


The Case of Maria Luis: The Importance of Language Access in Child Welfare and Domestic Violence Cases

**Nebraska Coalition to End Sexual and Domestic Violence
Lincoln, Nebraska
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Faculty Introductions

- Leslye E. Orloff, American University, Washington College of Law
- Prosecutor Christopher Freeman
- Lt. Giovanni Veliz




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Learning Objectives

By the end of this workshop you will be better able to:

- Understand what federal language access laws require of programs receiving federal financial assistance (e.g. courts, child welfare, police, prosecutors, advocates, legal services).
- Identify pivotal points where lack of language access can negatively impact immigrant victims and their children
- Know what steps you can take in your agency and in your collaborative relationships to improve language access for victims of domestic violence, sexual assault and child abuse.



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Demographics

What countries are you seeing immigrant survivors coming from?

Nebraska Demographics (2017)*

- ❖ Total foreign born population – 143,331
- ❖ 7.5% of the state's 1.8 million people are foreign born
 - 39.3% naturalized citizens
 - ~34.2% lawful permanent residents or temporary legal status**
 - ~26.5% undocumented**
- ❖ 92.0% rise in immigrant population from 2000 to 2017
- ❖ 16.9% of children in the state under age 18 have 1 or more immigrant parents
 - 85.4% of children with immigrant parents in the state are U.S. native.

*Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/NE> (Feb. 2018)
 ** Source: <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/NE>

Nebraska — Countries/Regions of Origin and Limited English Proficiency (2017)*


<ul style="list-style-type: none"> ▶ Latin America –53.8% <ul style="list-style-type: none"> ▶ Mexico (36.8%) ▶ El Salvador (6.3%) ▶ Cuba (2.5%) ▶ Asia –24.9% <ul style="list-style-type: none"> ▶ India (4.0%) ▶ China (3.6%) ▶ Vietnam 3.4%) ▶ Africa –9.1% ▶ Europe – 7.5 % ▶ Middle East – 3.0% ▶ Canada – 1.3% 	<p>Limited English Proficiency (Speak English less than very well)</p> <ul style="list-style-type: none"> ▶ Naturalized citizens 42.4% ▶ Non-citizens 65.4% <p>Languages Spoken at Home</p> <ul style="list-style-type: none"> ▶ Spanish (139,740) ▶ Vietnamese (5,640) ▶ Chinese (5,368) ▶ Arabic (6,534) ▶ Nepali, Marathi, or other Indic language (5,191) ▶ German (4,992) ▶ French (4,147)
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*Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/NE> (Feb. 2018)

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Resources


- Case of Maria L.
- Language Access to Court Services — Tool
- How Using Qualified Interpreters Benefits Law Enforcement
- Detained Parent Directive Brochure



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Maria Luis Case

- Let's read over the fact pattern
- In your small group at your table:
 - List on flip charts all the points at which language access should have been provided to Maria



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Report Back

- At what points in the case should Maria L. have been provided language access?



Large Group Discussion

- If Maria L. was also a victim of domestic violence...
 - How might that have affected her case?



How Immigrant Parents End up in Department of Homeland Security Custody

- Abusers/crime perpetrators/employers report them
 - VAWA self-petitions 38.3%; U visas 26.7%
- Traffic stops
 - VAWA self-petitions 28.6%; U visas 30.1%
- Immigration enforcement at the worksite
- CPS, welfare workers, health care providers, others
- Victims call the police for help and police
 - Make a dual arrest
 - Fail to obtain qualified interpreter and arrest the victim
 - Under Secure Communities program all arrested persons reported to DHS

Szabo, Stauffer, Anver and Orloff, Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants: 26 (February, 2014) http://niwaplibrarywcl.wclerican.edu/pubs/final_report-on-early-access-to-ead_02-12/




**Providing and Advocating for
Language Access**

**Title VI of the
Civil Rights Act 1964**

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 financial assistance*.

Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d

What is Meaningful Access?



- Meaningful access is defined in the US Department of Justice's own Language Access plan as:
- "Language assistance that results in accurate, timely and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed or inferior, as compared to programs or activities provided to English proficient individuals"

Title VI of the Civil Rights Act 1964

Meaning:

- If an organization receives any federal funds
- All aspects of the organization must take reasonable steps to provide meaningful access to programs, benefits, and services offered by the organization to persons who are limited English proficient (LEP)



Americans with Disabilities Act and Section 504 of the Rehabilitation Act

- Regardless of funding source the ADA requires
 - Entities (state/local governments, businesses, and non profit organizations) that serve the public are required to provide ASL interpreters, and other auxiliary aids, to ensure effective communication with deaf and hard of hearing individuals.
 - 28 C.F.R. S28 C.F.R. S35.160 (b)(2)
- Must ensure that communication with people who are Deaf or hard of hearing is equally effective as communication with people without disabilities



DOJ Vital Documents Translation Requirements

- Translation Requirements for Documents
 - All languages spoken by the lesser of 5% of population or 1000 individuals
 - When fewer than 50 persons = 5% written notice in that language of right to receive oral interpretation
- What are examples of vital documents?



Large Group Discussion

- What would be considered vital documents for a ...
 - Police department
 - Victim services agency
 - Legal services program
 - Child welfare agency

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DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010)

- Translation Requirements for Documents
 - Translated petitions, court orders, and materials explaining rights and obligations
 - Post signs and public service announcements in foreign languages advertising free qualified interpreters
 - Language cards to accurately identify individual language needs

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Who's covered?

1. Federally conducted programs
2. State/local government grantees
3. Non-governmental organization grantees



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Any Federal Funding

- What agencies could be sources of federal funding for your work and work of other agencies that victims need help from in your community?



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Any Federal Funding Includes Funds From:

- Office for Victims of Crime (OVC)
- Office on Violence Against Women (VAWA)
- Family Violence Prevention and Services Act (FVPSA)
- Health and Human Services funded programs (HHS)
- Office of Juvenile Justice and Delinquency Prevention (OJJDP)
- Bureau of Justice Assistance (BJA)
- Bureau of Justice Statistics (BJS)
- Community Capacity Development Office (CCDO)
- National Institute of Justice (NIJ)
- Other examples agencies in your community have?



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Policy Guidance Four Factors

67 Fed. Ref. 41455

1. Number or proportion of LEP individuals served or encountered in the eligible service population
2. Frequency of contacts
3. The nature and importance of the program, activity or services
4. Resources available → However, there is Dept. of Justice guidance that lack of resources is no excuse for failure to comply.

Large group discussion: Could one of these factors outweigh the others when you are working with immigrant crime victims?



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We Can't Afford Language Access

Financial limitations do not provide an exemption from language access requirements. Investigators will look at:

1. Demonstrated previous success
2. Whether other essential services are being restricted or defunded
3. Whether additional revenues secured or technology used
4. Whether the grantee has an implementation plan
5. Nature and impact on LEP persons



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Language Access to Law Enforcement Assistance

Best practices to successfully investigate and prosecute cases involving non-English speaking victims



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DOJ Model Guidance




- Police provide free language access to:
 - LEP persons who request it
 - *When officer decides it is helpful* to the criminal investigation or prosecution
- Police will inform members of the public that language assistance is available free of charge
- Language access provided in persons primary language

DOJ Sample Policy Center City Police Department




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DOJ and Exigent Circumstances 

- Use the most reliable *temporary* interpreter available to address exigent circumstances
 - Fleeing suspect
 - Weapons
 - Life threatening to the officer /victim/or public

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DOJ Requirements for Investigations & Interrogations 

- “A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness’ legal rights could be adversely impacted”
 - Criminal interrogations
 - Crime witness interviews
- Vital written materials translated into primary language
 - Miranda warnings

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The Difference Between —

- Securing the Scene
- Interviewing victims and witnesses

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Large Group Discussion

- For law enforcement and prosecutors
 - What are the benefits of using a qualified interpreter?
 - What are the potential harms of not using a qualified interpreter?



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Using Qualified Interpreters



Benefits

- Safety
- ID offender
- Locate weapons
- Admissible statements (excited utterances)

Harms

- Mistaken ID of offender
- Arrest of victim
- Misinterpretation results in inaccurate statements
- Trauma to children



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Language Access At the Court House for Limited English Proficient Survivors



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DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010) - Interpreters

- LEP individuals are to be provided qualified interpreters
 - For all parties, defendants and witnesses and all persons whose presence is necessary or appropriate (e.g., parents of minor crime victims)
 - In ALL court room proceedings whether civil, criminal, administrative, includes motions and status hearings
 - LEP individuals should not incur any fees for these services

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DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010) - Interpreters

- LEP individuals are to be provided qualified interpreters
 - Not restricted to court rooms, also other court functions including:
 - o Clerks offices, records room
 - o Alternative dispute resolution
 - o Pro se clinics
 - o All interactions with court appointed personnel (e.g. batterers treatment, guardians ad litem, court psychologists, testing)

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Large Group Discussion 

How would you get Quechua interpreter to child welfare proceedings in your state?

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Signs an Agency Needs a Language Access Policy and Plan

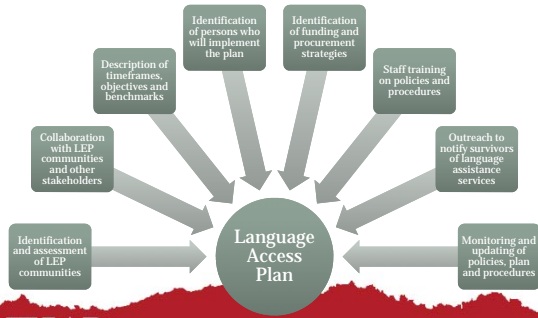
- Relying on relatives, children, or friends to interpret for clients
- Only bilingual staff are used as interpreters, in addition to the other staff job responsibilities
- No formal arrangements are in place to hire competent interpreters
- Staff does not know how to contract for interpretation services
- Staff are turning away LEP individuals
- No translated materials



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Developing an Effective Language Access Plan



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Returning to the Maria Luis Case

Maria Luis is an undocumented Quiche-speaking Guatemalan who had 2 children with her in the U.S. the youngest (Angelica) was born in the U.S. with respiratory problems. Maria Luis took Angelica to the emergency room for treatment and she was given a Spanish (not Quiche) interpreter. She thought she was told to bring the child back for a follow up visit if Angelica did not get better. The hospital said that she was told to bring the child back for a follow up appointment. Angelica got better, so Maria Luis did not return for the follow up visit. The hospital reported her to CPS. CPS arrived with police, took her 2 children who were placed in foster care. Maria Luis was detained and turned over to DHS for deportation. While she in DHS custody, Nebraska sought termination of parental rights. The notice that arrived in detention was not in her native language and DHS did not take her to the dependency court proceeding. Maria Luis was deported to Guatemala and Nebraska called her to explain her parenting plan explained to her in Spanish over the phone. She found a priest in Guatemala who helped her try to comply with the plan from Guatemala. Her parental rights to both her children were terminated her children remained in foster care. **For the next exercise assume Maria Luis was also a battered immigrant.**



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Small Group Discussion 

What could you in your professional role have done to help Maria Luis ...

(Groups assigned different intervention points)

- At the hospital?
- With child welfare?
- At court?
- With the police?
- With DHS/ICE when Maria was detained?

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Report back on potential interventions with...

- The hospital
- The police
- Child welfare
- With DHS/ICE
- The courts

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Immigrant Parents and Child Custody
In re Interest of Angelica L., 277 Neb. 984 (2009)

- Parents have a constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
 - Undocumented immigration status
 - Immigration detention
 - Deportation
- Overriding presumption that:
 - Parent-child relationship is constitutionally protected
 - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
 - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

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A Family Reunited



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Large Group Discussion

- How might notifying the consulate of Maria Luis' country have made a difference?

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Lessons Learned

- Consular notification
 - Can provide attorneys
 - Arrange for travel of children with parents
 - Help identify qualified interpreters
- Preventive Measure: Execute Power of Attorney

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Detained Parent Directive, Aug. 2017

- If parents are detained:
 - Placement near family court when ongoing family court/child welfare cases
 - Bring parents to family court to participate in cases involving children
 - Alternate: video or teleconference participation
 - Facilitate visitation when required by family/child welfare court order
 - Help children travel with deported parent – obtain passports for children



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Key Role of Advocacy for Immigrant and LEP Survivors

- Research has found that with support from advocates and attorneys who
 - Provide/help secure language access
 - Are knowledgeable about legal rights of immigrant survivors
- Immigrant and LEP survivors will
 - Access services, protection orders, immigration relief and justice system help



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Case Planning with LEP, Deaf and Hard of Hearing Victims

- Provide language access to your agency's services
- Make language access to other agencies services a central part of your case planning
 - Request qualified interpreters in advance
- Benefits
 - Build relationships that foster language access and better assistance to immigrant and LEP survivors



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Web Library Materials


- Language Access Folder
 - DOJ State Court Letter
 - NCSC Bench Card on Qualifying Interpreters
 - Fact Sheet on Language Access in the Courts
 - Language Access Tools for Law Enforcement
 - Laws government language access
 - Language Identification Card – World languages
- Family law > Child Abuse and TPR
 - Detained parents and court appearances
 - Detained Parent Directive and Flyer
 - Nebraska Supreme Court Unanimous
 - Decision in Maria's case



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Language Resources



ASIAN PACIFIC INSTITUTE
ON GENDER-BASED VIOLENCE

- Language line
- Video remote interpretation
- Video relay interpretation
- Department interpreters line developed in response to large local refugee population
- Immigrant community based organization partners
- Health care providers
- School systems
- Court systems





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Limited English Proficiency (LEP)

LEP.gov Search LEP.gov

A Federal Interagency Website

LEP Resources and Information

Frequently Asked Questions

Executive Order 13166

Resources by Subject

Recipients of Federal Assistance

Interpretation and Translation

LEP and Title VI Videos

Demographic Data

LEP Mapping Tools

LEP Compliance

Federal Agency LEP Plans

LEP Guidance for Recipients

LEP Guidance for DOJ Recipients

File a Complaint

LEP.gov

Subject LEP Resources

Report Broken Links on LEP.gov

Last Updated: November 19, 2018

Department of Justice LEP Guidance for Recipients and Agencies

Department of Justice LEP Guidance for Recipients and Agencies

LEP Guidance for DOJ Recipients

Language Access Guidance Materials

State Courts

Corrections

Police and Sheriff's Departments

Guidance to State and Local Government

Guidance for Federal Agencies


LEP Guidance for DOJ Recipients [TOP]

2002 LEP Guidance for DOJ Recipients - June 18, 2002

General Guidance Issued with Executive Order 13166 - August 16, 2000

LEP Enforcement and Compliance Activities

Language Access Guidance Materials [TOP]



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Technical Assistance and Materials

- Power Point presentations and materials for this conference at
 - <http://niwaplibrary.wcl.american.edu/september-2019-nebraska-law-enforcement/>
 - **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu