

Speaking Justice: Providing Victims and Litigants Language Access in the Courts

Webinar April 2, 2024

National Judicial Network
Forum on Human Trafficking and
Immigration in State Courts

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Faculty Introductions

- *Christine Stoneman*, Chief, Federal Coordination and Compliance Section (FCS), U.S. Department of Justice
- *Hon. Victor Reyes (Ret.)*, Judge, Pueblo, Colorado
- *Leslye E. Orloff*, Adjunct Professor and Director, NIWAP, American University Washington College of Law

Poll 1: Let's see who is on the webinar with us

Please check the box that best describes you:

- A. Judges/Court Staff
- B. Family Law Attorneys
- C. Prosecutors, law enforcement & their victim witness staff
- D. Victim advocates
- E. Other – type in the chat

POLL

Join the National Judicial Network (NJNI)

- Forum on Human Trafficking and Immigration in State Courts
- What is the NJN (371 judges – 43 states & territories)
 - Opportunity to engage in discussions with other judges
 - Receive latest information
 - Peer-to-Peer training opportunities
 - Get your questions answered
 - Receive the information you need through
 - Monthly webinars, trainings, and technical assistance
 - Bench cards, tools and training materials

The registration link will be in the chat for those judicial officers interested in joining!

Join a NIWAP Community of Practice

- Family Law Attorneys COP

www.surveymonkey.com/r/FamCOP2023

- Victim Advocates COP

<https://www.surveymonkey.com/r/VictimAdvocateCOPApp>

- Roundtable for Law Enforcement, Prosecutors and System-based Advocates

<https://www.surveymonkey.com/r/LERoundtable>

Learning Objectives

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

- Understand what federal language access laws require of the Courts
- Identify the steps judges can take in their courtrooms, attorneys can take in their court cases, and everyone can take in their communities to improve access to justice for immigrant and limited English proficient (LEP) victims, children, parents and litigants
- Recognize pivotal points in court cases where lack of language access can negatively impact immigrant victims, litigants, and their children

Ensuring Language Access in the Courts

This presentation is provided for educational purposes only and is not legal advice or official guidance.



U.S. Department of Justice

Civil Rights Division

Christine Stoneman
Chief

Federal Coordination and Compliance Section

Title VI of the Civil Rights Act of 1964

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq., was enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of race color, and **national origin** in programs and activities receiving federal financial assistance.
- <https://www.justice.gov/crt/fcs/TitleVI-Overview>



...shall on the ground of race, color, or national origin...

"[R]ace, color or national origin" includes any actual or perceived race, color, or national origin.

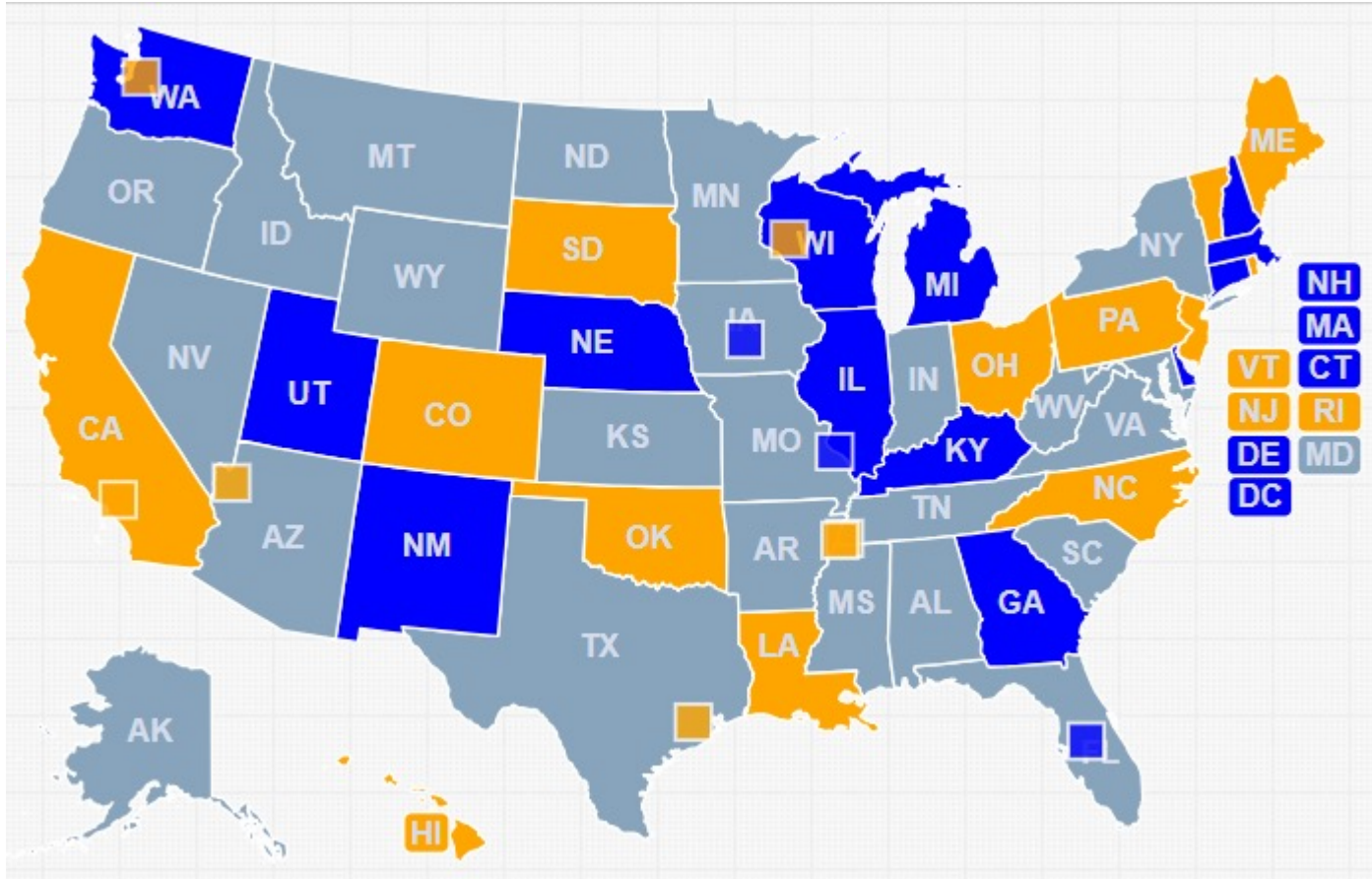
National origin can include an individual's **language, culture, ancestry, or other social characteristics.**



Civil Rights Division Enforcement of Title VI of the Civil Rights Act •

- The Civil Rights Division investigates reports of failure to provide adequate language services in violation of Title VI and works to secure voluntary compliance.
- Through our agreements and technical assistance, courts and court systems have expanded language services

Some Places Where We Have Worked with State Courts



A Tale of Two States

California and Mississippi



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- Developing and/or updating statewide language access plans to provide greater services to court users.
 - Providing oral and written language assistance services at no cost in all civil and criminal cases and court operations regardless of indigency status.
 - Creating and distributing in courtrooms, clerk's offices, and courthouses in-language notices on the provision of free language services.
-



U.S. Department of Justice

Civil Rights Division

- Creating and issuing video remote and telephonic interpreter guidance for court staff and judges.
- Creating and providing language access training for court staff and judges.
- Maintaining public facing websites explaining, in English and non-English languages, how to request interpretation or translation services.



U.S. Department of Justice

Civil Rights Division

- Developing a language access complaint process.
 - Translating court documents and court forms into multiple languages and making those documents publicly available.
 - Improving case management systems to better track language needs.
-



U.S. Department of Justice

Civil Rights Division

Our Broader Language Access Work

FCS also leads:

Law Enforcement Language Access Initiative

Federal Agency Language Access Coordination and the
Interagency Working Group on Language Access



U.S. Department of Justice

Civil Rights Division

Judicial Perspective

- What can state court judges and attorneys do to promote language access in family court cases involving LEP immigrant crime victims?



DOJ Resources you can Use on Language Access in the Courts



Language Access Planning and Technical Assistance Tool for Courts

Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice

February 2014



U.S. Department of Justice
Civil Rights Division

civilrights.justice.gov

Ensuring Language Access in the Courts

The Civil Rights Division collaborates with state and local courts and stakeholders across the country to further the shared goal of equal access to the courts, regardless of English proficiency, and to ensure the integrity and fairness of the legal system for all.

Recent examples of our work

The Civil Rights Division has worked with state and local court systems in more than 20 states across the country to remove language barriers for people who are limited English proficient and to ensure compliance with Title VI.

- Most recently, these court systems include:
 - [Fort Bend County, Texas](#)
 - [Oklahoma](#)
 - [Louisiana](#)
 - [North Carolina](#)
 - [South Dakota](#)
 - [Vermont](#)

You can find information about these matters and many other resources at www.lep.gov/state-courts

“No one should encounter barriers to courts because of the language they speak.”

– Kristen Clarke, Assistant Attorney General for Civil Rights

Federal Civil Rights Protections

Title VI of the Civil Rights Act of 1964 and its regulations prohibit race, color, and national origin discrimination against any person in the United States by a program or activity receiving federal financial assistance. 42 U.S.C. § 2000d; 28 C.F.R. Part 42 Subsection C.

To meet their obligations, state court recipients of federal funds must, for instance, provide appropriate language assistance services to individuals with limited English proficiency (LEP). Such assistance includes, but is not limited to, ensuring that court users with LEP have adequate interpretation and translation services provided at no cost during hearings and trials, as well as in court operations.

Federal Coordination and Compliance Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, N.W. (4CON)
Washington, D.C. 20530
(888) 848-5306
FCS.CRT@usdoj.gov
www.justice.gov/crt/fcs
www.lep.gov

To report discrimination to the Civil Rights Division, visit civilrights.justice.gov.

Language Access in State Courts



U.S. Department of Justice
Civil Rights Division

Federal Coordination and Compliance Section

September 2016

Poll 2: Do the courts in your area routinely provide interpreters in the following types of cases?

Please check all that apply:

- A. Criminal
- B. Protection orders
- C. Custody/Divorce
- D. Child welfare
- E. Child support

POLL

Impact of Language Access on Outcomes in State Courts

- Maria Luis' Story

Nebraska – Maria Luis Case Part I

- 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 only if Angelica did not get better. The hospital said that ML was told she must bring the child back for a follow-up appointment. Angelica got better, so Maria Luis did not return for the follow up visit.

Poll 3: How might the hospital's failure to identify and provide a qualified interpreter at the hospital impact Maria Luis and her children?

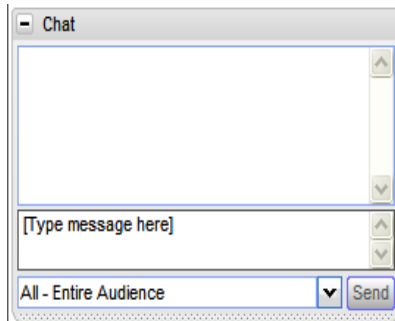
Please check all that apply:

- A. Incorrect treatment given
- B. Mother would not understand instructions given by the doctor
- C. Court trigger report to child welfare
- D. No real impact- child got better

POLL

Nebraska – Maria Luis Case Part II

- The hospital reported Maria Luis to Child Protective Services (CPS) when she failed to come to the follow-up appointment. CPS arrived at Maria Luis' house with the police. They took her 2 children who were placed in foster care. Maria Luis was detained and turned over to DHS for deportation. While she was in DHS custody, Nebraska initiated a dependency case against Maria Luis. The notices from the court that arrived at the DHS detention center were not in Quiche and DHS did not take her to the dependency court proceedings.



What would the judge have the power to do regarding the language access problems that have arisen thus far in this case?

- At the hospital?
- The role CPS played?
- With the police?
- With the court's notices?
- With the Department of Homeland Security?

Nebraska – Maria Luis Case Part III

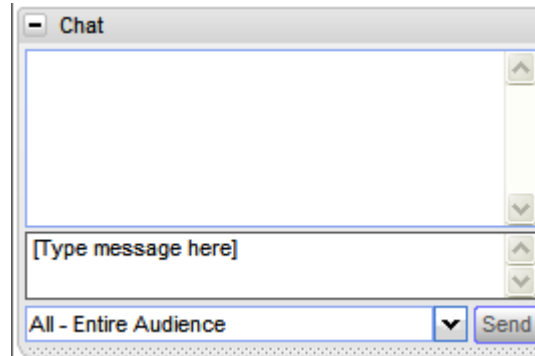
- Maria Luis was deported to Guatemala and Nebraska CPS called her to explain her parenting plan in Spanish over the phone. She found a priest in Guatemala who helped her understand the plan and helped her locate and participate in parenting classes to try to comply with the plan from Guatemala. Her parental rights to both her children were terminated and her children remained in foster care.

What role can a judge play regarding each of the following:

- How is the state communicating with an LEP parent regarding a parenting plan?
- When lack of language access impacts timing triggers for termination of parental rights?



If you are a judge or a family lawyer, how do you get a Quiche interpreter for a custody, protection order, or child welfare proceeding in your jurisdiction?



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

A Family Reunited



ICE Parental/Guardian Interests Directive July 2022

- Requires affirmative and ongoing inquiries about and identification of parents/legal guardians of minor children and incapacitated adults
- Status as a caregiver parents/legal guardian impacts
 - Decision to detain, initial placements, transfers of parents
 - Rights to family visitation & child welfare services/programs
 - ICE to comply with and facilitate court-ordered visitation
 - Unless parent is the abuser, ICE required to accommodate efforts to make arrangements for children
 - If court orders custody or return of child, ICE will in most cases release parent/guardian
 - ICE required to bring parents/guardians to court and establish communication with courts.

If an immigrant parent is detained, you can ...

- Order that they be brought to your courtroom to participate in state court proceedings involving their children
- Make sure they receive notice and that notice is provided in the parent's primary language
- Notify the detained parent's consulate

DOJ Guidelines on Language Access for Courts -I

- LEP persons 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 minors and crime victims)
 - In ALL court room proceedings whether civil, criminal, family protection order, or administrative
 - Includes motions and status hearings
 - LEP individuals should not incur any fees for these services

DOJ Guidelines on Language Access for Courts -II

- LEP persons are to be provided qualified interpreters
 - Not restricted to court rooms, also other court functions including:
 - Clerks' offices, records room, information counters
 - Alternative dispute resolution
 - *Pro se* clinics
 - All interactions with court appointed personnel (e.g., batterers treatment, guardian's ad litem, court psychologists, child advocates, drug testing, paternity testing)

2018 DOJ Letter to Chief Justices and State Court Administrators

- “The Federal requirement to provide language assistance to LEP individuals applies notwithstanding conflicting state or local laws or court rules.”
- “Dispensing justice fairly, efficiently, and accurately is a cornerstone of the judiciary.”
- “Language services expenses should be treated as a basic and essential operating expense, not as an ancillary cost.”

Translation Requirements – Which Languages

- 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

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

What role can attorneys and victim advocates play in increasing language access for their LEP immigrant victim clients?



Role of Lawyers and Advocates –Language Access Advocacy

- Plan and provide notice to the court and agencies in advance about your client’s interpretation needs
- Educate other programs about their language access responsibilities
- Build relationships with agencies in your community
- If a police report was not taken in your victim client’s case or it contains misinterpreted information – have the report amended
- File complaints with Federal Coordination and Compliance Section, DOJ, Office of Civil Rights. [Contact the Civil Rights Division | Department of Justice](https://civilrights.justice.gov) at <https://civilrights.justice.gov>

Research has found...

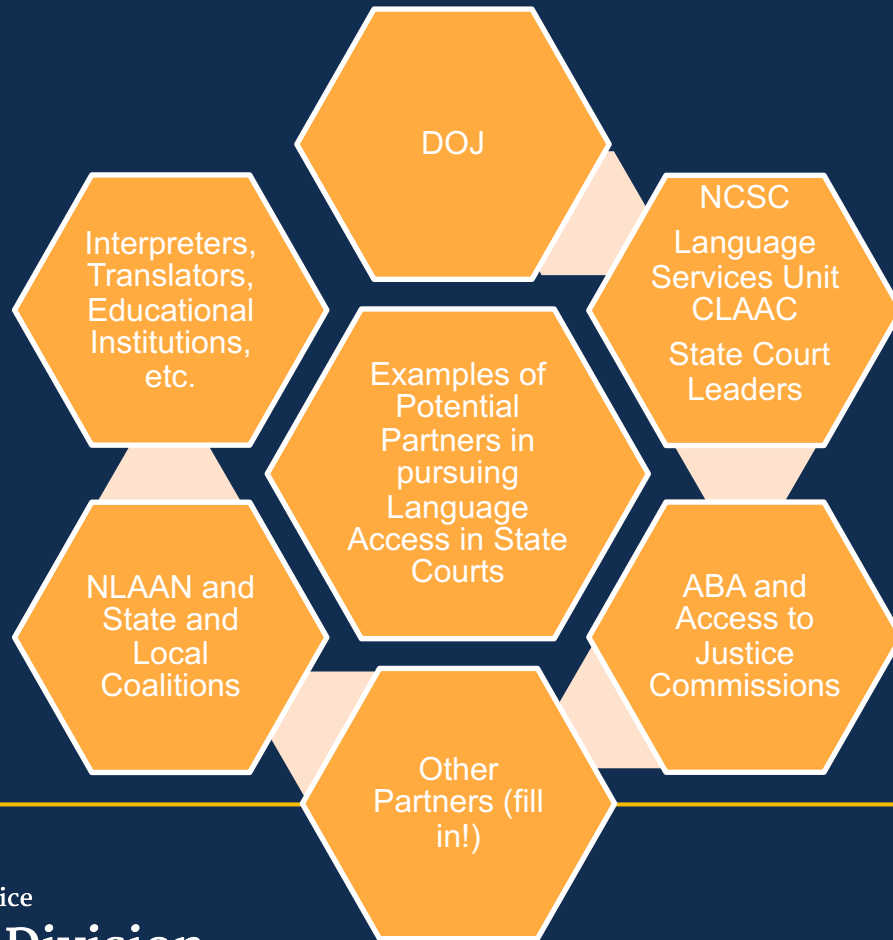
- With support from advocates and attorneys who
 - Provide/help secure language access
 - Are knowledgeable about legal rights of immigrant survivors
- Immigrant and LEP survivors will
 - Seek protection orders, help from courts, access services, and apply for immigration relief
- When state courts provide language access, issue SIJS judicial determinations and sign U visa certifications
 - Immigrant victims of domestic violence, sexual assault, human trafficking and child abuse are willing to seek protection orders and help from family courts at significantly higher rates

Mary Ann Dutton, Nawal Ammar, Leslye Orloff, and Darci Terrell, Use and Outcomes of Protection Orders by Battered Immigrant Women: Revised Final Technical Report to the National Institutes of Justice (November 19, 2006)

Nawal H. Ammar, Leslye E. Orloff, and Amanda Couture-Carron, Immigrant Victims of Interpersonal Violence and Protection Orders, In Civil Court Responses to Intimate Partner Violence and Abuse (2020)

Collaboration on Language Access

- How courts develop and grow language access programs
- National Center for State Courts (NCSC)
 - Develop relationships with programs that serve immigrant and LEP communities
 - The court can qualify an interpreter for the case using NCSC Bench Card
- Best Practice
 - Note the victim's language on the court jacket
- Have language identification cards available for use in courtrooms, clerks offices, court services
- Judges can play a leadership role promoting language access in their courtrooms, courts and in their communities



U.S. Department of Justice

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Questions & Discussion

www.justice.gov/crt/fcs
www.lep.gov/state-courts



U.S. Department of Justice
Civil Rights Division

Resources

- U.S. Department of Justice, Civil Rights Division, Federal Coordination & Compliance Section (FCS) State Courts and Language Access:
<https://www.lep.gov/state-courts>
- National Center for State Courts, Answering the Call – Celebrating a Decade Advancing Language Access in State Courts, Mapping Our Path to the Next Horizon. https://vimeo.com/showcase/10091061/video/879431920?utm_campaign=414220_%40the%20Center%20November%201%202023&utm_medium=email&utm_source=dotdigital
- NIWAP's Language Access Webpage:
<https://niwaplibrary.wcl.american.edu/language-access>
- APIGBV, Interpretation Technical Assistance Resource Center
<https://www.api-gbv.org/culturally-specific-advocacy/language-access/>
- Casa de Esperanza/ National Latin@ Network, LEP Toolkit:
<http://nationallatinonetwork.org/lep-toolkit-home>
- Vera Institute of Justice. Center on Victimization:
<https://www.vera.org/securing-equal-justice/ensuring-access-for-people-with-disabilities-and-deaf-people>

NIWAP's Training, Materials and TA

- ▶ **Technical Assistance**

- ▶ Call: 202.274.4457

- ▶ Email: niwap@wcl.american.edu

- ▶ **Web Library:** <https://niwaplibrary.wcl.american.edu/>

- ▶ **Judicial training manuals, toolkits, bench cards and materials** at <https://niwaplibrary.wcl.american.edu/sji-njn-materials>

- ▶ **National Judicial Network: Judicial officer member registration**

- <https://niwaplibrary.wcl.american.edu/national-judicial-network>