favor of independent contractor status. The skill required is only one consideration, however. It should also be noted that there are numerous professions, such as engineering, computer science, medicine, and performance arts, where workers are incredibly skilled, yet often still practice their craft as employees. Accord, *Metropolitan Opera Ass’n.*, 327
25 NLRB 740, 740-742 (1999) (members of bargaining unit included solo singers, principal dancers, members of the corps de ballet, and choristers for “one of the grandest, if not the preeminent opera company in the world”). Thus, although this factor favors independent contractor status, it is not entitled to significant weight.

30 (5) Whether Employer Supplies the Instrumentalities, Tools and Place of Work

The General Counsel, citing *Lancaster Symphony*, 357 NLRB at 1766, argues that this factor is neutral because both interpreters and SOSi provide roughly the same amount of supplies, and the amount of supplies each provides is negligible regardless. See also, *FedEx*, 361
35 NLRB at 623 (“Because aspects of the instrumentalities factor cut both ways, we find it to be neutral”). SOSi does not, however, concede that it provides any instrumentalities to the interpreters. The company notes that interpreters never come to its Reston, Virginia headquarters, but rather, work exclusively in the immigration courts or from their homes.

40 This factor is neutral and not overly significant. Neither party provides the most important instrumentalities of the work—courtrooms and the electronic recording systems. These are provided by EOIR and the immigration courts. The interpreters provide some relatively minor instrumentalities, such as pens, note pads and language dictionaries. Further, when conducting telephonic interpretation, interpreters interpret from their homes using their
45 own landline telephone connections. However, SOSi provides the interpreters with scheduling and administrative support, pays for training and certification opportunities with SCSi, and

provides guidance on EOIR requirements and instruction on the use of courtroom equipment. See *Adderley Indus., Inc.*, 322 NLRB 1016, 1023 (1997) (paid training provided to cable installers supported finding of employee status); *FedEx*, 361 NLRB at 622-23 (employee status finding supported where drivers received assistance from company employees during shifts, and company helped facilitate drivers' purchase of their trucks).

(6) Length of Time for Which the Person is Employed

The General Counsel argues that this factor favors employee status because the parties demonstrated an expectation that their relationship would be of indefinite duration. Relying on *FedEx*, 361 NLRB at 623, the General Counsel contends that this favors employee status. The General Counsel notes that many of the interpreters performed under contracts with SOSi's predecessors for more than a decade, and that SOSi's actions showed the company intended to have a continuing relationship with many of the interpreters, even though the agreed upon terms in the initial contract were less than a year. The General Counsel argues that the initial contracts were relatively short only because SOSi needed to ensure that its own contract with EOIR would be renewed, and notes that many of the interpreters continue to operate on one-year extensions of their initial contracts, mirroring the renewal time frame of SOSi's contracts with EOIR.

SOSi argues that this factor is neutral, and "largely uninformative one way or the other." SOSi notes that interpreters work primarily on one-year contracts which in many cases are renewed, but that there is significant disparity among interpreters in terms of how often they complete EOIR assignments. SOSi also points to the fact that no interpreter is guaranteed any number of assignments as favoring independent contractor status.

When SOSi first won the EOIR contract, it decided to enlist the same interpreters as had been used by Lionbridge. The company was well aware that many of the interpreters worked for Lionbridge in the immigration courts for several years, which was precisely why the company sought them out. Although the initial ICAs lasted only as long as SOSi's initial term with EOIR, the company has continued to use most of the original Lionbridge interpreters in lockstep with its own EOIR contract renewals. Thus, interpreters essentially "have a permanent working arrangement with the company under which they may continue as long as their performance is satisfactory." *FedEx*, 361 NLRB at 623 (quoting *United Insurance*, 390 U.S. at 259); see also *Sisters' Camelot*, 363 NLRB No. 13, slip op. at 5 (stating that even a *potentially* long-term working relationship favors employee status).²⁶ The noteworthy exception to the company's general practice of allowing interpreters to continue working so long as they perform satisfactorily is its treatment of the alleged discriminatees, discussed below.

²⁶ It should be noted that where workers work for a purported employer only intermittently, as is the case with some of the interpreters, this can favor a finding of independent contractor status. *Sisters' Camelot*, 363 NLRB No. 13, slip op. at 5. However, that case is distinguishable from the current one because some of the canvassers had "gaps in their working relationship" with the employer. While some interpreters work only "sporadically," there is no gap in their working relationship with SOSi in that they remain under contract with the company even if they do not work regularly. In addition, the canvassers in that case were found to be employees, notwithstanding their ability to work whatever schedule they wished without retaliation, which is not the case with the interpreters.

Because interpreters almost universally have an indefinite relationship with SOSi, which continues so long as their performance is satisfactory, this factor favors employee status.

(7) Method of Payment

The parties sharply disagree over this factor. The General Counsel argues that the method of payment favors employee status because interpreters are essentially paid by the hour, rather than by the job. Although interpreters operating under the initial contracts with SOSi were paid half-day and full-day rates for non-travel assignments, the General Counsel notes that the half day rate of \$225, and full-day rate of \$425, are roughly equal in terms of compensation per hour, so long as the assignments go the full four hours or eight hours, respectively. The General Counsel also asserts that interpreters are rarely released early from assignments, and further claims that “due to reassignment by court staff, interpreters generally continue working through the scheduled end of a session, or longer.”

Relying on *FedEx*, 361 NLRB at 623, the General Counsel notes that interpreters had very little ability to negotiate rates of pay on their own and were forced to resort to concerted action to convince SOSi to back off on its compensation demands. The General Counsel also argues that SOSi’s control over compensation has only increased since SOSi instituted its RFQ process, which has led to an overall standardization of payment rates to interpreters, and an increase in the number of interpreters being paid by the hour, rather than on a half-day/full-day basis. The General Counsel contends that once the RFQ process began, SOSi set maximum standard hourly rates and informed interpreters who requested higher rates that their requests were not in compliance with SOSi’s standard rates.

SOSi strongly disagrees with the General Counsel’s assertion that half-day and full-day assignments typically run long, claiming that “the overwhelming majority of morning and afternoon assignments end long before noon or 5:00 p.m.” In support of this argument, SOSi points to the fact that under the half-day/full-day structure, several interpreters’ average hourly pay ranged from \$83.75 per hour to \$134.43 per hour, a significant difference influenced by how long the interpreters’ “half-day” and “full-day” assignments actually lasted. SOSi contends that these varying hourly compensation rates show that the interpreters were effectively paid by the job, earning \$225 for completing a morning assignment and \$200 for an afternoon assignment, whether an assignment lasted 30 minutes or 4 hours. As for the increase in the number of interpreters being paid on an hourly rate after the RFQ process began, SOSi argues that this was always the result of bilateral negotiations between SOSi and each individual interpreter.

The compensation factor favors employee status. To be sure, the half-day/full-day structure in the initial ICAs somewhat approximated a “by the job” payment structure, in that interpreters were paid the same amount regardless of how long an assignment lasted. However, the effect of this was significantly muted because the unpredictability of how long an assignment would last forced the interpreters to block off the entire day for a SOSi assignment, even if the assignment was only in the morning. The result was that interpreters could precisely predict what their earnings per hour would be for the entire day of an assignment. A half-day assignment would provide a rate of \$28.13 per hour (\$225/8), and a full-day assignment would provide a rate of \$53.13 (\$425/8). Even on days when they were released early, the interpreters effectively had no ability to increase their earnings, *Fedex*, 361 NLRB at 623, because

interpretation assignments are booked in advance. That the interpreters on some days got a few extra hours of unexpected free time did not affect what was ultimately a precisely predictable hourly earnings structure when the entire day they blocked off is taken into account.

5 In addition, after the initial ICA, SOSi moved steadily toward a standardized, hourly rate structure for most interpreters. Despite its contention that all payment rights were strictly the result of individualized, bilateral negotiations with each interpreter, the spreadsheets indicate that the company almost universally held to its maximum rate structure for travel. For non-travel assignments, hourly earnings hovered below the company's maximum target of \$32 for "skilled" California Spanish interpreters; for "certified" California Spanish interpreters, most were right at the company's maximum target of \$48, with a relatively narrow range of \$43 to \$51. The company also informed interpreters who requested rates above the standard maximums that their requests did not comply with the company's rates. Although rates were not, in fact, completely nonnegotiable, even a "generally nonnegotiable" payment structure supports a finding of employee status. *Id.*; *see also Sisters' Camelot*, 363 NLRB No. 13, slip op. at 5; *Lancaster Symphony*, 357 NLRB at 1765 (both stating that nonnegotiable compensation rates weigh in favor of employee status). That SOSi does not withhold taxes or provide fringe benefits to interpreters does not overcome the other important aspects of the payment system which favor employee status. *FedEx*, 361 NLRB at 623 (drivers were employees, even though employer did not withhold taxes from payments, provide fringe benefits or pay for accident insurance).

(8) Whether the Work is a Part of the Employer's Regular Business

25 Relying on *FedEx*, 361 NLRB at 623, *Roadway Package*, 326 NLRB at 851, and *Porter Drywall*, 362 NLRB No. 6, slip op. at 5 (2015), the General Counsel argues that this factor favors employee status because SOSi is in the regular business of government contracting, including in the field of linguistics, and the interpreters' work is essential to the fulfillment of SOSi's contract within this field. SOSi counters that "this factor seems so insignificant in this case as to be essentially meaningless," but to the extent it is relevant, it slightly favors independent contractor status because the interpreting work is really for the EOIR's benefit, rather than SOSi. Citing *Crew One Productions, Inc. v. NLRB*, 811 F.3d 1305, 1313-1314 (11th Cir. 2016), SOSi maintains that the "[t]he relevant inquiry is 'whether or not the work is part of the regular business of the employer'... not whether the work is essential to the business of [the employer.]" If that is the inquiry, the result is the same because SOSi's regular business is still government contracting.

This factor favors employee status. SOSi's mission is fulfilling government contracts in a variety of fields, and the interpreters' work "effectuate that purpose." *FedEx*, 361 NLRB at 623. That government contracting in the field of linguistics was already part of the company's portfolio before the initial ICAs were negotiated is further evidence that the interpreters' work is part of the regular business of the employer. *Cf. Pennsylvania Academy* 843 NLRB at 347 (models were not employees in part because models were in the business of modeling, while academy was exclusively in the business of art instruction). In addition, SOSi depends on the interpreters for fulfillment of its EOIR contract, and would not be able to fulfill its obligations without them. *See Lancaster Symphony*, 357 NLRB at 1765 (that orchestra could not conduct its business without musicians favored finding that musicians were employees).

(9) Whether Parties Believe they are Creating the Relation of Master and Servant

The General Counsel argues that this factor is neutral, but acknowledges that the contracts between SOSi and the interpreters purport to create an independent contractor relationship. The General Counsel also notes, however, that the interpreters have exercised rights granted to employees under the Act, including joining the Union, engaging in concerted activity and claiming employee status in Board proceedings. The General Counsel also points out that some interpreters sought and received unemployment benefits, which are only available to employees. Relying on *FedEx*, 361 NLRB at 623, and *Lancaster Symphony*, 357 NLRB at 1761, the General Counsel argues that the intent factor is inconclusive where workers are referred to as independent contractors in their agreements with the purported employer, but also engage in concerted activity such as voting for union representation. Somewhat confusingly, the General Counsel also states that “interpreters *do not view themselves as employees* in their relationship with SOSi in light of how they are treated by SOSi.

Unsurprisingly, SOSi argues that this factor strongly favors independent contractor status and that the intent of the parties is one of the two most important factors in this case, citing *Penn v. Howe-Baker Engineers, Inc.*, 898 F.2d 1096, 1103 n. 9 (5th Cir. 1990) and *Crew One*, 811 F.3d at 1312 in support. SOSi emphasizes the ICAs references to interpreters as “Contractors,” and provisions making them responsible for all taxes arising from compensation and according them sole discretion for the manner of interpretation. SOSi also notes that the interpreters characterized themselves as independent contractors on their tax forms, and did not claim SOSi as their employer. SOSi further refers to the parties’ negotiations, in which the interpreters always referred to themselves as contractors, offered draft ICAs which characterized themselves as contractors, and negotiated terms which would allow them greater flexibility to perform assignments for parties other than SOSi.

This factor favors independent contractor status. Interpreters always understood that they were signing up as subcontractors until the relationship between SOSi and some of them soured. The General Counsel argues that the interpreters’ filings for unemployment compensation and assertions of employee status in this proceeding show an understanding that they were employees, but the interpreters only engaged in these activities *after* SOSi decided not to renew their contracts. Further, *FedEx* is distinguishable from the current case because there the drivers had no opportunity to negotiate the agreement they signed in which they were referred to as independent contractors. Here, the interpreters not only had an opportunity to negotiate the ICAs, they submitted draft proposals which referred to themselves as contractors. Further, in a mass email sent to interpreters during negotiations, Rosas expressed frustration with an “exclusivity clause” in a proposal by SOSi, asking “ARE WE NOW BEING CONSIDERED EMPLOYEES?” Thus, the record clearly indicates that even as many of the interpreters joined the Union, they still considered themselves to be independent contractors.

(10) Whether the principal is or is not in the business

The Board has treated this factor very similarly to factor 8—whether the work is part of the employer’s regular business. *See FedEx*, 361 NLRB at 624 (“Because FedEx is engaged in the same business as the drivers, we find that this factor weighs in favor of employee status”) In addition, so long as at least part of the employer’s operation is dedicated to the same work as that

performed by the workers in question, this factor will weigh in favor of employee status. *Sisters Camelot*, 363 NLRB slip op. at 6 (canvassers' fundraising work found to favor employee status, even though fundraising was not employer's primary activity, and employer's own fundraising program which did not use canvassers provided only ten percent of its revenue).

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As stated in the regular business factor, linguistics comprises a portion of SOSi's government contracting business, and the interpreters' linguistic abilities are essential to SOSi being able to fulfill a government contract in that field. Consequently, this factor favors employee status.

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C. *Whether the Interpreters are Rendering Services as an Independent Business*

The interpreters' entrepreneurial opportunities also weigh in favor of employee status. It is true that interpreters can and some do perform interpretation services for organizations other than SOSi, which favors independent contractor status. *Stamford Taxi*, 332 NLRB at 1373. However, as previously stated, the ability to work for multiple employers does not, by itself, make one an independent contractor. *Sisters' Camelot*, 363 NLRB No. 13, slip op. 7 ("That the canvassers may and often do work for other employers when they are *not* actively working for the Respondent is essentially indicative of their part-time work schedule and has little bearing on whether canvassers are employees or independent contractors"); *Lancaster Symphony*, 357 NLRB at 1763 (employee status found even though musicians were not required to work full-time or continuously with orchestra). The interpreters are also nominally free to accept and reject assignments as they wish, though, as explained below, this right is more theoretical than actual. In addition, even if a worker has a truly unfettered right to set his own schedule, having the right to work for an employer when one wants does not necessarily make one an independent contractor. See, e.g., *Minn. Timberwolves*, 365 NLRB No. 124; *Sisters' Camelot*, 363 NLRB No. 13; *Lancaster Symphony*, 357 NLRB 1761.

Several other factors make the interpreters "actual opportunities" for entrepreneurial independence quite limited. *FedEx*, 361 NLRB at 612. The interpreters are not allowed to hire any outside service or person when performing for SOSi. *Slay Transportation Co., Inc.*, 331 NLRB 1292, 1294 (2000) (truck driver owner-operators' right to hire drivers suggested employee status). Interpreters have no proprietary interest in their assignments and cannot transfer assignments without SOSi's permission. See *Roadway Package*, 326 NLRB at 853 (drivers' right to sell their customer service area did not suggest actual entrepreneurial opportunity because employer could effectively control when and to whom service areas could be sold). Although EOIR determines the location and time of all assignments, SOSi completely controls who is offered assignments and interpreters have no right to compete with SOSi for EOIR-related work. Cf. *Porter Drywall, Inc.*, 362 NLRB No.6, slip op. at 3 (independent contractor status suggested when crew leaders competed with employer for work and worked for employer's competitors, sometimes at the same time as they worked on jobs for employer).

Interpreters are also prohibited from soliciting business for themselves while working on SOSi assignments. This restriction seriously "limits their opportunity to develop other business relationships with new clients or employers." *Sisters' Camelot*, 363 NLRB No. 13, slip op. at 7. Finally, although interpreters have the contractual right to refuse assignments, SOSi expresses displeasure when this occurs, and interpreters can expect a reduced schedule in retaliation. This

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5 makes the supposed entrepreneurial opportunity to refuse an assignment one which interpreters “cannot realistically take.” *Fedex*, 361 NLRB at 612 (quoting *C.C. Eastern, Inc. v. NLRB*, 60 F.3d 855, 860 (D.C. Cir. 1995)). Because of the unpredictable length of assignments, the same can also be said for interpreters’ supposed ability to take an afternoon assignment for another employer after committing to a morning assignment with SOSi.

10 Thus, the interpreters are left with little entrepreneurial discretion in their working relationship with SOSi, outside of an essentially illusory right to accept or reject assignments unilaterally offered to them by the company. Interpreters cannot be said to be offering their services as part of an independent business under such circumstances.

D. SOSi has not Sufficiently Demonstrated the Interpreters are Independent Contractors

15 This is a close case with the majority of factors and the lack of entrepreneurial opportunity favoring employee status. Interpreters are highly skilled professionals who exercise independent judgment. Most of the supervision and direction they receive on a day-to-day basis is limited to procedural matters required by the immigration courts, rather than SOSi. Most suggestive of independent contractor status are the ICAs and the parties’ negotiations, which certainly demonstrated the intent to enter into an independent contractor relationship.

20 Yet when the parties’ relationship is viewed beyond the interpreters’ in-courtroom working conditions and the parties’ initial intent, a pattern emerges in which SOSi dictates the terms and asserts control far beyond what is required under its contract with EOIR. Interpreters wear SOSi-branded name badges and are prohibited from soliciting business for themselves while on SOSi assignments. They are prohibited from competing with SOSi for EOIR interpretation work. SOSi’s Code of Business Ethics restricts their use of social media, discussion of SOSi business with the news media, and dissemination of certain personal information which is often useful for concerted activities – e.g., colleagues’ compensation data and contact information. SOSi also has complete control over who is offered assignments, and it punishes interpreters who refuse assignments by offering them fewer future assignments.

30 Over time, the characteristics of an employer-employee relationship have only increased. Driven both by business necessity and frustration with the interpreters’ concerted activity, SOSi increasingly insisted on and implemented a uniform, hourly rate structure. The company has partnered with SCSi to provide training and certification opportunities to interpreters which are paid for by the company. The company has also ramped up efforts at supervision and evaluation of interpreters by sending interpretation recordings to SCSi for review, and using company employees to evaluate interpreters’ compliance with EOIR procedural requirements. Many of these steps are sensible, as the interpreters perform work which is integral to the company’s government contracts business in the field of linguistics. Yet they also undermine the company’s assertion that the interpreters are independent contractors.

45 These discretionary exercises of employer control, and SOSi’s integration of the interpreters into one of its core lines of business, make this case distinguishable from cases relied on by the company in which workers were found to be independent contractors because nearly all control exercised was government control. In *Air Transit*, for example, the cab drivers in question paid the purported employer a flat fee for the right to pick up passengers at Dulles

International Airport. The drivers had genuine entrepreneurial opportunity because they kept all of their earnings and operated almost entirely without company supervision. The only controls on drivers not imposed by the government were a prohibition on subleasing cabs, which was widely ignored in practice; a flat-fare charge system which applied to only two corporate customers; and a requirement that drivers maintain insurance coverage. Such minimal exercises of discretionary employer control, with almost limitless entrepreneurial freedom for the workers at issue, is not comparable to the relationship in this case.

The General Counsel introduced evidence of several state unemployment compensation decisions finding the discriminatees to be common law employees. Under Board law, state unemployment compensation decisions are admissible but not entitled to controlling weight. *Cardiovascular Consultants of Nevada, MI*, 323 NLRB 67, n. 2 (1997); and *Whitesville Mill Services Co.*, 307 NLRB 937 (1992). While oftentimes useful in providing material evidence that may corroborate or contradict testimony or other evidence in Board proceedings, the conclusions of state adjudicators cannot preempt the responsibility of Board judges to apply Board law to the facts before them. Here, the actions of several interpreters to seek and obtain unemployment awards bolsters their claim that they considered themselves to be employees (9th factor). However, I decline to give the state agency findings any weight beyond that.

Given all of the credible evidence, SOSi has not met its burden. To the extent that SOSi suggests that certain factors, such as control and intent of the parties, are entitled to greater weight in all cases, extant Board precedent does not support this contention. *See FedEx*, 361 NLRB at 617-618 (reiterating Board's belief that all Restatement factors must be considered, and that "no magic formula" exists in the area of worker classification). Further, in a relatively close case such as this one, a finding of employee status is in accordance with the Board's vow that it "should construe the independent-contractor exclusion narrowly," consistent with the Supreme Court's admonition that "administrators and reviewing courts must take care to assure that exemptions from NLRA coverage are not so expansively interpreted as to deny protection to workers the Act was designed to reach." *Id.* at 618 (quoting *Holly Farms Corp. v. NLRB*, 517 U.S. 392, 399 (1996)).

Accordingly, I conclude that SOSi interpreters are employees within the meaning of Section 2(3) and are entitled to the Act's protections.

I. THE SECTION 8(A)(1) ALLEGATIONS

A. *Misclassification of Interpreters as Independent Contractors*

Having determined that SOSi interpreters are employees, they are entitled to the protection of the Act from SOSi's actions that interfere with the exercise of their Section 7 rights. In that regard, the complaint alleges the commission of a series of coercive actions by SOSi in violation of Section 8(a)(1) and discriminatory adverse actions in violation of Section 8(a)(3) and (1) of the Act.

Apparently operating on the assumption that relief available under the aforementioned sections may not suffice, the complaint also alleges that since at least January 10, 2016, SOSi "has misclassified its employees as independent contractors, thereby inhibiting them from

engaging in Section 7 activity and depriving them of the protections of the Act.” SOSi contends that even if interpreters were determined to be statutory employees they were not misclassified because the parties “negotiated their status and mutually agreed that they were properly classified as independent contractors.”

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The parties concede the absence of any Board decisions directly addressing whether the mere classification of employees as independent contractors violates the Act.²⁷ The General Counsel argues that the misclassification of interpreters served to chill Section 7 activity. While Section 7 rights are applied to non-employees in certain instances – the discriminatory refusal to hire job applicants, for example – there is no legal or policy rationale advanced to justify the creation of a new class of violation for misclassifying employment status.

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Moreover, I fail to see the merit to such a charge where SOSi and the interpreters negotiated ICAs and even interpreters’ counterproposals incorporated the independent contractor classification. Here, the facts demonstrated that the assertion that interpreters were actually employees arose only after SOSi allegedly undertook adverse actions against some of them (see Estrada’s April 6 charge). Nor is there any explanation as to why, under the circumstances of this case, the protections emanating from Sections 8(a)(1) and (3) of the Act would be insufficient to provide the appropriate remedies. Here, the discriminatees enlisted the support of the Union and through that labor organization certainly had a statutory avenue available to seek recognition as employees and members of a bargaining unit. In that regard, they would have had the Act’s representational election process available to adjudicate the issue of their employment classification. This allegation is dismissed.

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B. SOSi Statements to Interpreters

(1) Siddiqi’s August 26th Statements to Weiherer and Rosas

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Siddiqi was SOSi’s statutory agent pursuant to Section 2(9) of the Act. He communicated frequently with interpreters within the scope of his responsibilities as their scheduler and was responsible for ensuring that the immigration courts were staffed with interpreters. On August 26, the second day of the Los Angeles protests, Siddiqi contacted Weiherer and asked if she could cover Los Angeles assignments. Weiherer declined because of some unspecified hostility towards her by the Los Angeles interpreters and identified some of the interpreters at the event as seen on the WhatsApp site. Siddiqi latched on to that revelation and extracted detailed information regarding the participants depicted in photographs sent by Weiherer. That same day, Siddiqi exchanged most of Rosas’ Adelanto assignments for the last week in August and all of September for Los Angeles assignments. At the time, Rosas still had not confirmed the assignments. Rosas was still at the demonstration when she saw the email and called Siddiqi for an explanation. Siddiqi told Rosas that she had not yet confirmed her assignments and he needed interpreters to cover the Los Angeles cases. He added that someone sent him a photograph of her at the protest.

²⁷ Indeed, the Board recently issued a Notice and Invitation to File Briefs on this issue in *Velox Express, Inc.*, Case 15-CA-184006, Feb.15, 2018.

Questioning an employee about union or concerted activity, or suggesting that engaging in such activity will have negative repercussions for the employee, constitutes unlawful interrogation when the employee being questioned would reasonably feel restrained from exercising rights protected by Section 7. See *Rapid Mfg. Co.*, 239 NLRB 465, 472 (1978), *enfd.* in relevant part, *Rapid Mfg. Co. v. N.L.R.B.*, 612 F.2d 144 (3d Cir. 1979) (employer violated Section 8(a)(1) when outside insurance company representative, acting as employer’s agent, questioned employees about whether they planned to vote for Union in election, and stated that employer’s insurance plan was more generous than Union’s); *Westwood Health Care Center*, 330 NLRB 935, 940-941 (2000) (employee unlawfully interrogated when, over multiple conversations during union organizing drive, supervisor told employee “we [don’t] need any outside help,” and directed employee to take all concerns directly to her).

In addition, employee interrogation is especially likely to violate Section 8(a)(1) when the nature of the information sought “could result in action against individual employees.” *Bozzutos, Inc.*, 365 NLRB No. 146, slip op. at 1 (2017). The Board has frequently found unlawful employer statements which have the effect of encouraging employees who feel harassed by other employees’ concerted activity to report such activity, particularly when the employer implies that it will “discipline the offending individuals or otherwise take care of the problem.” *Tawas Industries, Inc.*, 336 NLRB 318, 322 (2001); *see also CMI-Dearborn, Inc.*, 327 NLRB 771, 775-776 (1999) (employer violated Section 8(a)(1) by sending letter to all employees encouraging them to report “any threats, coercion or scare tactics used by the union pushers to get you to join the union” so that the company could “protect your right to be left alone”).

Weiherer, apparently persona non grata amongst the protesting interpreters and reluctant to take Los Angeles assignments while the protests were ongoing, initially volunteered information to Siddiqi about Rosas’ participation in the protest. However, Siddiqi went further and extracted detailed information about the participants. The additional inquiry, which reasonably conveyed to Weiherer that Siddiqi sought the information in order to take action adverse to the interests of the protestors, violated Section 8(a)(1) of the Act.

Additionally, Siddiqi’s subsequent comments to Rosas conveyed the impression that SOSi was surveilling the interpreters’ concerted activities. An employer’s statements or conduct violate Section 8(a)(1) when they would “lead reasonable employees to assume that their union activities have been placed under surveillance.” *Durham Sch. Servs., L.P.*, 361 NLRB No. 44, slip op. at 1 (2014). Certainly, Siddiqi’s comments to Rosas that he had been informed of her participation in the protest would reasonably lead her to assume that the company was monitoring her concerted activity, and would continue to do so. Thus, Siddiqi’s comments to Rosas also violated Section 8(a)(1).

(2) Valencia’s September 14th Statement to Portillo

On September 14, 2016, Valencia told Portillo that SOSi had not been offered a contract extension because of her concerted activities, including her involvement with contract negotiations and complaints to SOSi. A short while later, Valencia called Portillo back after SOSi management changed its mind and retracted the offer.

Valencia’s statement that Portillo was not offered a contract extension because she engaged in protected concerted activity was also coercive. Informing an employee that she was discharged due to her protected concerted activity is an independent violation of Section 8(a)(1), separate and apart from the discharge itself. *Three D, LLC.*, 361 NLRB No. 31, n. 2 (2014) (finding separate violation of Section 8(a)(1) where employer told employees that their Facebook discussion was the reason for their discharges), citing *Benesight, Inc.*, 337 NLRB 282, 283-284 (2001) (finding independent violation of Section 8(a)(1) where employer told employee that his discharge was attributable to his protected activity during a work stoppage).

C. SOSi’s Warnings to Interpreters Against the Transmission of Links

SOSi, through counsel on October 6, 2016, sent letters to interpreters informing them that it was investigating the improper forwarding of contract links and determined that “you are one of the contractors who engaged in this wrongful conduct.” It proceeded to demand a list “of individuals (including email addresses) to whom you forwarded any SOSi links for uploading or downloading contract documents; (2) a [list] of individuals (including email addresses) who sent to you any SOSi links for uploading or downloading contract documents; and (3) written confirmation that you have deleted and/or destroyed any confidential or proprietary documents about other contractors that you may have accessed or downloaded from SOSi links.” The letter is extremely broad in scope, and makes no attempt to exempt from its information request an interpreter’s own personal ICA which she voluntarily sent to other interpreters, or an ICA which an interpreter forwarded after another interpreter voluntarily sent it to her.

The Board has held that prohibitions on employees discussing their wages and other terms and conditions of employment are unlawful. See *Boeing Co.*, 365 NLRB No. 154, slip op. at 4 (2017). By communicating that it was wrong for an interpreter to voluntarily provide his/her own confidential data to other interpreters, including his/her ICA, SOSi retaliated against interpreters for discussing their wages and other terms and conditions of employment, and sought to prevent them from doing so in the future.

Moreover the Board has consistently held that threats to bring legal action against employees for engaging in protected concerted activity violate Section 8(a)(1) in that they reasonably tend to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights. *DHL Express, Inc.*, 355 NLRB 680 fn. 3, 692 (2010), citing *S.E. Nichols Marcy Corp.*, 229 NLRB 75 (1977). The portion of the letter informing the interpreters that “this matter was being taken very seriously and that the investigation was still ongoing...and no decisions made about what action to take...clearly constitute a threat to take legal action if interpreters engaged in the protected concerted activity of sharing their own personal data regarding their wages and other terms and conditions of employment. The threat violated Section 8(a)(1) of the Act.

As discussed above, in determining whether or not an interrogation violates Section 8(a)(1) of the Act, the Board looks at whether under all circumstances the interrogation reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. Considering the totality of the circumstances – the background and nature of the information sought, identity of the speaker, and the place and method of interrogation – one immediately focuses on the fact that the communication came via letter as opposed to in person confrontation. However, the accusatory letter was sent from an attorney, gave the distinct

impression that the recipient was individually targeted and conveyed warnings threatening legal action if the recipient communicated with anyone else about the subject matter involved. The serious and accusatory nature of the letter reasonably tended to restrain interpreters from engaging in protected concerted activities relating to their wages and other terms of employment.

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D. SOSi's Rules

(1) Applicable Law

10 In *Boeing Co.*, 365 NLRB No. 154, slip op. at 4 (2017), the Board established a new standard for evaluating the validity of employer rules, policies, and handbook provisions under the Act. Overruling *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), the Board created three categories of employer rules, policies, and handbook provisions:

15 • Category 1 includes rules that the Board designates as lawful to maintain, either because (i) the rule, when reasonably interpreted, does not prohibit or interfere with the exercise of NLRA rights; or (ii) the potential adverse impact on protected rights is outweighed by justifications associated with the rule. Examples of Category 1 rules are the no-camera requirement in this case, the “harmonious interactions and relationships” rule that was at
20 issue in *William Beaumont Hospital*, and other rules requiring employees to abide by basic standards of civility.

25 • Category 2 includes rules that warrant individualized scrutiny in each case as to whether the rule would prohibit or interfere with NLRA rights, and if so, whether any adverse impact on NLRA-protected conduct is outweighed by legitimate justifications.

30 • Category 3 includes rules that the Board will designate as unlawful to maintain because they would prohibit or limit NLRA-protected conduct, and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule. An example of a Category 3 rule would be a rule that prohibits employees from discussing wages or benefits with one another.

35 Each of SOSi's rules discussed below fall under *Boeing's* Category 3 because they prohibit employees from engaging in conduct protected by the Act, and the resulting harm to employee rights is not outweighed by any legitimate business justifications for the rules. Accordingly, each rule violates Section 8(a)(1) of the Act.

(2) The Publicity Clause

40 Publicity clauses are contained in each version of the ICA and prohibit interpreters, in pertinent part, from issuing any “news release or other public announcement . . . about this Agreement without the prior written consent of SOSi.”

45 Overbroad rules which completely prohibit employees from speaking with third parties, including the media, violate Section 8(a)(1) of the Act. *See Trump Marina Associates*, 354 NLRB 1027 (2009) (company's rule allowing only senior executives to speak with media was overbroad and without legitimate business justification, and thus violated Section 8(a)(1)); *See*

also *Valley Hospital Medical Center*, 351 NLRB 1250, 1252 (2007) (“Section 7 protects employee communications to the public that are part of and related to an ongoing labor dispute. This includes communications about labor disputes to newspaper reporters”) (internal citations omitted); *NCR Corp.*, 313 NLRB 574, 576 (1993) (“Employees have a statutorily protected right to solicit sympathy, if not support, from the general public”). Further, a rule which otherwise unlawfully prohibits employees from engaging in protected activity is not made lawful by conditioning the activity on consent from the employer. See *Trump Marina* 354 NLRB at n. 3 (“To the extent that an employee is required to obtain permission before engaging in protected activity, that requirement is an impediment to the full exercise of an employee’s Sec. 7 rights”); *Saginaw Control & Engineering, Inc.*, 339 NLRB 541, 553 (2003) (finding rule requiring employees to obtain company permission before distributing any materials on company property was overly broad and violated Section 8(a)(1)); *Crowne Plaza Hotel*, 352 NLRB 382, 386–387 (2008) (finding unlawful a rule prohibiting employees from “leaving [their] work area without authorization before the completion of [their] shift”).

SOSi’s publicity clause is unlawful because it is overly broad and prevents interpreters from using any media outlet to solicit support from the public, unless they first receive the company’s consent. Moreover, the apparent breadth of the publicity clause is almost unlimited because it contains no disclaimer exempting statements which reference labor disputes or other conduct protected by the Act. The publicity clause thus falls under Category 3 of the Board’s analysis in *Boeing* because it unlawfully restricts employee rights protected by Section 7, and is far too broad to be justified by any business justification.

(3) SOSi’s Code of Business Ethics

Although the company’s Code of Business Ethics and Conduct (CBEC) was only included as an attachment to the first two versions of the ICAs, the record indicates that there are interpreters who have continued to extend these versions of the ICAs. The record also demonstrates that SOSi never advised its interpreters that the CBEC had been revoked or that it was no longer applicable to them. Accordingly, to the extent that the CBEC still applies to some interpreters, SOSi has an obligation to remedy the unlawful rules contained within it. The unlawful rules within the CBEC include the following:

(a) Confidentiality

Protection of personal information: “Confidential and/or sensitive information such as a person’s...compensation data should only be used for legitimate business purposes and be accessed by, and communicated to, only those individuals who have a need to know such information.”

This rule falls under Category 3 in *Boeing* because it at least partially “prohibits employees from discussing wages or benefits with one another,” a restriction usually considered unlawful. See *Triana Industries*, 245 NLRB 1258 (1979) (unlawful to prohibit employees from asking coworkers how much they were making since some made more than others). This blanket prohibition on disclosing compensation data is tempered only by the extremely vague exception that the data may be disclosed “for legitimate business purposes,” and even then, only to “those individuals who have a need to know such information.” This unclear and seemingly very

limited exception does virtually nothing to mitigate the harm to employees' Section 7 rights. Further, even to the extent that the exception arguably limits the harm to employee rights, it should not be interpreted broadly because ambiguity in a rule is construed against the drafter. See *St. Joseph's Hospital*, 263 NLRB 375, 377 (1982) (unlawful for employer to forbid protected communications between employees on their own time on the company's premises, provided they did not disturb employees who were working). Moreover, the fact that the remainder of the rule is lawful is of no consequence. See *First Transit, Inc.*, 360 NLRB 619, 629 (2014) (the existence of lawful provisions does not cure an unlawful gag rule prohibiting discussion of work conditions, including wages). Accordingly, SOSi's maintenance of this rule violated Section 8(a)(1).

(b) Non-business Communications

Use of Company Assets: Prohibits non-business communications on company equipment/platforms.

Practically speaking, interpreters do not have access to SOSi computers, but they do have access to SOSi's electronic file sharing system. In *Purple Communications, Inc.*, 361 NLRB No. 126, slip op. at 14 (2014), the Board held that employees who use their employer's email system have a presumptive right to access that email system in nonworking time, unless the employer can demonstrate the existence of "special circumstances necessary to maintain production or discipline." While *Purple Communications* applied to employer-owned email systems, a reasonable interpretation of SOSi's rule is that it also applies to the company's file sharing system at any time. See *Republic Aviation*, 324 U.S. 1973 (1945) (presumption that rules restricting employee solicitation outside of work time are unlawful, even when the solicitations are made on company property). SOSi offered no evidence of special circumstances justifying its blanket ban on employees' use of company communications systems at all times for any non-business purpose. Consequently, the overly broad restriction to employees' Section 7 rights outweighs any legitimate justification offered for the rule.

(c) Social Media Policy

Social media should never be used to discuss any information concerning SOSi business or to disclose confidential or proprietary information....Also, individuals who use social media must refrain from sending any messages that are offensive or embarrassing to the Company or to other people.

This rule also falls under *Boeing* Category 3 because it is far too broad. The Board has recently held that employees' social media messages which are otherwise protected by the Act do not become unprotected merely because they are offensive or embarrassing to their employer's managerial personnel. *Richmond Dist. Neighborhood Ctr.*, 361 NLRB No. 74, n. 9 (2014) (in upholding discharge of after-school program counselors who had publicly-visible Facebook conversation criticizing program and expressing plans of future insubordination, Board was explicit that it did not rely on the employees' "use of profanity or disparaging characterizations of the Respondent's administrative and managerial personnel"). In addition, the rule's prohibition on using social media to discuss any "SOSi business" or "confidential information" leaves essentially no room for employee discretion to use social media to discuss

job related information. Cf. *Landry's Inc.*, 362 NLRB No. 69 (2015) (employer rule did not restrict Section 7 rights because it only encouraged employees to be civil when posting about job-related information on social media). Because the rule prevents employees from using social media to discuss any information about "SOSi business," regardless of the tone of such discussions, and without any exception for Section 7-protected topics such as wages, the rule falls under *Boeing* Category 3 and is unlawful.

(d) Communications with News Media

SOSi personnel are not permitted to communicate directly with the media unless explicitly permitted.

This rule is similar to the publicity clause, but is arguably even more restrictive of employees' Section 7 rights because it limits all communication with the media, including protected communications. For the same reasons articulated previously, this rule falls under *Boeing* Category 3, and is therefore unlawful.

II. SOSI'S TERMINATION OF ITS RELATIONSHIP WITH THE DISCRIMINATEES

A. *Refusal to Contracts of Gutierrez-Bejar, Estrada, Magaña, Portillo, Morris and Rivandeneira*

The complaint alleges that SOSi violated Section 8(a)(3) and (1) of the Act by refusing to renew the ICAs of Gutierrez-Bejar, Estrada, Magaña, Morris and Rivandeneira in August 2016 because they engaged in union and other protected concerted conduct. It includes Portillo in that group, but adds an additional allegation that SOSi rescinded a subsequent offer to extend her ICA because she too engaged in union and other protected concerted activity. SOSi contends that the decision to not renew their ICAs was based on legitimate business purposes.

Under *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the General Counsel has the initial burden of establishing that an employee's union or protected concerted activity was a motivating factor in an employer's decision to take adverse action against the employee. *Id.* at 1089. The General Counsel meets this burden by showing that the employee engaged in union and/or protected concerted activity, that the employer had knowledge of that activity, and that the employer harbored animus against union or protected concerted activity. See, e.g., *Mesker Door, Inc.*, 357 NLRB 591, 592 (2011). If the General Counsel makes this initial showing, the burden then shifts to the employer to prove that it would have taken the same action even if the employee had not engaged in protected activity. *Wright Line*, 251 NLRB at 1089.

As statutory employees, the concerted efforts of Gutierrez-Bejar, Estrada, Magaña, Portillo, Morris and Rivandeneira to obtain better wage rates and other terms and conditions, persistence in following up with respect to chronic payment problems, and criticism of alleged conflicts of interests between SOSi, interpreters and the SCSI, were all activities protected under the Act. Those activities, in conjunction with their union activities, motivated SOSi to not renew their ICAs. The undisputed evidence demonstrates that SOSi considered these protected

concerted activities to be inimical to its financial interests. That they were targeted for non-renewal was corroborated in several respects: the coercive statements made by Valencia and Siddiqi; Thornton's testimony that SOSi did not renew their ICAs because they worked against SOSi's interests; and internal company email revealing that they were part of a troublesome group of "seven" that Iwicki, SOSi's vice president, did not want working for the company.

In Portillo's case, Valencia told her that she was not previously offered an extension because of her refusal to take relay cases, complaints about the pay rate, breach of SOSi data, the contentious contract negotiations with interpreters, Union membership, her participation in the protests, and critical statements about SOSi to the press. He complained about the litigious nature of the interpreters and their involvement of the Board in the dispute with SOSi. Portillo denied the data breach, which was unsubstantiated, and Valencia confirmed her contract renewal. A short while later, Valencia called Portillo back and rescinded her contract extension because she was one of the interpreters that Iwicki did not want working for SOSi.

Gutierrez-Bejar, Estrada, Magaña, Portillo, Morris and Rivandeneira were all highly skilled, experienced and qualified interpreters working in the immigration courts. The record, devoid of any significant performance problems, leads to only one conclusion as to the reason why their contracts were not renewed – SOSi, in its quest to standardize lower wage and travel rates and with an ample supply of Spanish interpreters heading into its second year of the EOIR contract, wanted to eliminate these six outspoken interpreters from its workforce.

Consequentially, SOSi failed to meet this shifting burden of proving that it would have refrained from renewing the discriminatees' ICAs even in the absence of their union and other protected concerted conduct. Any doubt to the contrary was eliminated by the alternative reasons proffered by SOSi for not renewing their contracts. Suggestions of deficient performance were unfounded and, thus, pretextual. See *BMD Sportswear Corp.*, 283 NLRB 142 (1987) (reliance on false, pretextual reason for adverse employee action evidences unlawful motivation and precludes employer from meeting its burden of proving that it would have taken same action in any event), citing *General Iron Corp.*, 218 NLRB 770, 778 (1975), enf.d. 538 F.2d 312 (2d Cir. 1976); see also, *Taylor Machine Products*, 317 NLRB 1187, 1210-1211(1995), enf.in part, 136 F.3d 507 (6th Cir. 1996) (changing reasons for a discharge also often demonstrates that the proffered reasons are pretextual).

Under the circumstances, SOSi violated Section 8(a)(3) and (1) of the Act by refusing to renew the ICAs of Gutierrez-Bejar, Estrada, Magaña, Portillo, Morris and Rivandeneira.

B. Rosas' Constructive Discharge

The General Counsel alleges that SOSi constructively discharged Rosas in violation of Section 8(a)(3) and (1) by withdrawing her geographically preferred assignments in Adelanto on August 26 and replacing them with assignments in the relatively remote locations in Los Angeles because she engaged in concerted protected and union activity. SOSi denies the allegations, contending that Rosas voluntarily ended the relationship when she refused to accept SOSi's contracts terms on or after September 27.

In order to prove a discriminatory constructive discharge, the General Counsel must prove that the reassignment of Rosas' Adelanto cases and assignment of more burdensome travel cases to Los Angeles cases was an intentional or reasonably foreseeable effort to cause her to quit because of her union or protected concerted activities. See *American Licorice Co.*, 299 NLRB 145, 148 (1990) (employer's transfer of employee from day to night shift was unlawful where he knew that it would be a hardship and the employer had no legitimate justification for failing to accommodate the employee); see also, *North Carolina Prisoner Legal Services*, 351 NLRB 464, 470 (2007) (employer's elimination of longstanding reduced-hours schedule of discriminatee who could not work full time because of family obligations was tantamount to constructive discharge); *Yellow Ambulance Service*, 342 NLRB 804, 807 (2004) (requiring employee to choose between work and family obligations is sufficiently burdensome to support a finding of constructive discharge).

Rosas engaged in protected concerted and union activity with the Los Angeles group. Specifically, she was involved with the original interpreters negotiating committee, was critical of SOSi's wage rates, signed the petitions submitted to SOSi, joined the Union and attended meetings, and protested on August 25 and 26. SOSi was aware of those activities.

Rosas sought the higher travel rate whenever she was assigned Los Angeles cases. In December 2015, she was denied the travel rate for Los Angeles cases and told by a SOSi manager that she was "shooting herself in the foot" by refusing to take those cases at the regular full day rate. As a result, she sank to the bottom of the assignment list and her January assignments decreased to about 15 – or half her usual caseload. Rosas relented, agreed to take Los Angeles cases at the regular rate and her assignment numbers returned to normal in February. No charges were filed over this sequence of events.

Even though she continued taking Los Angeles cases in addition to Adelanto cases, the issue resurfaced on August 26 when Siddiqi switched Rosas' Adelanto assignments to Los Angeles after she failed to confirm the assignments. At that time, Rosas told Siddiqi that she would only take Los Angeles as full day assignments for \$550 instead of \$225. Siddiqi replied by assigning Rosas 20 Adelanto cases in September. Meanwhile, on September 12, SOSi offered Rosas a new ICA at the maximum hourly rate of \$35. Rosas declined this offer on September 19, insisting on a continuation of her half and full day rates, and an hourly minimum and mileage reimbursement. She received an automated response on September 27 indicating that her response was unacceptable. Rosas did not submit any other counteroffer and concluded her relationship with SOSi.

The circumstances regarding Siddiqi's switch of most of Rosas' cases from Adelanto to Los Angeles on August 26 for the last week in August and through September are inconclusive. She was participating in the Los Angeles interpreters' demonstration when she got his email and he conveyed the impression that her activities were under surveillance. While it may be inferred that Rosas' scheduling change was discriminatorily motivated by SOSi's knowledge of and animus towards Rosas' protected and concerted and union activity, Rosas also conceded that she failed to confirm the Adelanto assignments prior to August 26. Moreover, Rosas, after rejecting Los Angeles assignments unless they came with the higher rates that she demanded, was still assigned 20 Adelanto cases during September and sent a contract renewal, which she rejected.

The General Counsel contends that Rosas was essentially weeded out and had no other option but to quit working for SOSi because the company discriminatorily applied standardized rates more strictly towards the California Spanish interpreters. This assertion ignores the fact, however, that by August SOSi was awash in interpreters of Spanish, the common language in greatest demand in the immigration courts, and had greater leverage to negotiate standard rates from those interpreters. In contrast, SOSi was forced to be more flexible when negotiating with interpreters of common and uncommon languages in other locations.

Under the circumstances, it cannot be concluded by a preponderance of the evidence that SOSi's constructively discharge Rosas by reducing and/or changing her assignments to such an extent that made it so difficult for her to perform.

C. *The Rescission of Espinosa's ICA*

The complaint alleges that SOSi rescinded Espinosa's ICA in violation of Section 8(a)(1) after she shared her contract information with other interpreters, including her wage rates and other terms and conditions of employment. SOSi contends that Espinosa was legitimately discharged after sharing faulty links which exposed other interpreters' information.

Here, the General Counsel must establish that the protected activity was a "substantial or motivating factor" in deciding not to renew Espinosa's ICA. *Brink's, Inc.*, 360 NLRB No. 1206, 1216 (2014). Evidence of animus can be inferred from the entirety of the record, looking to circumstantial evidence and where available, direct evidence. See *Alternative Entm't, Inc. & James Decommer*, 363 NLRB No. 131 (2016), *enfd.* 858 F.3d 393 (6th Cir. 2017) (the timing of and vague pretextual explanation for the discharge provided strong circumstantial evidence of knowledge of protected activity and discriminatory motive).

On September 12, prior to the expiration of her last ICA extension, Espinosa received an email from SOSi with an RFQ and a link to SOSi's file sharing system. Espinosa opened the link, which contained the proposed pay rates and other contractual terms, as well as certain personal information. On September 14, Espinosa contacted Hatchette and expressed her concerns over the maximum pay rate of \$35 per hour and advised that she would submit a counteroffer. Espinosa also contacted Estrada and other interpreters to discuss her response. On September 19, after emailing Hatchette about the difficulty encountered in uploading and editing the RFQ, Espinosa simply responded by attaching a counterproposal of the same half and full day rates that she had under her initial ICA.

In the meantime, a SOSi employee erroneously forwarded the RFQ links and personal information of another interpreter to Espinosa and other interpreters. On September 18 and 19, Espinosa forwarded that interpreter's RFQ and personal information to at least 129 other SOSi interpreters. SOSi learned of the errant email on September 20 when interpreters posted the information on the WhatsApp Messenger site. Hatchette took immediate measures to ensure that the information was no longer accessible, informed interpreters of this development and instructed them not to share or download the information:

Later that day, SOSi's IT department informed Hatchette that Espinosa downloaded and shared the errant link with others. Hatchette then called Espinosa and accused her of

unauthorized disclosure. Espinosa gave inconsistent, shifting denials and concessions with explanations. On September 27, Hatchette notified Espinosa that her “conduct and, particularly your lack of candor, are not acceptable and violate your obligations to SOSi under your Independent Contractor Agreement. Accordingly, SOSi has made the decision to terminate your Independent Contractor Agreement.” About two weeks later, a regional coordinator reached out to Espinosa with an offer to pay her an hourly rate of \$35 for either 4-hour or 8-hour minimum assignments, with lower travel rates than those in the expired ICA, and the steep penalties for no shows. No agreement was reached.

Rosario’s ICA at Section 7 prohibited her from “[d]uplication or disclosure of the data and information to which the contractor may have access as a result of this Agreement . . . including, "without limitation," information that "due to its character and nature, or the circumstances of the disclosure, a reasonable person would recognize as being confidential." In addition, Section 9 required compliance with "federal, state, and local laws and regulations," which include laws prohibit the public dissemination of social security numbers.

Employees have no statutory right to access or share private personal data of another employee that they know was inadvertently breached. This is true even if the employees’ initial exposure to the confidential personal data was innocent. Thus, in *IBM Corp.*, 265 NLRB 638, 638 (1982), the Board upheld the discharge of an employee for disclosing wage data that he knew was deemed confidential and that he was not authorized to disclose, even though the information was sent to him anonymously. See also *Cook County College Teachers Union*, 331 NLRB 118, 118, 122 (2000) (employer lawfully disciplined secretary for disclosing confidential directory); *Grocery Carts, Inc.*, 264 NLRB 1067, 1067, 1070-71 (1982) (employee lawfully discharged for examining document in manager’s desk containing the confidential information of another employee). This allegation is dismissed.

CONCLUSIONS OF LAW

1. SOSi International, LLC (the Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union, Pacific Media Workers Guild Communications Workers of America, Local 39521, AFL-CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to renew the contracts of Jo Ann Gutierrez-Bejar, Hilda Estrada, Stephany Magaña, Kathleen Morris, Maria Portillo and Patricia Rivandeneira on September 1, 2016, and subsequently rescinding an offer to renew Portillo’s contract, all because they engaged in Union and other protected concerted activities, the Respondent violated Section 8(a)(3) and (1) and Section 8(a)(1) of the Act, respectively.

4. By interrogating employees about their protected concerted activities, engaging in surveillance, and creating the impression of surveillance on August 26, 2016, telling employees on September 15, 2016 that they would not be offered contract renewals because of their protected concerted activities and union activities, threatening legal action against employees on October 6, 2016 if they discussed protected concerted activities, and maintaining an unlawful “Publicity

Clause” rule in its Independent Contractor Agreements and various unlawful provisions in its SOSi Code of Business Ethics and Conduct, the Respondent violated Section 8(a)(1) of the Act.

5 5. By the aforementioned conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

10 6. All other complaint allegations not referenced above, including those alleging the unlawful constructive discharge of Irma Rosas and cancelation of Rosas Espinosa’s contract, are dismissed.

REMEDY

15 Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

20 The Respondent, having discriminatorily refused to renew the employment contracts of Jo Ann Gutierrez-Bejar, Hilda Estrada, Stephany Magaña, Kathleen Morris, Patricia Rivandeneira and Maria Portillo, must offer them contract renewals and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

25 Since the discriminatees have been found to be employees under the Act, the Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. The Respondent shall also compensate the discriminatees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *Latino Express, Inc.*, 359 NLRB No. 44 (2012).

30 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁸

ORDER

35 The Respondent, SOS International, LLC, Reston, Virginia, its officers, agents, successors, and assigns, shall

40 1. Cease and desist from

(a) Refusing to renew the contracts of its interpreters because they engaged in protected concerted activity or union activity;

²⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Offering and then rescinding contracts and work to interpreters because they engaged in protected concerted or union activity;

(c) Interrogating employees about their union or protected concerted activities;

(d) Engaging in surveillance or creating the impression of surveillance of employees engaged in union or protected concerted activities;

(e) Threatening legal action against employees for engaging in protected concerted activities;

(f) Instructing employees not to talk about their protected concerted activities;

(g) Telling employees they cannot work for SOSi because of their protected concerted activities;

(h) Maintaining unlawful provisions in the SOSi Code of Business Ethics and Conduct, and the Publicity Clause in its ICA, that restrict employees' rights under Section 7 of the Act;

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer interpreters Jo Ann Gutierrez-Bejar, Hilda Estrada, Stephany Magaña, Maria Portillo, Kathleen Morris and Patricia Rivandeneira immediate and full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed;

(b) Make Jo Ann Gutierrez Bejar, Hilda Estrada, Stephany Magaña, Maria Portillo, Kathleen Morris and Patricia Rivandeneira whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, including, but not limited to, payment for any consequential economic harm they may have incurred as a result of Respondent's unlawful conduct, plus interest;

(c) Expunge from its files any reference to the rescission of or refusal to renew the contracts of Jo Ann Gutierrez Bejar, Hilda Estrada, Stephany Magaña, Maria Portillo, Kathleen Morris and Patricia Rivandeneira, and notify them in writing that this has been done and that the adverse actions against them will not be held against them in any way;

(d) Take whatever steps are necessary to reclassify its interpreters that work at the EOIR locations nationwide, pursuant to the EOIR contract with SOSi, and treat them as employees rather than independent contractors, including rescinding any portions of the Independent Contractor Agreements and other documentation Respondent requires them to complete that purports to classify them as independent contractors;

(e) Rescind or revise those portions of the SOSi Code of Business Ethics and Conduct, and the Publicity Clause in the Independent Contractor Agreement, so as not to restrain or preclude employees from exercising their rights protected by Section 7 of the Act, and notify employees that this has been done;

5

(f) Within 14 days after service by the Region, post at Respondent's facility in Reston, Virginia and at EOIR contract locations nationwide, where Respondent has access to or maintains a bulletin board, copies of the attached notice marked "Appendix."²⁹ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 26, 2016.

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(g) File with the Regional Director of Region 21, within 20 days from the date of the Administrative Law Judge's Order, a sworn certificate of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

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Dated, Washington, D.C. March 12, 2018

30



Michael A. Rosas
Administrative Law Judge

²⁹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the Pacific Media Workers Guild Communications Workers of America, Local 39521, AFL-CIO or any other union.

WE WILL NOT refuse to renew or rescind offers to renew your employment contracts because you engage in protected concerted activity or union activity;

WE WILL NOT interrogate you about your union or protected concerted activities;

WE WILL NOT engage in surveillance or give you the impression that we are surveilling you in the course of union or protected concerted activities;

WE WILL NOT threaten legal action against you if you talk about your protected concerted activities;

WE WILL NOT instruct you that you are prohibited from talking about your protected concerted activities;

WE WILL NOT tell you that you cannot work for SOSi because of your protected concerted activities;

WE WILL NOT maintain unlawful provisions in the SOSi Code of Business Ethics and Conduct, and the Publicity Clause in our independent contractor agreements that restrict employees' rights under Section 7 of the Act;

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Jo Ann Gutierrez-Bejar, Hilda Estrada, Stephany Magaña, Maria Portillo, Kathleen Morris and Patricia Rivandeneira full

reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Jo Ann Gutierrez-Bejar, Hilda Estrada, Stephany Magaña, Maria Portillo, Kathleen Morris and Patricia Rivandeneira whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest compounded daily.

WE WILL file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters.

WE WILL compensate Jo Ann Gutierrez-Bejar, Hilda Estrada, Stephany Magaña, Maria Portillo, Kathleen Morris and Patricia Rivandeneira for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of Jo Ann Gutierrez-Bejar, Hilda Estrada, Stephany Magaña, Maria Portillo, Kathleen Morris and Patricia Rivandeneira and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

SOS INTERNATIONAL, LLC

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

888 South Figueroa Street, 9th Floor, Los Angeles, CA 90017-5449
(213) 894-5200, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/21-CA-178096 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (213) 634-6502.