



## **Language Access Problems Among DOJ's State Court Grantees**

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

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

### **1. No interpretation in civil cases**

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

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

#### ***Estefani almost ended up in foster care***

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

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

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

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

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

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

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

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

**2. Insufficient interpretation in rare languages**

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

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

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

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

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

**3. Inaccurate interpretation**

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

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

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

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

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

**4. Critical documents written only in English**

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

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

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

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

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

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

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

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

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

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

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

## **What DOJ Should Do**

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

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

- D. Allocate Bureau of Justice Assistance funding for state court language access programs.
- E. Support the State Court Interpreter Grant Program Act, S. 1329, and support amending it to increase the amount of funding it authorizes.

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

<sup>2</sup> 67 Fed. Reg. 41455, 41471 (June 18, 2002).

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

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

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

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

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

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

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

<sup>9</sup> Testimony of Maythe Ramirez before the California legislature.

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

<sup>11</sup> Email from Michael Mulé, Empire Justice Center (Dec. 2009).

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

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

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

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

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

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

[http://peoplesbudget.state.fl.us/reports/governors\\_bill\\_2009.pdf](http://peoplesbudget.state.fl.us/reports/governors_bill_2009.pdf) (recommending that \$5.8 million from the Federal

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

<sup>18</sup> 67 Fed. Reg. at 41463.

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

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

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

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

<sup>22</sup> 67 Fed. Reg. at 41471.

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

<sup>24</sup> *Id.*