



February 2, 2010

Assistant Attorney General Thomas E. Perez
Civil Rights Division
U.S. Department of Justice

Dear Assistant Attorney General Perez,

We write to thank you for meeting with us on December 15, 2009, to discuss steps the Department of Justice (“DOJ”) can take to make government more accessible to limited English proficient (“LEP”) individuals. Your interest and concern were clear to us, and we look forward to continuing the conversation.

This letter responds to your question about how LEP individuals are affected when they cannot obtain access to state courts, law enforcement agencies, Immigration Court, and other programs under DOJ’s authority. The stories below illustrate the serious harms and deprivations of rights that result when LEP individuals are unable to access those essential government bodies.

- **Estefani Almost Ended Up in Foster Care**

Estefani’s grandparents needed a court order to enroll her in school and get health care for her. They went to court several times, but because they have limited proficiency in English, and California courts do not provide interpreters for most types of civil proceedings, they were unable to accurately describe the situation. After many delays, including two hearings continued for lack of an interpreter, they learned they were pursuing the wrong order. Because Estefani’s medical condition was worsening and the school year approaching, they nearly gave her up to foster care. Finally, they turned to a court self-help center, which, with the assistance of a volunteer interpreter, was able to help them get the proper order.

Laura Abel, Language Access in State Courts (Brennan Center 2009), pp. 3-4 (citing Calif. Comm’n on Access to Justice, Language Barriers to Access to Justice in California (2005), p. 13).

- **A Mixtec-Speaking Man Spent Four Years in Prison Before It Was Discovered That He Had Not Understood the Spanish-Speaking Interpreter**

Although Santiago Ventura Morales and several witnesses in the State of Oregon’s criminal case against him spoke Mixtec, a Spanish-speaking court interpreter was appointed. Only after Mr. Ventura had served four years in prison was it discovered that he had not understood the interpreter. The prosecution eventually dropped the case, acknowledging that there was insufficient evidence against him.

Laura Abel, Language Access in State Courts (Brennan Center 2009), p. 28 (citing Elena M. deJongh, Court Interpreting: Linguistic Presence v. Linguistic Absence, Fla. Bar J.

(July-Aug. 2008), p. 20); Jim Camin, *News Update: Santiago Ventura Morales, The Oregonian* (Oct. 26, 2007).

- **Encarnación Is Fighting to Regain the Son She Lost After a Notice of Intent to Terminate Parental Rights Was Sent to Her in English**

In a case in Missouri state court, Encarnación's parental rights over her young son were terminated after she was placed in immigration custody. Encarnación, a native of Guatemala, who worked at a poultry plant that was raided by the Department of Homeland Security, arranged for her son to be in her brother's care while she was detained by immigration. Through an unfortunate course of events, her son's teachers arranged for his adoption by another couple. Encarnación received papers written only in English informing her of the court's intent to terminate her parental rights and free her son for adoption. Encarnación is a native Spanish speaker who does not speak or understand English. The court proceeded to terminate Encarnación's parental rights without her presence in court. Her son has been adopted by another family, his name has been changed, and Encarnación does not know where he is. Encarnación was informed of her appeal rights only in English. Encarnación is still fighting to regain custody of her son.

E-mail from Sameera Hafiz, Legal Momentum (Jan. 7, 2010). See Ginger Thompson, After Losing Freedom, Some Immigrants Face Loss of Custody of Their Children, The New York Times, April 23, 2009, available at <http://www.nytimes.com/2009/04/23/us/23children.html>.

- **Because of Interpreter Error, an Immigration Judge Found That a Buddhist Woman's Testimony Was Not Credible**

"[A]n interpreter . . . paraphrased a Buddhist woman's reaction to being persecuted as 'Oh, my God.' The Immigration Judge relied on this inaccurate translation of her reaction in finding that she was not credible, stating that Buddhists do not believe in God and, therefore, a Buddhist would not have used that phrase."

Appleseed, Assembly Line Injustice: Blueprint to Reform America's Immigration Court System (2009), p. 19, available at <http://www.appleseeds.net/Portals/0/Documents/Publications/Assembly%20Line%20Injustice.pdf>

- **Aarti Was Arrested and Placed in Immigration Detention After Trying to Report Domestic Violence**

For several years, Aarti had been physically and sexually abused by John, who was the father of her child. During one incident, John pushed Aarti against the wall and beat her repeatedly. At one point, Aarti scratched John's face to prevent him from slamming the door on her hand. Aarti, who lived in North Carolina, then called the police. When the police arrived, they tried to communicate with Aarti without an interpreter, even though Aarti does not speak English. Because they could not understand what Aarti was saying, they arrested her instead of John. As a result of Aarti's arrest, DHS learned of Aarti's immigration status and placed her in immigration detention, while her child remained in John's custody.

E-mail from Sameera Hafiz, Legal Momentum (Jan. 7, 2010).

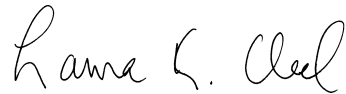
- **Lack of Interpretation Led a Colombian Woman to Agree to Deportation to Mexico**
A Colombian woman signed a stipulated order of removal written only in English. Because she has limited proficiency in English, and the order was never translated for her, she did not realize that by signing she was agreeing to be deported to Mexico, a country with which she has no ties.

National Immigrant Justice Center, Language Barriers May Lead Immigrants to Waive Right to Hearing Before Deportation, June 3, 2008, available at <http://www.immigrantjustice.org/news/detention/preleasestiporderdata20080603.html>

These stories demonstrate the need for DOJ to intensify its enforcement of the language access obligations of state courts, law enforcement agencies and other DOJ grantees under Title VI of the Civil Rights Act. There are also serious language access problems in DOJ's own Executive Office of Immigration Review. Other executive agencies, including the Department of Homeland Security, Department of Health and Human Services, and Department of Agriculture, Food and Nutrition Service, are far from providing the language access required by Executive Order 13166. We enclose fact sheets on each of these issues, which provide further examples and recommend actions DOJ can take to improve language access in each area.

We look forward to working together to ensure that people throughout the country are able to interact with government free of language access barriers.

Sincerely,



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**On behalf of the National Language Access
Advocates Network (“N-LAAN”)**



Language Access Problems Among DOJ's State Court Grantees

The Department of Justice ("DOJ") must maintain, and intensify, its strong enforcement of the language access obligations of the state courts that receive DOJ funds. DOJ provides funding to state courts across the nation, subjecting those courts to the requirements of Title VI of the Civil Rights Act of 1964. Nonetheless, nearly 13 million limited English proficient ("LEP") individuals live in states that do not require their courts to provide interpreters to LEP individuals in most types of civil cases. Another six million live in states that undercut their commitment to provide interpreters by charging for them. And many live in states that do not ensure that the "interpreters" the states provide can speak English, speak the language to be interpreted, or know how to interpret in the specialized courtroom setting.

With these practices, many states are violating Title VI, which requires state courts receiving federal assistance to provide interpreters to people who need them.¹ This fact sheet highlights five key problem areas and provides several examples:

1. No interpretation in civil cases

DOJ has stated repeatedly that court systems receiving federal funds must provide interpretation in criminal and civil matters for "LEP individuals during all hearings, trial and motions during which the LEP individual must be present."² Nonetheless, the Brennan Center's study of the 35 states with the highest proportion of LEP individuals found that 46% allow courts to deny interpreters in some or all civil cases.³

This problem is exacerbated by the frequent practice of charging LEP individuals for the interpreters provided for them in both criminal and civil cases, with the result that people who need interpreters often decide not to request them. Although DOJ has made clear that state courts may not charge LEP individuals for their court interpreters,⁴ of the 35 states studied by the Brennan Center, 80% allow courts to charge LEP individuals for interpreters.⁵

Estefani almost ended up in foster care

Estefani's grandparents needed a court order to enroll her in school and obtain health care for her. They went to court several times, but because they have limited proficiency in English, and California courts do not provide interpreters for most types of civil proceedings, they were unable to accurately describe the situation. After many delays, including two hearings continued for lack of an interpreter, they learned they were pursuing the wrong order. Because Estefani's medical condition was worsening and the school year approaching, they nearly gave her up to foster care. Finally, they turned to a court

*self-help center, which, with the assistance of a volunteer interpreter, was able to help them get the proper order.*⁶

A wife was unable to get a temporary restraining order against her murderous husband

*“A Korean woman seeking a protective order against her white, native-born husband testified that he had threatened to kill her and had firearms expertise. The judge denied the restraining order because he could not understand her testimony.”*⁷

An abusive husband was granted unsupervised custody because his wife could not communicate with the court

*“When Maythe Ramirez went to Superior Court in Contra Costa, Calif., for a child custody hearing in 2006, she wanted to tell the judge that her husband beat her and should not be allowed broad visitation rights. The court did not provide an interpreter for her, however, and Ms. Ramirez, who speaks almost no English, could not follow the arcane proceeding, much less participate. ‘It is really as if you are doing nothing in court,’ she said in Spanish through an interpreter, ‘standing still and not being able to explain what’s really happening.’”*⁸ *Initially, Ms. Ramirez’s husband obtained unsupervised visitation with the children.*⁹ *“However, Ms. Ramirez, who came to the United States from Mexico, later divorced her husband and had the visitation rules modified with the help of a lawyer from Bay Area Legal Aid, who got her interpreters for other hearings.”*¹⁰

Victims of domestic violence are found guilty of domestic violence because they cannot communicate with the court

*In Wayne County, New York, a Spanish-speaking woman called the police because her bilingual husband was physically attacking her. The law enforcement personnel who arrived at her home did not speak Spanish and lacked access to a Spanish-speaking interpreter. Instead, they used the husband to interpret for his wife. The police then arrested both husband and wife. At the arraignment, the Justice Court again used the husband to interpret for his wife. Not surprisingly, the presiding justice ended up agreeing with the husband’s portrayal of the incident, holding the wife, and not the husband, responsible for domestic violence.*¹¹

2. Insufficient interpretation in rare languages

Throughout the country, state courts cannot find, or do not provide, interpreters in rare languages:

Mixtec-speaking man spent four years in prison before it was discovered that he had not understood the Spanish-speaking interpreter

*A Spanish-speaking interpreter was appointed to interpret in an Oregon case in which defendant Santiago Ventura Morales and several witnesses spoke Mixtec. Only after Mr. Ventura had served four years in prison was it discovered that he had not understood the interpreter. The prosecution eventually dropped the case, acknowledging that there was insufficient evidence against him.*¹²

Quiché-speaking mother lost her parental rights, because court proceedings and orders were explained to her only in Spanish

*Speaking in Spanish, Mara Luis' doctor explained how to care for her asthmatic daughter. Mara Luis did not understand, because her native language is Quiché. Nebraska's child protective services agency then alleged that Mara Luis was not providing the daughter with proper care. Mara Luis' children entered the foster care system, and Mara Luis was placed in immigration detention. The child protective services agency issued a case plan requiring Mara Luis to keep in regular contact with her child protective case worker and attend parenting classes, among other things, in order to be reunited with her children. The agency translated the case plan for Mara Luis, but only over the phone and only in Spanish. Mara Luis was unable to comply with the plan, because she never received a written copy of it and it was not translated to her in Quiché. The state then moved to terminate her parental rights. She was unable to participate in the court proceedings, which were conducted through the use of a Spanish-language interpreter, and her rights were terminated. Eventually, her parental rights were restored on appeal, and after being separated from her children for four and a half years Mara Luis has recently been reunited with her children.*¹³

3. Inaccurate interpretation

State courts must ensure that the court interpreters they provide can and actually do provide competent interpretation.¹⁴ Nonetheless, many state courts have no formal mechanism in place to regularly assess the competence of interpreters, and many that purport to assess interpreter competence use untrained judicial staff to do so.¹⁵ All too often, court users suffer because a court interpreter garbles their words:

Interpreter mistranslated abuser's threat to kill victim, claiming that the abuser merely "scolded" the victim

"In a Massachusetts case, a woman seeking a domestic violence restraining testified that her abuser said, 'I want you dead.' The interpreter, though, stated that she had said, 'He scolded me.'"¹⁶

A man plead guilty to a felony, instead of a misdemeanor, because of interpreter error

“In Florida, an interpreter was allowed to interpret in more than 5,000 cases, although her competence had not been assessed. In one case, she interpreted so poorly that the defendant pleaded guilty to stealing a dump truck, which is a felony, and was sentenced to 15 years in prison, even though he thought he was pleading guilty to taking a toolbox, which is a misdemeanor for which he would be merely placed on probation.”¹⁷

4. Critical documents written only in English

Title VI obligates courts to translate “vital” documents into the languages commonly spoken by litigants and other court users.¹⁸ Many courts fail to do this.¹⁹

Wife was subjected to continuing abuse because Spanish-speaking husband could not understand order of protection issued only in English

In Monroe County, New York, a Spanish-speaking LEP woman obtained an Order of Protection against her Spanish-speaking LEP husband. The wife later called the police because her husband had violated one of the terms of the order, and a contempt hearing was scheduled. The judge found, however, that the husband lacked notice of the Order’s terms, because the Order had been written solely in English. As a result, the husband was not held to account for the continuing abuse.²⁰

Encarnación Is Fighting to Regain the Son She Lost After a Notice of Intent to Terminate Parental Rights Was Sent to Her in English

In a case in Missouri state court, Encarnación’s parental rights over her young son were terminated after she was placed in immigration custody. Encarnación, a native of Guatemala, who worked at a poultry plant that was raided by the Department of Homeland Security, arranged for her son to be in her brother’s care while she was detained by immigration. Through an unfortunate course of events, her son’s teachers arranged for his adoption by another couple. Encarnación received papers written only in English informing her of the court’s intent to terminate her parental rights and free her son for adoption. Encarnación is a native Spanish speaker who does not speak or understand English. The court proceeded to terminate Encarnación’s parental rights without her presence in court. Her son has been adopted by another family, his name has been changed, and Encarnación does not know where he is. Encarnación was informed of her appeal rights only in English. Encarnación is still fighting to regain custody of her son.²¹

5. No language access for critical encounters outside of the courtroom

Title VI requires courts to ensure that court-ordered services are available to LEP individuals.²² However, too often parents involved in child custody and abuse-neglect proceedings are required to participate in parenting classes, supervised visitation programs, or batterer intervention programs that are not language accessible.

Arabic-speaking mother denied visits with child, and then barred from speaking Arabic with him, because there was no Arabic interpreter available to facilitate visitation

In a child custody case in New York state court, a non-custodial mother was granted supervised visitation. The supervised visitation program to which she was assigned delayed her visits with her child because the program sought an Arabic interpreter who could be present during the scheduled visitation. After months of delay, the mother was notified that the program could not accommodate her language needs and she was asked to speak English only to her son during visitation; she was forbidden to speak to her son in Arabic. This mother does not speak English.²³

Child denied visitation with Spanish-speaking parent for six months because Spanish-speaking staff were not available to supervise visitation

In a child custody case in New York, a non-custodial parent had to wait over six months before court-ordered supervised visitation commenced due to the visitation program's long wait list for supervised visitation with Spanish speaking staff.²⁴

What DOJ Should Do

- A. Clarify the obligations of state courts under Title VI to:
 1. provide interpreters in all civil and criminal proceedings and in critical encounters outside of the courtroom,
 2. refrain from charging LEP individuals for their interpreters,
 3. ensure that all interpreters are competent,
 4. ensure that court-ordered activities are accessible to LEP individuals,
 5. translate vital documents, including domestic violence restraining orders and child reunification case plans.
- B. Allocate additional resources for DOJ's Coordination and Review Section to engage in more, and faster, investigations and to provide technical assistance for state court interpreter programs.
- C. Require that all courts applying for DOJ funding, and reporting on the use of DOJ funding, detail steps they are taking to provide language access. The information to be provided to DOJ should include, at a minimum, whether the applicant or recipient has a language access

plan or policy, any steps taken to implement that plan or policy, and any complaints about language access that the applicant or recipient has received in the past twelve months.

D. Allocate Bureau of Justice Assistance funding for state court language access programs.

E. Support the State Court Interpreter Grant Program Act, S. 1329, and support amending it to increase the amount of funding it authorizes.

¹ Laura Abel, Language Access in State Courts (Brennan Center 2009), pp. 1, 8-10.

² 67 Fed. Reg. 41455, 41471 (June 18, 2002).

³ Laura Abel, Language Access in State Courts (Brennan Center 2009), p. 1.

⁴ 67 Fed. Reg. 41455, 41462 (June 18, 2002); Laura Abel, Language Access in State Courts (Brennan Center 2009), pp. 16-17.

⁵ Laura Abel, Language Access in State Courts (Brennan Center 2009), pp. 1, 17-19.

⁶ *Id.*, pp. 3-4 (citing Calif. Comm'n on Access to Justice, Language Barriers to access to Justice in California (2005), p. 13). California's courts are subject to Title VI because they are part of a unified system, National Center for State Courts, Court Unification FAQ's, available at

<http://www.ncsconline.org/wc/courttopics/FAQs.asp?topic=CtUnif#FAQ327>, many parts of which receive federal funds. *See, e.g.*, Judicial Council of California, Programs: Collaborative Justice (last modified Jan. 4, 2010), available at <http://www.courtinfo.ca.gov/programs/collab/> (describing receipt of Byrne Fund and Juvenile Accountability Block Grant funding); Reentry Court Solutions, Funding Alert: California (Nov. 3, 2009), available at <http://www.reentrycourtsolutions.com/2009/11/03/funding-alert-california/> (describing distribution of millions of dollars of federal funds for reentry courts).

⁷ Laura Abel, Language Access in State Courts (Brennan Center 2009), pp. 3-4 (citing Pa. S. Ct. Comm. on Racial & Gender Bias in the Justice System, Final Report (2001), pp. 33-34).

⁸ John Schwartz, *Study Finds Gaps in Aid for Non-English Speakers in State Civil Courts*, N.Y. Times, July 3, 2009).

⁹ Testimony of Maythe Ramirez before the California legislature.

¹⁰ John Schwartz, *Study Finds Gaps in Aid for Non-English Speakers in State Civil Courts*, N.Y. Times, July 3, 2009.

¹¹ Email from Michael Mulé, Empire Justice Center (Dec. 2009).

¹² Laura Abel, Language Access in State Courts (Brennan Center 2009), p. 28 (citing Elena M. deJongh, *Court Interpreting: Linguistic Presence v. Linguistic Absence*, Fla. Bar J. (July-Aug. 2008), p. 20); Jim Camin, *News Update: Santiago Ventura Morales*, The Oregonian (Oct. 26, 2007).

¹³ *In re Interest of Angelica L. & Daniel L.*, 277 Neb. 984 (2009); E-mail from Sameera Hafiz, Legal Momentum (Jan. 7, 2010); Jean Ortiz, *Guatemalan Mom Says Neb. Court Wrongly Took Kids*, Fremont Tribune (April 28, 2009)). Nebraska courts are subject to Title VI because they are administratively unified, Nebraska Administrative Office of the Courts and Probation, Administration of the Third Branch of Government, available at <http://www.supremecourt.ne.gov/brochures/staff-brochure-09.pdf> ("General administrative authority over all the courts in this state is vested in the Nebraska Supreme Court . . ."), and because several components receive federal funding. *See, e.g.*, Center on Children, Families and the Law, University of Nebraska, Lincoln, Projects & Outreach: Court Improvement Project, available at http://ccfl.unl.edu/projects_outreach/projects/current/cip.php (describing courts' receipt of Court Improvement Program funding).

¹⁴ 67 Fed. Reg. 41455, 41461, 41471 (June 18, 2002); Laura Abel, Language Access in State Courts (Brennan Center 2009), pp. 20-25.

¹⁵ Laura Abel, Language Access in State Courts (Brennan Center 2009), pp. 21-24.

¹⁶ *Id.*, p. 20 (citing Nancy K.D. Lemon, *Access to Justice: Can Domestic Violence Courts Better Address the Needs of Non-English Speaking Victims of Domestic Violence?* 21 Berkeley J. of Gender, Law & Justice 38, 45-46 (2006)).

¹⁷ *Id.* (citing Elena M. deJongh, *Court Interpreting: Linguistic Presence v. Linguistic Absence*, Fla. Bar J. (July-Aug. 2008), p. 20). Many Florida courts are bound by Title VI, because the legislature allocates funding from the Federal Grants Trust Fund to pay a portion of the salaries of Circuit Court judges, *see* Fiscal Year 2009-2010 Governor's Recommended General Appropriation Act, p. 326,

http://peoplesbudget.state.fl.us/reports/governors_bill_2009.pdf (recommending that \$5.8 million from the Federal

Grants Trust Fund be used for circuit court salaries and benefits), and because many county courts also receive federal funds. *See, e.g.*, Kathryn Bursch, Federal Grant Targets Women Drug Abusers, 10 Connects.com (Jan. 12, 2009), <http://www.pretial.org/Docs/Documents/Federal%20grant%20targets%20women%20drug%20abusers.pdf> (stating that the Pinellas Drug Court receives a \$900,000 federal grant).

¹⁸ 67 Fed. Reg. at 41463.

¹⁹ American Friends Service Committee, *Language of Inclusion: A Critical Look at Equal Access in the N.J. Courts System* (2007), pp. 5-6 (documenting lack of translated forms in New Jersey's small claims courts); *Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity to Provide Protection Orders* (2006), p.1 (reporting that the state courts examined had "sparse informational or instructional material on protection orders in languages other than English and rarely posted signs informing the public of the availability of interpreter services").

²⁰ Email from Michael Mulé, Empire Justice Center (Dec. 2009). New York courts are bound by Title VI because they are part of a unified system, N.Y. Unified Court System, N.Y. Unified Court System, available at <http://www.courts.state.ny.us/>, many parts of which receive federal funding. *See, e.g.*, Office of the State Comptroller, Open Book New York, available at <http://www1.osc.state.ny.us/transparency/arra/arraDataContracts.cfm?a=01490&cfda=16.803&order=2&sort=ASC> (describing receipt and allocation of ARRA funding by Office of Court Administration).

²¹ E-mail from Sameera Hafiz, Legal Momentum (Jan. 7, 2010); Ginger Thompson, *After Losing Freedom, Some Immigrants Face Loss of Custody of Their Children*, The New York Times, April 23, 2009, available at <http://www.nytimes.com/2009/04/23/us/23children.html>.

Missouri courts are subject to Title VI because they are part of a unified court system, Missouri Judicial Branch, Fiscal 2005 Annual Report, available at <http://www.courts.mo.gov/file.jsp?id=320>, components of which receive federal funds. *See, e.g.*, Bureau of Justice Assistance, FY 2009 Adult Drug Court Discretionary Grant Program Funding Results, available at <http://www.ojp.gov/BJA/funding/09DrugCourtsAwards.pdf> (describing federal funding awarded to Missouri 25th Circuit Drug Court).

²² 67 Fed. Reg. at 41471.

²³ E-mail from Sameera Hafiz, Legal Momentum (Jan. 7, 2010).

²⁴ *Id.*



Language Access Problems Among DOJ's Law Enforcement Grantees

DOJ has made it clear that LEP individuals who dial 911 should have access to communication in their primary language, and officers who are dispatched in response should be aware of language needs and able to respond effectively.¹ The use of bilingual officers in these situations is strongly encouraged, and the use of bystanders, friends, and family to interpret strongly discouraged.² Furthermore, intake procedures should be conducted in an LEP person's primary language, and LEP persons should be able to effectively convey health and safety issues important for police and corrections officers to know.³

Some law enforcement agencies are making great strides toward fulfilling their language access obligations under Title VI.⁴ However, many others still fail to provide language access to victims of and witnesses to domestic violence and other crimes.

Search for toddler was hampered by inability to interview witnesses

In winter 2008, the Detroit Police Department's search for a two-year-old girl was stymied by difficulty communicating with the Bangladeshi immigrants in the girl's community.⁵ One officer reported that often the only people the police are able to interview are children, because they are the only ones who speak English.⁶

Murder investigation frustrated by shortage of Spanish interpreters

In 2009, the Cleveland Police Department had difficulty conducting a murder investigation in a mostly Spanish-speaking community.⁷ Apparently, the department has only two bilingual police officers and a professional interpreter whom they bring in "for bigger cases" – a category not including that particular murder case.⁸

Korean man spent four days in jail because police could not communicate with him

The Washington D.C. Office of Human Rights found the Metropolitan Police Department in violation of the D.C. Language Access Act when a Korean man was arrested and detained for four days before an interpreter was provided for him. When he was finally able to communicate with the police, they discovered that he was not the person they had sought.⁹

Frequently, victims of domestic violence are charged with domestic violence, and abusers go free, because of the victims' inability to communicate with law enforcement.

Aarti was arrested and placed in immigration detention after trying to report domestic violence

For several years, Aarti had been physically and sexually abused by John, who was the father of her child. During one incident, John pushed Aarti against the wall and beat her repeatedly. At one point, Aarti scratched John's face to prevent him from slamming the door on her hand. Aarti, who lived in North Carolina, then called the police. When the police arrived, they tried to communicate with Aarti without an interpreter, even though Aarti does not speak English. Because they could not understand what Aarti was saying, they arrested her instead of John. As a result of Aarti's arrest, DHS learned of Aarti's immigration status and placed her in immigration detention, while her child remained in John's custody.¹⁰

A California woman had difficulty obtaining a special visa for crime victims, and her abuser went free

In California, a local sheriff's office had difficulty communicating with an LEP victim of domestic violence who reported the crime. Although the sheriff's office receives federal funding, it did not use an interpreter to communicate with the victim and did not follow up or investigate the incident she reported. Later, when the victim requested that the sheriff's office verify that she reported the crime to law enforcement for a special visa for crime victims, the sheriff's office refused because they did not find the victim helpful because she was LEP.¹¹ Without this verification, she cannot prove her eligibility for the visa.

Mia was forced into a psychiatric hospital and her abuser went free

Mia called 911 after an abusive domestic violence incident. She had very limited English-speaking capacity and the police did not provide interpretation. She became agitated because she could partially understand that her English-speaking abuser was lying to the police officer. The police officer left. After another abusive incident, Mia called 911 again. This time, her abuser's friend interpreted for Mia and told the police that she had threatened suicide. The police officer placed her on a 72 hour involuntary psychiatric hold. Once Mia had access to an interpreter at the hospital, she was released; her abuser was never arrested.¹²

What DOJ Should Do

DOJ should require that all law enforcement applications for DOJ funding, and all reports on the use of DOJ funding, detail steps they are taking to provide language access. The information that should be provided to DOJ should include, at a minimum, whether the applicant or recipient has a language access plan or policy, any steps taken to implement that plan or policy, and any complaints about language access that the applicant or recipient has received in the past twelve months.

¹ DOJ, “Sample for Discussion Purposes Planning Tool: Considerations for Creation of a Language Assistance Policy and Implementation Plan for Addressing Limited English Proficiency in a Law Enforcement Agency,” available at http://www.usdoj.gov/crt/lep/Law_Enforcement_Planning_Tool.htm; 67 Fed. Reg. at 41468.

² *Id.*

³ *Id.*

⁴ Useful language access tools for law enforcement developed by or with financial support from DOJ include: DOJ, Sample for Discussion Purposes Planning Tool: Considerations for Creation of a Language Assistance Policy and Implementation Plan for Addressing Limited English Proficiency in a Law Enforcement Agency, available at http://www.justice.gov/crt/lep/Law_Enforcement_Planning_Tool.htm; Susan Shah et al., *Overcoming Language Barriers: Solutions for Law Enforcement* (Vera Institute for Justice 2008), available at http://www.cops.usdoj.gov/files/ric/Publications/vera_translating_justice_final.pdf; Barathai A. Venkatraman, *Lost in Translation: Limited English Proficient Populations and the Police*, The Police Chief (April 2006), available at http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=861&issue_id=42006.

⁵ George Hunter, *Cultural Barriers Stall Search for Girl*, THE DETROIT NEWS, Dec. 26, 2008, available at <http://www.detroitnews.com/apps/pbcs.dll/article?AID=/20081226/METRO/812260367/1410/METRO01>. For examples of federal funding received by the Detroit Police Department, see John E. Ott (ed.), *FBI Law Enforcement Bulletin*, Federal Bureau of Investigation (Dec. 2008), available at <http://www.fbi.gov/publications/leb/2008/december2008/december08leb.htm>; Review of the Office of Justice Programs' Paul Coverdell Forensic Science Improvement Grants Programs, U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division (Jan. 2008), available at <http://www.usdoj.gov/oig/reports/OJP/e0801/final.pdf>

⁶ George Hunter, *Cultural Barriers Stall Search for Girl*, *supra*.

⁷ Will Carr, *Language Barrier Poses Hurdle in Murder Investigation*, Channel 9 News (Jan. 26, 2009), available at <http://www.newschannel9.com/news/police-975133-cleveland-department.html>. For examples of federal funding received by the Cleveland Police Department, see Rep. Marcia L. Fudge, *Eleventh Congressional District Is Awarded \$14.8 Million in Cops Funding* (Aug. 9 2009), available at <http://marcialfudge.com/2009/08/eleventh-congressional-district-is-awarded-148-million-in-cops-funding/> and Ida Lieszkovszky, *Cleveland Police Get Nearly \$12M in Federal Funding*, WCPN News (Jul. 28, 2009), available at <http://www.wcpn.org/WCPN/news/27263/>.

⁸ Carr, *Language Barrier Poses Hurdle in Murder Investigation*, *supra*.

⁹ Kathryn Alfisi, *Language Barriers to Justice*, WASHINGTON LAWYER (Apr. 2009), available at http://www.dcbbar.org/for_lawyers/resources/publications/washington_lawyer/April_2009/language_barriers.cfm.

¹⁰ E-mail from Sameera Hafiz, Legal Momentum (Jan. 7, 2010).

¹¹ *Id.*

¹² *Id.*



Language Access Problems in Immigration Court

The Immigration Courts run by the Executive Office of Immigration Review (“EOIR”) at the Department of Justice are bound by the language access requirements set out in DOJ’s 2002 Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (“LEP”) Persons.¹ At a minimum, they must provide competent interpretation for LEP individuals during all courtroom proceedings, and during all critical encounters outside the courtroom.² Immigration Courts fall far short of this requirement by failing to provide interpretation for critical encounters, and by providing inaccurate interpretation.

- **No interpretation for exchanges between non-LEP individuals** Interpreters convey only the statements of non-English-speaking respondents and witnesses, and questions or statements addressed directly to them by the court or attorneys.³ The result is that LEP individuals cannot comprehend the testimony of English-speaking witnesses and exchanges between the Immigration Judge and the Department of Homeland Security Trial Attorney or their counsel.

Failure to interpret exchanges between a lawyer and judge almost led an attorney to accept a removal order without his client’s consent

“The attorney of one man from El Salvador almost accepted an order for removal rather than the voluntary departure, which has much less dire consequences, because none of the exchanges between the lawyer and the judge were translated.”⁴

- **No interpretation outside the courtroom** In many Immigration Courts, LEP individuals are not given information in any language other than English when they arrive at the court for the first time. The EOIR employees who interact with the public often do not speak to people in any languages other than English, and they do not provide interpretation of any kind. As a result, many people arriving at court for the first time do not understand what they need to do or where they need to go.

- **Interpreters translate incorrectly**

Immigration Judge found that a Buddhist woman’s testimony was not credible, because of interpreter error

“[A]n interpreter . . . paraphrased a Buddhist woman’s reaction to being persecuted as ‘Oh, my God.’ The Immigration Judge relied on this inaccurate translation of her reaction in finding that she

was not credible, stating that Buddhists do not believe in God and, therefore, a Buddhist would not have used that phrase.”⁵

Interpreter error gave an Immigration Judge the mistaken impression that a respondent had started fires at a demonstration
“[A]n inaccurate translation led an Immigration Judge to believe mistakenly that the immigrant had started fires at a demonstration, when in fact the immigrant testified that fire trucks were called to hose down political demonstrators.”⁶

A respondent had a miscarriage after her husband beat her; the interpreter wrongly stated that the woman had an abortion
“[A] Spanish interpreter from Spain, while interpreting for a Honduran woman, made an important error. She was using a word in Spanish that can mean either ‘miscarriage’ or ‘abortion.’ He simply stated in English that she had an abortion, rather than clarifying with her which meaning was correct. She had actually had a miscarriage, after being beaten by her husband. This difference in meaning was actually quite important to her case.”⁷

- **Interpretation is conducted in the wrong language**

Immigration Court forced to reopen Kanjobal speaker’s removal proceeding because interpretation was provided in Spanish
Francisco Juan Martin, who was born in Guatemala, appeared pro se at a master calendar hearing on August 16, 2007. Although Mr. Martin’s native language is Kanjobal, the court interpreter interpreted the proceedings into Spanish only. Consequently, Mr. Martin was unable to understand the judge’s order that he must apply for cancellation of removal by September 25, 2007. When he failed to apply by that date, he was ordered removed from the country. It was only after the BIA heard his appeal that he was allowed to apply for cancellation.⁸

Immigration Judge called French interpreter for Mooré-speaking man
In a case at the Varick Street Immigration Court in New York City, “a man . . . spoke Mooré, a dialect from Burkina Faso. The immigration judge attempted to call a Mooré interpreter, but was unable to work the phone system to contact one. Instead, the immigration judge called a French interpreter. The detainee barely spoke French, and the difficulty of communication over the phone only exacerbated the misunderstanding and inability to effectively convey questions and answers.”⁹

Detainee languished in detention while Immigration Court tried to find a Mam-speaking interpreter

In a case at the Varick Street Immigration Court in New York City, “a Mam-speaking detainee was provided with only a Spanish interpreter and was therefore unable to comprehend basic questions. The case was continued and the detainee was returned to detention until the later date.”¹⁰

- **Interpreters act unprofessionally** Law students observing the Varick St. Immigration Court in New York City have seen interpreters engaging in “audible private cell phone conversations while court was in session; tardiness by over an hour; flipping through magazines while interpreting; and, inappropriate comments about cases and detainees after detainees were taken from the courtroom.”¹¹

Interpreter refused to interpret respondent’s testimony

“[A]n interpreter . . . flatly refused to translate his client’s testimony about being attacked and disfigured by anti-Semites in the Ukraine; the interpreter opined, ‘that sort of stuff doesn’t happen in the Ukraine.’”¹²

- **Inadequate telephone and videoconference technology exacerbate problems** Even the most sophisticated telephone technology makes it impossible to catch the visual cues on which interpreters rely to determine the meaning, style and tone of the speech to be translated.¹³ Speaker phones, the least expensive and most commonly used forms of courtroom remote interpretation technology,¹⁴ have the additional drawbacks of poor sound quality.¹⁵ Without the proper equipment, speaker phone interpreting also prevents respondents from communicating confidentially with counsel through an interpreter.¹⁶

Immigration Judge slams telephone interpreter system

“In one instance, the telephone interpreter simply became unresponsive midway through the hearing. After repeated attempts to call out to her, the immigration judge hung up and tried several times to dial back into the service, getting a busy signal each time. Frustrated, the judge scheduled a continuance and promised to arrange for a live Korean interpreter on that date. Months later, the same judge colorfully expressed his annoyance with the telephone interpreter service, referring to it as ‘crap’ and ‘a waste.’”¹⁷

While interpreting through videoconferencing has the potential to address some of these concerns, its implementation in Immigration Court been problematic. In many courts, videoconferencing technology consists of a webcam stream, fed to a television monitor split into several frames.¹⁸ Often, the resulting image is small, grainy, blurry, and does not convey the visual cues on which interpreters rely. Many videoconferencing systems also preclude confidential attorney-client communication. Immigrants using interpreters are more likely to

experience problems with videoconferencing and to have a higher rate of removal orders during Master Calendar Hearings.¹⁹

What DOJ Should Do

- A. Require interpreters to interpret all speech occurring in an immigration proceeding.
- B. Ensure that Immigration Court personnel who deal with the public can communicate with LEP individuals.²⁰
- C. Update the Immigration Judge Benchbook regarding the following issues, and train all judges in those protocols:
 - 1. the prohibitions on interpreter paraphrasing or opining;
 - 2. the need to ensure that the interpreter speaks the specific language and dialect spoken by the LEP individual;
 - 3. the importance of interpreters' adhering to ethics requirements such as conflicts rules; and
 - 4. how to ensure that interpretation is effective in videoconferences and over the telephone.
- D. Improve interpreter training and screening.
- E. Improve the monitoring of court interpreters by:
 - 1. asking for additional types of feedback on the Contract Interpreter Performance form;
 - 2. soliciting feedback from attorneys; and
 - 3. using trained, impartial personnel to conduct spot checks of interpreter performance.²¹
- F. Curtail the use of telephone interpreting, and of videoconferencing when interpretation is necessary.²² Ensure that when they are used appropriate equipment is provided.²³
- G. Update EOIR's Language Assistance Plan as required by Executive Order 13166 (and contemplated by EOIR's initial Language Assistance Plan), to incorporate standards for Immigration Court language access that are at least as high as the standards DOJ has set out for state court language access in its LEP guidance for DOJ recipients.²⁴

¹ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455, 41459 n.4 (Dep't of Justice June 18, 2002) ("DOJ LEP Guidance") (noting that "[p]ursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of Federal agencies, including the Department of Justice."); DOJ Coordination & Review Section, Departmental Plan Implementing Executive Order 13166, § 4.23, available at <http://www.justice.gov/crt/cor/lep/dojimp.php#6.%20Executive%20Office%20for%20Immigration%20Review> (web page last updated Jan. 10, 2001) ("EOIR will review its existing language assistance services to ensure that its LEP practices are consistent with the compliance standards for adjudicatory systems receiving federal financial assistance as set forth in the *LEP Guidance for DOJ Recipients*").

² See, .e.g., 67 Fed. Reg. at 41471.

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- ³ See Muneer Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1026 n.87 (2007); Chicago Appleseed, *Assembly Line Injustice* (2009), p. 19, available at <http://www.appleseeds.net/Portals/0/Documents/Publications/Assembly%20Line%20Injustice.pdf>.
- ⁴ Detainee Working Group of the New York University Chapter of the National Lawyers Guild, *Broken Justice: A Report on the Failures of the Court System for Immigration Detainees in New York City* (Vol. I: Sep. 2006-May 2007), p. 18.
- ⁵ Appleseed, *Assembly Line Justice* (2009), p. 19, available at http://www.chicagoappleseed.org/programs/immigration_court_reform.
- ⁶ Appleseed, *Assembly Line Justice* (2009), p. 19, available at http://www.chicagoappleseed.org/programs/immigration_court_reform.
- ⁷ Email from Meredith Rapkin, Villanova School of Law (Jan. 7, 2010).
- ⁸ *In re Francisco Juan Martin*, No. A091 418 436, 2009 WL 263117 (BIA Jan. 2, 2009).
- ⁹ Detainee Working Group of the New York University Chapter of the National Lawyers Guild, *Broken Justice: A Report on the Failures of the Court System for Immigration Detainees in New York City* (Vol. I: Sep. 2006-May 2007), p. 18.
- ¹⁰ *Id.*
- ¹¹ *Id.*
- ¹² Appleseed, *Assembly Line Justice* (2009), p. 21, available at http://www.chicagoappleseed.org/programs/immigration_court_reform.
- ¹³ 67 Fed. Reg. at 41462. See also National Center for State Courts, *Future Trends in State Courts* (2009), p. 37, available at www.ncsc.org/Web%20Documents/FutureTrends2009.pdf; National Association of Judiciary Translators and Interpreters, *Position Paper: Telephone Interpreting in Legal Settings* (2009), at 3, available at <http://www.najit.org/Publications/Position%20Papers/Telephone%20Interpreting.pdf>.
- ¹⁴ See EOIR, *Immigration Judge Benchbook, Introduction to the Master Calendar*, available at <http://www.justice.gov/eoir/vll/benchbook/tools/Purpose%20and%20History%20of%20MC.htm> (“It is often necessary at master calendar hearing to use the services of the contract interpreter by means of the telephone which is located on the bench. . . . If the interpreter is not on hand, the immigration judge must use the telephone to contact the interpreter, who will then assist by speaker phone.”).
- ¹⁵ National Association of Judiciary Translators and Interpreters, *Position Paper: Telephone Interpreting in Legal Settings* (2009), at 3, available at <http://www.najit.org/Publications/Position%20Papers/Telephone%20Interpreting.pdf>.
- ¹⁶ National Center for State Courts, *Future Trends in State Courts* (2009), p. 37, available at <http://www.ncsc.org/Web%20Documents/FutureTrends2009.pdf>. In federal judicial proceedings, the respondent’s right to confidential attorney-client communication through the aid of an interpreter is guaranteed by federal law. 28 U.S.C. § 1827(d) (requiring courts to provide interpreter services where the respondent’s LEP status inhibits his “comprehension of the proceedings or communication with counsel or the presiding judicial officer.”). Some states, including New Jersey and Wisconsin, also require telephone interpreting equipment that enables confidential attorney-client communication. See Wisconsin State Courts, *Guide to Telephone and Video Interpreting* (Sept. 6, 2006), available at www.wicourts.gov/services/interpreter/docs/telephoneinterpet.pdf; New Jersey State Courts, *Operational Standards for Telephone Interpreting* (Jan. 2001), at 5, available at <https://njcourts.judiciary.state.nj.us/web0/directive/vicops/timan1.pdf>.
- ¹⁷ Findings of National Lawyers Guild Detainee Working Group regarding observations of Varick Street Immigration Court 2008-2009 (provided by Gene Smilansky 10-16-09).
- ¹⁸ See *Assembly Line Injustice*, p. 22.
- ¹⁹ Legal Assistance Foundation of Metropolitan Chicago & Chicago Appleseed Fund for Justice, *Videoconferencing in Removal Hearings: A Case Study of the Chicago Immigration Court* (2005), p. 41, available at <http://appleseeds.net/Portals/0/Documents/Publications/Center%20Pubs/Chicago%20Videoconferencing%20Report.pdf>.
- ²⁰ To assess the ability of Immigration Court staff to communicate with LEP individuals, EOIR could send bilingual testers into the public areas of Immigration Court. For successful examples of such language access testing in New York City, Washington, D.C.’s Office of Human Rights, and the social services agencies of Wisconsin and Washington State, see Laureen Laglagaron, *Is This Working? Assessment and Evaluation Methods Used to Build and Assess Language Access Services in Social Services Agencies* (2009), pp. 25-28, http://www.migrationinformation.org/integration/language_portal/files/Language-Access-in-Social-Services.pdf; Washington, D.C. Office of Human Rights, *Implementation of the D.C. Language Access Act of 2004: A*

Compliance Review for Fiscal Year 2008, p. 4,
http://ohr.dc.gov/ohr/frames.asp?doc=/ohr/lib/ohr/pdf/dcohr_compliance_1107fin.pdf.

- ²¹ In the New York State court system, for example, all interpreters, regardless of experience, are observed periodically by a supervisor. New York Office of Court Administration, Working With Court Interpreters (Feb. 2, 2009), <http://www.nycourts.gov/courtinterpreter/pdfs/TipSheet.pdf>.
- ²² Some state courts have disallowed the use of remote interpreting altogether for proceedings lasting longer than 30 minutes or involving “unsophisticated users of interpreter services” or “emotionally charged situations.” *See, e.g.*, Wisconsin State Courts, Guide to Telephone and Video Interpreting (Sept. 6, 2006), available at www.wicourts.gov/services/interpreter/docs/telephoneinterpet.pdf. Videoconferencing in immigration proceedings also poses numerous procedural problems unrelated to language access, which are beyond the scope of this letter. For a case study, see Videoconferencing in Removal Hearings: A Case Study of the Chicago Immigration Court (2005), available at <http://appleseeds.net/Portals/0/Documents/Publications/Center%20Pubs/Chicago%20Videoconferencing%20Report.pdf>.
- ²³ National Association of Judiciary Translators and Interpreters, Position Paper: Telephone Interpreting in Legal Settings (2009), at 3, available at <http://www.najit.org/Publications/Position%20Papers/Telephone%20Interpreting.pdf>; *Position Statement: VRI Services in Hospitals* (April 2008), available at <http://www.nad.org/issues/technology/vri/position-statement-hospitals> (describing best practices for interpreting via videoconference).
- ²⁴ DOJ Coordination & Review Section, Departmental Plan Implementing Executive Order 13166, § 4.23, available at <http://www.justice.gov/crt/cor/lep/dojimp.php#6.%20Executive%20Office%20for%20Immigration%20Review> (web page last updated Jan. 10, 2001).



Language Access Problems at Federal Executive Agencies

Under Executive Order 13166, the Department of Justice (“DOJ”) is charged with ensuring that federal agencies issue both language access plans covering their own federally conducted activities and language access guidance covering the agency’s funding recipients.¹ Each plan and guidance must be consistent with the limited English proficiency (“LEP”) guidance document issued by the Department of Justice (“DOJ”).² Throughout the executive agencies, compliance with these requirements is disappointing. Here are a few examples.

Department of Homeland Security

The Department of Homeland Security (“DHS”) has issued neither a plan for improving language access to its federally conducted programs nor a guidance describing how its funding recipients should improve access to their programs. This is particularly problematic because DHS frequently fails to provide language access services to the LEP individuals it encounters. Given the high stakes proceedings involved, the lack of language access can result in people being erroneously removed from the United States, or being denied critical medical care:

- **Initial interviews:** Immigration and Customs Enforcement and Customs and Border Protection officers routinely use only rudimentary Spanish to interview individuals. As a result, charging documents and government-maintained files relating to LEP individuals are often inaccurate. Additionally, LEP individuals frequently are unable to understand DHS officers’ instructions.³
- **Asylum interviews:** Citizenship and Immigration Services (“USCIS”) does not provide interpreters at asylum interviews.⁴ Instead, it requires applicants to bring their own “interpreter” and then utilizes phone interpreters to check the accuracy of the applicants’ interpreters.
- **Credible fear interviews:** While USCIS does provide interpreters at credible fear interviews,⁵ some of these interviews are conducted in a language other than the primary language spoken by the LEP individual.⁶

In one instance, a Haitian Creole-speaking asylum seeker was interviewed in Spanish. The transcript of that interview was then used by the government to impeach him in Immigration Court.

- **Naturalization interviews:** Even individuals who have qualified for the English language waiver during a naturalization interview are not provided with interpreters in some cases.⁷

- Immigration detention: Recent reports have documented ICE failures to provide interpretation for detainees seeking health care, food, toiletries, or other assistance.⁸

Department of Health & Human Services

Although the Department of Health and Human Services (“HHS”) has issued a language access guidance, HHS’ Office for Civil Rights needs additional staff and resources to provide technical assistance, training and compliance reviews. There continue to be many language access barriers at entities receiving federal financial assistance:

*In Washington, D.C., a Spanish-speaking woman’s son was showing symptoms of sinusitis, so she took him to the hospital. She went to the check-in window in the reception area but didn’t understand what the person there said to her. At that point a hospital staff person yelled at her and told her to go learn English. The woman indicated that the staff person who yelled at her appeared to be Latino himself. The hospital did not provide the woman with an interpreter.*⁹

*A Spanish-speaking man sought treatment for diabetes. He went to a hospital with his wife, but when they arrived, the staff did not want to see him without an interpreter. They eventually sent someone out who was bilingual, but it was very brief and she left five minutes later because she was busy. She only helped him fill out the form, and did not help him communicate with his doctor. He had to resort to making signs to the doctor to explain his health concerns.*¹⁰

Additionally, HHS’ language assistance plan, which has been in effect since 2000,¹¹ should be updated. And, as recent Government Accountability Office reports have made clear, there are ongoing problems implementing parts of the plan.¹² Late last year the Centers for Medicare and Medicaid Services (“CMS”) issued its own Strategic Language Access Plan.¹³ That is a welcome step, but CMS should act quickly to implement the plan and to respond to the problems identified by the GAO.

United States Department of Agriculture (USDA), Food and Nutrition Service (FNS)

The SNAP Program (Food Stamps) fed 31 million people each month last year.¹⁴ In addition to Title VI, the implementing regulations of the Food Stamp Act have always required language assistance services, and the statute was amended in 2008 to require the provision of language services by recipients.¹⁵ However, the Food and Nutrition Service of the Department of Agriculture, which runs SNAP, has not issued an LEP Guidance document explaining the Title VI requirements of the state agencies administering SNAP. The USDA Civil Rights Instruction 113-1 does not meet the requirements of Executive Order 13166.¹⁶

What DOJ Should Do

- A. Language Assistance Plans:** Pursuant to its role as “repository” of the language assistance plans issued by executive agencies,¹⁷ DOJ should require each agency engaging in federally conducted activities to issue a Language Assistance Plan, as required by Executive Order 13166. Each agency that has already issued a Language Assistance Plan should be required to update it yearly. The plan should be posted on www.lep.gov and on the issuing agency’s website. And, each agency with a Language Assistance Plan should be required to report annually to DOJ regarding the agency’s implementation of the plan.
- B. Language Assistance Guidance:** Pursuant to its obligation to “consult with the agencies in creating their guidance,”¹⁸ DOJ should require each agency providing federal assistance to issue a Language Assistance Guidance. The guidance should be posted on www.lep.gov and on the issuing agency’s website.
- C. Language Access Complaints Procedure:** DOJ should ensure that each Language Assistance Plan and Language Assistance Guidance includes an effective complaint procedure that is accessible to LEP individuals. Complaint instructions and/or forms should be posted on www.lep.gov and on the issuing agency’s website. Additionally, DOJ should require that each agency annually compile a report stating the number of Title VI complaints it has received, the number resolved, and a summary of each Title VI issue reviewed, as well as any specific remedies. The reports should be made available to DOJ’s Coordination and Review Section and to members of the public.¹⁹

¹ Exec. Order 13166, §§ 2, 3 (Aug. 11, 2000). The LEP Guidance is published at 65 Fed. Reg. 50121 (Aug. 16, 2000).

² *Id.*

³ Email from Meredith Rapkin, Villanova School of Law (Jan. 7, 2010).

⁴ 8 C.F.R. § 208.9(b). *See also* 8 C.F.R. § 1208.9(g); USCIS, Should I Bring an Interpreter to My Asylum Interview?, available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=da55809c4410f010VgnVCM1000000ecd190aRCRD&vgnnextchannel=3a82ef4c766fd010VgnVCM1000000ecd190aRCRD> (“USCIS does not provide any interpreters during the asylum interview, except in the case of hearing-impaired applicants. You must bring an interpreter if you do not speak English well enough to proceed with the interview in English.”).

⁵ 8 C.F.R. § 208.30(d)(5).

⁶ Email from Nadia Firozvi, Asian Pacific American Legal Resource Center (Jan. 4, 2010); Email from Meredith Rapkin, Villanova School of Law (Jan. 7, 2010).

⁷ Email from Nadia Firozvi, Asian Pacific American Legal Resource Center (Jan. 4, 2010); Email from Meredith Rapkin, Villanova School of Law (Jan. 7, 2010).

⁸ Amnesty International report, *Jailed Without Justice: Immigrant Detention in the USA* (2009), available at <http://www.amnestyusa.org/uploads/JailedWithoutJustice.pdf>, p. 34; Human Rights Watch, *Detained & Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention* (March 2009), pp. 3, 33-34, available at http://www.hrw.org/sites/default/files/reports/wrd0309web_0.pdf.

⁹ E-mail from Jennifer Deng-Pickett, D.C. Language Access Coalition (Jan. 2010).

¹⁰ *Id.*

¹¹ HHS, Strategic Plan to Improve Access to HHS Programs and Activities by Limited English Proficient (LEP) Persons, Dec. 12, 2000, <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/lepstrategicplan2000.pdf>.

¹² *See* GAO, *Medicare: Callers Can Access 1-800-MEDICARE Services, but Responsibility within CMS for Limited English Proficiency Plan Unclear*, GAO-09-104 (Dec. 29, 2008), <http://www.gao.gov/new.items/d09104.pdf>; GAO,

Centers for Medicare & Medicaid Services: CMS Should Develop an Agencywide Policy for Translating Medicare Documents into Languages Other Than English, July 30, 2009, <http://www.gao.gov/new.items/d09752r.pdf>.

¹³ Centers for Medicare and Medicaid Services, Strategic Language Access Plan to Improve Access to CMS Federally Conducted Activities by Persons with Limited English Proficiency (Nov. 30, 2009), available at <http://www.cms.hhs.gov/EEOInfo/Downloads/StrategicLanguageAccessPlan.pdf>.

¹⁴ SNAP, FAQ, available at: <http://www.fns.usda.gov/snap/faqs.htm#1>

¹⁵ 7 U.S.C.2020(e)(1).

¹⁶ See FNS 113-1, pg 9-12, <http://www.fns.usda.gov/CR/Documents/113-1.pdf>

¹⁷ Exec. Order 13166, § 2.

¹⁸ *Id.* § 3.

¹⁹ Pres. Obama, Memorandum for the Heads of Executive Departments and Agencies, available at http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment. The Equal Employment Opportunity Commission provides similar statistics on its website, available at <http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>.