



National Asian Pacific American Bar Association

INTERPRETING JUSTICE

Progress & Challenges *on* Language Access

An Asian Pacific American Perspective 2017



NAPABA Research Institute

Authors

*Meredith Higashi, Suzan Chau, Daniel Hu, Stacey Wang,
Les Jin, Tina Matsuoka, and Navdeep Singh*

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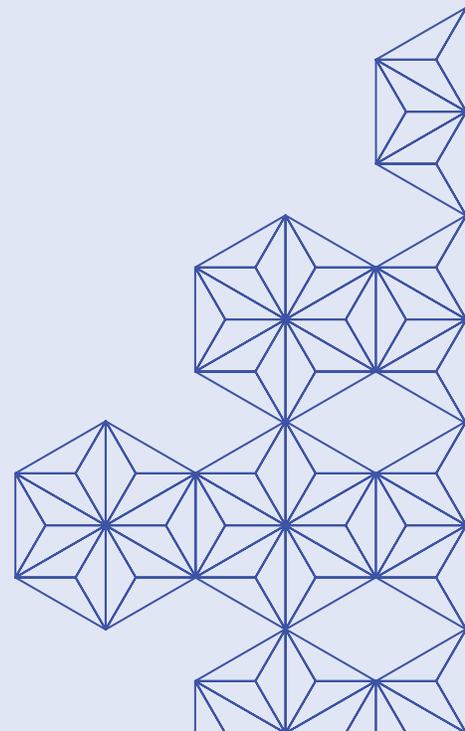
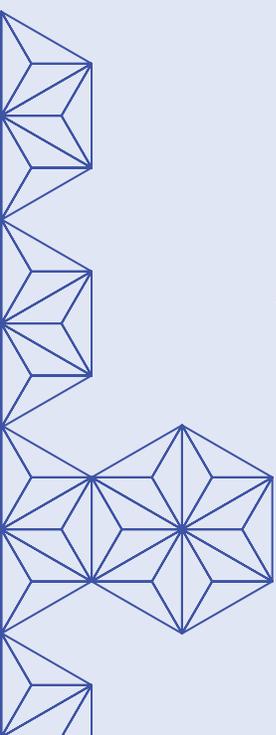
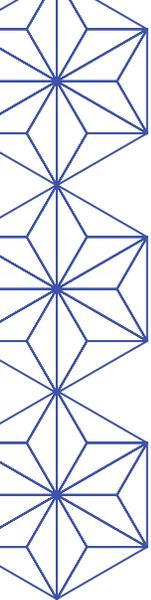


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INTRODUCTION

As a bedrock of America’s democracy, the legal system must embody the nation’s principles of equality and justice. Achieving this mandate, however, requires vigilant work to ensure that values translate into laws and policies that ensure all people have access to a judicial system that serves them fairly. As demographic changes have diversified communities across the country, laws and policies impacting the functioning of courts and administrative agencies must keep pace with the growing need for access in proceedings before the judiciary and governmental agencies for individuals who lack proficiency in English.

One of the core values of the National Asian Pacific American Bar Association (NAPABA) is to promote equal access to justice for Asian Pacific Americans (APAs), particularly for the significant portion of the community who face increased challenges due to limited English proficiency. NAPABA’s longstanding work to improve language access solidified in the spring of 2006 with the launch of the organization’s Language Access Project and hire of its first AmeriCorps VISTA volunteer. In May 2007, NAPABA produced its groundbreaking report, *The State of Language Access for Asian Pacific Americans*,¹ to advocate for the rights of limited English proficient (LEP) Asian Pacific Americans in the justice system. Widely used by language rights advocates, courts, and bar associations, the report advanced NAPABA’s leadership as a resource on language access.

The 10th anniversary of NAPABA’s 2007 report presents an opportunity to assess the landscape on language access. This updated report reflects upon progress and continuing challenges, and provides recommendations on policies, strategies, and best practices for legal, government, and community stakeholders to further diminish barriers in judicial and administrative proceedings for LEP Asian Pacific Americans.

Asian Pacific Americans are the fastest growing population in the United States, with numbers growing an average of 3.4 percent annually from 2007 to 2014.² In 2007, the APA population was 4.5 percent of the U.S. population.³ Today, there are 21 million Asian Americans and 1.5 million Native Hawaiians and Pacific Islanders in the United States,⁴ comprising more than 6 percent of the population.⁵ Among Asian Americans, more than two-thirds of individuals are foreign-born; among Pacific Islanders, that proportion is 16

percent.⁶ The APA population now includes the highest proportion of immigrants compared with other racial and ethnic groups, and its members are collectively the most likely to be LEP (35 percent of the Asian American population and 14 percent of the Native Hawaiian and Pacific Islander population,⁷ as compared to 32 percent and 8 percent, respectively, a decade ago⁸). The national LEP population has also increased in the last 10 years from more than 22 million to nearly 26 million,⁹ of whom more than 5.5 million are APA.¹⁰ With the rapid growth of immigrant and LEP communities outpacing policy developments to expand services and languages through all interactions with the legal system, overall gaps in language access have widened, rather than improved.

The increased need for services that are accessible to the LEP community converges with a challenging time of emerging policies that adversely impact immigrant populations. For example, Congress proposed federal legislation in 2017 that would cut legal immigration by half, including by curtailing family-based visas, permanently reducing refugee admissions, and replacing employment visa categories with a point-based merit system that gives priority to individuals based on socio-economic criteria, including English proficiency.¹¹ While policy makers and communities grapple with challenging debates about immigration policy and citizenship, it is important that the issue of language access is not conflated with those debates. Language access is an indisputable necessity, facilitating essential services that ensure the security and protection of fundamental rights of all community members, including those who are LEP. As natural disasters such as the devastating hurricanes during fall 2017 in Texas and Florida—areas with

highly diverse populations, including large numbers of Asian Pacific Americans—illustrate, timely and comprehensive language assistance is very often a matter of safety and survival. Language services perform a similarly urgent function for individuals who are victims of crimes or seeking protection from domestic abuse. In all situations where LEP individuals need assistance to understand and communicate vital information, language access ensures they can fairly and actively participate in processes that safeguard their rights and interests.

As changing communities face increased challenges to inclusion, language access is as important as ever. This report elaborates on the state of language access in courts and governmental agencies through the lens of developments since NAPABA's original report. NAPABA's goal is that this report: (1) serve as a timely update on language access policies and practices; (2) identify continuing needs and challenges; and (3) uplift best practices and recommendations for policy makers, judges, lawyers, judicial and agency staff, program managers, and community stakeholders. NAPABA commends and highlights progress that has been made, but also focuses a sharp eye on improvements needed to realize equal justice for all.

This report addresses the state of language access in the following key areas where recommendations call for continued advocacy and more deliberate policy making:

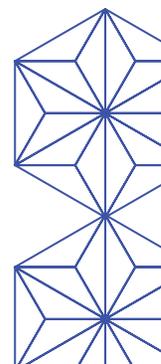
Expanding the Mandate for Language Access in Federal Courts. Federal courts lag behind federal agencies and state courts on language access as a result of gaps in federal law. Executive Order 13166, which extended Title VI's non-discrimination requirement to entities receiving federal financial assistance, does not apply to the judicial branch. Federal courts recognize only a limited right to an interpreter. NAPABA urges Congress to amend the Court Interpreters Act of 1978 to provide interpreter coverage to all cases and calls upon judges to exercise their existing authority under the Act to ensure appointment of competent interpreters for LEP individuals. In addition, the Judicial Conference, Administrative Office of the U.S. Courts, and Federal Judicial Center should use their independent authority to expand interpretation services, certify interpreters

in more languages, help courts translate written materials, and guide best practices for the use of interpreters.

Ensuring State Court Compliance with Language Access Requirements. While language access in state courts has progressed overall in the last decade, several barriers still exist for LEP individuals. These challenges include limitations on the provision of interpreters, costs of interpretation, inconsistent interpreter quality, limited languages interpreted, insufficient language assistance in points of contact outside of the courtroom, and a need for translation of written materials. NAPABA recommends that state courts expand interpretation to all stages and all types of proceedings, and provide interpreters at no cost to persons involved. Courts should also ensure appropriate language assistance in all court offices and programs, including alternative dispute resolution. To the extent that court systems have developed stronger policies for access to individuals with disabilities, those requirements may serve as a guide for improving access for LEP individuals. In developing or revising their language access plans, states can also look to roadmaps and indicia of best practices identified by leading experts on language access.

Improving Access to Qualified Interpreters. Enforcement of the mandate to provide language access requires interpreters to be highly qualified to serve LEP individuals. In both federal and states courts, the challenge of quality interpretation is particularly acute for diverse Asian and Pacific Islander languages. NAPABA recommends improving rules and standards for the use of interpreters while also prioritizing appropriate training and compensation to maintain a pool of highly qualified interpreters. In addition, courts must ensure that translations of vital documents are part of their commitment to language access.

Ensuring Federal Agency and Administrative Court Compliance with Language Access Requirements. Federal agencies have taken significant steps toward addressing language access and have engaged the LEP community through a variety of channels, but a lack of consistency and comprehensive language access across agencies underscores areas for necessary improvements. Similar challenges affecting language access in the courts also apply to agency proceedings: limitations on the provision



of interpreters, costs of interpretation, inconsistent interpreter quality, limited languages interpreted, insufficient language assistance across multiple points of contact in the agencies, and a need for translations of written materials. NAPABA recommends agencies regularly assess their language access services and look to the roadmap set forth by the Attorney General's 2011 guidance memorandum.

Strengthening Language Access Across State and Local Agencies. Many state and local agencies have improved their language access policies in the last decade, providing models for lagging states and localities to follow. Some of the most beneficial outcomes for LEP communities occur when government agencies collaborate with advocates and community stakeholders in the development of their policies. NAPABA recommends state and local agencies ensure their compliance with language access requirements by implementing a formal and well-documented grievance process that enables Title VI funders and the Department of Justice to conduct an appropriate review.

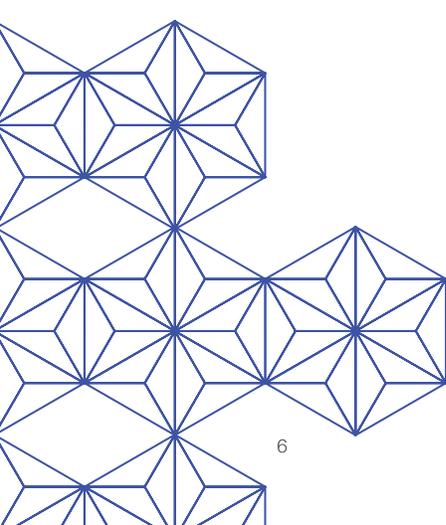
Supporting Legal Aid Programs' Role in Increasing Access to Justice. The Legal Services Corporation (LSC), which provides funds directly to legal aid organizations, ensures equal access to justice for all Americans by providing civil legal assistance to those unable to afford it. Of most urgent concern are recent budget cuts to LSC and the President's Fiscal Year 2018 proposal to cut LSC funding entirely. NAPABA urges Congress to restore LSC funding to levels that can adequately meet the demand for legal aid.

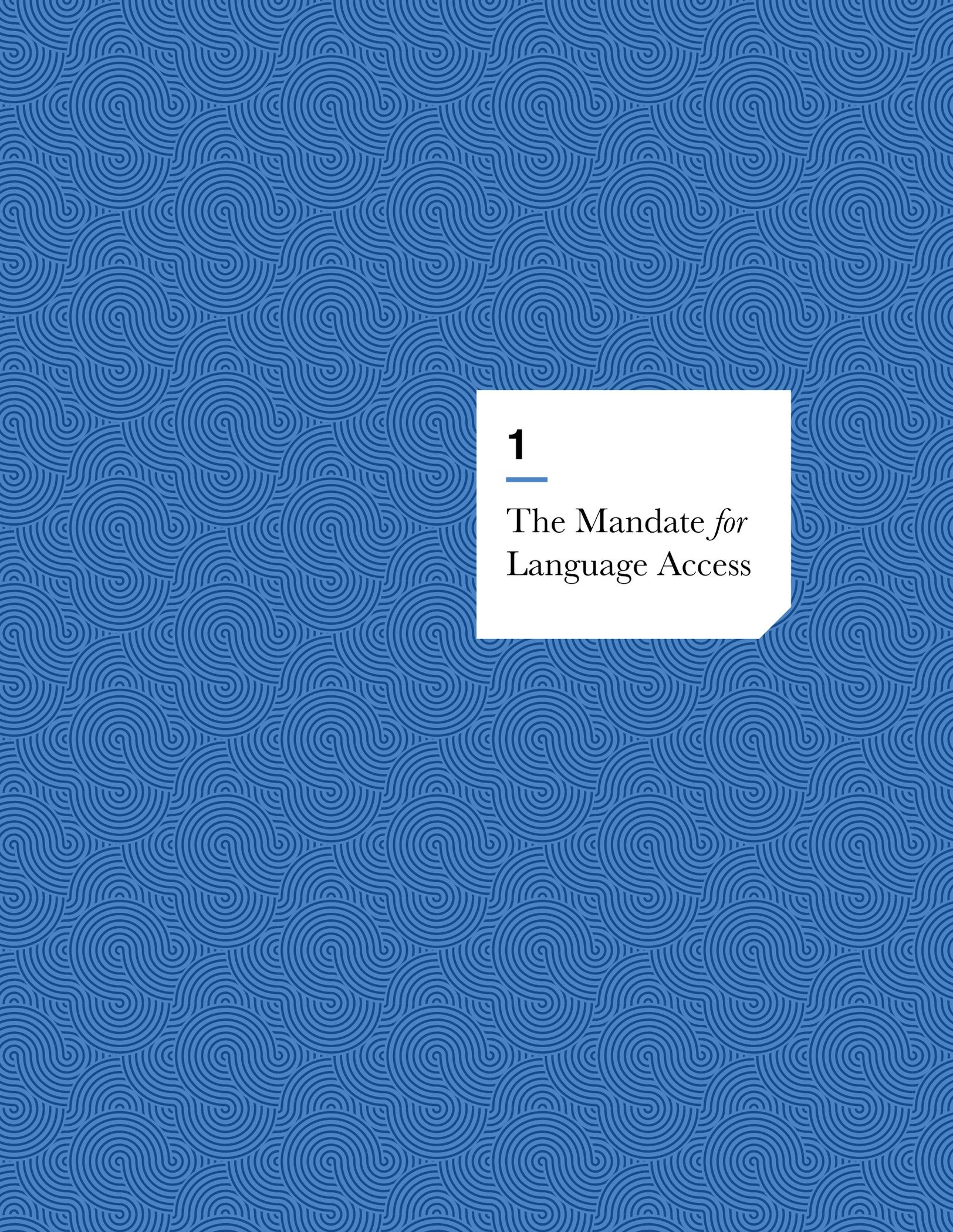
Using Other Advocacy and Community-Based Resources to Break Down Language Barriers. Advocacy and community-based organizations play an important role alongside legal aid organizations and government entities in identifying the needs of the LEP community and developing stronger language access policies. NAPABA recommends that organizations collaborate to pool resources, engage in advocacy, and seek funding to support multilingual tools and outreach to assist LEP community members.

Utilizing New Tools for Language Access. Technology has significantly advanced in recent years. Today, sophisticated technologies, such as video remote interpreting, present more possibilities for interpretation services where the availability of in-person, local interpreters presents a challenge. NAPABA recommends that courts continue to integrate technological tools into their language access services while recognizing that these options are not ideal.

Addressing Challenges to Funding Language Assistance Services. Particularly in light of federal budget cuts to programs that assist LEP individuals, courts and LEP-serving organizations must explore other sources of funding to help bridge the gap to serve the legal needs of the LEP community. In addition to continued lobbying to Congress, NAPABA recommends collaborations between organizations and governmental entities, as well as creative pursuit of funding through foundations.

With additional insights from NAPABA members and partners who serve LEP APA clients, this report provides a framework to approach language access issues and guide policies and practices that advance the rights of LEP individuals navigating the legal system.





1

The Mandate *for*
Language Access

BACKGROUND

The past decade has seen notable achievements on language access. As discussed further in this report, entities with broad leadership or oversight, such as the American Bar Association, U.S. Department of Justice, and Legal Services Corporation, have addressed language access as a priority and have implemented or amplified, through directives, many of the recommendations by NAPABA and other language justice advocates to expand resources or attention to the needs of the LEP community. States have also progressed on language access, with many developing or improving their language access plans in recent years, often as the result of working with community stakeholders—including NAPABA members and partner organizations, some of whom initiated complaints that prompted the urgent attention and improvements by states. This progress is important on its own, as well as because it reinforces gaps in areas and by entities that continue to lag on language access.

Language barriers are critical to address because English proficiency affects important aspects of civic life—educational opportunity, occupational mobility, earnings, quality of health care, and ability to participate in the political process. Language proficiency is of particular consequence in the legal system, where court or administrative proceedings impact individuals' interests in life, liberty, property, and family relationships. Individuals who are LEP are those for whom English is not a primary language and who have a limited ability to read, speak, write, or understand English.¹²

The demand for language assistance services is growing, with the diversity of language needs reflecting the nation's changing demographics. For the federal courts, there are more than 3,600 interpreters registered in the National Court Interpreter Database who collectively speak more than 180 languages.¹³ Spanish accounts for the overwhelming majority of interpreting requests at 96 percent.¹⁴ Mandarin is the second-most requested language, with Cantonese, Korean, and Vietnamese also included in the top ten languages.¹⁵

Top 10 languages requiring interpreting in federal courts (fy 2016)

LANGUAGE	NUMBER OF COURT PROCEEDINGS
Spanish	254,736
Mandarin	1,640
Bosnian/Croatian/Serbian	952
Russian	950
Portuguese	835
Arabic	815
Cantonese	538
Korean	403
Vietnamese	360
Romanian	340

Source: U.S. Courts



“[Language access is] a fundamental principle of law, fairness, and access to justice.”¹⁶

Specialized legal terminology and complex proceedings can challenge even those who are fluent in standard English. As the National Center for State Courts (NCSC) notes, “Many individuals have enough proficiency in a second language to communicate at a very basic level. But participation in court proceedings requires far more than a very basic level of communicative capability.”¹⁷ With important stakes at issue in the legal system, high standards for language assistance are a necessity for fair access to justice. Justice is unattainable when the individuals participating in the processes intended to achieve it cannot understand or convey information vital to their interests. Language barriers lead to misunderstood information, omitted or erroneous testimony, inaccurate records, and a violation of ethical standards by the court. The mandate for language access requires services to ensure meaningful participation of LEP individuals in all stages of their interactions with courts and agencies, including through oral interpretation and written translation assistance.

THE APA LEP POPULATION

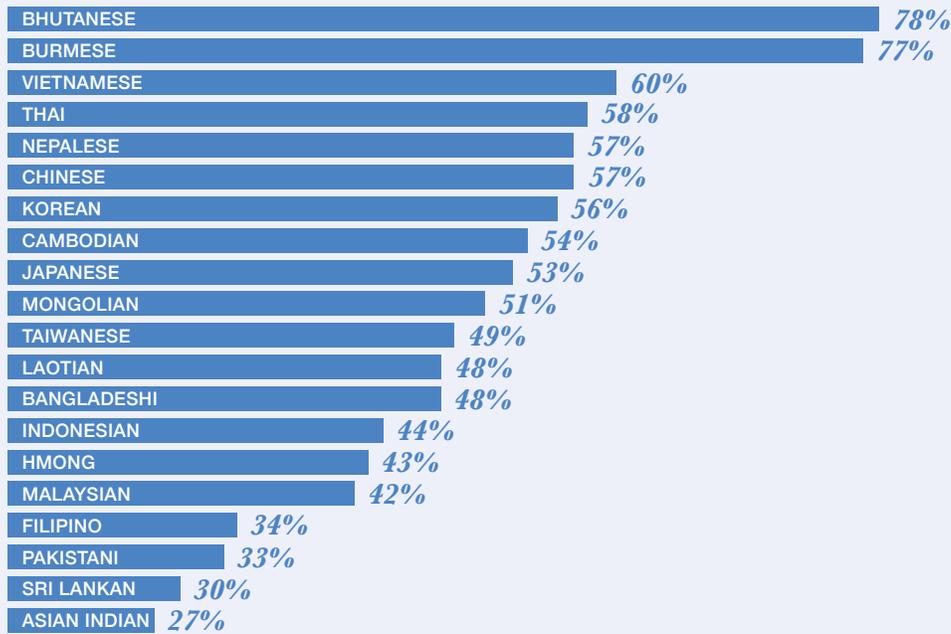
The APA population is the nation’s fastest-growing, with now more than 22.5 million people of Asian or Pacific Islander heritage in the United States.¹⁸ Trends in recent years show that migration from Asia has grown in share from below 40 percent in 2009 to rising and reaching 43 percent by 2011.¹⁹

The APA population overall is concentrated in a few states. More than 56 percent of Asian Americans are in California, Washington, Texas, New Jersey, and Hawaii, and more than 67 percent of the Native Hawaiian and Pacific Islander population resides in Hawaii, California, Washington, Texas, and Utah.²⁰ While growth in these states and in major metropolitan areas is significant, other areas are also experiencing increases in the APA population. For instance, APAs are a rapidly growing population in Arizona and Nevada in those states’ major cities.²¹ In the Midwest, rates of APA population growth are exceeding those in California, New York, and Hawaii.²² Chicago is home to 28 percent of the Midwest’s Asian American population and 13 percent of its Native Hawaiian and Pacific Islander population,²³ and significant populations also live in other cities in the region, such as Cleveland, Detroit, and Minneapolis-St. Paul.²⁴ Asian Pacific Americans are also thriving in regions that have been overlooked as hubs for diverse immigrant

communities. For instance, they comprise the fastest growing groups in the South.²⁵ In North Carolina, the APA population grew by 85 percent between 2000 and 2010, and in Georgia, by 83 percent. In that same time span, the Native Hawaiian and Pacific Islander population grew in Arkansas by 151 percent, and in Alabama by 87 percent.²⁶ Subgroups of APAs also have varying concentrations across areas of the country. For example, 79 percent of Hmong Americans live in either California, Minnesota, or Wisconsin, while 62 percent of Japanese Americans live in California, Hawaii, or Washington, and 59 percent of Bangladeshi Americans live in New York, California, or Texas.²⁷

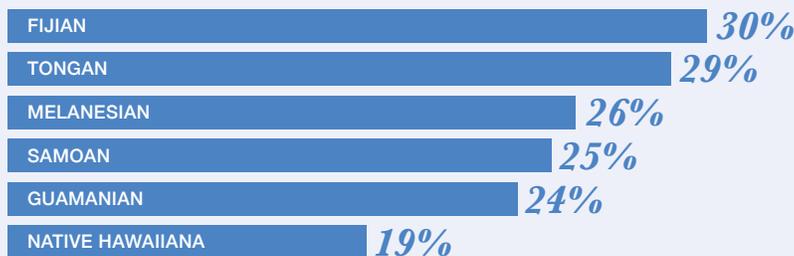
The broad and changing demographics of the APA community are reflected in vast linguistic diversity. More than one hundred Asian, Native Hawaiian, and Pacific Islander languages and dialects are spoken in the United States, and 77 percent of APAs speak a language other than English at home—a figure higher than that for any other population group.²⁸ Among the nation’s 25.9 million LEP individuals (a more than 3.6 million increase since 2007²⁹), 21 percent are Asian Pacific American.³⁰ The prevalence of limited English proficiency varies across APA subgroups (see Figures A and B).

Figure A | *Asian American Limited English Proficiency*



Source: AAPI Data, Infographic: AA Limited English Proficiency (2015)

Figure B | *Native Hawaiian & Pacific Islander Limited English Proficiency*



Source: AAPI Data, Infographic: NHPI Limited English Proficiency (2015)

While there are not direct correlations between populations with the highest language needs and economic barriers, several APA groups with the highest poverty rates, such as Hmong, Bangladeshi, Cambodian, and Pakistani,³¹ are among those with higher LEP rates, indicating a common confluence of barriers that creates particular challenges to accessing public resources.

For the many APAs with limited English, language barriers are an acute challenge for access to legal services. An understanding of the vast cultural and linguistic diversity of LEP populations is critical to ensuring that language access plans and policies are responsive to the needs they aim to address.

2

Legal Basis & Prevailing Standards *for* Language Access

FEDERAL AUTHORITY

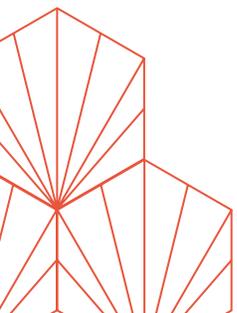
Federal law prohibits discrimination by entities that receive federal funding. Title VI of the Civil Rights Act of 1964 provides that “[no] person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.”³² In 1974, the United States Supreme Court clarified that Title VI extends to language access rights. Ruling in *Lau v. Nichols*, a case initiated against the San Francisco school board by non-English speaking Chinese students who were denied educational opportunities because of their limited English proficiency, the Court held that discrimination based on language ability violates Title VI’s prohibition on national origin discrimination.³³ This landmark civil rights case established precedent for LEP populations to assert their right to a “meaningful opportunity” to participate in programs receiving federal funding.³⁴ Title VI’s coverage applies to all entities, including state courts and agencies, that receive federal funding or support.

In 2000, President Bill Clinton issued Executive Order (EO) 13166,³⁵ which directed each federal agency to develop and implement a system to ensure LEP persons can meaningfully access the agency’s services and required each agency providing federal financial assistance to issue guidance and implementing regulations to their funding recipients on their obligations under the executive order. EO 13166 mandates that federal agencies and recipients of federal funding implement LEP plans to address language and interpreter services, based on an analysis of four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to persons’ lives; and (4) the resources available to the grantee/recipient and costs.³⁶ Under this mandate, the Department of Justice issued its LEP Guidance (“Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency”) in 2000, followed by amended guidance in 2001 and 2002.³⁷ In February 2011, the Attorney General issued a memorandum expressing the federal government’s renewed commitment to language access obligations under EO 13166.³⁸ A year earlier, the Assistant Attorney General for Civil Rights issued a letter to

state courts to reinforce long-standing policy that court systems receiving federal financial assistance must provide meaningful access to LEP persons in order to comply with Title VI, notwithstanding any conflicting state or local laws or court rules.³⁹

EO 13166 does not apply to the judicial branch. Language access in federal courts, which do not receive federal financial assistance, is determined by the requirements set by Congress and the Supreme Court. As discussed below, existing laws and policies do not fill the critical gap to ensure language access needs are met in federal courts.

- ▶ **Coverage under Title VI:** Programs or activities that receive federal financial assistance, including state and local courts and agencies
- ▶ **Coverage under EO 13166:** Federally conducted programs and activities, including federal agencies and recipients of their funding, such as state and local agencies, non-profits, and other organizations
- ▶ **Coverage under neither Title VI nor EO 13166:** Federal courts



STATE AND LOCAL LAW

States and localities may have their own laws requiring language access for LEP individuals that supplement or complement other language access policies. For example, laws in California illustrate language access requirements established under state statutes and local ordinances in other regions.

California's Civil Rights Act is a state version of Title VI, providing that:

No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, *national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation*, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.⁴⁰ (emphasis added)

California's Dymally-Alatorre Bilingual Services Act (or Bilingual Services Act), passed in 1973, requires state and local agencies, including courts, serving a "substantial number of non-English speaking people," to employ a "sufficient number of qualified bilingual staff in public contact positions" and to translate documents explaining available services into their clients' languages.⁴¹ The Bilingual Services Program of the State Personnel Board monitors agency compliance with the Bilingual Services Act and provides guidance to agencies seeking to meet their legal obligations to serve LEP individuals.⁴²

California Government Code §§ 11135, *et seq.*, and its accompanying regulations provide that no one shall be "denied full and equal access to benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state," on the basis of linguistic characteristics.⁴³

Passed in 2014 and effective January 1, 2015, California Government Code § 68092.1 states that

"[t]he Legislature finds and declares that it is imperative that courts provide interpreters to all parties who require one, and that both the legislative and judicial branches of government continue in their joint commitment to carry out this shared goal."⁴⁴

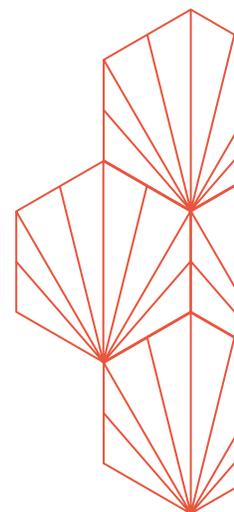
Passed in 2014 and effective January 1, 2015, California Evidence Code § 756 states that "[t]o the extent required by other state or federal laws" the Judicial Council shall reimburse courts for interpreters in every civil case, but if sufficient funds are not available, prioritization of interpreters in civil cases shall be by case type as follows:

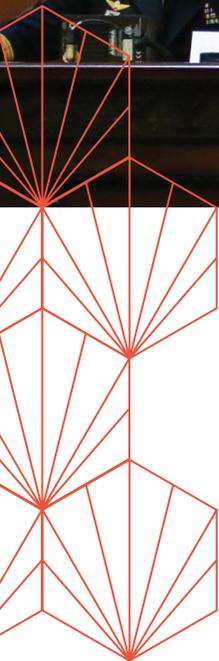
- (1) Family law DV, Elder/Dependent Adult Abuse (with physical abuse or neglect), Civil Harassment (with violence or threat of violence (under CCP 527.6(w)).
- (2) Unlawful Detainer.
- (3) Termination of Parental Rights.
- (4) Conservatorship or Guardianship.
- (5) Family Law Custody/Visitation.
- (6) All other civil harassment, elder abuse, dependent adult restraining orders.
- (7) All other family law.
- (8) All other civil actions or proceedings.

If funds are not available, preference given to fee waiver parties for (3), (4), (5), (6), (7), or (8) above.⁴⁵

Other state language access laws, including in Hawaii and New York, are described in the later section, "Strengthening Language Access in State and Local Agencies."

At the local level, the cities of Oakland and San Francisco were the first in the United States to implement a language access ordinance to supplement federal and state language access policies.⁴⁶ These ordinances provided further and more specific guidance on definitions (including "substantial number of LEP Persons Group"), evaluation, implementation, compliance, and how persons can file complaints.⁴⁷ San Francisco's ordinance requires all city departments to "provide





information and services to the public in each language spoken by a Substantial Number of Limited English-Speaking Persons or to the public served by a Covered Department Facility in each language spoken by a Concentrated Number of

Limited English-Speaking Persons.”⁴⁸ Other cities, including Washington, DC (see further discussion on page 41), Philadelphia, Minneapolis, New York, and Seattle have also issued ordinances requiring language access.⁴⁹



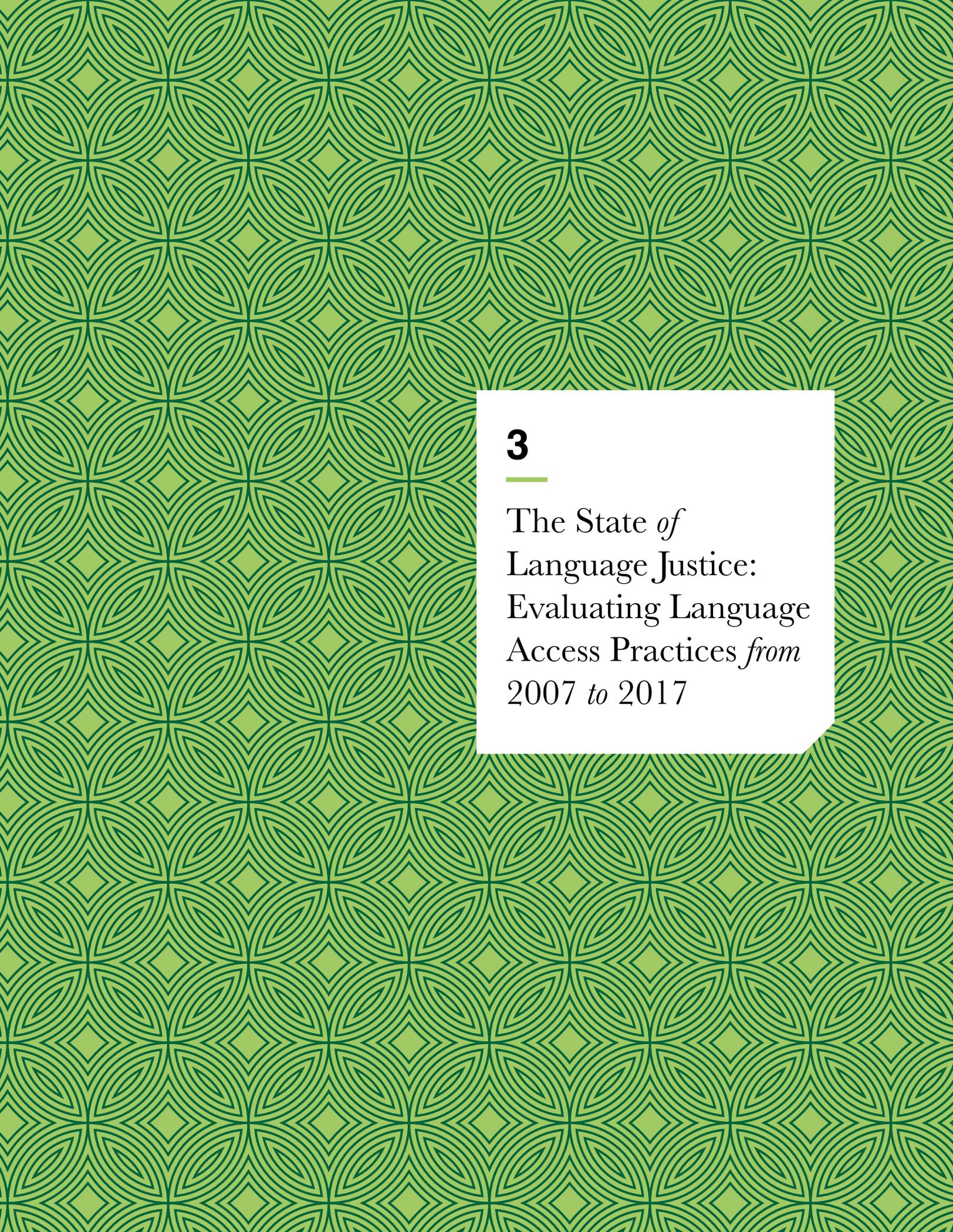
Community advocates were instrumental in the passage of San Francisco’s language access measure, “Equal Access to Services Ordinance.”

Immigrant rights groups, policy advocates, and legal services organizations formed a coalition to advance the ordinance. Part of their advocacy involved educating local authorities about existing federal and state laws to demonstrate how a local ordinance would support the efforts of other levels of government.⁵⁰

OTHER STANDARDS

The principle of language access in the justice system is also promulgated by non-binding, but influential standards within the legal community. In 2012, the American Bar Association issued its Standards on Language Access in Courts, which apply to all adjudicatory bodies in which LEP persons are involved, from federal courts to state courts to administrative tribunals at the federal, state, and local levels.⁵¹ The strength of the ABA’s Standards is underscored by the endorsement of the Conference of Chief Justices and the Conference of State Court Administrators.⁵² The” in front of “ABA’s Standards provide a blueprint for

courts for the design, implementation, and enforcement of comprehensive language access services “suited to the needs of the communities they serve”⁵³ and premised as a “fundamental principle of law, fairness, and access to justice, and to promote the integrity and accuracy of judicial proceedings.”⁵⁴ NAPABA, which was instrumental in placing this project on the ABA agenda, served as part of the national Advisory Group to the ABA’s Standing Committee on Legal Aid and Indigent Defendants in the development of the Standards.



3

The State of
Language Justice:
Evaluating Language
Access Practices *from*
2007 *to* 2017

Expanding *the* Mandate for Language Access in Federal Courts

OVERVIEW

The federal courts and non-executive agencies are not required to comply with the requirements of Executive Order 13166, which applies only to the executive branch and recipients of federal financial assistance. Congress and federal judiciary bodies determine the requirements of language access in the federal courts. Due to this discrepancy, federal courts have fallen behind state courts in the development of language access policies and providing protections to LEP individuals.

Federal courts have recognized the right to an interpreter in criminal trials, immigration cases, and some disciplinary hearings but have not established a constitutional right to an interpreter in other federal court proceedings, namely civil cases. Congress has a critical role in the scope of language access in federal courts because it is federal law that most restricts the provision of interpreters in federal court proceedings. The Court Interpreters Act of 1978 ensured criminal defendants have a right to an interpreter at trial, but in civil cases that right only exists when the defendant is being sued by the government.⁵⁵ Neither plaintiffs nor defendants have any right to an interpreter in suits between private parties. Some circuit courts have interpreted the Act to only provide an interpreter for litigants who speak no English at all.⁵⁶ The limited recognition of the right to an interpreter means that it is common for federal courts to deny or charge for interpreters to LEP parties or witnesses in civil cases.

Other entities also influence the provision of language services in federal courts. The Judicial Conference, which comprises the Chief Justice of the Supreme Court, the chief judges of each circuit and of the Court of International Trade, and a district judge from each regional circuit, sets the policy for the federal judiciary.⁵⁷ The Judicial

Conference has statutory authority to provide recommendations to the various courts to promote uniformity and efficiency of court procedures through the Guide to Judicial Policy. While the Judicial Conference has adopted policies regarding the appointment of interpreters for the deaf and hearing impaired, the Judicial Conference has yet to adopt a policy to ensure meaningful participation of LEP individuals in judicial proceedings, or to expand interpretation access to all civil cases. The Administrative Office of the U.S. Courts (AOC) operates under the Judicial Conference. Funded by Congress, the AOC oversees court interpreter certification. Currently, the AOC certifies interpreters only in Spanish.⁵⁸ The Federal Judicial Center, established by Congress to provide research and education to the federal judicial system, produces both the Judicial Benchbook used by federal district courts and training modules for federal judges. The Judicial Benchbook currently does not provide guidance on how judges should assess the need for interpreters or determine whether an interpreter has appropriate qualifications.

CHALLENGES

The limited requirements for language access in federal courts have presented significant challenges for LEP court users, particularly as federal courts trail behind the new national standards designed to assure access for all parties to court forms, instructions, web sites, and other written materials in commonly spoken languages. Most of these courts do not provide information in languages other than English, including in documents intended for unrepresented parties (which include LEP litigants). As recently as 2011, 82 of 90 federal district courts reported they did not provide resources, services, or notices in a language other than English.⁵⁹ When translations are available, they are often only in Spanish, despite the more than one hundred languages spoken in the courts.

The lack of in-language resources creates procedural complications, as well. There is inconsistency in the language assistance required when cases move between state and federal courts or between an administrative proceeding and federal court. A couple scenarios illustrate this problem: a case originates in state court, where an interpreter is provided, but reaches a federal court where no interpreter is provided, or a case in a federal administrative proceeding with an interpreter is appealed to a federal court where an interpreter may be denied. More specifically, it falls short by mentioning compliance with federal law but not acknowledging that Title VI requires comprehensive language access.



“Moving the Case to Disadvantage a Party”

A participant at the 2016 National Legal Aid & Defender Association conference shared a story in which an LEP plaintiff sued a corporate defendant in New Jersey state court. New Jersey has good language access in state court language access, and the plaintiff would not have had to pay for court interpretation, whereas she would have in federal court. The defendant removed the case to federal court, ostensibly to increase the pressure of not having paid interpretation services in federal court and thus increasing the cost for plaintiff who had limited means.⁶⁰





Recommendations

With stagnant laws and policies to address the widespread need for language assistance in the federal courts, NAPABA recommends urgent prioritization to close the stark gaps in access for LEP individuals:

- ▶ **EXPAND AND ASSURE AUTHORITY IS EXERCISED UNDER THE COURT INTERPRETERS ACT.** The Court Interpreters Act has the greatest influence on the scope of, and current restrictions on, the provision of interpreters in federal court proceedings. Congress must amend the federal Court Interpreters Act to clarify that federal courts must provide interpreters in all matters involving LEP participants. Congress should also allocate funding to cover this expansion. With their existing authority under the Court Interpreters Act and the Federal Rules of Civil Procedure, federal judges must appoint competent interpreters for LEP individuals whenever an individual's level of English proficiency is insufficient to permit meaningful communication.
- ▶ **EXPAND POLICIES BEYOND THE COURT INTERPRETER ACT.** Other bodies can improve language access in federal courts alongside Congress. The Judicial Conference has the authority under statute to adopt policies independently of federal legislation and should exercise its authority to ensure meaningful access to LEP individuals in judicial proceedings and expand access to language interpretation in civil cases. The Administrative Office of the U.S. Courts should certify interpreters in all spoken languages in addition to Spanish, assess the skills of interpreters in the languages for which certification is not available, and help courts update web sites by translating text into commonly spoken languages and make court forms and instructions accessible in those languages. The Federal Judicial Center should update the Judicial Benchbook to provide judges with best practices for assessing the quality of interpreters and for determining whether a party or witness has sufficient English proficiency.

Ensuring State Court Compliance *with* Language Access Requirements

OVERVIEW

The Department of Justice has interpreted Title VI of the Civil Rights Act of 1964 to require all state courts that receive any federal funds to provide interpreters in all civil and criminal cases. Many state courts receive federal financial assistance, though states are not consistent with the policies and practices they have in complying with language access requirements. The past decade has seen more states adopt or update language access plans or require certified interpreters, but not all have progressed. Many states that do have plans face shortcomings with the scope or implementation of their plans.

KEY DEVELOPMENTS

Some state courts have progressed on language access through reaffirmation of their language access obligations or the development of strong LEP plans. Among developments in recent years:

- ▶ In 2010, the **Georgia Supreme Court** reinforced language access obligations under Title VI in *Ling v. State of Georgia*.⁶¹ A Mandarin-speaking litigant had argued that her trial counsel was ineffective in failing to secure an interpreter for her trial and relying on her husband to communicate a plea agreement offer. The court held that “one who cannot communicate effectively in English may be effectively incompetent to proceed in a criminal matter and rendered effectively absent at trial if no interpreter is provided.”⁶²
- ▶ **Hawaii** adopted the nation’s most comprehensive LEP plan. Between September 2013 and March 2015, the Hawaii State Judiciary collaborated with DOJ to better meet the needs of LEP individuals in court operations and proceedings, including by updating and expanding its Language Assistance Policy, providing mandatory training for staff and judges, refining its court interpreter assignment policy, increasing efforts to educate local court interpreter assignment coordinators, and implementing an awareness campaign on its webpage to increase the public’s knowledge about how to access language services.⁶³ The Hawaii State Judiciary moved from 45th in 2014 to first in the nation among all state courts for its language access services,⁶⁴ and its multilingual website received recognition with the #1 Top Tech Award by the National Association for Court Management in 2016.⁶⁵
- ▶ In 2015, **California**—which has the highest number (nearly seven million) and concentration (27 percent of the national total) of LEP individuals⁶⁶—adopted a language access plan for the state’s courts.⁶⁷ The plan provides recommendations, guidance, and a consistent statewide approach to ensure language access to all LEP court users in the state. The plan sets forth an extensive discussion of the multifaceted issues related to the expansion of language access, as well as a comprehensive set of goals and recommendations delineating a consistent, yet flexible, statewide approach to the provision of language access, at no cost to court users.



“State Comparisons Highlight the Need for Uniform Standards”

A NAPABA member who has practiced in multiple Midwest states suggests that a uniform state policy and centralized funding are components of strong language access plans. For example, Missouri and Minnesota each have a uniform state policy and centralized funding, which allows for some tailoring of programs at the local levels to match local needs. In contrast, Kansas does not have a state-wide language access plan, and gives control to local courts to set their own policies; this has led to problems such as an imbalance in resources for language access between wealthier and poorer counties, a lack of grievance channels, and inconsistent services in different courts. It is also more difficult for local courts to extend language access services to justice partners unless there is state oversight. Centralized funding enables allocation of resources to be distributed widely—to law enforcement, legal aid, and social services—to spread awareness of language access needs and to identify problems at an early stage.

In October 2012, the National Center for State Courts (NCSC) convened state court leaders from 49 states, three territories, and the District of Columbia at the 2012 National Summit on Language Access in the Courts and followed the convening with the publication, *A National Call to Action*, in July 2013. In the time since the summit and report, NCSC has reported that jurisdictions have made significant improvements in language access. NCSC conducted a survey in 2017 that asked respondents to identify the most valuable aspects of the Summit or *National Call to Action* that they applied to their programs in the past five years. Forty-two percent of

respondents said that collaboration and information sharing provided the most value to their own programs, and 27 percent said that the action steps detailed in the publication were the most important.⁶⁸ Nearly all of the participating jurisdictions responded affirmatively that there were specific and concrete improvements. Common improvements included hiring of a full-time language access coordinator, increasing training, creating training programs, establishing interpreter certification and recruitment, implementing court rules and policies, creating language access plans, and translating documents and forms.⁶⁹



Developing a Comprehensive Plan

California is the nation's most diverse state, with its nearly seven million LEP residents speaking more than two hundred languages. The California Judicial Council's adoption of the *Strategic Plan for Language Access in the California Courts* (Language Access Plan) developed through several stages that model a process for inclusivity and engagement of community stakeholders. In August 2013, Chief Justice Tani G. Cantil-Sakauye introduced Access 3D to institute access to justice as three-dimensional: physical, remote, and equal.⁷⁰ By the end of the year, a Joint Working Group for the Language Access Plan was formed, with an invitation to statewide advocates to participate in listening sessions. The 18-month effort to develop the plan included public hearings and a 60-day formal public comment period, which included jointly submitted comments of two dozen diverse community and legal services organizations, including leading APA organizations such as Asian Americans Advancing Justice-Los Angeles, Asian Pacific American Bar Association of Los Angeles County, Korean American Bar Association of Southern California, and South Asian Bar Association of Southern California.⁷¹ The five-year strategic plan called for systems to provide interpreters in all court proceedings; language access outside the courtroom, such as at filing windows and court-ordered activities and programs; translation of forms and signage; increasing interpreter pools; training of court staff and judicial officers; community outreach; monitoring and complaints; and sustaining funding. States that currently do not have a language access plan can use California's extensive plan as a model by tailoring its general strategic goals to their own specific climate and circumstances.



CHALLENGES

While more states are adopting or improving their language access plans, there continue to be significant barriers to language access in state courts.

Limitations on when courts provide interpreters present one of the most common challenges. Some courts only provide interpreter assistance for certain categories of cases. For example, language assistance is not always guaranteed in some types of cases in which LEP individuals are particularly vulnerable, such as those concerning housing, debt collection, child support, and domestic violence. As of 2016, more than twenty states failed to require that interpreters be provided

in all civil cases.⁷² Interpreters are needed during many stages of a case, including during pretrial matters such as witness preparation for criminal proceedings, where it may be difficult to ensure witnesses will appear if the message and details for participation are not relayed properly. Communications between a prosecutor or defense counsel and witnesses are the responsibility of the lawyer. In some states, the prosecutor or defense counsel are a component of the court system, but in others they are not. Interpreters are also necessary at other junctures of a case, including in pretrial conferences, alternative dispute resolution, and calendar calls, as some examples.



Case Study: Need in All Cases

In December 2010, the Legal Aid Foundation of Los Angeles filed a DOJ complaint based on two Korean-speaking litigants who requested and were denied interpreters in their county court civil cases. One client had been sexually assaulted and sought a restraining order against her attacker; the other had filed for custody and child support for her son. DOJ opened an active investigation in which it observed in 2013 that the county and the state's Judicial Council policies, practices, procedures, and activities were inconsistent with the Civil Rights Act.⁸⁰ The investigation garnered significant attention, particularly with litigants needing assistance in APA languages.⁸¹ DOJ reached an agreement with the Superior Court of California, Los Angeles County (LASC) in 2016 for LASC's continued steps to achieve compliance with Title VI, including: provision of free qualified interpreters for LEP court users; translation of vital local materials and translation of key information on the LASC website; posting of multilingual signs outside of limited civil courtrooms advising LEP court users of the availability of interpreters at no cost to them; placement of signs at courthouse entrances notifying court users in the top five non-English languages about the availability of free interpreter services for court proceedings; expansion of the interpreter request web portal to a broader range of civil cases; provision of language assistance service-related training to judicial officers and staff; implementation of telephonic voice response information about court services in English and the top five non-English languages receiving interpreter requests; and the requirement that LASC continue to consult with community-based service providers and other justice partners to understand the emerging language issues. DOJ also required LASC to evaluate and make appropriate amendments to its Limited English Proficiency Plan on an annual basis.⁸²

Even when courts may provide interpreters, there are gaps in the scope and quality of services. Limitations on the languages for which available and qualified interpreters exist are particularly problematic for APA LEP individuals due to their vast linguistic diversity. In a compilation of data provided to NCSC in August 2012, state courts identified the six most requested languages in their jurisdictions. The top 12 languages overall included Vietnamese (among the top six in 71 percent of jurisdictions), Mandarin (68 percent), Korean (37 percent), Cantonese (24 percent), Tagalog (24 percent), and Ilocano (3 percent).⁷³ Many courts

still do not offer interpretation in languages other than Spanish, or in a range that reflects the needs of the diverse communities they serve. Combined with training standards for interpreters that are inconsistent across states (see further discussion in the section, "Improving Access to Qualified Interpreters"), many courts are failing to make access meaningful for all LEP individuals.

The costs of interpretation also create barriers to language access. Cost-shifting and payment is often the responsibility of LEP court users. More than half of states fail to guarantee that courts will provide interpreters free of charge,⁷⁴ which means

that many people who need interpreters will not, in fact, receive them because they cannot afford them. When courts charge the cost of the interpreter to one or more of the persons involved in the case, they are essentially imposing a surcharge based on one's LEP status and discouraging those individuals from requesting an interpreter. A NAPABA member shared that she often tells clients that "it is not worth time and money to appear in court to press a case" because the cost of getting an interpreter is so high, and the lack of proper interpretation puts doubt in one's mind that a case involving an LEP individual will be treated fairly.⁷⁵ Another consequence of shifting costs to court users is that even when a law firm covers interpreters as part of a pro bono representation of a client, those costs add up and may impact the ability of the firm to take on other pro bono matters, including serving other LEP clients.

The courtroom is the most obvious point of contact for those interacting with the court system, but there are many other interactions that have important bearings on fair access to and administration of justice. However, outside of courtroom proceedings, the provision of language assistance drops. In the same compilation of information provided to NCSC in 2012, state courts in each U.S. state, territory, and the District of Columbia shared data about their language assistance services. Frequent (as in daily or weekly) provision of court personnel providing language services in courtroom proceedings occurred in 86 percent of courtroom proceedings, a figure that dropped to 78 percent at the front counter, 68 percent at self-help centers, and 65 percent in fielding calls.⁷⁶



Language Access Beyond the Courtroom

Some states have implemented practices to promote access to justice outside the courtroom. For example, the Missouri Office of State Courts Administration (OCSA) has recommended courts have signs with different languages so visitors can indicate if they need assistance in another language, a practice followed in some courts. To ensure the signage is meaningful, the OCSA recommends the signage be in "simple directions . . . [and] because many LEP individuals may not be fully literate in their native language, use of universal symbols is encouraged."⁷⁷ In Minnesota, some courts have established protocols with court staff and partners, such as attorneys, law enforcement, and social workers, to engage in early identification of language access needs.⁷⁸ Hawaii courts have printable "language ID cards" that individuals can bring to alert court staff that they need language assistance. The printable language ID card is available on the Hawaii State Judiciary website and accessible in Cantonese, Chuukese, Ilokano, Japanese, Korean, Kosraen, Mandarin, Marshallese, Pohnpeian, Samoan, Spanish, Tagalog, Tongan, and Vietnamese.⁷⁹ The translated cards show the text in both English and the user's primary language. The Tagalog version appears below as an example.





Recommendations

NAPABA recommends state courts develop or improve their plans on language access to expand the provision of interpreters and translated materials. State courts must:

- ▶ **PROVIDE COMPETENT INTERPRETATION IN ALL STAGES AND TYPES OF PROCEEDINGS.** Courts should provide interpretation in all stages and types of proceedings, including at first contact with a judge or court clerk and in court functions that take place outside of the courtroom. Rigorously trained interpreters should be provided for LEP parties, as well as other LEP individuals who appear as witnesses or victims, or parents or guardians of English proficient minors who appear as litigants, witnesses, or victims. Courts should ensure they provide interpreters for all languages requested and translate materials, including court forms and website information, in the common languages of LEP communities they encounter.
- ▶ **PROVIDE INTERPRETATION AT NO COST.** It runs counter to the principle of justice to require some individuals to pay for their ability to have meaningful access to the courts. Courts should ensure no individual bears an unfair burden by providing interpreters at no cost to the persons involved.
- ▶ **SHAPE POLICIES IN ACCORDANCE WITH EFFECTIVE GUIDANCE.** Courts should look to the deliberate roadmap set forth by the National Center for State Courts in building or revising their language access plans. NCSC's recommendation should be used in conjunction with reports on effective implementation of language access plans. Courts should also assess the alignment of their language access plans with indicia of best practices such as those scored by the Justice Index (see further discussion). The Justice Index's comprehensive matrix on language access provides a way for states to compare their plans against those of better-performing states. Additionally, existing plans and policies for access to individuals with disabilities may serve as an effective template for addressing LEP needs. While Title VI and the Americans with Disabilities Act requirements are not the same, most court systems have been more diligent in their requirements to accommodate persons with disabilities.
- ▶ **TRAIN STAFF AND GIVE THEM TOOLS TO IDENTIFY AND ASSIST LEP PERSONS.** All court staff and officers should receive training on how to identify the needs of and assist LEP individuals at all points of contact, from security screening to the clerk's office. This includes ensuring there is signage and language cards to help LEP persons indicate their needs.



A Meaningful Approach

Washington State deliberately includes both LEP and deaf, hard-of-hearing, and deaf-blind interpretation and translation services in the state's newly revised Model Language Access Plan because "the delivery of language assistance services—interpretation and translation services—to these populations involves some similarities, and because many courts consolidate these services within the same office and staff," while highlighting distinctions between these populations where appropriate.⁸³

LANGUAGE ACCESS INDEX

The National Center for Access to Justice, a research and policy organization at Fordham Law School, produces the Justice Index, a public online resource that measures and analyzes findings and indicators of state justice systems' practices for ensuring access to justice. Launched in 2014 using data collected in 2012 and 2013, the Justice Index underwent an update in 2016 with data collected in 2015. The project's Language Access Index identifies best practices on language access and where those practices exist or are absent, enabling state officials to see how their states' plans measure against sixteen indicia:⁸⁴

- 1 | Official certification of court interpreters;
- 2 | Required use of certified court interpreters;
- 3 | Training of judges on working with interpreters;
- 4 | Training of court staff on working with interpreters;
- 5 | Providing notice of free interpreters in all matters on the state judiciary website;
- 6 | Using other languages to offer free interpreters in all matters on the website;
- 7 | Requiring interpreters at clerks' counters;
- 8 | Including clerk-counter interpreters in the Language Access Plan;
- 9 | Requiring interpreters at self-help centers;
- 10 | Including self-help centers in the Language Access Plan;
- 11 | Translating website instructions for self-represented parties;
- 12 | Translating on website when interpreters are provided;
- 13 | Translating on website how to file an interpreter complaint;
- 14a | Requiring appointed interpreters in specified types of highly vulnerable cases;
- 14b | Requiring interpreters to be free of charge in specified types of highly vulnerable cases;
- 15 | Translating on website the availability of court forms; and
- 16 | Posting translated forms available on the website in languages commonly spoken by self-represented litigants.

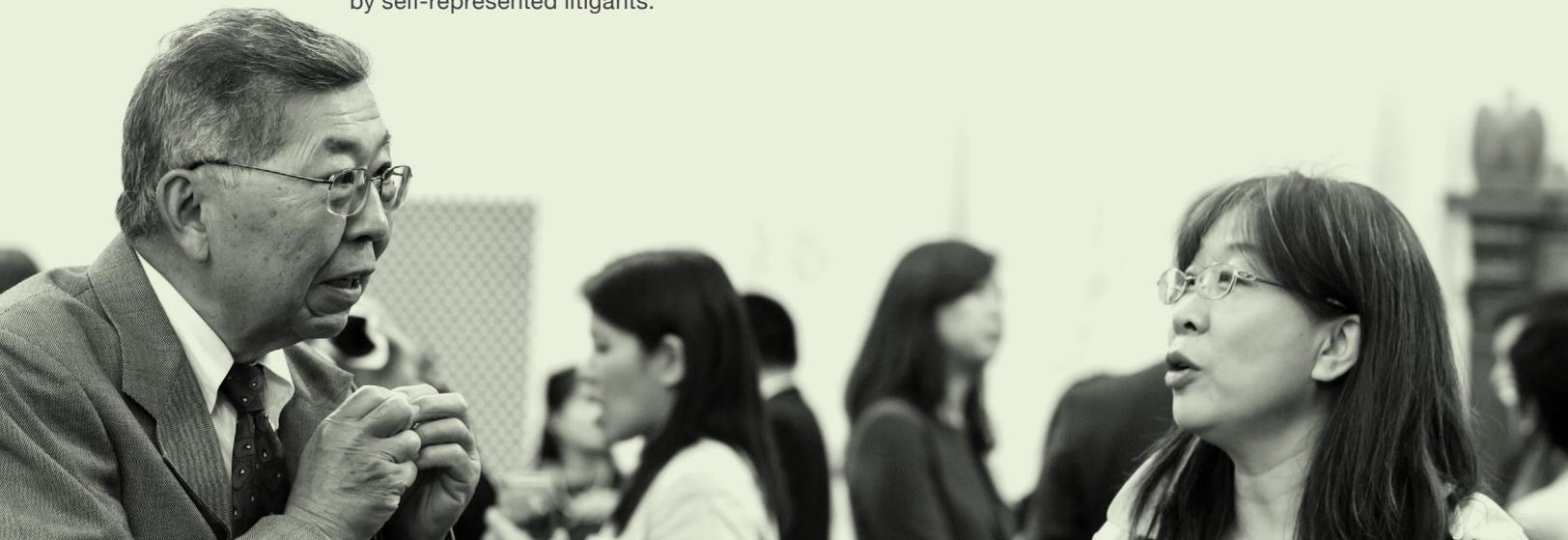
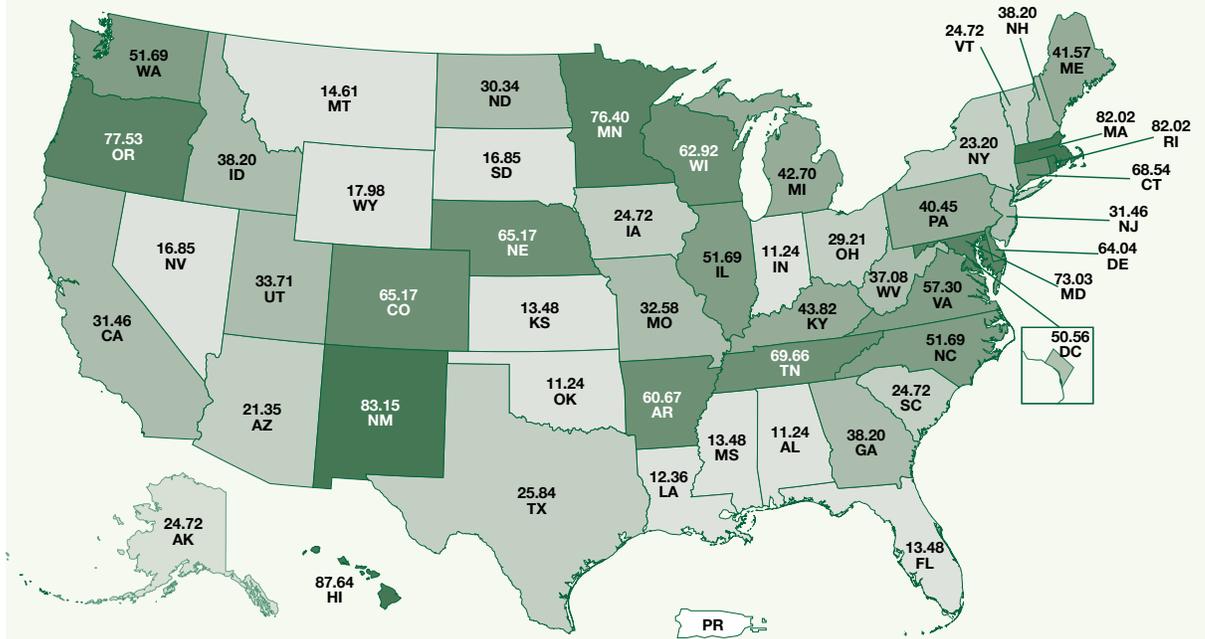


Figure C | Performance Map: Access for People with Limited English Proficiency

Scores are on a 100-point scale



Source: <http://justiceindex.org/2016-findings/language-access/>

On a 100-point scale, Hawaii (87.64), New Mexico (83.15), Massachusetts (82.02), and Rhode Island (82.02) had the strongest performance. Oklahoma (11.24), Indiana (11.24), Alabama (11.24), and Louisiana (12.36) had the weakest scores.⁸⁵ Hawaii's plan includes an update and expansion of its Language Assistance Policy, provides for mandatory training for staff and judges, refines its court interpreter assignment policy, increases efforts to educate local court interpreter assignment coordinators, and implements an awareness campaign on its webpage to increase the public's knowledge about how to access language services.⁸⁶ At the other end of the scale, Oklahoma's plan is bare-boned, including only certification of and required use of certified interpreters when they are available.⁸⁷

Some troubling findings from the Language Access Index include:

- ▶ Less than half of states notify litigants on the state judiciary website that free interpreters are available in all matters. Only 13 states provide this notification in non-English languages that are commonly spoken in the courts.
- ▶ Only ten states with a significant LEP population require clerk counters to have certified interpreters or bilingual staff fluent in common languages available throughout all hours of operation.
- ▶ Only three states with significant LEP populations require self-help centers to have certified interpreters or bilingual staff fluent in common languages present during all hours of operation.





State Language Access Plans

“Massachusetts Model”

Massachusetts has one of the nation’s stronger language access plans, featuring most of the best practices identified by the Justice Index, and is particularly responsive to the APA community’s needs. One in five LEP individuals in Massachusetts speaks an APA language, with Chinese, Vietnamese, and Mon-Khmer/Cambodian as the top APA languages spoken.⁸⁸ Translated court forms exist on the state court website for eight languages other than English, including Chinese, Khmer, and Vietnamese, and certified interpreters are available for Gujarati, Hindi, Japanese, Khmer, Mandarin, Nepali, Punjabi, Thai, and Vietnamese.⁸⁹

“New Jersey Plan”

In January 2017, New Jersey released its new language access plan, which consolidated, improved upon, and updated existing language access standards and policies. The plan is the culmination of decades of efforts on language access throughout the state’s judiciary and the specific focus of a diverse working group established in 2014 comprising judges, managers, staff, and interpreters throughout the state and with vetting by councils and advisory committees. The plan includes new standards that formalize existing practices, several of which address the translation of statewide and local documents. Other new standards relate to informing court users about language access services, the use of bilingual court staff, the appointment of staff interpreters, and continuous monitoring of compliance, quality, and effectiveness of language assistance services.⁹⁰

“Pennsylvania Plan”

In March 2017, Pennsylvania released one of the nation’s most recent language access plans. The plan, which provides for increased language access training and data collection procedures and free interpretation by qualified interpreters for Pennsylvania’s sixty judicial districts, followed several years of critique and review of language access practices in the state’s courts. In 2013, the American Civil Liberties Union of Pennsylvania filed two complaints with DOJ for cases in Berks and Bucks Counties where courts failed to provide LEP individuals with translated court documents or in-court interpreters. In 2015, Temple University Beasley School of Law’s Sheller Center for Social Justice (Sheller Center) released a report on a 2014 survey of the state’s magisterial district judge courts that found that courts often violated federal and state requirements on language access.⁹¹ Some troubling trends included high use of non-certified interpreters, such as friends or family members of LEP individuals, and only half of courts surveyed stating they provided free, in-person, certified interpreters in all civil proceedings.⁹² In April 2017, following the publication of Pennsylvania’s language access plan, DOJ signed a Memorandum of Understanding with the Unified Judicial System of Pennsylvania addressing the 2013 complaints, in which Pennsylvania committed to the timely implementation of its Language Access Plan and establishment of a Monitoring and Evaluation Team.⁹³ The Sheller Center and the Villanova University Charles Widger School of Law noted continued barriers for LEP court users from the time of its first study to its follow-up report released in August 2017, and emphasized that the effectiveness of the state’s new language access plan requires strong training of court staff and judges, monitoring, and enforcement.⁹⁴

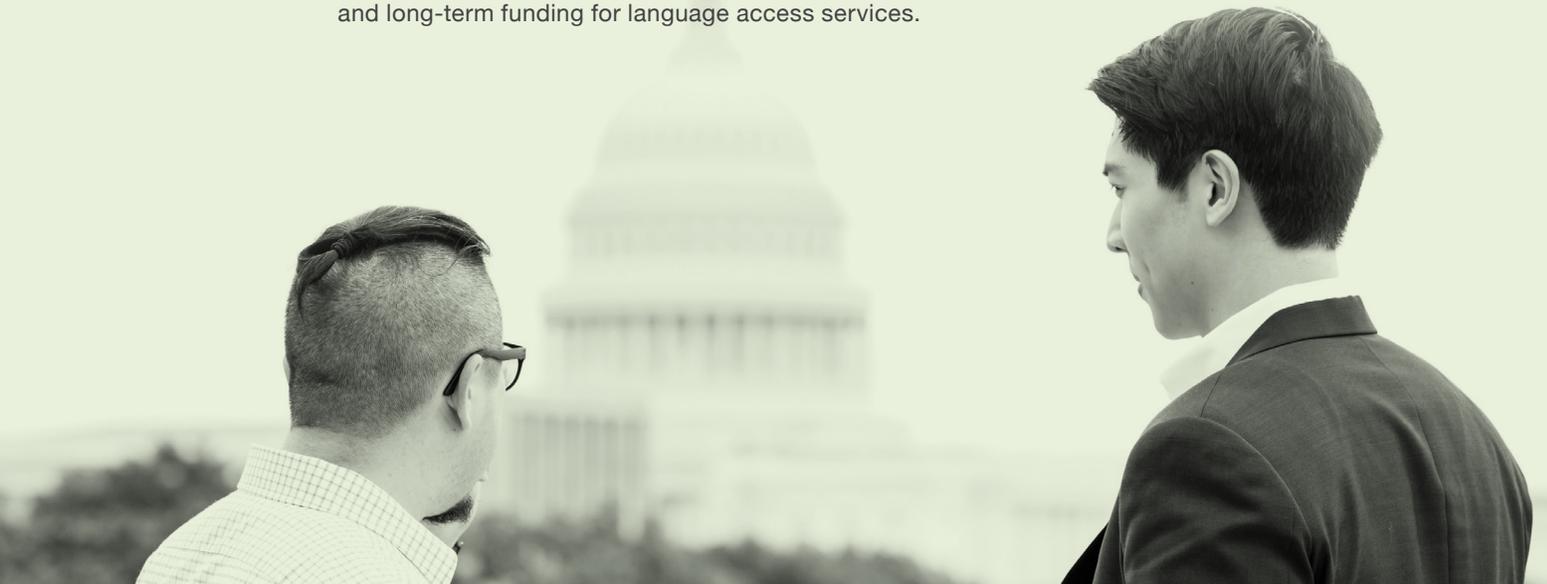
Language Access Plans can illuminate important information about the priority of language access in each state. For example, the level of detail, amount of information, and recentness of plan’s revision can reflect on the resources directed at this initiative. With significant shifts in demographics and growing LEP populations, even those plans that may have been published five years ago warrant re-visitation to assess if current needs are

met. States that recently adopted or updated their language access plans include New Jersey (January 2017), Pennsylvania (March 2017), North Carolina (July 2017), and Washington (July 2017).⁹⁵ Several other states are in the process of drafting or approving plans, including Indiana,⁹⁶ Iowa,⁹⁷ and Kansas.⁹⁸

BEST PRACTICES FOR STATE COURTS

In July 2013, the National Center for State Courts produced a report as a guide for jurisdictions to improve their LEP services (*A National Call to Action—Access to Justice for Limited English Proficient Litigants: Creating Solutions to Language Barriers in State Courts*). The report included a nine-step roadmap on the essential components of a State Language Access Plan, as developed by participants at NCSC's 2012 National Summit on Language Access in the Courts:

- 1 | *Identify the Need for Language Assistance:* Collect and analyze data and create procedures to identify the need for language assistance at all points of contact.
- 2 | *Establish and Maintain Oversight:* Develop a state or district language access plan, create of an oversight body (e.g., a Language Access Office), and/or create a language access coordinator position. Identify key stakeholders and collaborative partners.
- 3 | *Implement Monitoring Procedures:* Implement procedures to monitor and evaluate language assistance services.
- 4 | *Train and Educate Court Staff and Stakeholders:* Establish programs to train courts, justice partners, and stakeholders on language access services, requirements, and mandates.
- 5 | *Train and Certify Interpreters:* Develop procedures to enhance the availability of qualified interpreters and bilingual specialists through recruitment, training, credentialing, and utilization efforts.
- 6 | *Enhance Collaboration and Information Sharing:* Establish procedures to enhance the sharing of information and resources on national and regional levels.
- 7 | *Utilize Remote Interpreting Technology:* Fulfill LEP needs with remote technologies and ensure quality services.
- 8 | *Ensure Compliance with Legal Requirements:* Amend procedural rules to ensure compliance with legal requirements under the U.S. Constitution, federal statutory and regulatory requirements, and state constitutional, statutory, or court requirements. However, as discussed earlier, the comprehensive language access that is necessary in all court proceedings, services, and programs is required for compliance with laws such as Title VI; NCSC falls short of the position supported in this report that the courts should provide LEP individuals with qualified language assistance at no charge in all proceedings, services, and programs.
- 9 | *Explore Strategies to Obtain Funding:* Develop and implement strategies to secure short-term and long-term funding for language access services.





“Bar Associations, Community Organizations Engaged in Oversight”

Bar associations and other community organizations can play an active role in the oversight of courts’ language access plans. For example, while California’s strategic plan (described at page 19) is comprehensive, it is a set of recommendations and not mandates, with not much required oversight or enforcement—a point raised in criticism by community groups and legal services organizations through public comments and hearings. Chief Justice Cantil-Sakauye appointed an Implementation Task Force composed of judicial officers, legal services organizations, community groups, interpreters, court staff, public defenders, and others. The task force was charged to develop systems to implement and examine the plan, develop materials and work products, propose necessary rules of court and forms, coordinate with other related advisory groups, and monitor compliance. Throughout this process, the continuing input of legal services and community organizations, including local APA organizations and bar associations, has been critical to expanding language access in all of the state’s 58 counties.

Improving Access to Qualified Interpreters

OVERVIEW

Enforcement of the mandate to provide language access lacks teeth unless interpreters meet a high standard that enables LEP individuals to participate fairly in judicial proceedings. Rigorously trained, qualified interpreters are essential to the provision of meaningful access for LEP individuals.

Asian, Native Hawaiian, and Pacific Islander languages are among the most used languages in court proceedings after Spanish. According to the National Center for Access to Justice, Mandarin and Cantonese are among the three most frequently used languages in federal courts. Courts used Mandarin interpreters 1,682 times and Cantonese interpreters 813 times in 2011.⁹⁹ LEP needs reflect strong and growing populations of APA communities across the nation. For example, in Hawaii, with its majority-APA population, 14 of the 15 top languages requested in 2013 in the state were Asian or Pacific Islander languages (the exception being American Sign Language), with Chuukese, Ilokano, and Marshallese as the top languages.¹⁰⁰ In California,

Vietnamese, Korean, and Mandarin are among the top five languages used.¹⁰¹ In Minnesota, Hmong and Vietnamese are among the top five languages requested, and Karen (spoken in Burma and Thailand) is among the top ten.¹⁰² In Nevada, Tagalog, Chinese, Korean, and Vietnamese are the top languages spoken by LEP individuals after Spanish.¹⁰³

According to the ABA, court interpreting requires “language fluency, interpreting skills, familiarity with technical terms and courtroom culture and knowledge of codes of professional conduct for court interpreters.”¹⁰⁴ Inadequate interpretation can lead to devastating consequences, such as people pleading guilty for crimes they did not commit or going through costly appeals based on interpreter errors, but there are limited laws and court rules ensuring the appointment of qualified interpreters in judicial and administrative proceedings.



FEDERAL INTERPRETERS

The Administrative Office of the United States Courts (Administrative Office) determines the selection and usage guidelines for interpreters in federal court proceedings, while the local trial courts determine the need for specific language

interpreters. The Administrative Office, under the Court Interpreters Act, recognizes three different kinds of court interpreters: certified, professionally qualified, and language skilled.¹⁰⁵

Certification of interpreters is critical to ensuring quality interpretation, and therefore fair access to justice. The Court Interpreters Act requires the Director of the Administrative Office to prescribe, determine, and certify the qualifications of persons who serve as certified interpreters in federal courts when the Director considers such certification to be merited for LEP persons.¹⁰⁶ In 2007, there were federal interpreter certification programs for Spanish, Haitian Creole, and Navajo, but, today, Navajo and Haitian Creole are no longer offered.

Certified interpreters are those who have passed the Administrative Office certification examination, which is administered in two phases—written and oral examinations. The Standards for Performance and Professional Responsibility for Contract Court Interpreters in Federal Courts lays out the standards for federally certified court interpreters.

Professionally qualified interpreters are used for all languages except those for which the Administrative Office has certified interpreters. These interpreters need to have passed either the State Department conference or seminar interpreter test, passed the UN interpreter test, and be a current member in good standing of the Association Internationale des Interprètes de Conférence or the American Association of Language Specialists.

Language skilled or ad hoc interpreters are individuals who are not professionally qualified but who can demonstrate an ability to interpret court proceedings to the court's satisfaction.

In addition to the qualifications of interpreters, how the decision to provide an interpreter is made also has significance. The decision to provide an interpreter is left to the discretion of the judge, who often is not qualified to make such a determination. For example, several circuits have narrowly construed the Court Interpreters Act's requirement that an interpreter be provided in criminal actions and in civil actions initiated by the United States when a party or witness's language proficiency "inhibit[s]" their comprehension.¹⁰⁷ In contrast, the operative standard that DOJ has emphasized is

whether limited English proficiency prevents one from participating *meaningfully* in a judicial proceeding. There is irony in the fact that federal courts would enforce language access on state courts yet themselves may be lacking in those services. Judges or any other individual determining when interpretation is needed for a proceeding must have appropriate training to avoid inconsistent application of the law and consequential outcomes affected by language barriers.



STATE INTERPRETERS

More than forty states have existing language access plans or set out plans at the local jurisdictional level.¹⁰⁸ Each state has its own standards for state court interpreters, including a code of ethics, compensation, certification requirements, and governing statutes and rules. For most states, the minimum requirements entail passing a criminal background check; passing the NCSC's Oral Interpreter Performance Exam, or the oral exam with a score of 70 percent or higher; passing the NCSC 135-Q Multiple Choice Exam, or the written exam, with a score of 80 percent or higher; and attending an orientation program. In 2016, ten states did not certify court interpreters.¹⁰⁹ Eighteen states did not require the use of certified interpreters.¹¹⁰

Some states have a decentralized court system and choose to give most of the discretion to the

individual courts, so certification and compensation can vary by each state judicial district. New Mexico, for example, has language access plans at each judicial district, whereas Minnesota and Texas have one at each county within its judicial districts. Other states may not employ salaried interpreters and only use freelance interpreters when necessary. States sometimes use tiered pay structures based on education and certification level. The Hawaii State Judiciary has its tiered pay schedule for freelance interpreters listed on the Court Interpreter Registry. There can be specific compensation disparities for certain languages based on regions. For example, in Colorado and Florida, their courts pay Spanish interpreters a lower rate than those of other languages.¹¹¹ This discrepancy may be due to a higher number of available Spanish interpreters than for other languages.

State Court Interpreter Standards: Examples

California's standards for state court interpreters are governed by Article I § 14 of the California State Constitution; California Government Code §§ 68560-68566; and California Rules of Court, Rules 2.890-2.894. Court interpreters must pass both the Written Exam and Oral Proficiency Exam to be certified or registered with the Judicial Council of California. The range for salaried interpreters for spoken or sign language is \$69,685.80 to \$78,506.82, while freelance interpreters receive around \$156 for a half day or \$282 for a full day. There are certified interpreters for America Sign Language, Arabic, Armenian, Cantonese, Farsi, Japanese, Khmer, Korean, Mandarin, Portuguese, Punjabi, Russian, Spanish, Tagalog, and Vietnamese. Proficiency standards are high, and some interpreters may have provisional qualification, meaning that the judge has found on the record that a certified or regular interpreter is not available, and the provisional qualification is only valid for six months.¹¹²

In **Illinois**, interpreters are coordinated at the local trial court level but funding for its language access program comes out of general revenue from the state. The Criminal Proceeding Interpreter Act, 725 ILCS 140/0.01, and Code of Civil Procedure, 735 ILCS 5, are the governing Illinois interpreter statutes. Interpreters must attend a two-day orientation, pass the NCSC written English proficiency exam or the NCSC oral certification exam, or have federal certification.¹¹³

New Mexico provides a centralized certification program for interpreters through the New Mexico Administrative Office of the Courts, with two distinct credentialing programs. Certified Court Interpreters and Justice System Interpreters are expected to provide language access services in the courtroom, as well as outside the courtroom. These interpreters must qualify with a higher level of language proficiency than those in the state's second credentialing program, the Language Access Specialist Certification, a program that allows bilingual court and agency employees to provide language assistance outside of the courtroom and in court for non-jailable traffic offenses only.¹¹⁴

New York has a centralized state program for state court interpreters, and spends between \$100,000 to \$500,000 of the courts' general operating budget on its language access program. Part 217: Access to Court Interpreter Services for Persons with Limited English Proficiency of the Administrative Rules of the Unified Court System and Uniform Rules of the Trial Courts controls standards and expectations of state court interpreters. Interpreters can be certified by completing an orientation workshop, written language assessment or written translation, background check, and oral exam. Salaried interpreters for both spoken and sign language are paid from \$50,000 to \$75,000, while freelance interpreters earn \$25 to \$50 per hour, \$140 for a half day, and \$250 for a full day.¹¹⁵

In **Pennsylvania**, salaried interpreters are available in seven judicial districts, with an average entry salary rate of \$37,348 and high salary rate of \$50,494. Freelance interpreters' hourly wage depends on their interpreter classification level, with the "master" level being the most qualified and highest paid. The relevant governing statute for interpreter standards and expectations is the Administrative Regulations Governing Court Interpreters for Persons With Limited English Proficiency and for Persons Who Are Deaf or Hard of Hearing. Interpreters for languages with NCSC tests available need to pass the respective written test and written language assessment, as well as the oral performance test. Those for languages without a NCSC test need to pass an Oral Proficiency Interview at the Superior level and pass the Versant English test.¹¹⁶



In both federal and state courts, the challenge of interpretation is particularly acute for Asian and Pacific Islander communities. Some states have no certified interpreters in Asian or Pacific Islander languages. Some states with high LEP populations have scarce interpreters or few Asian or Pacific Islander languages covered. In some jurisdictions, attorneys have begun to train their own interpreters who understand the language and the nuances of legal terminology.

In addition to interpretation, LEP individuals also need access to translated documents. DOJ has clarified that Title VI requires state courts to provide vital documents to court users in the languages commonly spoken by those users.¹¹⁷ The ABA standards also urge courts to translate information, such as court services and programs, court forms, and court orders.¹¹⁸



“Inconsistent Courtrooms”

Language access plans should ensure consistent policies across a state’s courts. For example, one NAPABA member in Philadelphia noted that the state trial and municipal courts did not practice the same policy on interpreters. She was not allowed to bring her own interpreter to a municipal court and had to use a court interpreter, but she was permitted to bring her own interpreter to a trial court, in both instances for civil matters.¹¹⁹ The discrepancy indicates the municipal court failed to follow the new language access policy.

DEVELOPMENTS

Some positive developments have improved the availability of quality interpretation in the last decade, particularly as they impact languages for which there is growing need. Notably, more states are expanding interpretation services to civil proceedings. For example, the Colorado court system expanded the requirement of free interpreters to LEP individuals in all civil proceedings in 2011,¹²⁰ and has engaged with local community organizations, including APA organizations, to help recruit more interpreters.

States are also making progress in language access to more LEP communities. The number of Asian and Pacific Islander languages for which

oral certification exams are available through the NCSC has increased in the last decade. In 2007, there were only six Asian or Pacific Islander languages: Cantonese, Hmong, Korean, Laotian, Mandarin, and Vietnamese.¹²¹ Today there is also Ilocano, Khmer, and Tagalog.¹²² Court forms and other written information are also more accessible in languages other than English and Spanish. For example, the New York State Unified Court System provides information on its website in some Asian languages, including Bengali, Chinese, Korean, and Punjabi.¹²³ California courts provide translations of the state’s language access plan in several languages, including Chinese, Khmer, Korean, Punjabi, Tagalog, and Vietnamese.¹²⁴



Working to Meet Needs: Arkansas

Arkansas has the second-largest population from the Marshall Islands in the continental United States, at more than four thousand residents. After Spanish, Marshallese is the second most requested language in the state courts. In 2013, Arkansas became the first state to certify a Marshallese interpreter. The previous year alone, the interpreter had assisted in more than eight hundred cases involving Arkansas residents from the small Pacific Island nation.¹²⁵



To make interpretation jobs more attractive and to retain interpreters, some states are increasing and reviewing compensation. For example, in March 2017, New York State court administrators released a report with nearly seventy “concrete actions” to be taken to improve court interpreting services. Among them is a raise in the per diem rate for a full day of service and a commitment to review pay on a yearly basis, including considering

tiered compensation based on education, experience, and other factors.¹²⁶

Sources of interpreter recruitment have also expanded. A decade ago, college- and university-based degree and certification programs in interpretation were just emerging. Now more than fifteen institutions in several states offer these programs.¹²⁷

CHALLENGES

While court systems continue to strengthen the quality and availability of interpreters, key barriers reflect how the above-described developments are too infrequently the exception rather than the norm.

cases involving family law or domestic violence. These practices may be the result of a court’s failure to have a policy that requires that qualified interpreters be provided and to prohibit the use of unauthorized interpreters.

One of the most critical challenges is that the demand for interpreters and diversity of languages requested is unmet by the supply of available interpreters. Low pay for contract interpreters makes it difficult for state courts to retain a sufficient supply of qualified interpreters, many of whom will instead use their skills for higher compensation in federal court or do freelance interpreting in other settings. The high costs of certification compound the shortage.

An inadequate supply of qualified interpreters impairs the ability of the judicial system to function properly. A lack of interpreters frequently leads to delays in proceedings involving LEP parties until an interpreter is available, a barrier not faced by non-LEP parties. Additionally, providing unbiased interpretations through all stages of court proceedings is critical to the fair administration of justice. Potential conflicts of interest can arise in smaller communities or where there are fewer interpreters for a particular language in the area. Some jurisdictions with less populous multilingual populations may encounter issues with finding qualified interpreters who can remain neutral parties in the case. Some APA communities are small enough where it is possible for interpreters to have close connections with one or both parties.

A lack of qualified interpreters means that unqualified persons, including family members and friends, may be called upon to act as interpreters, increasing the potential for incorrect interpretation and even the interpreter’s own biases in presenting the case. Children are also not appropriate interpreters for their parents’ cases, particularly when dealing with traumatic



“Impact of Poor Interpretation”

“Access to an interpreter does not equal quality,” said one NAPABA member who leads an APA community organization. He recalled a criminal immigration case in which the interpreter did not appropriately translate the judge’s advisement, into Indonesian for the client and instead stated the phrase “beyond a reasonable doubt” in English. The NAPABA member informed the judge of his concerns about the interpreter. “The difficulty is, how do people [assessing the quality of interpretation] see something like this? I was able to see it because I speak Indonesian and I was there at court, but what if someone wasn’t there to notice?” Concerns about the quality of interpreters are prevalent among those who have observed or participated in court proceedings involving LEP individuals. At the same time, improving the quality of interpreters still does not address another problem, that of making interpreters available when they are needed.



“A Judge’s Perspective”

A state supreme court justice noted that in state courts, all judges should know their Title VI obligation to provide language access and how to take appropriate steps if the issue is raised. She hopes that all states will institute long-range language access plans to provide alternatives depending on how language access services are being sought—for example, over the telephone, at the counter, in court, or in court-ordered services. In situations where an LEP individual or their attorney raises the issue of inaccurate interpretation, in her state under the evidence code, the allegations would be handled through another person qualified as an expert interpreter and the fact-finder would evaluate the interpreters’ differing interpretations as they would with any other expert witnesses. She recommends that parties tape record interpreted proceedings to allow for a review of the interpretation, especially if the proceedings are not otherwise audio recorded by the court.¹²⁸



“Extra Hurdles for Pro Se Litigants”

For pro se litigants, the lack of translated materials is significantly challenging. “Even some information specifically targeted to LEP individuals is available only in English. For instance, on the website of the Southern District of New York the response to the question ‘I do not speak English. What do I do?’ is provided only in English.”¹²⁹ The response itself instructs litigants to have a “trusted friend or family member” assist with interpretation.¹³⁰





Recommendations for Courts

Courts must increase the use of qualified interpreters to improve the ability of LEP individuals to access the courts, with the focus being on two key components: coverage and quality. Entities responsible for improving judicial proceedings and access to justice must study the problem of the lack of qualified interpreters and develop plans to address the any shortages.

The coverage of interpreters may be strengthened by:

- ▶ **EXPANDING LANGUAGE ACCESS IN CIVIL PROCEEDINGS.** For federal courts, Congress must amend the Court Interpreters Act to clarify that federal courts should provide interpreters in all matters involving an LEP participant regardless of whether the proceeding is criminal or civil in nature (see earlier discussion). States should also continue to expand the requirements for language assistance.
- ▶ **ASSURING LANGUAGE ACCESS IN ALL COURT OPERATIONS.** Language assistance must extend to all court operations outside of the courtroom.
- ▶ **PROVIDING FREE INTERPRETERS.** Courts must ensure LEP individuals have meaningful access to proceedings without the burden of cost.
- ▶ **IMPROVING STANDARDS FOR DETERMINING WHEN AN INTERPRETER IS NEEDED.** *Voir dire* should include questions that call for people to provide descriptive answers to assess their English language comprehension and speaking skills. As examples, Georgia's Uniform Rule for Interpreter Programs instructs courts to ask certain descriptive questions, and in Ohio, the bench card for judges suggests asking questions that require narrative responses.¹³¹

The quality of interpreters may be improved by:

- ▶ **ENSURING A VALIDATED CERTIFICATION PROCESS AND PROGRAM OF STUDY.** State legislatures should pass legislation to create certification programs in their states.
- ▶ **ASSURING ADEQUATE COMPENSATION FOR INTERPRETERS.** Interpreter compensation rates should be reviewed and appropriately updated to be competitive and aligned with demand and interpreter skill.
- ▶ **ESTABLISHING STANDARDS FOR COURT INTERPRETATION.** Standards ensure that LEP court users are served by interpreters who meet high qualification requirements and who can provide unbiased assistance throughout the proceedings. Standards also prevent the use of unqualified interpreters, including family members and friends.
- ▶ **DEVELOPING GRIEVANCE PROCESSES.** LEP individuals must have a formal and documented channel through which they can challenge concerns about interpretation or the lack of meaningful interpretation.

Improve Service Delivery Infrastructure. Courts must also be doing more to improve their service delivery infrastructure. LEP individuals must be aware they have a right to an interpreter and know how to access the court's language services. Courts must ensure that written language assistance is a priority alongside interpretation services, including by translating vital court documents and key information on their websites, posting multilingual signage in the courthouse, and providing direct notices to parties in the summons, complaint, or subpoena. Additionally, courts should gather data on interpreter needs from parties and court staff and assign interpreters affirmatively.



Other Recommendations

Broader recommendations can strengthening the provision of quality, comprehensive interpretation.

- ▶ **INCREASE DEGREE AND CERTIFICATION PROGRAMS IN INTERPRETATION.** While the number of these programs has increased, the availability of certification in APA languages remains an unmet need. Mandarin and Cantonese are among the top three languages most frequently used in federal courts. Community colleges and universities are particularly well situated to partner with local federal courts and state court systems to develop certification and training programs tailored to the language needs of localities. Scholarships for these academic programs will also defray some of the prohibitive costs of interpreter training and certification.
- ▶ **DESIGNATE CLEAR OVERSIGHT BODIES.** State-appointed committees, commissions, or task forces can provide oversight to ensure appropriate standards of interpretation are being met. For example, in Los Angeles, the courts have a community-based oversight task force that includes representatives from LEP communities, diverse bar associations, and organizations that serve LEP communities (see discussion on pages 19 and 28).
- ▶ **COLLECT DATA.** Bar associations and legal aid organizations can collect data on client language preferences that will inform what improvements must be made to policies, monitoring, and enforcement.

Ensuring Federal Agency *and* Administrative Court Compliance *with* Language Access Requirements

OVERVIEW

Since the signing of EO 13166, federal agencies have taken significant steps toward appropriately addressing language access needs. The Attorney General's February 2011 memorandum affirmed the federal government's commitment the executive order and offered recommendations to federal agencies. However, federal agency plans vary greatly in scope and implementation. For example, in January 2016, NAPABA joined legal

and advocacy organizations in a letter to the United States Citizenship and Immigration Services (USCIS), a component of the Department of Homeland Security, regarding the agency's policy memorandum on the role and use of interpreters that was not compliant with obligations under EO 13166;¹³² USCIS did not respond to or address these concerns.



“Legal and Advocacy Organizations Critique Agency Language Access Policy”

NAPABA joined dozens of legal and advocacy organizations across the country to address USCIS's Policy Memorandum on the Role and Use of Interpreters. The letter highlighted significant concerns and ethical considerations with the encouragement and use of family, friends, and other informal interpreters:

Some [of us] have witnessed USCIS officers calling out into the audience in waiting rooms asking if anyone can speak a certain language. We have also seen LEP individuals asking random strangers to help them communicate with USCIS staff for their interviews or INFOPASS appointments [scheduled online]. USCIS's failure to provide appropriate language services has also fueled unregulated local networks of untrained “interpreters” who prey on vulnerable LEP immigrants in desperate need of assistance for their USCIS interviews . . . Even those who are well-intentioned frequently cross the line into giving inappropriate advice and engaging in the unauthorized practice of law.¹³³

The groups also emphasized how many USCIS proceedings are akin to court proceedings, where individuals are seeking critical benefits or pursuing remedies. Devastating consequences can result from incomplete or inaccurate information, including putting LEP individuals at risk of deportation.

The DOJ's Civil Rights Division maintains the LEP.gov website, which is “a hub for agencies to provide resources, share standards and procedures, and house a variety of tips and updates for agencies, advocates, and individuals.”¹³⁴ LEP.gov provides examples of notable agency practices organized in the

following themes: (1) Best Practices Tools, Trainings and Resources; (2) Inter- and Intra-Agency Coordination; (3) Data and Technologies; (4) Technical Assistance and Trainings for Contractors and Service Providers; and (5) Agency Outreach, Education, and Communication with LEP Individuals.¹³⁵

DEVELOPMENTS

In the last several years, a number of federal agencies have dedicated significant attention to the LEP community and made improvements in their services. Their activities showcase some of the different ways in which LEP individuals, language rights advocates, and policy makers can more easily access relevant information for their communities.

- ▶ The Department of Commerce's Census Bureau provided several supporting activities to ensure the entire population participated in the Decennial Census. Its LEP outreach included providing language assistance in Spanish, Chinese, Korean, Vietnamese, and Russian by phone, mail, and at on-site assistance centers.¹³⁶ Census data is critical for policy- and decision-making that impacts programs and resources to communities, including those provided for the LEP population.
- ▶ In 2011, the Census Bureau launched a "Language Mapper," providing accessible information about a dozen languages, including Chinese, Japanese, Korean, Vietnamese, and Tagalog, regarding the location of language needs.¹³⁷ For example, selecting the option for "Korean, speaks English less than 'very well'" shows concentrations around major cities such as Los Angeles, Chicago, New York, and Washington, DC, as well as pockets across the country.¹³⁸
- ▶ In 2012, DOJ's Civil Rights Division launched interactive and downloadable maps using American Community Survey

data that identified the concentration of LEP populations as a whole at the national, state, judicial, district, and county level.¹³⁹ The maps are available for 2012, 2013, and 2014.

- ▶ In 2011, Department of Homeland Security created "I Speak" guides and posters to assist front-line personnel in identifying the language spoken by LEP persons encountered in DHS operations and programs. The identification guides included Bengali, Burmese, Cambodian, Cantonese, Hindi, Hmong, Ilocano, Indonesian, Japanese, Korean, Laotian, Mandarin, Mon, Punjabi, Tagalog, Tamil, Thai, Urdu, and Vietnamese.¹⁴⁰
- ▶ In 2014, the Social Security Administration (SSA) implemented the PolicyNet LEP Cluster, a centralized electronic intranet-based policy repository containing all LEP policies and procedures to assist the SSA nationwide network of over 1,400 offices.¹⁴¹ SSA policy requires that staff provide a free interpreter to individuals requesting language assistance.¹⁴²
- ▶ In 2015, DOJ's Civil Rights Division led a federal interagency effort, including the SSA, the Federal Emergency Management Agency, the Federal Bureau of Investigation, Immigration and Customs Enforcement, the Internal Revenue Service, and the White House Initiative on Asian Americans and Pacific Islanders that resulted in the creation of a language access video training series for federal employees.¹⁴³

CHALLENGES

EO 13166 and the Attorney General's memorandum provide guidance for federal agencies on how to ensure language access for LEP individuals. However, just as courts have struggled with language access, federal agencies have also struggled with providing adequate translations and language assistance to LEP individuals.

There is little uniformity and standardization in how forms are translated into other languages. It is unclear how specific agencies determine which forms will be translated and in which languages. The complaint forms available by several agencies

demonstrate significant inconsistencies in the scope of translated information available and the languages provided. (See Appendix)

The constantly changing priorities of any presidential administration present issues with longevity and continued development of language access resources. In addition, agencies also face different challenges based on their scope of jurisdiction and have not consistently developed nimble strategies to address the unique needs and circumstances LEP individuals face when interacting with particular agencies.



Executive Office for Immigration Review's Plan

In 2012, the Executive Office for Immigration Review (EOIR), a separate agency within DOJ to adjudicate cases arising under the Immigration and Nationality Act and its implementing regulations, released its Language Access Plan that went into effect in May 2013.¹⁴⁴ The plan required that EOIR interpret all court proceedings fully and completely using simultaneous and consecutive mode interpretation. EOIR equipped courtrooms with digital audio recording systems to aid interpretation. As part of the plan, EOIR would also provide language services at the service window, via telephone, through the EOIR website, through translation of vital documents, and by conducting outreach and education. Other components of the plan included systems for proper identification of LEP individuals, staff training, data collection, quality control, and evaluation. The plan required immigration practitioners representing LEP individuals to be able to communicate with their clients in a language the client understands, a requirement that is also part of the code of federal regulations and can result in disciplinary sanctions for violations.¹⁴⁵

Despite EOIR's plan, practitioners continue to report noncompliance, with judges not requiring full interpretation of all parts of proceedings. Previously, in many EOIR courts, only questions or statements directed to and from the respondent and witnesses were interpreted. Some judges continue this practice, even though it violates the plan, because it appears to be more efficient in moving the calendar along. Practitioners often cite equipment failure as an issue, as well as the quality of interpretation provided during proceedings. However, EOIR's website does have a method of lodging complaints against interpreters. There are also reports of serious

delays due to the unavailability of certain language interpreters, resulting in multiple continuances and LEP individuals having to wait years to obtain relief. One practitioner in San Jose reported that after several futile attempts by EOIR to secure a Korean interpreter, including one who could assist telephonically, the case proceeded with the practitioner interpreting for his own witness. Further, individuals in proceedings continue to have difficulties during critical encounters outside the courtroom. Respondents have reported being unable to communicate with court staff or understand documents that are only in English and sometimes Spanish.



Disaster Relief

Natural disasters present urgent situations for language access, with needs for information about how to ensure one's safety and, later, how to navigate the application process for disaster relief. During Hurricane Katrina in August 2005, many APA families faced difficulties accessing services from the Federal Emergency Management Agency (FEMA) and the Red Cross due to language and cultural differences, with some not knowing they were eligible for services and others unfairly denied.¹⁴⁶ Community- and faith-based organizations provided support to the LEP APA community and expressed concern about FEMA's engagement with their organizations and response to LEP needs, including the lack of emergency warnings in languages other than English.¹⁴⁷ After Hurricane Katrina, FEMA hired an LEP/Accessible Communications Needs Coordinator with responsibility for ensuring the agency's language access services.¹⁴⁸ FEMA also now maintains a multilingual webpage, which contains materials in over twenty languages.¹⁴⁹ During Hurricane Harvey, which hit Texas in August 2017, community organizations provided critical support for the one in five Houstonians who are LEP, including many in the nation's fourth-largest Vietnamese immigrant population who fled to Houston after Katrina.¹⁵⁰ The staff of the Houston office of the non-profit organization Boat People SOS (BPSOS) helped direct people displaced by the storm into about twenty Vietnamese churches and Buddhist temples serving as shelters, and also referred individuals with ongoing medical needs to hospitals they knew were open.¹⁵¹ BPSOS said the city of Houston had provided multilingual warnings about the hurricane.¹⁵² Although federal coordination with LEP communities has made progress and organizations are better prepared for immediate support in emergency situations, the need for bilingual support, especially through legal assistance, during the long and complicated recovery process cannot be overlooked.¹⁵³



Recommendations

The Attorney General's memorandum provided a roadmap for federal agencies on language access. Federal agencies should revisit their plans with regularity to assess how their plans can be more relevant as LEP communities change and new issues affecting them emerge.

- ▶ **DEVELOP A FORMAL GRIEVANCE PROCESS.** Agencies should develop a formal grievance process with documentation so that DOJ can provide review. Guidance recommended by LEP.gov specifies that each agency must ensure its process for receiving feedback from LEP individuals is "transparent and accessible," and that the process must enable LEP individuals to communicate their comments, suggestions, or criticisms regarding the failure to provide language access. The investigations of such complaints must involve appropriate language assistance for LEP persons or witnesses. Agencies should also document the feedback received by LEP individuals, as well as any resolution of the issues raised.¹⁵⁴
- ▶ **ESTABLISH A LANGUAGE ACCESS WORKING GROUP.** Agencies should establish a Language Access Working Group to reflect their prioritization of language access improvements and to ensure implementation of the provisions of the executive order.
- ▶ **EVALUATE AND/OR UPDATE THE AGENCY'S CURRENT RESPONSE TO LEP NEEDS.** Agencies should inventory the languages most frequently encountered, identify the primary channels of contact with LEP community members, and evaluate agency programs and activities for language accessibility.
- ▶ **ESTABLISH A SCHEDULE FOR REGULAR REVIEW.** Agencies' language access plans should formalize a regular review and updating process for their LEP services and policies. Agencies should also conduct assessments following significant events or circumstances that have tested the quality and thoroughness of the agency's responsiveness to LEP community members.

▶ **ENSURE AGENCY STAFF CAN CONNECT LEP INDIVIDUALS TO THE RIGHT RESOURCES.**

Agency staff must be able to competently identify situations involving LEP needs and take the necessary steps to ensure meaningful access.

▶ **PROVIDE PUBLIC NOTICE.** Agencies must notify the public, including through means that reach the LEP communities served by the agency, of the agency's LEP policies, plans, and developments. Notification efforts must include translated materials, including online. Outreach through community-based justice partners and ethnic media can better ensure information reaches all communities.

▶ **ASSESS AGENCY HIRING NEEDS.** Agencies should assess whether non-English language proficiency may be a necessary consideration for fulfilling hiring gaps to ensure comprehensive language assistance for LEP communities.

▶ **COLLABORATE WITH OTHER AGENCIES.** Agencies may improve their own language assistance services by sharing resources and collaborating to improve efficiency, accuracy, and quality of written translations. These efforts will also decrease inconsistencies currently existing across agencies. Collaboration should also extend beyond agencies and include engaging community stakeholders in the feedback process.

▶ **PROVIDE GUIDANCE TO RECIPIENTS OF AGENCY FUNDING.** Agencies should draft guidance for recipients of the agency's federal financial assistance and submit that guidance to the Federal Coordination and Compliance Section of DOJ's Civil Rights Division.

Finally, Congress can also strengthen language access in federal agencies.

▶ **CONGRESS SHOULD CODIFY THE REQUIREMENTS OF EO 13166 INTO LAW.** Currently, the mandate that federal agencies provide meaningful access to LEP persons is codified in a revocable Executive Order, without the full force of law. Congress should pass strong and enforceable legislation to protect the right of access for LEP individuals.

Strengthening Language Access Across State and Local Agencies

OVERVIEW

Under state or local law, or as recipients of federal funding, state and local agencies have requirements to ensure language access for LEP individuals. These laws direct state and local agencies to provide interpretation and translation services to meet their jurisdictions' LEP needs.

Some of the models for state and local language access laws include:

▶ **California:** See discussion of California Gov't Code § 11135 (state version of Title VI), Dymally-Alatorre Bilingual Services Act, California Evidence Code § 756, California Gov't Code § 68092.1 on page 13.

▶ **District of Columbia:** In 2004, the District of Columbia enacted its Language Access Act.¹⁵⁵ All District of Columbia government agencies and entities receiving funding from the D.C. government are required to provide access to individuals seeking their services who have limited or no proficiency in English. The agency is mandated to provide oral interpretation, upon request, in addition to written translations of vital documents in the most widely spoken languages, including Spanish, Amharic, Mandarin, Korean, Vietnamese, French, Arabic, Portuguese, Russian, and Tigrinya.

► **Hawaii:** In 2006 Hawaii passed Act 290 (§371-31 to -37), Hawaii Revised Statutes, to ensure that LEP individuals have equal, meaningful access to state-funded services in Hawaii. The Act requires all state agencies and entities that receive state-funding and provide services to the public to establish a language access plan and specific services to LEP individuals. Those services include oral interpretation and the written translation of vital documents. The Act also establishes the Office of Language Access to ensure compliance, as well as the Language Access Advisory Council to advise on implementation matters.

► **New York:** Governor Andrew M. Cuomo issued Executive Order 26 (EO 26), “Statewide Language Access Policy,” in October 2011, requiring all executive state agencies that provide direct public services to translate vital documents and provide appropriate interpretation services into LEP languages. EO 26 also requires each executive state agency to develop an agency-specific language access plan that complies with the Order. The enforcement of the Order is overseen by the Deputy Secretary for Civil Rights.

DEVELOPMENTS

Some examples illustrate improvements in state and local agency language access policies as the result of effective monitoring and enforcement of

federal, state, and local laws, often led by the advocacy of community-based organizations.



“A Victory for Language Access in Local Law Enforcement”

In New York City, nearly one-quarter of residents are LEP—a proportion that rises to one-half among Asians.¹⁵⁶ In 2008, Mayor Michael Bloomberg issued Executive Order 120, “Citywide Policy on Language Access to Ensure the Effective Delivery of City Services,” requiring each City agency to take “reasonable steps to develop and implement agency-specific language assistance plans regarding LEP persons.”¹⁵⁷ The following year, the New York Police Department (NYPD) published its Language Access Plan. The plan requires NYPD officers to “provide free language assistance to LEP individuals whom they encounter when necessary or whenever an LEP person requests language assistance services.”¹⁵⁸

In 2013, Legal Services NYC filed a lawsuit against the NYPD on behalf of several Spanish-speaking women, claiming that the police violated their civil rights by denying them interpreters.¹⁵⁹ The women, who were attempting to report domestic violence, suffered devastating consequences based on language barriers. As their complaint emphasized, victims of domestic violence and other crimes were particularly vulnerable to the NYPD’s unlawful practices, which left them unable to communicate with police in emergency situations, get protection, file police reports, and obtain medical assistance.¹⁶⁰

After years of litigation, the parties reached a settlement that required the NYPD to adopt new protocols and training for officers responding to domestic violence incidents involving parties who are limited English proficient. The NYPD is now required to document language needs in domestic violence incidents and will utilize city-contracted services that provide immediate access to interpreters in more than 240 languages. The lawsuit resulted in monetary damages to the plaintiffs and attorneys’ fees.¹⁶¹



“Best Practices in Monitoring Language Access Compliance: A Local Agency Example”

The collaboration between advocates and the Department of Public Social Services (DPSS) in Los Angeles County (LA County) illustrates best practices in monitoring for language access compliance. In LA County, DPSS serves over ten million residents in 88 cities. It is the largest social service agency in the United States and provides services to one-third of the county’s residents. DPSS serves residents in 19 languages at more than forty offices throughout LA County.

DPSS reformed its language access policies and services after advocates from more than twenty local community-based organizations and legal aid agencies filed an administrative Title VI complaint with the Department of Health and Human Services (DHHS) Office for Civil Rights in December 1999.¹⁶² The complaint alleged discrimination based on national origin and language discrimination because LEP individuals were not getting adequate access to welfare-to-work services in California’s CalWORKs program (California’s Temporary Assistance to Needy Families). At the time, about 40 percent of LA County’s CalWORKs participants were LEP and DPSS failed to provide language access services. The complaint highlighted DPSS’s deficiencies in failing to provide basic CalWORKs program information and services to enable LEP individuals access to the program, denying equal opportunity for LEP individuals to participate in welfare-to-work services and failing to monitor their language delivery system to ensure meaningful participation by LEP individuals.

As a result of the complaint, DPSS reached a resolution agreement with DHHS in 2003,¹⁶³ which created the Community Advisory Board (CAB). CAB members include advocates from community based organizations and legal aid agencies,

refugee service providers, and DPSS staff. CAB’s purpose is to advise DPSS on issues affecting LEP persons in the development, implementation, operation, and evaluation of all federally-funded DPSS administered and contracted programs and services. One main mechanism CAB utilizes to monitor DPSS’s language access delivery includes conducting secret shopper surveys where volunteers are sent DPSS’s local offices to observe how LEP participants are treated and whether appropriate signage is posted. CAB published a final report presented to DPSS Civil Rights Section and the California Department of Social Services which outlines the findings from the site visits and recommendations. Successful outcomes from this monitoring practice include: DPSS’s Civil Rights Section implementing a daily internal checklist for the restocking of all mandatory brochures and posters at each local office; inviting CAB advocates to train civil rights liaisons located at each DPSS office; providing Language Line access codes to all frontline delivery staff; and involving the Los Angeles County Sheriff’s Department to address CAB advocate concerns with security officers not abiding by language access policies. LA County’s example highlights the beneficial outcomes to LEP communities when local government agencies and advocates collaborate.

CHALLENGES

State and local agencies must be especially highly attuned to the needs of the specific LEP communities they serve and the prevalent issues those communities encounter with agency contact, which may vary significantly across geographies. Deficiencies in agencies’ staffing shortages, training to serve LEP populations generally and their jurisdictions’ common LEP communities, and scope and quality of outreach

and language services provided may be particularly exacerbated at state and local levels due to the frequency with which LEP individuals interact with these agencies. Impact data and assessments of agencies’ language access compliance illustrate the substantial demand for language assistance and areas where significant gaps emerge.

EXAMPLES: IMPACTS AND ASSESSMENTS

- ▶ **California:** A 2012-2013 Statewide Language Survey and Implementation Plan required each agency to complete and submit a language survey every even-numbered year by October 1, unless the agency petitions for and is granted an exemption from the California Department of Human Resources.¹⁶⁴ A total of 56 state agencies participated in the most recent language survey.¹⁶⁵ Of the 4,272,552 public contacts reported from the 56 agencies, 546,802 (13 percent) were from persons identified as LEP.¹⁶⁶ Of the 57,721 public contact employees reported from the 56 participating agencies, 8,186 (14 percent) were certified as bilingual contacts.¹⁶⁷ A total of 50 agencies, including 22 that reported bilingual staffer deficiencies, submitted implementation plans.¹⁶⁸ Nine of the 22 agencies with bilingual staffer deficiencies (41 percent) indicated that they had successfully completed the action plan to correct the actual staffing deficiencies in all local offices or units that reported deficiencies.¹⁶⁹ Since 2011, there have been 4,747 written materials translated.¹⁷⁰
- ▶ **District of Columbia:** The District of Columbia conducted an Annual Compliance Review in 2015.¹⁷¹ The review concluded that in Fiscal Year 2015, the Office of Human Rights (OHR) received a total of 23 language access-related complaints, a 35 percent increase from the number of complaints received the prior year.¹⁷² OHR made six non-compliance findings.¹⁷³ In FY15, training in language access compliance requirements and resources reached 3,858 District employees (compared to 3,017 in FY14) and 504 public service organization employees.¹⁷⁴ OHR engaged more than 700 LEP and non-English proficient (NEP) residents and business owners through more than eighty “Know Your Rights” trainings and fifty community events.¹⁷⁵ Trainings were organized in collaboration with immigrant-serving government and community-based partners and allowed OHR to identify more than eighty Human Rights Liaisons.¹⁷⁶ Twenty-three agencies reported conducting outreach to LEP/NEP communities.¹⁷⁷ A total of 32 language access policies that outline internal processes and guidelines for providing access to LEP/NEP customers have been adopted by covered entities with major public contact.¹⁷⁸ Eighty-nine different languages were requested by customers and provided by District agencies.¹⁷⁹ The Equal Rights Center conducted language access field tests on behalf of OHR in FY15 consisting of telephone calls and in-person visits to the public-facing divisions of 15 agencies.¹⁸⁰ Testers received language assistance in 45 percent of the telephone tests and 88 percent of the in-person tests.¹⁸¹ Testers received language assistance through a telephonic interpreter in 47 percent of tests.¹⁸² Testers received language assistance from bilingual employees in 14 percent of tests.¹⁸³ Bilingual employees provided assistance in Spanish, French, Vietnamese, and Amharic.¹⁸⁴





Recommendations

Recommended guidance for federal agencies to improve language access should also apply to the steps state and local agencies can take. NAPABA urges state and local agencies to, in particular:

- ▶ **ENGAGE AND COLLABORATE WITH COMMUNITY-BASED ADVOCATES.** As effective examples highlight, state and local agencies should engage and collaborate with community-based advocates to improve their language access programs, activities, and services and enhance compliance.
- ▶ **DEVELOP A FORMAL GRIEVANCE PROCESS.** State and local agencies should develop a formal grievance process with documentation so that Title VI funders and DOJ can conduct a thorough review. The grievance policy should capture specific details about the timing, location, and nature of the alleged language access violation, the persons involved in the interaction, and designate an identifiable agency official responsible for overseeing, investigating, and responding to the grievance. The policy itself should include accommodations to enable LEP participants to fully engage throughout the process. (See examples of grievance processes in box)
- ▶ **ENSURE INTERPRETATION IS PROVIDED THROUGH ALL STAGES OF THE AGENCY INTERACTION.** State and local agencies should ensure they provide interpretation assistance at all points of LEP individuals' contact with the agencies, including in the grievance process, as outlined above.
- ▶ **TRANSLATE MATERIALS.** State and local agencies should ensure the translation of key materials, including important and commonly accessed information online.



"Language Access Grievance Policies"

In Massachusetts, the Commonwealth Health Insurance Connector Authority (Health Connector) is an independent, quasi-governmental agency established by the Massachusetts legislature and charged with helping businesses and individuals access health coverage. The Health Connector adopted a grievance procedure to provide for the "prompt and equitable resolution" of any complaints alleging national origin or language discrimination, including under actions prohibited by the Affordable Care Act's non-discrimination provision (Section 1557), which builds upon federal civil rights laws, including Title VI.¹⁸⁵ The Health Connector's policy directs individuals to submit grievances in paper copy or electronically to the Language Rights Coordinator within sixty days of becoming aware of the alleged discriminatory action. The complaint form requests details of the persons involved in the action and provides options regarding the type of discrimination that occurred, such as lack of signs informing the public of translation services, lack of forms or materials in multiple languages, lack of bilingual personnel, or other forms that can be further detailed by the complainant.¹⁸⁶ The form requires the complainant to describe the bases on which they believe they were discriminated against, and to identify what remedy they seek. Following receipt of the complaint, the Language Rights Coordinator is directed to investigate the complaint, including by affording all interested persons an opportunity to submit relevant evidence. Based on a preponderance of the evidence, the Language Rights Coordinator will then issue a written decision no later than thirty days after the filing of the grievance, unless further time is deemed necessary and is communicated to the complainant. The written decision will include notice to the complainant of the right to pursue further administrative remedies. Individuals may also file a complaint directly with the U.S. Department of Health and Human Services' Office for Civil Rights. The Health Connector's policy states that, for persons filing grievances through their process, arrangements will be made to providing LEP individuals with language assistance which may include, but is not limited to, "providing qualified interpreters . . . or assuring a barrier-free location for the proceedings."¹⁸⁷

In Washington, DC, LEP individuals who are unable to access a government service from a covered entity may file language access complaints either informally or formally. The Office of Human Rights (OHR), designated by the DC Language Access Act to oversee the implementation of the Act, encourages individuals to first file an informal complaint with the agency if the agency action does not pertain to an urgent issue. The first point of contact should be the agency's Language Access Coordinator, or if one is not assigned to that agency, then to an agency supervisor or the OHR language access director. An informal complaint will include details about the agency name, timing and location of the incident, and the name of the staff person encountered at the agency. When these incidents are reported, the Language Access Coordinator or agency supervisor

must inform the agency director. Through the formal process, language access complaints may be filed with OHR. Both public complaints (individuals, groups, or organizations alleging language access violations at covered entities) or individual complaints (alleging direct harm by an agency) may be formally filed. The language access complaint form requests information about a person's preferred language and interpretation need, as well as details about the nature of the complaint, including options to point out lack of language assistance by agency staff and lack of translated materials, and problem encountered with the agency. The online complaint form is in English, but the print version is available in English, Spanish, Vietnamese, Chinese, Korean, and French.¹⁸⁸

Supporting Legal Aid Programs' Role in Increasing Access to Justice

OVERVIEW

Established by Congress, the Legal Services Corporation (LSC) is a private, non-profit corporation that ensures equal access to justice for all Americans by providing civil legal assistance to those unable to afford it. LSC provides funds directly to legal aid organizations that serve these clients. LSC also funds programs that expand initiatives to engage the private bar as a resource for supporting legal aid attorneys serving the civil legal needs of the low-income community. In 2014, the U.S. Census Bureau calculated that 63 million people in the United States qualify for LSC-funded legal services.¹⁸⁹ Of the individuals served in 2015, LSC reported that its offices and attorneys had served more than 755,000 clients, with a broader

impact on nearly two million individuals, including others in the households.¹⁹⁰ Of these clients, more than 23,000 identify as Asian Pacific American.¹⁹¹

Legal aid organizations play a critical role in increasing access for LEP individuals in the court system. In addition to working with advocacy organizations to improve conditions and policies affecting LEP individuals, legal aid organizations provide direct legal services to clients in need of language assistance. Legal aid organizations receiving LSC funds are required under the Legal Services Corporation Act (1974) to serve eligible clients in their native languages, and LSC has issued guidance to all grantees affirming this mandate.¹⁹²



Legal Aid after Hurricane Harvey

LSC provides critical services to LEP individuals on an ongoing basis, but also during emergency situations like natural disasters. After Hurricane Harvey in Houston, legal aid attorneys served as first responders for thousands of individuals facing an array of urgent needs, from preparing insurance claims or applications for FEMA aid, to assisting those who needed to secure medical care, risked being taken advantage of by unscrupulous landlords, or faced unlawful termination when circumstances did not enable them to return to work. Demand for legal services was so high that pro bono lawyers and legal aid groups across the country pledged to provide help.¹⁹³



CHALLENGES

LSC is facing a funding crisis at a time when the need for civil legal aid is growing. In the last decade, the number of people qualifying for civil legal aid increased about 25 percent, but about 50 to 80 percent of clients are turned away due to a lack of resources.¹⁹⁴ Between 2010 and 2013, Congress cut \$80 million from the LSC budget.¹⁹⁵ In 2011, the tightened budget resulted in LSC-funded organizations reducing their headcount by 661 full-time employees, including 241 attorneys,¹⁹⁶ directly closing off access to legal

counsel for many litigants in need. The situation for LSC remains alarming, with the President's Fiscal Year 2018 budget proposing to eliminate federal funding for the LSC.¹⁹⁷

In the midst of funding challenges, LSC must also ensure that those organizations receiving LSC funds are meeting requirements to serve LEP clients. Despite LSC's guidance, many LSC-funded organizations are not providing adequate language access.



Legal Services Corporation (LSC) Funding

In January 2016, NAPABA endorsed a resolution to oppose cuts in the LSC budget¹⁹⁸ and reiterated this position in March 2016 through the joint Coalition of Bar Associations of Color resolution on the issue.¹⁹⁹ NAPABA, in conjunction with the American Bar Association and other legal organizations, has continued to lobby Congress for increased LSC funding.



Recommendations

LSC is a critical resource for ensuring access to justice for LEP individuals, and its continued effectiveness in serving this component of its constituency relies upon both sufficient resources of its own and targeted substantive policies to address LEP needs. NAPABA recommends:

- ▶ **CONGRESS ADEQUATELY FUND LSC.** Congress must restore LSC funding to at least FY2010 appropriation levels (\$450 million) to support the demand for civil legal aid.
- ▶ **LSC DIRECT GRANT FUNDS TO IMPROVING LANGUAGE ACCESS.** LSC should allocate grant funds to increase access to the courts for LEP individuals. Grant money can support hiring interpreters, creating legal clinics, or launching multilingual hotlines.
- ▶ **LSC-FUNDED ORGANIZATIONS EXPAND RESOURCES THROUGH COLLABORATION.** Service providers, legal aid organizations, and advocacy groups should work together in partnership to expand their resources and uplift their strengths. Collaboration should not replace the need for legal aid organizations to themselves hire bilingual staff and interpreters.
- ▶ **LSC-FUNDED ORGANIZATIONS ADOPT PLANS AND POLICIES TO ENSURE INTERNAL STANDARDS AND STRUCTURE.** Legal services organizations should develop and adopt plans and policies to ensure internal standards and structure when it comes to serving LEP individuals. An LSC committee should ensure that legal aid programs receiving LSC funds are following federal language access requirements.

- ▶ **LSC-FUNDED ORGANIZATIONS BUILD RELATIONSHIPS WITH LEP COMMUNITIES.** Legal service providers should reach out to the LEP community and establish stronger relationships to develop trust and improve the likelihood that LEP community members will turn to the legal system to solve their problems.
- ▶ **LSC-FUNDED ORGANIZATIONS DISSEMINATE MORE INFORMATION TO LEP COMMUNITIES.** Legal service providers should expand the information—and methods of disseminating information—they provide in LEP communities' languages to increase awareness of legal services that are available. Collaboration with community organizations and outreach through ethnic media are reliable mechanisms to disseminate information.
- ▶ **GAO EVALUATE LSC COMPLIANCE.** The Government Accountability Office should examine whether the LSC and any legal aid grantees have fully complied with language access requirements under federal law.

Using Other Advocacy *and* Community-Based Resources *to* Break Down Language Barriers

OVERVIEW

Legal aid organizations are not the only on-the-ground resources for LEP individuals in accessing legal services. Many advocacy organizations and community groups, particularly those serving the APA community, provide critical tools to facilitate legal assistance for LEP individuals. These tools include legal hotlines, pro bono legal clinics, and bar association initiatives. Intimate knowledge of the LEP communities they serve is also a critical asset advocacy organizations and community

groups can provide to collaborations with governmental entities developing or improving language access policies.

Bar associations, particularly diversity bars and those that have developed strong relationships across diverse communities, can play a critical role in helping LEP individuals. Bar associations can sit on oversight boards, partner with legal aid organizations, and help courts conduct community outreach.



Building Partnerships between Attorneys and Non-Profits

The Asian Pacific American Women Lawyers Association (APAWLA) partnered with Asian Youth Center in Los Angeles to prepare families on who would take care of their children if their undocumented parents were deported. Asian Youth Center identified who needed interpreters in the event they needed advice. APAWLA worked with Asian Americans Advancing Justice-Los Angeles and other ethnic bar associations to find interpreters, partnering with various other groups to reach a larger section of the population. Law firms provided support with funding. The groups worked together on outreach and education, as well as providing legal assistance for various areas of law that other entities within the collaborative did not practice.²⁰⁰

CHALLENGES

Effective collaborations on language access do not only include outreach to government entities. As the APAWLA example illustrates, diverse organizations within a community can add different value and skills to better serve LEP clients.

However, organizations do not all approach or consider opportunities in their work with such a collaborative, cross-disciplinary mindset, which diminishes impact and the maximization of resources.



Recommendations

Partnerships through advocacy and other community-based resources are important tools to advance language access. NAPABA recommends collaborative efforts to produce needed efforts to support LEP clients:

- ▶ **DEVELOP MULTILINGUAL LEGAL HOTLINES.** Organizations should collaborate to develop, outreach, and recruit volunteers for multilingual legal hotlines to assist LEP clients.
- ▶ **PRODUCE INFORMATIONAL AND EDUCATIONAL RESOURCES.** Organizations should collaborate to produce information regarding language access rights and language assistance services in multiple languages and conduct in-language workshops to educate LEP APA community members on legal issues.
- ▶ **SEEK FUNDING OPPORTUNITIES.** Organizations should collaborate to seek funding resources for programs to assist LEP persons, including from grant-giving foundations and from IOLTA programs. (See funding discussion below)
- ▶ **MONITOR TRENDS.** Advocates and local service providers should work together to identify and corroborate trends and submit appropriate complaints to DOJ.



What Can Attorneys Do to Help?

Attorneys and bar associations within the APA community can leverage their professional training, language skills, cultural competency, and broad networks to support language access education, outreach, and services:

- ▶ Volunteer bilingual members of your bar associations at local legal clinics.
- ▶ Outreach to area law schools and recruit bilingual law students to assist with legal intake at clinics.
- ▶ Collect data and monitor incidents/trends in coordination with advocacy groups and local service providers.
- ▶ Assist with identifying or reaching out into ethnic communities to recruit interpreters.
- ▶ Assist with ensuring local publications on language access and language rights are available in offices for your clients and for community members.
- ▶ Encourage and develop partnerships with your local judicial system to serve on language access councils to monitor and improve court access.
- ▶ Help plan or participate in Know Your Rights programs by recruiting representatives from various agencies to speak at community-based centers and provide in-language materials, or provide funding to support these types of community events.

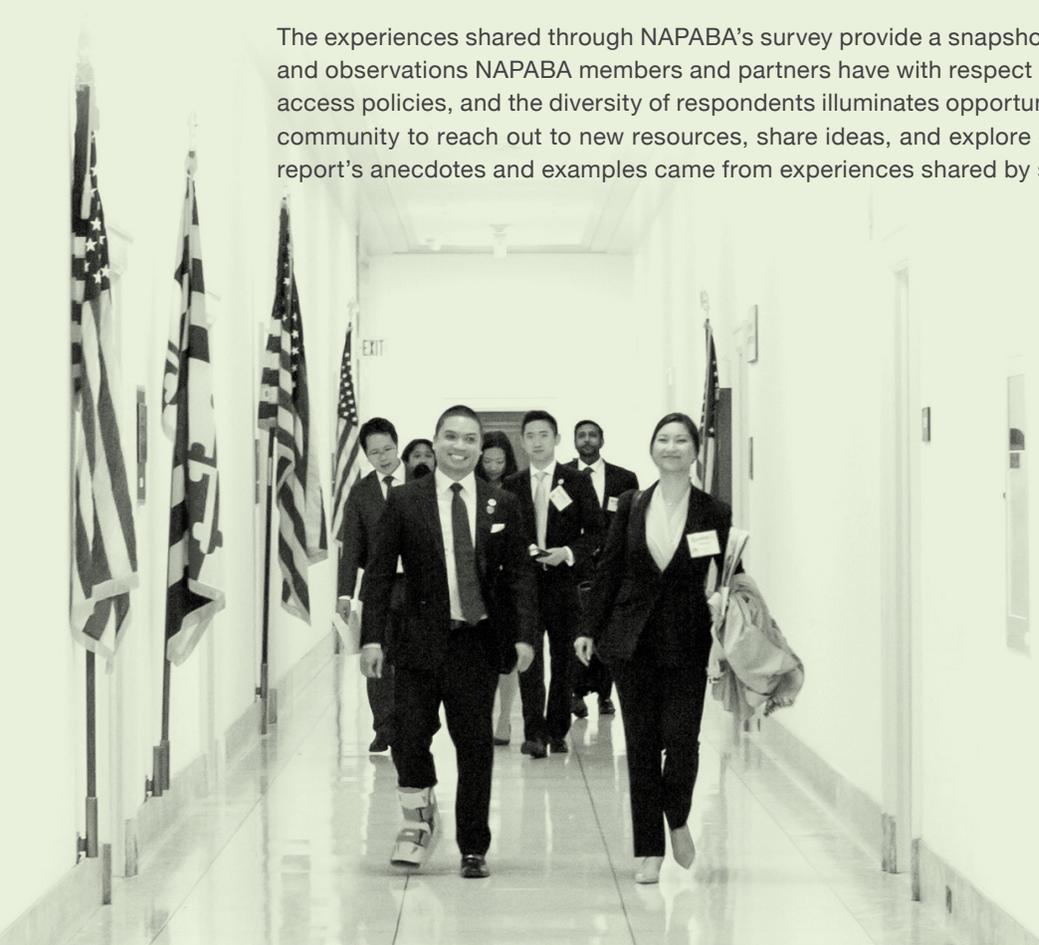


NAPABA SURVEY ON LANGUAGE ACCESS

In 2017, NAPABA conducted a survey to engage individual members and language advocates from partner organizations in feedback about their experiences serving or interacting with LEP clients. A total of 62 respondents from legal aid practices (54 percent), law firms (15 percent), government agencies (13 percent), community organizations (15 percent), and bar associations (3 percent) in at least 13 states²⁰¹ and the District of Columbia participated, providing important insights:

- ▶ The majority had served or encountered LEP clients (59 percent “frequently” and 26 percent “occasionally”).
- ▶ The range of Asian, Native Hawaiian, and Pacific Islander languages spoken by their LEP clients is vast, including nearly thirty languages or dialects. Mandarin is the most frequently encountered (61 percent) among the respondents, followed by Korean (42 percent), Cantonese (37 percent), Vietnamese (34 percent), and Tagalog (29 percent).
- ▶ Nearly three-quarters of respondents said they have seen courts and agencies in their regions make better accommodations to serve LEP individuals. However, they noted areas for improvement. The most common issues respondents identified as “the greatest issues” preventing LEP community members from gaining access to courts was knowledge of language access obligations by courts and agencies and knowledge of language access rights by LEP individuals.
- ▶ Diversity in the legal profession enhances responsiveness to the needs of LEP clients. One respondent commented that “it helps to have a diverse bench and administrative agency to make the issue of language accommodations routine.”
- ▶ Respondents observed more than two dozen Asian, Pacific Islander, or Native Hawaiian languages supported or provided in their courts or agencies, with some available only by phone.

The experiences shared through NAPABA’s survey provide a snapshot of the range of encounters and observations NAPABA members and partners have with respect to LEP clients and language access policies, and the diversity of respondents illuminates opportunities for the language rights community to reach out to new resources, share ideas, and explore collaborations. Many of this report’s anecdotes and examples came from experiences shared by survey participants.



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4

The State *of* Language Justice: Evolving Issues *in* Language Access Practices

Utilizing New Tools *for* Language Access

OVERVIEW

Rapid developments in technology are changing the way communication can be conducted. Having an interpreter directly in the courtroom is the most effective way to break down the language barrier in court, but technology can also provide tools when the physical presence of a qualified interpreter is a challenge.

In state courts, the commonly used technique for remote interpreting is speaker telephone (83 percent), followed by integrated audio/video equipment (28 percent) and specialized telephone equipment that allows simultaneous interpretation and confidential conversations between a party and their attorney (38 percent).²⁰²

As NAPABA described in 2007, telephonic interpreting, while less desirable than face-to-face interpretation, has been useful in situations where it would be too expensive or inconvenient to provide an interpreter in person. A decade ago, several states had telephonic interpreting programs or pilot projects: Florida, Idaho, New Jersey, Oregon, and Washington. These programs enabled qualified interpreters from metropolitan areas to assist proceedings in rural counties. Phone interpretation has also been useful for APA languages, which may include rare languages for which a local interpreter cannot be found, although

the same concerns about interpreter competency and accuracy remain relevant. For example, one NAPABA member shared that a telephonic interpretation service attempted to assign an interpreter who spoke an entirely different language than the one needed, claiming the languages were essentially the same.²⁰³

The drawbacks of telephonic interpretation, however, are not insignificant: The absence of visual cues that aid in clear communication, poor sound quality, or other distractions and interruptions. While advances in technology in the last decade may provide better options or methods of ensuring quality interpretation services, the plethora of advancements must be carefully screened for accuracy and appropriate use. For example, web-based automated translations, such as Google Translate, are vulnerable to misuse and inaccuracy.²⁰⁴

DEVELOPMENTS

After the Supreme Court of Florida proposed to study video remote interpreting in June 2014, Florida developed a “state-of-the-art” Virtual Remote Interpreting (VRI) system. Communication service is similar to that of Skype or FaceTime, providing: control of the camera with zooming feature; simultaneous, consecutive, and private mode audio; a visual of the interpreter inside the

courtroom; volume control and levels; features for conferencing other participants; and team interpreting.²⁰⁵ Arizona is another state with VRI services of similar sophistication as Florida’s. Arizona notes that the use of VRI is intended for “shorter hearings where having an interpreter onsite is cost prohibitive.”²⁰⁶

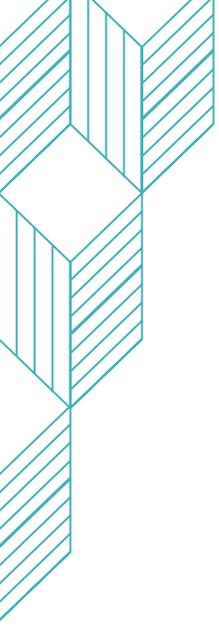




Recommendation

NAPABA recommends the Use of Enhanced Technology as Appropriate to Expand Language Access. Technological approaches to increase access to judicial proceedings should be used when in-person interpretation was not available. Alongside extensive efforts to increase in-person court reporting, states should make use of high quality video, telephonic and other forms of remote interpreting but avoid or minimize their use in trial or evidence-gathering settings.





Addressing Challenges *to* Funding Language Assistance Services

OVERVIEW

Funding for language assistance services is a need that is far from being met as immigrant populations grow across the nation. Recent setbacks to the LSC underscore the urgency of the funding challenge. The language rights

community continues to challenge the proposal to defund LSC, while also recognizing that other sources of funding to help support the legal needs of the LEP community exist and must also be thoroughly explored.

DEVELOPMENTS

Funding for language access services can come through a variety of channels, including through state and local governments, foundations, and national and local organizations and associations. A wide array of opportunities that have emerged in recent years:

- ▶ In some states, language assistance is treated as part of general operating costs. California includes language assistance as a line item in the judicial branch budget, and the Judicial Council reimburses for interpreters in civil cases. In Oregon, the state's judicial department mandates language assistance as part of the general fund account. New Jersey, the latest state to develop a language access plan, provides that the judiciary will cover all costs incurred for interpreting services, "including court interpreters, qualified bilingual staff, and certain translated materials, except in very limited circumstances" as described in the plan.²⁰⁷
- ▶ The California Equal Access Fund increase for legal services and other budget items for immigrants will go up by \$20 million in the next two years (\$10 million in 2018 to \$20 million in 2019). In addition, 25 percent of all *cy pres* awards in the state will go to the Equal Access Fund.²⁰⁸
- ▶ The LA Justice Fund, which provides for representation for immigrants in removal proceedings, has city and county funding

toward a planned \$10 million fund managed by the California Community Foundation. The Foundation contributed greatly and is also seeking other foundations to join. California also has its own \$15 million fund to assist immigrants in removal and approximately \$30 million to help with naturalization and other immigration services.²⁰⁹

- ▶ In New York, for Fiscal Year 2016-2017, the Unified Court System (USC) expected to spend more than \$27 million on the language access program, all from the State's General Fund. In addition, UCS "will seek to [identify] grants and other sources of funding to supplement the operating budget of the language access program."²¹⁰
- ▶ In 2007, the Rasmuson Foundation funded the Alaska Institute for Justice's Language Interpreter Center to provide qualified interpreters and translators to government, business, and service organizations for LEP Alaskans. The Alaska court system had partnered with twenty other entities to obtain the \$450,000 grant from the Rasmuson Foundation to establish the Language Interpreter Center.²¹¹
- ▶ The DC Bar Foundation spent \$900,000 to improve access to legal aid for DC residents; \$67,500 was granted to Ayuda,

which runs the Community Interpreter Bank.²¹²

- ▶ Other foundations such as the Robert Wood Johnson Foundation sought grant applications in 2017 to benefit research in

population health, well-being, and equity impacts of specific policies and programs²¹³—areas strongly implicated by language access. The National Endowment for the Humanities is stepping up its efforts to assist grantees with LEP issues.²¹⁴



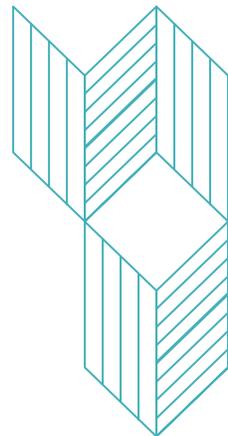
National Center for State Courts

The National Center for State Courts provides funding to state jurisdictions to support language access services and provides technical assistance directly to states. NCSC examined funding trends in its 2017 follow-up report, *Called To Action*, on progress since its 2012 National Summit.²¹⁵ Data reported by surveyed judicial representatives from 49 states, three territories, and the District of Columbia identified that 44 percent of jurisdictions have received grant funding, an increase from the 36 percent reporting grant funding in 2012.²¹⁶ Jurisdictions also had diverse sources of funding, from NCSC, to the State Justice Initiative (see below), to local or national sources, including the Georgia Asian Pacific American Bar Association.²¹⁷



State Justice Institute

In the last decade, the State Justice Initiative (SJI) has dedicated more than \$2.7 million toward language access grants as the “centerpiece of [its] efforts to improve the administration of justice in state courts nationwide.”²¹⁸ These grants support technical assistance, education and training, and demonstration projects. For example, in 2008 and 2008, SJI provided more than \$160,000 to the New Mexico Administrative Office of the Courts to develop and sustain an Interpreter Resource Partnership among justice agencies in New Mexico to ensure that LEP individuals have access to culturally appropriate services in both criminal and civil cases. The New Mexico Administrative Office of the Courts also received a \$160,475 grant from SJI in 2012 for training to state court staff to ensure quality language access services outside of the courtroom for LEP individuals. In 2013, SJI gave \$50,000 to the Supreme Court of Louisiana’s Court Interpreter Program to assist in the development of the first-ever statewide court interpreter training and certification program in Louisiana. In 2015, the Oregon Judicial Department received \$50,000 from SJI to support the development and implementation of its frontline service strategy to improve language access in Oregon’s courts through translated signage, increased availability of translated forms and information, and improved visual, written, and online resources for LEP litigants. In 2016, SJI provided the Supreme Court of Ohio Court Interpreter Training Program with \$24,000 to fund certification needs for court interpreting through collaboration with a post-secondary educational institution.



CHALLENGES

While funding opportunities exist from diverse sources, securing funding for language access programs requires surmounting significant challenges. Funding expectations may be limited or downplayed due to the underutilization of language services—which underscores points

earlier addressed about ensuring broad outreach and education to LEP communities about what language assistance is available to them. Federal budget cuts to programs that support LEP individuals also require an increased emphasis on pursuing other forms or channels of funding,

often stretching organizational capacity. Furthermore, the immense federal budget gap cannot be closed by other sources.

The scope of required language services must not narrow even in light of funding challenges. The

ability to LEP litigants to have interpreters at no cost, in all proceedings, and for all languages is necessary to ensuring the right of meaningful access.



Recommendations

The language rights community must continue to make its strongest case for both the preservation and enhancement of existing funding, and for prioritization of language support by entities that may be new or unconvinced resources. In addition to advocating for LSC funding as described above, NAPABA recommends:

- ▶ **CONGRESS ALLOCATE FUNDS TO THE FEDERAL COURTS.** Congress should allocate funding to the federal courts to cover an expansion, through amendment to the Court Interpreters Act, of the court interpreter program to all civil cases. Funding should also enable the federal judiciary to certify interpreters in additional languages.
- ▶ **CONGRESS REVISIT THE STATE COURT INTERPRETER GRANT PROGRAM.** The State Court Interpreter Grant Program, which included increased funding authorized to state courts, has failed to advance in Congress. The bill was last introduced in 2012.²¹⁹
- ▶ **NON-PROFIT PARTNERSHIPS WITH COURTS TO SECURE FUNDING.** The non-profit sector can act as an advocate or conduit of funding.²²⁰ Non-profit organizations may be more likely to receive aid or grants when partnered with the courts.
- ▶ **PURSUIT OF FOUNDATIONS SUPPORTING SERVICES RELEVANT TO LEP COMMUNITIES.** LEP service providers and advocacy organizations should seek out foundations willing to support services for specific populations, particularly if the community organizations are able to help document the number of individuals with language needs that are being unmet.
- ▶ **SUPPORT OF DATA COLLECTION.** Community advocates and lawyers should advocate for and support rigorous data collection that strengthens the case for resources to be allocated to communities in most need.
- ▶ **EDUCATION TO LEP COMMUNITIES OF THEIR RIGHTS.** LEP service providers and advocacy organizations should increase demand for and utilization of language services by educating LEP populations of their language rights, supporting the case for increased funding.
- ▶ **COURT BUDGETS INCORPORATE LANGUAGE ACCESS COSTS.** Courts must not shift the costs of language access to LEP individuals. Rather, courts should increase fees across the board by treating interpretation and translation costs as general operating costs, affirming that language access is essential to the administration of justice and not a privilege or option.



Appendix

The Current State *of* Select Federal Agencies *on* Language Access

AGENCY	LANGUAGES ACCESS	COMPLAINT FORMS
<p>Department of Transportation</p>	<p>Does not provide a translation of the forms in a different language. Provides some of the Civil Rights process in Spanish.</p>	<p>Vehicle complaint form: Does not provide other language translations.</p> <p>Airline and Consumer Complaint form: Does not provide other language translations.</p> <p>Rail incident EEOC complaint form: Does not provide other language translations.</p> <p>Civil Rights Information about process of filing complaint: Does not provide forms specifically, some information is translated in Spanish.</p>
<p>Department of Justice</p>	<p>Provides Language Access materials and policies for Limited English Proficiency persons translated in Spanish, Mandarin, and Vietnamese.</p>	<p>Discrimination complaint forms provided in Chinese, Vietnamese, French, Spanish, and Korean.</p> <p>ADA disability discrimination complaint forms and instruction process- provided in Spanish.</p> <p>General Complaint forms for criminal, employment, disability, education etc. divisions. Provided in other languages, including Chinese, Vietnamese, Korean, and Spanish.</p>
<p>Federal Housing Administration</p>	<p>Provides translations in Spanish. Includes policies for Language Assistance Plans for Limited English Proficiency persons.</p>	<p>Provides Housing discrimination process and forms online and in Spanish translation.</p> <p>Provides a variety of complaint forms in many categories and information on each separate process. Provided in Spanish.</p>
<p>Health and Human Services</p>	<p>Provides civil rights information in other languages, including Chinese, Korean, Tagalog, and Vietnamese.</p>	<p>Complaint forms online, including for Health IT and for retaliation complaints, are only in English.</p>
<p>Social Security Administration</p>	<p>Provides language translations many languages, including Korean, Chinese, Tagalog, Hmong and Vietnamese.</p>	<p>Information and form for discrimination by SSA provided in English only.</p> <p>Online form of complaint for public fraud or waste or abuse, provided in English only.</p> <p>How to file a complaint against an administrative judge discrimination is only in English.</p>

AGENCY	LANGUAGES ACCESS	COMPLAINT FORMS
<p>Equal Employment Opportunity Commission</p>	<p>Provides translations in multiple languages, including Chinese, Korean, and Vietnamese. Provides policy on Language access as well as a plan and a video for ASL speakers and for the deaf and hearing impaired.</p>	<p>Provides general complaint process information and a variety of types of complaints from discriminations against gender, race, harassment, sex, disability, etc. Information is provided in a variety of languages.</p>
<p>Department of Labor</p>	<p>Provides general Spanish translation of their website, and separate forms of multiple languages for employment discrimination complaints.</p>	<p>Complaint form and instructions for employment discriminations provided in Cantonese, Mandarin, Vietnamese, Spanish, Korean and French.</p> <p>Complaint form and instructions for Health and Safety concerns provided in Spanish.</p> <p>Complaint process and forms for criminal and civil complaints regarding the Labor managements provided in Spanish.</p>
<p>Department of Agriculture</p>	<p>Provides a general Spanish translation of their website.</p>	<p>Complaint process for civil rights violations for a customer is only in English.</p> <p>Discrimination Complaint form only in English.</p> <p>Complaint process for civil rights violations for an employee is only in English.</p>
<p>Department of Homeland Security</p>	<p>No translations available on their general website.</p>	<p>Provides a civil rights and discrimination complaint process form and instructions of the process. Also accepts a variety of languages, including French, Russian, Spanish, and Vietnamese.</p> <p>EEO complaint process and information is only in English.</p> <p>Traveler Redress Inquiry complaint form for those whom TSA stops during travel is only in English. TSA civil rights information only in English, as well.</p>
<p>Department of Education</p>	<p>General website is translated in Spanish.</p>	<p>Civil rights complaint form is available in multiple languages, including Chinese, Hindi, Hmong, Korean, Laotian, Punjabi, Tagalog, Urdu, and Vietnamese.</p>

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National Asian Pacific American Bar Association

1612 K Street NW, Suite 510
Washington, DC 20006

napaba.org