

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.  
Phu V. Hoang  
Richland Correctional Inst.  
1001 Olivesburg Road  
P. O. Box 8107  
Mansfield, Ohio 44901

Khuong V. Hoang  
Marion Correctional Inst.  
P. O. Box 57  
Marion, Ohio 43202

Lan T. Vu  
Ohio Reformatory for Women  
1479 Collins Avenue  
Marysville, Ohio 43040

and

Lai T. Vu  
Marion Correctional Inst.  
P. O. Box 57  
Marion, Ohio 43202

Relators,

vs.

Ninth District Court of Appeal  
161 S. High Street  
Akron, Ohio 44308

Respondent.

Supreme Court Case No.

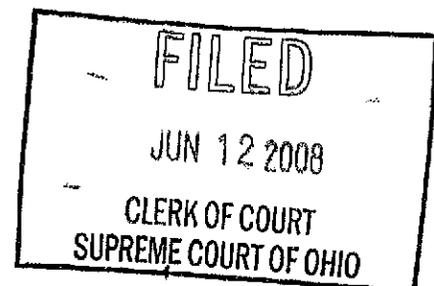
**08-1135**

ORIGINAL ACTION IN MANDAMUS

Verified Complaint  
in Mandamus

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Counsel for Relators



Phu V. Hoang, Khuong V. Hoang, Lan T. Vu, and Lai T. Vu ("Relators"), pursuant to Sup. Ct. Prac. R. X, ask this Honorable Court to issue a Writ of Mandamus directing the Ninth District Court of Appeals ("Ninth District") to appoint Relators an interpreter for purposes of assisting counsel in their criminal cases on appeal.

1. Relators are appellants in pending criminal appellate cases in the Ninth District Court of Appeals: Case No. 07 CA 0108-M, Case No. 07 CA 107-M, and the Consolidated Appellate Cases of 07 CA 0094-M and 07 CA 0095-M.

2. In the trial court [Medina County Court of Common Pleas, Judge James L. Kimbler], Relators were each determined to be indigent and appointed counsel for purposes of trial and then again for purposes of appeal.

3. In the trial court, Relators were each determined to have limited English proficiency and granted the use of an interpreter for purposes of trial.

4. Relator Phu V. Hoang is a foreign national (Vietnam), who has limited English proficiency skills, who is unable to effectively communicate with his attorney in oral or written English, and who is unable to assist his counsel in his defense on appeal absent the use of an interpreter.

5. Relator Khuong V. Hoang is a naturalized United States citizen, born in Vietnam, who has limited English proficiency skills, who is unable to effectively communicate with his attorney in oral or written English, and who is unable to assist

his counsel in his defense on appeal absent the use of an interpreter.

6. Relator Lan T. Vu is a foreign national (Vietnam), who has limited English proficiency skills, who is unable to effectively communicate with her attorney in oral or written English, and who is unable to assist her counsel in her defense on appeal absent the use of an interpreter.

7. Relator Lai T. Vu is a naturalized United States citizen, born in Vietnam, who has limited English proficiency skills, who is unable to effectively communicate with his attorney in oral or written English, and who is unable to assist his counsel in his defense on appeal absent the use of an interpreter.

8. Ninth District is the Ninth District Court of Appeals and appellate court for the Medina County Court of Common Pleas established pursuant to O.R.C. 2501.01(J) and with jurisdiction established pursuant to O.R.C. 2501.02.

9. This Honorable Court has jurisdiction pursuant to O.R.C. 2731.02.

10. Relators have notified the Ninth District of their impairment, lack of English proficiency, and requested the assistance of an interpreter.

11. The Ninth District has denied Relator Phu V. Hoang's motion for interpreter. [Appellant has moved this Court for an order appointing an interpreter at State's Expense. Appellant states that he is a Vietnamese immigrant who speaks very little English and requires an interpreter to communicate with his appellate counsel. The motion is denied. Signed Judge Beth Whitmore].

12. The Ninth District has denied Relator Khuong V. Hoang's motion for interpreter, order dated December 7, 2007. [Appellant has moved this Court for an order appointing an interpreter at State's Expense. Appellant states that he is a Vietnamese immigrant who speaks very little English and requires an interpreter to communicate with his appellate counsel]. The motion is denied. Signed Judge Beth Whitmore].

13. The Ninth District has denied at least one other appellant in a criminal appellate case his request for appointment of an interpreter. See State of Ohio vs. Dung V. Ha, 07 CA 0089-M, order dated November 6, 2007 [Appellant has moved this Court for an Order appointing an interpreter at State's expense. Appellant states that he is a Vietnamese immigrant who speaks very little English and requires an interpreter to communicate with his appellate counsel]. The motion is denied. Signed Judge Slaby].

14. The Ninth District has denied at least one motion to reconsider the denial of an interpreter appointment in a criminal appellate case. See State of Ohio vs. Dung V. Ha, 07 CA 0089-M, order dated November 20, 2007 [Upon review of appellant's motion [for reconsideration], we find no obvious error or issue that we did not properly consider. The motion for reconsideration is denied.]

15. The Ninth District has failed to rule on Relators Lan Vu's and Lai Vu's request for an interpreter.

16. Due process, fundamental fairness and equal protection of the law, as guaranteed by the U.S. and Ohio Constitutions, require communication in Ohio courts to be effective and

accurate. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; See Introduction.

17. Defendants in criminal cases have the right to be meaningfully present at their trials, assist in their defense, receive effective assistance of counsel and confront witnesses. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; See Introduction.

18. State and federal law clearly hold accurate, high-quality interpretation, translations and transliteration services to be fundamental elements of due process. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; See Introduction.

19. Ohio courts must employ highly skilled and professionally qualified judicial interpreters to ensure deaf and limited-English-proficiency people legal protections. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; See Introduction.

20. To meaningfully participate, parties must be able to understand legal proceedings, and this cannot happen without a competent interpreter. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; See Introduction.

21. The U.S. Constitution guarantees individuals the right to due process and the right to meaningful participation in the proceedings in which they are involved. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; page 17.

22. Providing individuals who do not speak English, are Limited English Proficient (LEP) or are deaf or hard-of-hearing with an

interpreter is essential to upholding these rights. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; page 17.

23. Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d et seq. prohibits discrimination on the basis of race, color, and national origin in all programs and activities receiving federal financial assistance. Under regulations issued by essentially every federal grant agency, Title VI has been construed consistently since 1964 to prohibit both intentional discrimination and the adoption of facially neutral policies and practices that have a significant adverse discriminatory impact. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; page 17.

24. The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. Section 3789d prohibits discrimination on the basis of race, color, religion, national origin and sex in any program funded under the statute. and the act authorizes the U.S. attorney general to bring a civil action in response to any past or present pattern or practice of discrimination. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; page 17.

25. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency, signed by President William J. Clinton and reaffirmed by President George W. Bush requires all federal agencies providing federal financial assistance to draft Title VI guidance regulations specifically tailored to its recipients and consistent with the LEP Guidance issued by the Department of Justice. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; page 17.

26. Title II of the American with Disabilities Act prohibits state and local government discrimination against people with disabilities in providing public services and the statute covers litigants, witnesses, and all those who have dealings with the courts. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; page 18.

27. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against any "handicapped individual" in programs receiving federal financial assistance. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; page 18.

28. Ohio Revised Code Section 2311.14 states that when a party to or witness in a legal proceeding cannot readily understand or communicate because of hearing, speech, or other impairment, the court should appoint a qualified interpreter to assist such person. *Interpreters in the Judicial System: A Handbook for Ohio Judges*; page 18.

29. As an officer of the court, a lawyer not only represents clients but has a special responsibility for the quality of justice.

30. In representing clients, a lawyer performs various functions including: as advisor, providing the client with an informed understanding of the client's legal rights and obligations and explains their practical implications; as advocate, asserting the client's position under the rules of the adversary system; as negotiator, seeking the result advantageous to the client and consistent with requirements of honest dealings with others; and, as evaluator examining a client's

legal affairs and reports about them to the client or to others. Each of these functions requires effective communication with the client and is prohibited if they do not speak, read or write a common language.

31. A lawyer should maintain communication with a client concerning the representation which is prohibited absent the services of an interpreter for those of limited English proficiency.

32. A lawyer should seek improvement of the law, ensure access to the legal system, advance the administration of justice, and exemplify the quality of service rendered by the legal profession.

33. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance.

34. A lawyer shall do all of the following, each of which is prohibited for a client of limited English proficiency without the assistance of an interpreter: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) comply as soon as practicable with reasonable requests for information from the client; (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that

the client expects assistance not permitted by the Ohio Rules of Professional Conduct or other law.

35. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation which is impossible for clients of limited English proficiency absent the services of an interpreter.

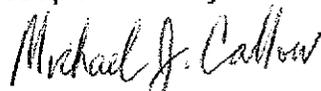
36. Relators have a clear right to require the Ninth District to appoint interpreters to assist them in their defense during their appellate case.

37. Relators have no plain and adequate remedy in the ordinary course of law except to seek a writ of Mandamus, as they will be forced to relinquish any rights to effectively participate in their appellate case without the use of an interpreter and their attorney will be forced to withdraw from representation without the ability to effectively communicate with his clients.

WHEREFORE, Relators pray for:

- (1) a writ of Mandamus to issue ordering the Ninth District to appoint interpreters to assist counsel in the appellate case;
- (2) the recovery of costs and of reasonable attorney fees; and,
- (3) for such further and other relief as this Honorable Court deems appropriate and equitable.

Respectfully submitted,



Michael J. Callow #0065579  
Callow & Callow LLC  
600 East Smith Rd.  
Medina, Ohio 44256  
330.721.2889 ph.  
866.214.0367 fax.

STATE OF OHIO                    }  
  }  
COUNTY OF MEDINA               }

SS:

Affidavit in verification of Complaint

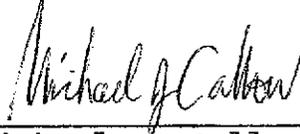
Michael J. Callow, being first duly sworn, deposes and states:

1. I am the attorney for Relators Phu V. Hoang, Khuong V. Hoang, Lan T. Vu and Lai T. Vu;
2. I submit this affidavit in support of the foregoing Complaint for Writ of Mandamus;
3. I am competent to testify concerning the allegations made in the within complaint as I have personal knowledge of same;
4. I represented Relators Hoang, Hoang, Vu and Vu in court proceedings in the Medina County Court of Common Pleas and I am familiar with the proceedings thereto;
5. I represent Relators Hoang, Hoang, Vu ad Vu in court proceedings in the Ninth District Court of Appeals and I am familiar with the proceedings thereto;
6. That I am a licensed attorney in the State of Ohio in good standing;
7. That the allegations made herein are true and accurate and the exhibits attached hereto are true and accurate copies; and,
8. That during the past two (2) years of representing Relators, I am personally familiar with their English proficiency limitations;
9. That during the past two (2) years of representing Relators, I have repeatedly and necessarily utilized the

services of an interpreter to effectively communicate with the relators; and,

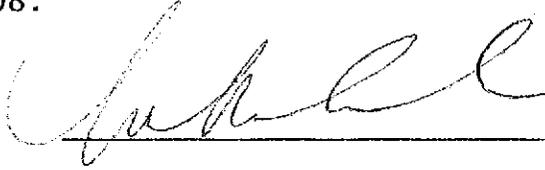
10. That without the assistance of an interpreter, I will be prohibited from continuing to represent the Relators in that I could not establish accurate and effective communication.

FURTHER AFFIANT SAYETH NAUGHT.



Michael J. Callow #0065579

Sworn to before me and subscribed in my presence this 10<sup>th</sup>  
day of June, 2008.



**WANA MANNEH CALLOW, Attorney at Law**  
Notary Public - State of Ohio  
My Commission Has No Expiration Date  
Section 147.03 R.C.