



Language Access Problems at Federal Executive Agencies

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

Department of Homeland Security

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

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

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

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

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

Department of Health & Human Services

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

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

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

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

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

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

What DOJ Should Do

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

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

² *Id.*

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

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

⁵ 8 C.F.R. § 208.30(d)(5).

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

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

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

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

¹⁰ *Id.*

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

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

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

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

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

¹⁵ 7 U.S.C.2020(e)(1).

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

¹⁷ Exec. Order 13166, § 2.

¹⁸ *Id.* § 3.

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