

# Clearinghouse REVIEW

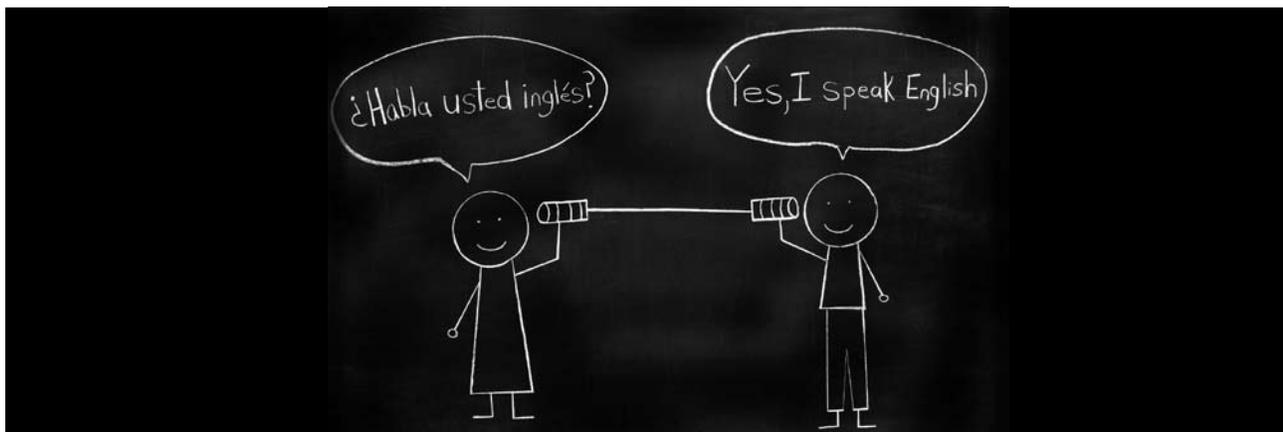
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# Language Access 101

## The Rights of Limited-English-Proficient Individuals

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Legal aid attorneys must uphold the rights of their limited-English-proficient (LEP) clients and enforce the protections of Title VI of the Civil Rights Act of 1964.<sup>1</sup> As the U.S. Department of Justice recently explained, the “Obama Administration supports ... Title VI language access work as a high priority” and wants “to make it clear, to recipients [of federal assistance] and federal agencies alike, that language access is not a fly-by-night measure, but an essential component of what it takes to do business and meet civil rights requirements.”<sup>2</sup> Legal aid offices must ensure that LEP clients receive language-assistance services in-house and from all agencies and programs that receive federal assistance.

Here I describe the legal basis for the rights of LEP individuals, detail the language-assistance requirements of recipients of federal assistance, and explain how these requirements apply to all Legal Services Corporation (LSC) programs. I also review how to file a language-access administrative complaint, highlight several recent enforcement efforts to improve language-assistance services, and describe some of the barriers that still remain more than forty-five years after the enactment of Title VI.

One in five people in the United States speaks a language other than English at home.<sup>3</sup> The term “limited-English proficient” refers to individuals who primarily speak a language other than English and who have a limited ability to read, speak, write, or understand English.<sup>4</sup> It covers individuals “born in other countries, children of im-

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<sup>1</sup>See Leticia Camacho & Gillian Dutton, *How Coalitions Can Help Legal Aid Attorneys Improve Access for Their Limited-English-Proficient Clients*, 42 CLEARINGHOUSE REVIEW 551 (March–April 2009); Memorandum from Loretta King, Acting Assistant Attorney General, U.S. Department of Justice, to Federal Agency Civil Rights Directors and General Counsel (July 10, 2009), <http://bit.ly/ca2M19>.

<sup>2</sup>Loretta King (see *supra* note 1), Remarks at the Meeting of the Federal Interagency Working Group on Limited English Proficiency (April 20, 2009), <http://bit.ly/aV8Rjt>.

<sup>3</sup>U.S. Census Bureau, American Fact Finder, S1603: Characteristics of People by Language Spoken at Home—2008 American Community Survey 1-Year Estimates (n.d.), <http://bit.ly/USLEPData>. The U.S. Census Bureau defines limited-English-proficient (LEP) individuals as those who speak English less than “very well” (see U.S. Census Bureau, *A Compass for Understanding and Using American Community Survey Data: What State and Local Governments Need to Know* 12 n.8 (2009), <http://bit.ly/cbQr2K>).

<sup>4</sup>U.S. Department of Justice, *Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency: Policy Guidance*, 65 Fed. Reg. 50123 (Aug. 16, 2000), <http://bit.ly/bC5Bxe> [hereinafter 2000 Justice Department Guidance].

migrants born in the United States, and other non-English or LEP persons born in the United States.”<sup>5</sup>

Language access is the right of LEP individuals to have meaningful access to (described below), participate in, and benefit from programs and activities that receive federal financial assistance.<sup>6</sup> Failure on the part of a recipient of federal assistance to adopt and implement language-access policies and procedures may constitute national-origin discrimination prohibited by Title VI.<sup>7</sup>

### Legal Basis for Language-Access Rights

Discrimination against individuals because of the language they speak or their ancestry is national-origin discrimination.<sup>8</sup> Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>9</sup> Federal financial assistance is grants, training, use of equipment, donations of surplus property, and any other assistance to a recipient agency or to a program or service from that agency or entities that receive funding from that agency.<sup>10</sup>

In *Lau v. Nichols* the U.S. Supreme Court described how Title VI required a school district to take reasonable steps to ensure

that Chinese-speaking students had a meaningful opportunity to participate in federally funded education programs.<sup>11</sup> The Court found that the U.S. Department of Health, Education, and Welfare’s Title VI implementing regulations and guidelines required the school district to take affirmative steps to rectify language deficiencies in order to open instructional programs to LEP students.<sup>12</sup>

To ensure compliance with Title VI the Justice Department similarly required, in a regulation, that communication between recipients and LEP program beneficiaries take place in languages other than English:

Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons.<sup>13</sup>

On August 11, 2000, Pres. Bill Clinton signed Executive Order No. 13,166, which directed federal agencies to comply with Title VI and its implementing regula-

<sup>5</sup>*Id.* at 50124.

<sup>6</sup>See U.S. Department of Justice, Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance (n.d.), <http://bit.ly/cFx8sx>.

<sup>7</sup>2000 Justice Department Guidance, *supra* note 4, at 50123.

<sup>8</sup>*Id.* at 50124.

<sup>9</sup>42 U.S.C. § 2000d.

<sup>10</sup>28 C.F.R. § 42.102 (2009); Coordination and Review Section, U.S. Department of Justice, Possible Federal Sources of Assistance to Federally Assisted Programs or Activities (last updated Sept. 18, 2002), <http://bit.ly/bpzfue>. Note that in the language-access context the term “recipient” refers to agencies or other entities receiving federal financial assistance.

<sup>11</sup>*Lau v. Nichols*, 414 U.S. 563, 566 (1974).

<sup>12</sup>*Id.* at 567–68. The U.S. Supreme Court also observed how “[l]anguage permits an individual to express both a personal identity and membership in a community, and those who share a common language may interact in ways more intimate than those without this bond” (*Hernandez v. New York*, 500 U.S. 352, 370 (1991)).

<sup>13</sup>28 C.F.R. § 42.405(d)(1) (originally published in 41 Fed. Reg. 52669 (Dec. 1, 1976)); see *National Multi Housing Council v. Jackson*, 539 F. Supp. 2d 425, 430 (D.D.C. 2008), citing 28 C.F.R. § 42.405(d)(1); *Aghazadeh v. Maine Medical Center*, Civ. No. 98-421-P-C., 1999 WL 33117182, at \*6 (D. Me. June 8, 1999).

tions.<sup>14</sup> The order specifically prohibited discriminating on the basis of national origin by, among other ways, denying LEP individuals meaningful access to federal programs and activities. The order further required federal agencies to develop agency guidance documents to explain Title VI obligations to recipients of federal assistance.

On the same day the executive order was signed, the Justice Department issued a guidance document that clarified the Title VI obligations of recipients of federal financial assistance and was to serve as a model for other federal agency LEP guidance documents.<sup>15</sup> In 2002, the Justice Department republished a more comprehensive LEP Guidance.<sup>16</sup>

Many federal agencies questioned the viability of Executive Order No. 13,166 and the Justice Department Guidance after the Supreme Court's decision in *Alexander v. Sandoval*, in which the Court held principally that there was no private right of action to enforce the Title VI disparate-impact regulations.<sup>17</sup> In October 2001 the Justice Department clarified and reaffirmed the LEP Guidance requirements: because *Sandoval* did not invalidate any Title VI regulations proscribing conduct that has a disparate impact on covered groups, the executive order and the Guidance remained in effect.<sup>18</sup> The Guidance also explained how the *Sandoval* decision did not invalidate the authority of federal agencies to respond to civil rights complaints filed by LEP individuals who were

denied language-assistance services by recipients of federal funding.<sup>19</sup>

### Recipients' Title VI Language-Service Obligations

As described in the LEP Guidance from the Justice Department and subsequent LEP guidance documents issued by federal agencies such as LSC, Title VI requires recipients of federal assistance to ensure that LEP individuals have meaningful access to programs and benefits by providing appropriate language-assistance services.<sup>20</sup> To assess whether a recipient is providing meaningful access and appropriate language-assistance services to LEP individuals, the recipient is to use the following four-factor test: (1) the size of the LEP population eligible for programs or services, (2) the frequency of recipients' encounters with discrete languages and LEP individuals, (3) the nature of the program or service, and (4) the resources available to the recipient.<sup>21</sup>

While recipients may be tempted to assign greater weight to the last factor, they must balance each factor equally.<sup>22</sup> As a Justice Department official explained to other federal agencies, "even in tough economic times, assertions of lack of resources will not provide carte blanche for failure to provide language access. Language access is essential and is not to be treated as a 'frill' when determining what to cut in a budget."<sup>23</sup>

The two primary types of language-assistance services are interpretation

<sup>14</sup>Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 11, 2000), <http://bit.ly/c1G95Z>.

<sup>15</sup>2000 Justice Department Guidance, *supra* note 4.

<sup>16</sup>U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (June 18, 2002), <http://bit.ly/bH3Jpe> [hereinafter 2002 Justice Department Guidance].

<sup>17</sup>*Alexander v. Sandoval*, 532 U.S. 275 (2001).

<sup>18</sup>Memorandum from Ralph F. Boyd Jr., Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Heads of Departments and Agencies, General Counsel, and Civil Rights Directors (Oct. 26, 2001), <http://bit.ly/abEw69>.

<sup>19</sup>2002 Justice Department Guidance, *supra* note 16, at 41460 n. 3.

<sup>20</sup>See Helaine Barnett, President, Legal Services Corporation, Program Letter 04-2 to All LSC Program Directors (Dec. 6, 2004), <http://bit.ly/aV0pyY>.

<sup>21</sup>See 2000 Justice Department Guidance, *supra* note 4, at 50,124–25; 2002 Justice Department Guidance, *supra* note 16, at 41459–61.

<sup>22</sup>2002 Justice Department Guidance, *supra* note 16, at 41460.

<sup>23</sup>King, *supra* note 2.

(oral language services) and translation (written language services).<sup>24</sup> The terms “interpreter” and “translator” are often used interchangeably, but each requires a distinct set of skills and aptitudes.

While interpreters do not need formal certification, they must be competent and have knowledge in both languages of the terms and concepts peculiar to the program or activity and the phraseology used by the LEP individual. Competency “requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but may not be competent to interpret in and out of English.”<sup>25</sup> For this and other reasons, such as attorney-client privilege and principles of confidentiality and impartiality, family members, children, friends, and volunteers should not be used as interpreters. Bilingual individuals, and even competent interpreters, also may lack the necessary skills to serve as translators.

Recipients must translate vital written documents into the language of each frequently encountered LEP group eligible to be served or likely to be affected by the program, service, or benefit. Vital documents are consent and complaint forms, intake and application forms with potential consequences, written notices of rights or denials, loss or decrease in benefits or services, notice of disciplinary action, and notices advising LEP individuals of free language assistance, among many others.<sup>26</sup>

A recipient can demonstrate strong evidence of compliance with the written-

translation requirement by providing “written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered,” or, if there are fewer than fifty persons in a language group that reaches the 5 percent trigger, “the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.”<sup>27</sup>

To ensure compliance, recipients are strongly advised to develop a written language-access plan that describes how and when they offer language-assistance services to LEP individuals. Identifying LEP persons, specific language-assistance measures, staff training, how the recipient gives notice to LEP persons, and procedures for regular monitoring and updating are components of an effective plan.<sup>28</sup> All federal LEP Guidance documents have consistently held that “even in places with English-only statutes or ordinances, covered recipients ‘continue to be subject to Federal non-discrimination requirements,’ including those that support LEP individuals.”<sup>29</sup>

### Legal Aid Offices and LEP Clients

As part of the Title VI obligation to refrain from national-origin discrimination, LSC programs must offer appropriate language-assistance service to LEP clients.<sup>30</sup> In December 2004 LSC explained several steps that programs must take, as recipients of federal funding, to meet their Title VI obligations.<sup>31</sup>

<sup>24</sup>2002 Justice Department Guidance, *supra* note 16, at 41461–64.

<sup>25</sup>*Id.* at 41461.

<sup>26</sup>*Id.* at 41463; see also American Translators Association, Translation: Getting It Right (2003), <http://bit.ly/clw04v>.

<sup>27</sup>2002 Justice Department Guidance, *supra* note 16, at 41464.

<sup>28</sup>*Id.* at 41464–65.

<sup>29</sup>King, *supra* note 2.

<sup>30</sup>Section 1006(b)(6) of the Legal Services Corporation Act states that, “[i]n areas where significant numbers of eligible clients speak a language other than English as their principal language, the Corporation shall, to the extent feasible, provide that their principal language is used in the provision of legal assistance to such clients under this title” (42 U.S.C. §2996e(6)).

<sup>31</sup>See Barnett, *supra* note 20.

Five years later, many LSC programs still fall short in complying with these requirements.<sup>32</sup> Many programs lack systems to assess the population and needs of the LEP communities in their service area, written policies and procedures for providing LEP clients with appropriate language-assistance services, staff training on these policies and procedures and how to work with interpreters, and notices in non-English languages that these services are available. LSC-funded programs must have several components in place to ensure that the LEP community has meaningful access to program services.<sup>33</sup>

Many legal aid offices consider only the number of LEP clients who seek services in determining whether they are meeting the needs of the LEP community, but this measure can produce inaccurate results if the legal aid office does not reach out to LEP communities or give notice of language-assistance services in non-English languages. For example, a legal aid office that is located in an area with a large Spanish-speaking population but does not have a telephone system with prompts in Spanish, bilingual staff, translated notices describing its programs and services, or outreach methods in place should not be surprised to have few Spanish-speaking LEP clients.

Accurate assessment of the needs of the LEP community requires a review not only of client intake information but also of current census and school-district data. Legal aid offices must also develop relationships with community-based organizations that work with LEP communities and collaborate with these organizations to create outreach approaches and ensure that these communities are aware that language-assistance services

are available at the legal aid offices.

Once a legal aid office has assessed the LEP communities in its service area, it should develop a language-access plan describing how it will fulfill these needs and how staff members will render language-assistance services to LEP clients. Simply writing a plan is not enough, however. To be effective the plan must have the support of management, with regular training for all staff members on how to deliver language-assistance services to LEP clients and how to work with interpreters.<sup>34</sup>

Even when a legal aid office is providing language-assistance services, individual staff members must also be trained on how to respond to language-access issues so that they can answer the question, Did my LEP client receive meaningful access to programs and services that receive federal financial assistance? For example, when working with an LEP client who was denied public benefits, consider whether the written denial and hearing notice was sent only in English, whether the worker at the public benefits office supplied appropriate language-assistance services, and whether the client was required to have her own interpreter.<sup>35</sup>

Staff members of public interest law offices and LSC-funded programs can also join the National Language Access Advocates Network (N-LAAN), a national organization of public interest attorneys and advocates who support and engage in advocacy to eradicate language discrimination and promote language rights.<sup>36</sup>

### How to File a Language-Access Administrative Complaint

Title VI administrative complaints on behalf of LEP individuals who have been

<sup>32</sup>National Language Access Advocates Network (N-LAAN), National Voluntary Self-Assessment of Legal Services Programs (2009) (survey results presented at the National Legal Aid and Defender Association annual conference, Denver, Colorado, November 19, 2009) (a copy of the survey results is in my files).

<sup>33</sup>See Paul Uyehara, *Opening Our Doors to Language-Minority Clients*, 36 CLEARINGHOUSE REVIEW 544 (March–April 2003).

<sup>34</sup>See 2002 Justice Department Guidance, *supra* note 16, at 41464–65.

<sup>35</sup>See Resolution Agreement Between U.S. Department of Health and Human Services Office for Civil Rights, Region II, and Montgomery County (New York) Department of Social Services (n.d.), <http://bit.ly/bFw1Nz>.

<sup>36</sup>The National Language Access Advocates Network (N-LAAN) website is located at <http://www.probono.net/nlaan/>. Additional language-access information and resources can be found on the Empire Justice Center Language Access Resource Center (LARC) that I developed and maintain, <http://bit.ly/LARCLEP>.

denied meaningful access to a government program or service that receives federal financial assistance may be filed with the federal agency that is the source of the funding or assistance. If the source of funding or assistance is unclear, the complaint may be filed with the Coordination and Review Section of the Justice Department's Civil Rights Division.<sup>37</sup> This section is responsible for federal governmentwide coordination with respect to Executive Order No. 13,166 and serves as the federal repository for LEP guidance documents and internal implementation plans for each federal agency.<sup>38</sup>

In the past year the Coordination and Review Section has increased its outreach to public interest law offices and community organizations working with LEP clients and has encouraged them to file administrative complaints on behalf of LEP clients. In September 2008 Paul Uyehara, formerly a senior staff attorney at the Language Access Project of Community Legal Services of Philadelphia, joined the Coordination and Review Section, where he leads a new language-access initiative to increase advocates' and community groups' involvement in Title VI complaint and investigation.<sup>39</sup>

### Recent Federal Enforcement Actions Against Recipients

While LEP individuals do not have a private right of action to enforce Title VI disparate-impact regulations, administrative complaints have led to enforcement actions by federal agencies and can help ensure appropriate language-assistance policies and procedures. Recent enforcement actions involving recipients such as state courts, law enforcement agencies, state and local public benefits offices,

and housing authorities identify the language-assistance services that recipients must have in place to ensure compliance with Title VI.

**Courts and Law Enforcement.** State courts and local law enforcement agencies are direct recipients of federal financial assistance from the Justice Department and have been subject to Title VI investigations and administrative reviews to ensure that LEP individuals have meaningful access to all programs and services. In September 2008 the Justice Department and the State of Maine Judicial Branch entered into a memorandum of understanding under which Maine's judicial branch agreed to take several steps toward LEP individuals having meaningful access to state courts.<sup>40</sup> Among the steps is an administrative order that assigns qualified interpreters to all LEP parties or witnesses in any court proceeding and a policy document detailing standards of professional conduct for state-court interpreters.

In 2009, after the Indiana Supreme Court decided that LEP criminal defendants were not entitled to interpreters at court expense unless they were indigent, the Justice Department explained to the court's administrative division how other state courts had complied with Title VI by providing free interpreter services to LEP individuals in both civil and criminal proceedings.<sup>41</sup>

In 2007 the Justice Department entered into a memorandum of agreement with the Lake Worth, Florida, Police Department after investigating an LEP individual's civil rights complaint that the police failed to have appropriate language-service policies and procedures in place or to have language-assistance measures.<sup>42</sup>

<sup>37</sup>Complaint form in English, Spanish, and Chinese is available at <http://bit.ly/9zDDEI>.

<sup>38</sup>See Limited English Proficiency: A Federal Interagency Website, Federal Agency LEP Guidance and Language Access Plans (n.d.), <http://bit.ly/aPAft0>.

<sup>39</sup>See Uyehara, *supra* note 33.

<sup>40</sup>See U.S. Department of Justice, No. 171-34-8, Memorandum of Understanding Between the United States of America and the State of Maine Judicial Branch (2008), <http://bit.ly/cACnYg>.

<sup>41</sup>Letter from Merrill A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, to Lilia G. Judson, Executive Director, Division of State Court Administration, Indiana Supreme Court (Feb. 4, 2009), <http://bit.ly/df41QY>; see also Laura K. Abel, *Language Access in State Courts*, in this issue.

<sup>42</sup>U.S. Department of Justice, No. 171-18-16, Memorandum of Agreement Between the United States of America and Lake Worth, Florida, Police Department (2007), <http://bit.ly/buE5Yz>.

The agreement contained a new language-assistance plan and a language-assistance policy statement. The Justice Department signed a similar agreement with the Town of Mattawa, Washington, and its police department after complaints that the police department failed to provide language-assistance services to Spanish-speaking LEP survivors of domestic violence.<sup>43</sup>

**Public Benefits.** State and local agencies that administer publicly funded social services and cash assistance programs—Temporary Assistance for Needy Families, Medicaid, emergency assistance, general relief, adult protective services, personal care services, and the like—receive federal funding from the U.S. Department of Health and Human Services (HHS), which issued an updated LEP Guidance document in 2003.<sup>44</sup>

The language-service obligations of HHS recipients are detailed in two recent resolution agreements. In September 2009 the Montgomery County, New York, Department of Social Services and the HHS Office for Civil Rights agreed that the county would ensure that the language-assistance needs of applicants for and recipients of benefits are assessed and that competent and timely language-access services are provided to LEP individuals.<sup>45</sup> HHS agreed with the Hawaii Department of Human Services on August 12, 2008, to ensure that limited-English-proficient persons receive equal access to programs and services—for example,

medical care for low-income persons.<sup>46</sup> This agreement resolved a compliance review, which resulted from the investigation of a language-discrimination complaint filed with HHS in May 2005.

**Housing Agencies.** State and local governments, public housing agencies, assisted-housing providers, nonprofit organizations (housing-counseling agencies)—all receive federal assistance from the U.S. Department of Housing and Urban Development (HUD), which on January 22, 2007, issued its Final LEP Guidance requiring recipients to provide appropriate language-assistance services.<sup>47</sup> HUD's Office of Fair Housing and Equal Opportunity is responsible for investigating and enforcing Title VI obligations. In January 2007 it entered into a Conciliation Agreement with the Nashua, New Hampshire, Housing Authority to resolve a complaint that the housing authority lacked language-access policies and procedures ensuring LEP individuals' meaningful access to programs and services.<sup>48</sup> The Office of Fair Housing and Equal Opportunity similarly agreed with the Yolo County, California, Housing Authority in 2004 to resolve a Title VI complaint filed by an LEP individual who alleged that the housing authority did not provide appropriate language-assistance services.<sup>49</sup>

### Remaining Language Barriers

LEP individuals still do not have meaningful access to a number of vital federal

<sup>43</sup>U.S. Department of Justice, Nos. 171-81-2, 171-81-3, Memorandum of Agreement Between the United States of America and Town of Mattawa, Washington, and Town of Mattawa Police Department (2008), <http://bit.ly/d4dC9f>. For best practices by law enforcement agencies, see Susan Shah & Rodolfo Estrada, Vera Institute of Justice, Bridging the Language Divide: Promising Practices for Law Enforcement, (2009), <http://bit.ly/91zgcj>.

<sup>44</sup>U.S. Department of Health and Human Services, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47311 (Aug. 8, 2003), <http://bit.ly/ajZdVv>.

<sup>45</sup>Resolution Agreement Between U.S. Department of Health and Human Services Office for Civil Rights, Region II, and Montgomery County Department of Social Services (n.d.), <http://bit.ly/bFw1Nz>.

<sup>46</sup>Hawaii Department of Human Services Resolution Agreement (2008), <http://bit.ly/bq1gik>.

<sup>47</sup>Office of the Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 72 Fed. Reg. 2732 (Jan. 22, 2007).

<sup>48</sup>Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Conciliation Agreement Under Title VIII of the Civil Rights Act of 1968 as Amended by the Fair Housing Amendments Act Between the United States Department of Housing and Urban Development and Rafael and Ana Rodriguez and Nashua Housing Authority (2007), <http://bit.ly/9KjifT>.

<sup>49</sup>Voluntary Compliance Agreement Under Title VI of the 1964 Civil Rights Act Among the United States Department of Housing and Urban Development and Yolo County Housing Authority (2004), <http://bit.ly/9RgOa5>.

government and recipient programs. Each of the barriers identified below could be remedied with federal legislation that would give LEP individuals equal access to our court system and enable them to enforce their rights under Title VI.

As evident by the Justice Department letter to the Indiana Supreme Court, LEP parties and witnesses are still denied access to competent interpreters in state courts across the country. A number of state-court systems fail to have interpreters for civil and criminal proceedings, require LEP individuals to pay for interpreters, or do not properly train court interpreters.<sup>50</sup> Many vital documents, “such as standard pleadings, legal opinions, and self-help materials, are often written only in English, making them incomprehensible to LEP individuals.”<sup>51</sup>

In 2007 the State Court Interpreter Grant Program Act was introduced in the U.S. Senate; it would have given state-court interpreter programs additional funding, which state-court systems could use to assess the language needs in a geographic area, recruit skilled court interpreters, create a certification process for court interpreter programs, and ensure that a qualified interpreter is available to a court whenever necessary.<sup>52</sup> This legislation or a similar act is needed to provide resources to improve language services in our state-court system.

Although state courts provide interpreters in criminal and civil proceedings, federal courts are not required to do so for LEP individuals. The Court Interpreters Act requires the director of the Administrative Office of the United States Courts to prescribe, determine, and certify the qualifications of interpreters in

federal courts.<sup>53</sup> Even though qualified interpreters must be present in all criminal cases, civil matters do not come under the purview of the Act unless the government is the plaintiff.<sup>54</sup> Congress should amend the Court Interpreters Act to require federal courts to match what many state-court systems already do and provide interpreters for LEP individuals in all criminal and civil proceedings.<sup>55</sup>

The Supreme Court’s decision in *Alexander v. Sandoval* stands as a barrier to LEP individuals’ assertion of a private right of action under Title VI. The Civil Rights Act of 2008 would reinstate a private right of action to challenge disparate-impact discrimination regulations under Title VI and effectively overturn the *Sandoval* decision, which has significantly impaired enforcement of Title VI antidiscrimination provisions that Congress erected over four decades.<sup>56</sup>



To be able to deal with a barrier that millions of LEP individuals face each day, legal aid offices must understand language-access rights. While the last several years have seen increased enforcement by federal agencies, the prohibition—as mandated by the Civil Rights Act of 1964 and recognized by the Supreme Court—of national-origin discrimination cannot be fully realized until LEP individuals can enforce these federal language-access rights. Until then, legal aid attorneys and advocates must file administrative complaints on behalf of LEP clients and communities and work with state and national coalitions to advocate policies and procedures that ensure meaningful access to benefits, programs, and services.

<sup>50</sup>See Abel, *supra* note 41.

<sup>51</sup>David Udell & Rebekah Diller, Brennan Center for Justice, Access to Justice: Opening the Courthouse Door 10 (2007), <http://bit.ly/dhGsMO>.

<sup>52</sup>State Court Interpreter Grant Program Act, S. 702, 110th Congress (last reported Aug. 1, 2008), <http://bit.ly/9siwmp>.

<sup>53</sup>28 U.S.C. § 1827.

<sup>54</sup>See Interpreters Office, U.S. District Court, Southern District of New York, Court Interpreting FAQ (n.d.), <http://bit.ly/9asnCq>.

<sup>55</sup>See Administrative Office of the U.S. Courts, Implementation of the Long Range Plan for the Federal Courts: Status Report 109 (2008), <http://bit.ly/c0cYly> (Recommendation No. 81).

<sup>56</sup>Civil Rights Act of 2008, H.R. 5129 (<http://bit.ly/cGI5eP>), S. 2554 (<http://bit.ly/arlpLE>), 110th Congress (2008); see also Cristóbal Joshua Alex, *The Rollback of Civil Rights in the Courts and the Potential Impact of the Civil Rights Act of 2008*, 42 CLEARINGHOUSE REVIEW 335 (Nov.–Dec. 2008).



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