

2023

## Lost in Translation: Language Barriers to Accessing Justice in the American Court System

Myasar Ihmud

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>

---

### Recommended Citation

Myasar Ihmud, Lost in Translation: Language Barriers to Accessing Justice in the American Court System, 56 UIC L. REV. 669 (2023).

<https://repository.law.uic.edu/lawreview/vol56/iss4/3>

This Comments is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact [repository@jmls.edu](mailto:repository@jmls.edu).

# LOST IN TRANSLATION: LANGUAGE BARRIERS TO ACCESSING JUSTICE IN THE AMERICAN COURT SYSTEM

MYASAR IHMUD\*

I.	INTRODUCTION .....	669
II.	BACKGROUND .....	671
	A. Prioritizing Access to Justice.....	672
	B. Language Diversity in America.....	673
	C. Legal Protections for LEP Individuals.....	676
	1. Title VI of the Civil Rights Act of 1964 .....	676
	2. Court Interpreters Act of 1978.....	678
	3. Americans with Disabilities Act .....	680
III.	ANALYSIS.....	681
	A. Access to Justice Beyond the Courtroom .....	681
	B. Meaningful Access Must Go Beyond Meeting the Minimum.....	683
	C. Trial Court Discretion is a Flaw of the Court Interpreters Act.....	683
	D. Unique Issues Faced by Arabic Speaking Individuals .....	686
	E. Unique Issues Faced by Deaf and Hard of Hearing Individuals .....	688
IV.	PROPOSAL.....	690
	A. Diversifying the Legal Field .....	691
	B. Education in Law School about Language Accessibility and LEP Clients .....	692
	C. Increased Training for Judges.....	694
V.	CONCLUSION .....	696

## I. INTRODUCTION

“Who said robbing a people of its language is any less violent than war?” – Ray Gwyn Smith<sup>1</sup>

During a disciplinary hearing in a Georgia state prison, Jeremy

---

\* J.D., UIC School of Law 2023. I’m grateful for my experiences in the Fifth District of the Circuit Court of Cook County, Illinois where my work as a bilingual advocate and law clerk gave me a front row seat to language access issues. Thank you to my family, friends, and colleagues, whose support has carried me through this process, and to the Law Review Editorial Board for all your guidance and thoughtful feedback.

1. GLORIA ANZALDUA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* 75 (4th ed. 2012) (writing about the difficulties and joys of living at many “borders” between nations, cultures, classes, genders, and languages). As Anzaldua recalls,

I remember being caught speaking Spanish at recess - that was good for three licks on the knuckles with a sharp ruler. I remember being sent to the corner of the classroom for ‘talking back’ . . . when all I was trying to do was tell her how to pronounce my name.

*Id.*

Woody, a deaf inmate, had his hands cuffed behind his back.<sup>2</sup> Without the use of his hands Woody could not communicate, and without an interpreter and the guards could not communicate with him.<sup>3</sup> He could not hear what was being said, nor speak or write to ask for an interpreter.<sup>4</sup> During this ordeal he could see the guards laughing at him.<sup>5</sup> In an essay recounting his experience, Woody wrote, “I started to scream. That was really all that I could do. They sent me to the hole, and I cried endlessly. It’s hard to describe the fury and anger.”<sup>6</sup>

This experience by a deaf defendant illustrates a crucial gap in our court systems. Justice is difficult to attain when someone finds themselves in proceedings where their rights are at issue, and that attainment is substantially threatened when a language barrier is also in the courtroom.

In a recent investigation into a Texas county court, Assistant Attorney General for the Civil Rights Division at the United States Department of Justice, Kristen Clarke, explained, “[p]eople with limited English proficiency can suffer the loss of their children, homes, and fundamental rights when they face language barriers that deny meaningful access to our judicial system.”<sup>7</sup> Language is our main tool for expression and communication. To deprive someone of either in court is a gross injustice, breeds distrust in our justice system, and individuals with limited English proficiency are effectively silenced.<sup>8</sup>

---

2. *Woody v. Perry*, No. 5:16-cv-467-TES-CHW, 2018 U.S. Dist. LEXIS 103202, at \*16-19 (M.D. Ga. May 25, 2018) (claiming that lack of American Sign Language interpreters in prison prevented the plaintiff from participating in education training programs, seeking proper treatment for medical concerns, and resulted in wrongful convictions for prison disciplinary infractions).

3. Jeremy Woody, *The Isolation of Being Deaf in Prison*, in *DISABILITY VISIBILITY: FIRST-PERSON STORIES FROM THE TWENTY-FIRST CENTURY* 59 (Alice Wong ed., 2020).

4. *Id.* at 61.

5. *Id.*

6. *Id.* at 62.

7. Press Release, Dep’t Just. Off. Pub. Affs., Justice Department Settles Language Access and Retaliation Investigation of Courts in Fort Bend County, Texas (June 29, 2021) [hereinafter Fort Bend Press Release]. The release further states:

[Fort Bend County] will provide interpreter services at no cost to LEP individuals in civil and criminal cases in FBC courts. FBC courts will also review its language access plans over the next year, develop mandatory Title VI training for FBC courts, provide Title VI retaliation training and issue public notices that explain the Title VI nondiscrimination policy and complaint process in non-English languages.

*Id.*

8. See generally *Know Your Rights! Limited English Proficiency Rights in the Justice System*, ACUTRANS (Aug. 25, 2020), [www.acutrans.com/lep-rights-in-the-us-justice-system/](http://www.acutrans.com/lep-rights-in-the-us-justice-system/) [perma.cc/DBW4-4ZT5] (quoting Judge Eric

Limited English proficiency refers to people whose primary language is not English “or who may have a limited ability to read, write, speak, or understand English[.]”<sup>9</sup> Such individuals are considered “limited English proficient” (“LEP”).<sup>10</sup>

The first part of this Comment provides background on language diversity within the United States and existing federal protections for individuals with limited English proficiency. The next Section provides an overview of language related barriers to accessing justice. While many LEP individuals face similar barriers, this Comment will highlight two groups. The first is Arabic speaking litigants. Arabic is one of the fastest growing languages in the United States and there is a large Arabic speaking population in Illinois. The second is Deaf and Hard of Hearing litigants whose primary language is American Sign Language (“ASL”). Because Deaf and Hard of Hearing individuals have limited English proficiency due to what is often viewed as a physical disability, they are often overlooked in conversations around language access.

This Comment also analyzes the meaning of language access and whether the current protections are sufficient to meet the needs of LEP individuals. Finally, this Comment proposes several steps that the legal profession can take outside the courtroom to help provide more meaningful language access<sup>11</sup> so that LEP individuals have the same opportunities as native English speakers.

## II. BACKGROUND

This Section begins with a brief overview of what it means to access justice followed by a closer look at language diversity in the United States. The breadth of language diversity gives rise to the need of robust language interpretation services. What follows is a discussion of the several statutes Congress enacted that attempt to remedy these problems including Title VI of the Civil Rights Act of 1964, the Court Interpreters Act of 1978, and the Americans with

---

Washington, “[w]hen state courts fail to provide competent interpreters . . . [LEP litigants] can’t protect their children, they can’t protect their homes, they can’t protect their safety. Courts suffer because they lose faith in the justice system. Society suffers because its laws cannot be enforced . . .”).

9. U.S. DEP’T OF JUST. CIV. RTS. DIV., FED. COORDINATION & COMPLIANCE SECTION, LANGUAGE ACCESS PLANNING AND TECHNICAL ASSISTANCE TOOL FOR COURTS 2 (Feb. 2014).

10. *Id.*

11. AM. BAR ASS’N, STANDING COMM. ON LEGAL AID & INDIGENT DEFS., STANDARDS FOR LANGUAGE ACCESS IN COURTS 10 (2012), [www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_standards\\_for\\_language\\_access\\_proposal.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.pdf) [perma.cc/QN7A-Y43S] (defining language access as “the provision of the necessary services for LEP persons to access the service or program in a language they can understand, and to the same extent as non-LEP persons.”) [hereinafter STANDARDS FOR LANGUAGE ACCESS IN COURTS].

Disabilities Act. Finally, this Section discusses the unique challenges faced by two underrepresented populations: Arabic speakers and deaf and hard of hearing individuals.

### A. *Prioritizing Access to Justice*

The Framers of the Constitution created the judicial branch “to ensure that Americans would have access to the courts to vindicate their rights.”<sup>12</sup> Supreme Court Chief Justice John Marshall asserted “[t]o what quarter will you look for protection from an infringement on the Constitution, if you will not give the power to the judiciary? There is no other body that can afford such a protection.”<sup>13</sup> Some define access to justice as a person’s ability to “seek and obtain a remedy through formal or informal institutions of justice for grievances.”<sup>14</sup> Others view it as the ability to access legal representation and a fair court process.<sup>15</sup> However, accessing justice is not achieved by simply entering the court room with legal representation.<sup>16</sup> The American Bar Association expands its view of accessing the justice system to include an individual’s ability to “engage effectively with law enforcement officials.”<sup>17</sup> Still, these definitions place greater emphasis on *justice* rather than *access*.

However, the scope here focuses more narrowly on the concept of *accessing* justice and how it is impacted by language related barriers. Language barriers alienate LEP individuals from advocating for their rights.<sup>18</sup> Further, in the criminal context,

12. DAVID H. GANS, CONST. ACCOUNTABILITY CTR., *THE KEYSTONE OF THE ARCH: THE TEXT AND HISTORY OF ARTICLE III AND THE CONSTITUTION’S PROMISE OF ACCESS TO COURTS* 5 (2016).

13. JOHN MARSHALL, *THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION (1787)*, reprinted in 3 *ELLIOT’S DEBATES* 554 (Jonathan Elliot ed., 1836).

14. *Necessary Condition: Access to Justice*, U.S. INST. PEACE, [www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice](http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice) [perma.cc/6VRA-CYF9] (last visited Mar. 10, 2023) (providing guidance regarding access to justice).

15. Bob Glaves, *What Do We Mean When We Say Access to Justice?*, CHI. BAR FOUND. (Sept. 20, 2018), [chicagobarfoundation.org/blog/bobservations/what-do-we-mean-when-we-say-access-to-justice/](http://chicagobarfoundation.org/blog/bobservations/what-do-we-mean-when-we-say-access-to-justice/) [perma.cc/N9UM-Z2GH].

16. *See id.* (advocating for substantive and procedural changes to ensure equitable and meaningful access to justice including community education and outreach so that potential litigants can recognize their problems as legal issues, more efficient and user-friendly court processes, and the ability to access legal representation for more complex legal issues).

17. *Human Rights and Access to Justice*, AM. BAR ASS’N, [www.americanbar.org/advocacy/rule\\_of\\_law/what-we-do/human-rights-access-to-justice/](http://www.americanbar.org/advocacy/rule_of_law/what-we-do/human-rights-access-to-justice/) [perma.cc/WV5C-WG42] (last visited Mar. 10, 2023) (arguing that access to justice is fundamental to advancing human rights).

18. *See* SAM JAMMAL & TUYET DUONG, MEX. AM. LEGAL DEF. & EDUC. FUND & ASIAN AM. JUST. CTR., *LANGUAGE RIGHTS: AN INTEGRATION AGENDA FOR IMMIGRANT COMMUNITIES* 15 (2008) (warning that if we do not remove barriers to immigrant access to the courts, including lack of language access, “we could

“[i]mpaired access to justice resulting from language inequalities is particularly damaging . . . when someone’s very liberty is at stake and a faulty trial can have irrevocable consequences.”<sup>19</sup> In one criminal case, it was found that the denial of a post-conviction relief petition of an LEP inmate was made in error because “the Spanish translation of the rights he was waiving by entering the plea was so inaccurate [that] his plea of guilty was not entered knowingly, intelligently, and voluntarily.”<sup>20</sup> It is evident that without proper language interpretation, there can be no path to a just outcome.

### B. *Language Diversity in America*

For decades, various politicians have attempted to make English the national language.<sup>21</sup> Despite these efforts, English is not the official language of the United States, but it may be considered the default language.<sup>22</sup> Each interaction with American society requires some level of English proficiency as most, if not all, government functions, court proceedings, and business dealings are conducted in English.<sup>23</sup> English is the predominant language of 78.4% of those living in the U.S.<sup>24</sup> The remaining 21.6% speak only Spanish (13.2%), other Indo-European languages<sup>25</sup> (3.8%), Asian and Pacific Islander languages<sup>26</sup> (3.5%), or another language

---

soon face a situation where immigrants become completely disconnected from one of America’s lasting institutions, which could impact civic engagement by immigrants and LEPs.”).

19. *Ponce v. State*, 9 N.E.3d 1265, 1268 (Ind. 2014).

20. *Id.* at 1267.

21. *ACLU Backgrounder on English Only Policies in Congress*, ACLU, [www.aclu.org/other/aclu-backgrounder-english-only-policies-congress](http://www.aclu.org/other/aclu-backgrounder-english-only-policies-congress) [perma.cc/33RY-CDP6] (last visited Mar. 10, 2023). *See also* English Language Unity Act of 2023, H.R.997, 118th Cong. (proposing English as the official language of the United States and English proficiency testing for naturalization).

22. Harmeet Kaur, *FYI: English Isn’t the Official Language of the United States*, CNN (June 15, 2018), [www.cnn.com/2018/05/20/us/english-us-official-language-trnd/index.html](http://www.cnn.com/2018/05/20/us/english-us-official-language-trnd/index.html) [perma.cc/VZV7-9536] (investigating the rise in xenophobic and racist speech in situations where bystanders tell and yell at non-English speakers to “speak English in America.”).

23. *Id.*

24. U.S. CENSUS BUREAU, LANGUAGE SPOKEN AT HOME TABLE S1601 (2021), [data.census.gov/table?q=Language+Spoken+at+Home&t=&y=&d=&n=&tid=ACSST1Y2021.S1601](https://data.census.gov/table?q=Language+Spoken+at+Home&t=&y=&d=&n=&tid=ACSST1Y2021.S1601) [perma.cc/Q7A5-2528] [hereinafter LANGUAGE SPOKEN AT HOME] (showing self-reported data on languages spoken in the home)

25. Indo-European languages include French, Italian, Swedish, German, Russian, Serbian, Polish, Hindi, Urdu, and others. Cristian Violatti, *Indo-European Languages*, WORLD HIST. ENCYC. (May 4, 2014), [www.worldhistory.org/Indo-European\\_Languages/](http://www.worldhistory.org/Indo-European_Languages/) [perma.cc/AUX9-ZJY7].

26. Asian and Pacific Islander languages include Chinese, Tagalog, Vietnamese, and Korean. *The Top 5 Asian and Pacific Island Languages in the US*, UNITED LANGUAGE GRP., [www.unitedlanguagegroup.com/blog/translation/asian-pacific-island-languages-in-us](http://www.unitedlanguagegroup.com/blog/translation/asian-pacific-island-languages-in-us) [perma.cc/XYT3-JGA6] (last visited Mar.

(1.2%).<sup>27</sup> In some states, the issue is more pronounced where well over a hundred languages, with varying dialects, are spoken.<sup>28</sup>

Spanish is the second most-spoken language after English in this country.<sup>29</sup> LEP individuals whose native language is Spanish make up 13.2% of the population.<sup>30</sup> Fortunately, Spanish interpreters tend to be more readily available than other language interpreters.<sup>31</sup> Court forms, if translated at all, are also likely translated in Spanish.<sup>32</sup>

There are many dialects in any one given language. Often, they are mutually understandable in that two people who both speak English, one from the United States and the other from the United Kingdom, can understand one another.<sup>33</sup> However, there are situations where the same word has different meanings. A simple example is the word “chip.” In the U.S., “chips” refers to potato chips which are “a thin slice of white potato that has been cooked until crisp and then usually salted.”<sup>34</sup> However, in the U.K., “chips” refers to what Americans call “French fries.” Another example is the word “maraca.” A maraca is an instrument; however, Spanish speakers from Chile know “maraca” to be a slang word for prostitute.<sup>35</sup>

10, 2023).

27. LANGUAGE SPOKEN AT HOME, *supra* note 24 (breaking down non-English languages spoken at home into general categories of Spanish, other Indo-European language, Asian and Pacific Islander languages, and other).

28. *See, e.g.*, CAL. COMM’N ON ACCESS TO JUST., LANGUAGE BARRIERS TO ACCESS TO JUSTICE IN CALIFORNIA 1 (2005), [www.calbar.ca.gov/portals/0/documents/reports/2005\\_Language-Barriers\\_Report.pdf](http://www.calbar.ca.gov/portals/0/documents/reports/2005_Language-Barriers_Report.pdf) [perma.cc/TB49-MD95] (sharing that “Californians speak more than 220 languages”); N.Y. STATE UNIFIED CT. SYS., COURT INTERPRETING IN NEW YORK: A PLAN OF ACTION 1 (2006), [ww2.nycourts.gov/sites/default/files/document/files/2018-05/action\\_plan\\_040506.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/action_plan_040506.pdf) [perma.cc/QB8T-579C] (stating that in New York, 168 languages and many more distinct dialects are spoken).

29. *See* SANDY DIETRICH & ERIK HERNANDEZ, U.S. CENSUS BUREAU, LANGUAGE USE IN THE UNITED STATES: 2019 (2022) (using the most recent American Community Survey data to highlight trends and characteristics of different languages spoken in the United States over the past forty years).

30. LANGUAGE SPOKEN AT HOME, *supra* note 24.

31. *See, e.g.*, *Off. of Interpreter Serv.*, STATE OF ILL. CIR. CT. OF COOK CNTY., [www.cookcountycourt.org/ABOUT-THE-COURT/Office-of-the-Chief-Judge/Court-Related-Services/Office-of-Interpreter-Services](http://www.cookcountycourt.org/ABOUT-THE-COURT/Office-of-the-Chief-Judge/Court-Related-Services/Office-of-Interpreter-Services) [perma.cc/2P37-Z5NJ] (last visited Apr. 23, 2023) (indicating that Spanish, Polish, and ASL interpreters are available every day for criminal and civil matters).

32. *E.g.*, *Approved Standardized Statewide Forms*, ILL. CTS., [www.illinoiscourts.gov/documents-and-forms/approved-forms/](http://www.illinoiscourts.gov/documents-and-forms/approved-forms/) [perma.cc/N7DE-FKJH] (last visited April 23, 2023) (creating easily accessible links to Spanish translations of statewide approved court forms).

33. Adam Brock, *Six Differences Between British and American English*, VOA LEARNING ENG. (Sept. 6, 2017), [learningenglish.voanews.com/a/six-difference-between-british-and-american-english/3063743.html](http://learningenglish.voanews.com/a/six-difference-between-british-and-american-english/3063743.html) [perma.cc/44CV-W6LB].

34. *Potato chip*, MERRIAM-WEBSTER, [www.merriam-webster.com/dictionary/potato%20chip](http://www.merriam-webster.com/dictionary/potato%20chip) [perma.cc/NY63-F6WL] (last visited Mar. 10, 2023).

35. Guinevere Jones, *The Nuances of Spanish Dialects Around the Globe*, BABEL MAG. (Apr. 23, 2020), [www.babel.com/en/magazine/spanish-dialects](http://www.babel.com/en/magazine/spanish-dialects)

In a court proceeding where the interpreter speaks one dialect and the LEP individual speaks another, misinterpretation can have significant legal consequences. In one instance, a Salvadoran interpreter was interpreting for a Mexican farmer in a worker's compensation case where the word "cintura" was interpreted as "waist" instead of "lower back" as the farmer had attempted to communicate.<sup>36</sup> Upon further questioning, the farmer said his back hurt, not his waist.<sup>37</sup> The judge deemed the farmer's statements "inconsistent and evasive" leading the farmer to lose his hearing.<sup>38</sup> In this situation, an inadequate language interpreter significantly impacted the farmer's access to justice and ability to recover damages for his injury.<sup>39</sup> However, some courts have determined that dialectical inconsistencies are not an issue.

Even still, Spanish speakers face significant barriers. For instance, Illinois courts are making an effort to translate more documents and forms in Spanish.<sup>40</sup> For the last several years, Illinois courts have attempted to translate more documents used by pro-se litigants.<sup>41</sup> However, Illinois law requires that all forms be filed in English.<sup>42</sup> Forms submitted in a language other than English at the circuit level must be accompanied by a certified translation.<sup>43</sup> Requiring certified translations of documents may pose additional cost-related barriers, particularly for people with already limited resources.<sup>44</sup>

Nearly half the states have enacted English-only laws to make English the official language of their state.<sup>45</sup> These laws come in several different forms. Some states have simple policies that declare English as the state's official language, while others have designated English as the language of all "official public documents, records or meetings."<sup>46</sup> Others have gone even further with laws stating that the government is "not required to provide documents"

---

[perma.cc/4Z4Z-Y9PV].

36. Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLINICAL L. REV. 347, 352 (2000).

37. *Id.*

38. *Id.*

39. *Id.*

40. *Ensuring Language Access in Illinois' Courts*, 2CIVILITY (May 28, 2020), [www.2civility.org/ensuring-language-access-in-illinois-courts/](http://www.2civility.org/ensuring-language-access-in-illinois-courts/) [perma.cc/YK6C-RGYS].

41. *Id.*

42. *Id.*

43. *Id.*

44. *See, e.g., Certified Translation Serv.*, RUSH TRANSLATE, [rushtranslate.com/certified-translation](http://rushtranslate.com/certified-translation) (last visited April 20, 2023) (advertising the cost of certified translations as \$24.95 per page).

45. *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 189-90 (Alaska 2007) (holding that adopting English as the state's official language is unconstitutional).

46. *Id.* (citing N.H.REV. STAT. ANN. § 3-C:1 (1995); S.D. CODIFIED LAWS ANN. § 1-27-20 (1995); TENN. CODE ANN. § 4-1-404 (1984)).

or information “in other languages,” but they do allow state employees “to communicate in other languages” with the public.<sup>47</sup>

The Ninth Circuit found that these laws sought to ban all government officials including the judicial branch from speaking any language other than English.<sup>48</sup> Several courts have struck down these laws, finding that they sought “to prevent citizens of limited English proficiency from effectively communicating with government officials and from receiving, when available, vital information about government.”<sup>49</sup> While these laws have been found to be unconstitutional or unenforceable, the attitudes that fuel them reinforce barriers to access for LEP individuals.

Notably, what is missing from data sets on language is information on the prevalence of American Sign Language as a language of origin. This is likely reflective of ASL’s frequent link to deafness, a physical disability. Consequently, “deafness is treated predominantly as a matter of public health and social welfare policy, not primarily as a social and linguistic phenomenon within the general population.”<sup>50</sup> This view of deafness places the linguistic and language access needs of Deaf and Hard of Hearing people in disability-related conversations.<sup>51</sup> This fails to account for the social and linguistic issues that may exist within Deaf culture and communities. Including Deaf and Hard of Hearing individuals in the conversations around language use and accessibility ensures a well-rounded view of the issue that results in meaningful access.

Given the linguistic diversity within the United States, Congress has enacted the following federal laws to protect individuals with limited English Proficiency from discrimination.

### *C. Legal Protections for LEP Individuals*

#### *1. Title VI of the Civil Rights Act of 1964*

Title VI of the Civil Rights Act of 1964 (“Title VI”) prohibits any program receiving federal aid from discriminating on the basis of national origin.<sup>52</sup> Courts have noted the nexus between a person’s national origin and their primary language in determining that discrimination based on English proficiency also violates Title VI.<sup>53</sup>

47. *Id.*

48. *Id.*

49. *In re Initiative Petition No. 366*, 46 P.3d 123, 127 (Okla. 2002) (holding that petition to designate English as Oklahoma’s official language unconstitutionally infringed upon the freedom of speech).

50. Ross Mitchell et al., *How Many People Use ASL in the United States?: Why Estimates Need Updating*, 6 SIGN LANGUAGE STUDIES 306, 310 (2006).

51. *Id.* at 311.

52. See 42 U.S.C. § 2000d (2022) (prohibiting discrimination based on race, color, and national origin in programs and activities receiving federal financial assistance).

53. Office of Justice Programs, *Limited English Proficient (LEP)*, U.S. DEP’T

Therefore, programs receiving federal funding must provide language access to their programs and services, which often means some form of oral interpretation and written translation of documents.<sup>54</sup> State and county courts that receive federal funding to support their operations whether “directly from a federal agency, or . . . as a subrecipient of a state entity” are required to “ensure that LEP persons can participate in or benefit from their programs and activities.”<sup>55</sup>

Under Title VI, state courts are required to take steps to ensure that LEP litigants can meaningfully access services.<sup>56</sup> However, in using their discretion to assess English proficiency, courts often miss the mark. In one instance, a litigant in a civil case repeatedly asked for and was denied a Polish interpreter for eight of the nine hearings at which she appeared.<sup>57</sup> The court in all but one instance determined that she was able to understand and communicate in English, despite her clear inability to fully communicate or express herself in court.<sup>58</sup> This particular defendant was representing herself and attempting to cross-examine the plaintiff’s witness on her own.<sup>59</sup> However, her inability to communicate effectively frustrated the court and she was accused of intentionally wasting the court’s time despite her repeated pleas for a court interpreter.<sup>60</sup> Following a judgment entered against her, the defendant appealed her case.<sup>61</sup> On appeal, the Supreme Court of Hawaii found that the district court had abused its discretion in denying the repeated requests for an interpreter when it failed to “adequately inquire” into the defendant’s language access needs.<sup>62</sup>

In another situation, a circuit court failed to provide a criminal

---

JUST. (Jan. 7, 2020), [www.ojp.gov/program/civil-rights/limited-english-proficient-lep](http://www.ojp.gov/program/civil-rights/limited-english-proficient-lep) [perma.cc/M8ND-M962]; *see, e.g.*, *Lau v. Nichols*, 414 U.S. 563, 568–69 (1974) (extending the protections of Title VI to cases involving discrimination on the basis of language).

54. *Id.*

55. LAURA ABEL, BRENNAN CTR. FOR JUST., *LANGUAGE ACCESS IN STATE COURTS* 1, 8 (2009) (researching 35 states and finding that “46% fail to require interpreters be provided in all civil cases; 80% fail to guarantee that the courts will pay for the interpreters they provide,” and “37% fail to require the use of credentialed interpreters even when they are available.”) [hereinafter *LANGUAGE ACCESS IN STATE COURTS*].

56. Office of Justice Programs, *supra* note 53.

57. *Cambridge Mgmt., Inc. v. Jadan*, 481 P.3d 63, 75 (Haw. 2021) (holding that the district court abused its discretion by denying repeated requests for a Polish language interpreter in a landlord-tenant dispute because it failed to conduct an adequate inquiry into the tenant’s language access needs in accordance with Hawaii law).

58. *Id.* at 69 (noting that while five different district court judges heard the case, only one granted the request part-way through a hearing and ordered an interpreter be appointed; however, an interpreter never actually appeared).

59. *Id.* at 66.

60. *Id.*

61. *Id.* at 67.

62. *Id.*

defendant with a Bangladeshi interpreter.<sup>63</sup> This failure occurred multiple times, leading to delayed proceedings.<sup>64</sup> It appeared there was confusion as to whether the responsibility of providing an interpreter fell on the State Attorney's Office or the trial court.<sup>65</sup> The Intermediate Court of Appeals of Hawaii found that the responsibility fell to the trial court to provide an interpreter for the defendant and, in failing to do so, the court deprived the defendant of his right to a speedy trial.<sup>66</sup>

Similarly, an Arabic speaking defendant was denied a fair trial when the trial court abused its discretion by not providing the defendant with an Arabic interpreter even after two witnesses testified to the defendants' limited English proficiency.<sup>67</sup>

Recently, the Department of Justice closed out its investigation of courts in Fort Bend County, Texas, finding that the County courts were not providing adequate language access services and accommodation for LEP litigants and were instituting barriers in violation of Title VI.<sup>68</sup> A requirement that defendants in criminal proceedings use a bilingual advocate rather than a qualified court interpreter for plea proceedings was considered a violation of Title VI.<sup>69</sup> In states where litigants must supply their own interpreters, another barrier exists for those who cannot afford one.<sup>70</sup>

## 2. Court Interpreters Act of 1978

Recognizing a need to "provide more effectively for the use of interpreters in courts of the United States," Congress passed the Court Interpreters Act of 1978, requiring federal courts to provide foreign language interpreters in criminal and civil actions brought by the government.<sup>71</sup> Additionally, all U.S. District Courts are

---

63. *State v. Hossain*, No. CAAP-15-0000703, 2017 Haw. App. LEXIS 87, at \*9 (Haw. Ct. App. 2017) (holding that the trial court has the responsibility of locating an interpreter not the State).

64. *Id.* at \*2-4

65. *Id.*

66. *Id.*

67. *State v. Abouelhana*, 2021-Ohio-91, 2021 Ohio App. LEXIS 90, at ¶¶ 6, 14-15 (Ohio Ct. App. 2021) (holding that the defendant was denied a fair trial as the trial court failed to make a sufficient open-ended inquiry to assess whether an interpreter was needed, and the evidence demonstrated that the defendant did require an interpreter during the earlier proceedings).

68. Fort Bend Press Release, *supra* note 7.

69. *Id.*

70. See LANGUAGE ACCESS IN STATE COURTS, *supra* note 55, at 67-68 (identifying only Idaho, Kansas, Kentucky, Maine, Minnesota, Nebraska, New Jersey, New York, Oregon, and Wisconsin as states where courts pay for interpreters without imposing a means test and without assessing interpreter costs on the parties).

71. Court Interpreters Act of 1978, Pub. L. No. 95-539, 92 Stat. 2040 (codified at 28 U.S.C. § 1827 – 28); Laura K. Abel, *Language Access in the Federal Courts*, 61 DRAKE L. REV. 593, 594 (2013).

required to maintain a list of certified interpreters on file.<sup>72</sup> Yet state courts are not under the same obligations, leaving parties in state court without the same protections. However, even federal protections are limited. The Court Interpreters Act is only triggered when the trial judge has reason to believe that a party needs an interpreter -- the appointment of which is discretionary.<sup>73</sup>

At the federal level, the Court Interpreters Act gives authority to the Administrative Office of the United States Courts to determine the qualifications and skill level needed for court-appointed interpreters.<sup>74</sup> There are three categories: certified interpreters, professionally-qualified interpreters, and language skilled/ad hoc interpreters.<sup>75</sup> Certified interpreters must pass the Administrative Office certification examination; this certification has been developed in Spanish, Navajo, and Haitian Creole, but is currently only offered in Spanish.<sup>76</sup> For all other languages, professionally-qualified interpreters may be used, provided they can sufficiently demonstrate their qualifications.<sup>77</sup> If there are no certified or professionally-qualified interpreters, the courts may use a suitable non-certified/non-qualified interpreter if they can demonstrate to the court's satisfaction "the ability to interpret court proceedings from English to a designated language" and vice versa.<sup>78</sup> There are no uniform qualifications for state court interpreters.<sup>79</sup>

To advise state courts, the National Center for State Courts defines professional interpreters as individuals who have a "native-like mastery of both English and another language; display wide general knowledge, characteristic of what a minimum of two years of general education at a college or university would provide; and perform the three major types of court interpreting. . . ."<sup>80</sup> The three

---

72. 28 U.S.C. § 1827(c) (2022).

73. *United States v. Tapia*, 631 F.2d 1207, 1209 (5th Cir. 1980) (holding that any indication that a defendant speaks only or primarily a language other than English would trigger the requirements of the act, and that the judge was required to make findings on the record concerning the need for an interpreter).

74. 28 U.S.C. § 1827(b) (2022).

75. *Interpreter Categories*, U.S. CTS., [www.uscourts.gov/services-forms/federal-court-interpreters/interpreter-categories](http://www.uscourts.gov/services-forms/federal-court-interpreters/interpreter-categories) [perma.cc/B4LN-JA6A] (last visited Mar. 10, 2023).

76. *Id.*

77. *Id.* (stating that qualified court interpreters must show that they "passed the U.S. Department of State conference or seminar interpreter test in a language pair that includes English and the target language . . . passed the interpreter test of the United Nations in a language pair that includes English and the target language . . . [or are] a current member in good standing" of an interpretation association).

78. *Id.*

79. LANGUAGE ACCESS IN STATE COURTS, *supra* note 55.

80. *Court Interpreter Resources*, NAT'L CTR. FOR STATE CTS., [www.ncsc.org/education-and-careers/state-interpreter-certification](http://www.ncsc.org/education-and-careers/state-interpreter-certification) [perma.cc/FX22-SGUQ] (last visited Mar. 10, 2023).

types are sight translation,<sup>81</sup> consecutive interpreting,<sup>82</sup> and simultaneous interpreting.<sup>83</sup> Court interpreters play a significant role in bridging the language gap in the courtroom, but litigants do not always have access to an interpreter outside of court where they may be needed for interviews or interrogations, depositions, attorney-client meetings, and other crucial steps of the process.<sup>84</sup>

### 3. *Americans with Disabilities Act*

Title II of the Americans with Disabilities Act (“ADA”) provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”<sup>85</sup> A “public entity” is statutorily defined to include state or local governments, which includes their respective court systems.<sup>86</sup>

While Deaf and Hard of Hearing individuals may be proficient in written English, court proceedings are conducted orally which require English proficiency, the ability to hear and understand spoken English, and the ability to speak English. In which case, Deaf and Hard of Hearing individuals require just as much access to language appropriate resources so that they may effectively communicate with the court.<sup>87</sup>

---

81. ROSEANN DUENAS GONZALEZ ET AL., FUNDAMENTALS OF COURT INTERPRETATION 893 (2nd ed. 2012) (explaining that sight translation is the translation of a written document in the source language into the target language orally). It is considered a combination of translation and interpretation). *Id.*

82. *Three Ways of Interpreting for Court Proceedings*, TRANSLATION SERVS. (Jan. 15, 2020), [www.etranslationservices.com/blog/interpretation/three-ways-of-interpreting-for-court-proceedings/](http://www.etranslationservices.com/blog/interpretation/three-ways-of-interpreting-for-court-proceedings/) [perma.cc/2478-JQFU] (noting that consecutive interpretation is a less demanding form of interpretation that requires the interpreter to listen to the speech in its entirety and then convey the speech in the target language to the LEP individual when the speaker is done).

83. *Id.* (stating that simultaneous interpreting occurs at the same time from the source language to the target language and vice versa with just a few seconds delay, which is a more demanding method of translation).

84. *Interpreting Justice: Issues Affecting LEP Litigants*, LEGAL SERVS. N.Y.C., [www.legalservicesnyc.org/what-we-do/practice-areas-and-projects/civil-rights-initiative/interpreting-justice-language-access-in-the-new-york-courts/issues-facing-lep-litigants](http://www.legalservicesnyc.org/what-we-do/practice-areas-and-projects/civil-rights-initiative/interpreting-justice-language-access-in-the-new-york-courts/issues-facing-lep-litigants) [perma.cc/W6WA-MXFM] (last visited Mar. 10, 2023) [hereinafter *Interpreting Justice*].

85. Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 (2022).

86. 42 U.S.C. § 12131(1) (2022).

87. AM. BAR ASS’N COMM’N ON DISABILITY RTS., COURT ACCESS FOR INDIVIDUALS WHO ARE DEAF AND HARD OF HEARING 8-9 (2017), [www.americanbar.org/content/dam/aba/administrative/commission-disability-rights/court-access-guide-lr-intractv-accsb-rev022317.pdf](http://www.americanbar.org/content/dam/aba/administrative/commission-disability-rights/court-access-guide-lr-intractv-accsb-rev022317.pdf) [perma.cc/WG9C-Z5Z3] (defining effective communication as the ability to receive information and convey information to the courts in the same way as native English speakers).

Despite the available protections, there remain serious problems with the implementation of these laws. The next section illustrates how in practice, language remains a serious barrier.

### III. ANALYSIS

This Section dives deeper into the notion of meaningful access and analyzes whether the federal protections outlined in the previous section are sufficient to meet the needs of LEP individuals. In addition, this Section looks closer at the experiences of Arabic speakers and Deaf and Hard of Hearing individuals in the court system.

#### *A. Access to Justice Beyond the Courtroom*

The conversations regarding access to justice often focus on access to court systems where “justice” is achieved by simply entering a courtroom with the assistance of legal counsel. However, access to justice for LEP individuals is hindered because they are unable to communicate with the court or understand the proceedings. Case law shows that, when unable to communicate with the court, LEP litigants are unable to defend themselves appropriately in criminal<sup>88</sup> or immigration hearings,<sup>89</sup> protect their homes,<sup>90</sup> or keep custody of their children.<sup>91</sup> Additionally, the right to language access “encompasses a number of other constitutional

---

88. *See Abouelhana*, 2021-Ohio-91 at ¶ 1 (finding that defendant’s motion for a new trial should have been granted because the trial court abused its discretion because it failed to make a sufficient open-ended inquiry to assess whether an interpreter was needed despite evidence demonstrating the defendant’s limited English proficiency); *see also* *State v. Krstoth*, 378 P.3d 984, 986 (Haw. 2016) (determining the circuit court’s denial of the defendant’s motion to withdraw his plea constituted an abuse of discretion because the court’s colloquy did not establish that the defendant voluntarily, intelligently, and knowingly entered his plea with an understanding of the nature of the charge against him and the consequences of his plea because of his limited English proficiency).

89. *B.C. v. AG United States*, 12 F.4th 306, 308-09 (3d Cir. 2021) (holding that an immigrant judge failed to conduct a suitable evaluation to determine whether a non-citizen needed an interpreter, did not take action despite the apparent language barrier, and that this barrier resulted in an adverse determination of the non-citizen’s credibility).

90. *Cambridge Mgmt., Inc.*, 481 P.3d at 63 (noting that a tenant was put at risk of losing their home and holding that the district court abused its discretion in failing to properly examine the tenant’s language access needs and approve repeated requests for an interpreter).

91. *E.g., In re J.P.*, 14 Cal. App. 5th 616, 617-18 (2017) (finding that mandating a drug and alcohol program as part of a family reunification plan was made in error when the parent demonstrated his inability to find a program in his native Burmese which delayed custody proceedings). *See also* *S.Y. v. Superior Ct.*, 29 Cal. App. 5th 324, 333 (2018) (using English fluency as a factor in a child custody determination was made in error).

rights, including procedural and due process rights.”<sup>92</sup> These include the right to confront witnesses, effective assistance of counsel, and to be present at trial.<sup>93</sup>

Access to justice is such an important part of American democracy that the Department of Justice established the Office for Access to Justice (“ATJ”) in March 2010 to address the “access-to-justice crisis” within the criminal and civil justice systems.<sup>94</sup> However, seen as too costly, the executive branch closed this office in 2018.<sup>95</sup> In 2021, Attorney General, Merrick Garland, announced the restoration of the ATJ because there is still a great need for equal access to the courts.<sup>96</sup> In 2022, the Justice Department officially named a new Director of the Office for Access to Justice to increase capacity and advance the federal government’s efforts make the justice system more accessible.<sup>97</sup>

Yet, language barriers continue to extend far beyond the courtroom. For instance, if custody of one’s children is conditioned on completion of court-ordered programming, then an LEP individual would need those classes to be language accessible.<sup>98</sup> If they are not, then that parent is unable to complete the courses and would not be able to fulfill the condition. To no fault of their own, they face losing custody. The launch of a new “nationwide effort to assist law enforcement agencies in meeting their obligations to provide meaningful language assistance” is a positive step towards removing language barriers outside the courtroom.<sup>99</sup>

---

92. United States *ex rel.* Negron v. New York, 434 F.2d 386, 389 (2d Cir. 1970) (proceeding in absence of an interpreter, where the defendant was LEP, “lacked the basic and fundamental fairness required by the due process clause of the Fourteenth Amendment.”).

93. People v. Gomez, 204 Cal. Rptr. 655, 658 (Cal. Ct. App. 1984). *See also* State v. Gonzales-Morales, 979 P.2d 826, 828 (Wash. 1999) (holding that a defendant’s right to an interpreter rested upon the “Sixth Amendment constitutional right to confront witnesses and the right inherent in a fair trial to be present at one’s own trial”) (internal quotations omitted); Chao v. State, 604 A.2d 1351, 1362 (Del. 1992) (holding that a defendant has a right to a court-appointed interpreter, where the “trial court is put on notice that an indigent defendant may have obvious and significant difficulty with the language. . .”).

94. *See generally Access to Justice 2010-2018*, U.S. DEP’T OF JUST., [www.justice.gov/archives/atj](http://www.justice.gov/archives/atj) [perma.cc/HR24-RU7R] (last visited Mar. 10, 2023) (providing archived information on ATJ).

95. Hassan Kanu, *Biden Reopens Office for Access to Justice, but Slowly*, REUTERS (June 8, 2021, 3:43 PM), [www.reuters.com/legal/legalindustry/biden-reopens-office-access-justice-slowly-2021-06-08/](http://www.reuters.com/legal/legalindustry/biden-reopens-office-access-justice-slowly-2021-06-08/) [perma.cc/AJH9-TCEJ].

96. Press Release, Dep’t of Just., Attorney General Merrick B. Garland Restores the Office for Access to Justice (Oct. 29, 2021) (on file with author).

97. Press Release, Dep’t of Just., Justice Department Announced Director of the Office for Access to Justice (May 19, 2022) (on file with author).

98. *See In re J.P.*, 14 Cal. App. 5th 616, 618 (2017) (finding error where gaining custody of the child was conditioned on a non-English speaking parent completing court ordered programming not available in the parent’s native language).

99. Press Release, Dep’t of Just., Justice Department Announces New Language Access Law Enforcement Initiative (Dec. 19, 2022) (on file with

### *B. Meaningful Access Must Go Beyond Meeting the Minimum*

The American Bar Association believes competent interpretation is “an essential component of a functional and fair justice system.”<sup>100</sup> In *Ponce v. State*, the Indiana Supreme Court stressed that the entire justice system is impacted when qualified court interpreters are lacking.<sup>101</sup> There can be no administration of justice when litigants cannot understand what is happening nor “convey critical information to the court.”<sup>102</sup>

Even with the growing emphasis on language access, many non-English speakers are unable to effectively communicate their legal issues and concerns. Many rely on family members to interpret court proceedings, with this burden falling especially heavily on children of immigrants.<sup>103</sup> Language access must go beyond meeting the minimum standards set out by the above statutes. The Supreme Court of Hawaii explains that the court is an intimidating setting for people with limited English proficiency because of its technical legal language.<sup>104</sup> It goes on to explain that it is the court’s responsibility to ensure LEP litigants know enough English to meaningfully access the justice system by making sure their English proficiency is more than “passable, or . . . ‘good enough’ to meet ordinary day-to-day demands.”<sup>105</sup>

If courts’ fail to make an adequate inquiry into a person’s English proficiency, they are not upholding this responsibility, leaving judicial discretion to reinforce language barriers.

### *C. Trial Court Discretion is a Flaw of the Court Interpreters Act*

The Court Interpreters Act directs courts to appoint a certified interpreter at the judge’s discretion and establishes statutory guidance for using interpreters to ensure that the quality of interpretation “does not fall below a constitutionally permissible

---

author) (“Providing law enforcement agencies with the tools they need to ensure effective and meaningful language access promotes and advances greater safety for [LEP] people”).

100. STANDARDS FOR LANGUAGE ACCESS IN COURTS, *supra* note 11, at 1.

101. *Ponce*, 9 N.E.3d at 1274.

102. LANGUAGE ACCESS IN STATE COURTS, *supra* note 55, at 5.

103. Lei Danielle Escobal, *Children of Immigrants Shouldn’t Have to Interpret For Their Parents In Court*, DIAMONDBACK (Feb. 24, 2022), dbknews.com/2022/02/24/courts-must-provide-better-interpreters/ [perma.cc/SV9H-D9US].

104. *Cambridge Mgmt., Inc.*, 481 P.3d at 65.

105. *Id.*

threshold.”<sup>106</sup> Because litigants do not have a constitutional right to an interpreter, judges are given wide discretion in determining if one is needed.<sup>107</sup> Furthermore, there is no set formula for appointing a court interpreter.<sup>108</sup> Judges may appoint an interpreter at their discretion if they have reason to believe that a party or a witness may need one.<sup>109</sup> If an interpreter is not appointed, litigants may object and later appeal if appropriate or feasible, but their day in court proceeds without assistance.<sup>110</sup>

In addition, some courts have held that the failure to appoint an interpreter is only reversible when the defendant’s case has been “hampered.”<sup>111</sup> Other courts have ruled similarly, holding that, even when the trial court erred in not appointing an interpreter, the error was only reversible if the defendant could show he was “unduly prejudiced” by the lack of language access.<sup>112</sup>

The court is not likely to appoint an interpreter simply because a party requests one.<sup>113</sup> To determine if a litigant needs an interpreter, the court generally asks a series of questions on the record to determine the LEP individual’s English competency.<sup>114</sup> The court must determine if the party speaks only or primarily, a language other than English, and if that “inhibits their comprehension of the proceedings or communication with counsel.”<sup>115</sup> The court may ask the individual questions to assess their English proficiency that cover a wide range of topics like

---

106. *United States v. Johnson*, 248 F.3d 655, 661 (7th Cir. 2001) (finding that one interpreter for four defendants did not deny them due process despite their claims that it hindered their ability to confer with defense counsel during the trial).

107. *Id.*

108. Jeffrey Archer Miller, *Interpreting the Court Interpreters Act: A Practical Guide to Protecting the Rights of Non-English Speaking Criminal Defendants*, 2 CRIM. L. PRAC. 25, 27-28 (2014) (“The *Perocich* approach, which provides the trial judge with broad discretion to determine whether a court-appointed interpreter is necessary, has been cited in state and federal courts for over a century and continues to be cited today.”).

109. *Id.*

110. See Virginia Benmaman, *Interpreter Issues on Appeal*, NAT’L ASS’N JUD. INTERPRETERS & TRANSLATORS NEWSL. (2000) (outlining the various issues on appeal related to inadequate language access including: failure to appoint an interpreter, ineffective assistance of counsel, appointment of an uncertified interpreter, and issues related to bias, conflict of interest, and confidentiality).

111. *State v. Drobek*, 815 P.2d 724, 737 (Utah Ct. App. 1991) (holding that abuse of discretion in not appointing an interpreter is only reversible if it hinders the defendant’s case).

112. *State v. Selalla*, 744 N.W.2d 802, 812 (S.D. 2008).

113. *In re Raymundo B.*, 203 Cal. App. 3d 1447, 1453 (Cal. Ct. App. 1988) (requiring “[c]onclusive proof” of the inability to understand English in order for an interpreter to be appointed). The *Raymundo* court found by clear and convincing evidence that the defendant, a juvenile, spoke and understood English, and that, even though an interpreter had been appointed for the defendant in the past, this was not sufficient proof of his need. *Id.*

114. *Johnson*, 248 F.3d at 661.

115. *Id.*

education, employment, social life, and other questions of that nature, as illustrated in the following cases.

The court may also call witnesses who can attest to the party's English proficiency.<sup>116</sup> In one case out of California, a minor criminal defendant requested an interpreter, but the request was denied based on the testimony of several witnesses.<sup>117</sup> His high school teacher testified the defendant participated in class discussion, did his assignments, and communicated with his teacher in English only.<sup>118</sup> A law enforcement officer also testified that he spoke with the defendant several times in English, and that they were able to communicate effectively.<sup>119</sup> In addition, the court spoke with the minor defendant at an earlier hearing, conducted entirely in English.<sup>120</sup> Based on this evidence, the court determined that the defendant was sufficiently proficient in English and would not need an interpreter.<sup>121</sup> In this situation, the court did its due diligence and interviewed several people to determine the level of the defendant's proficiency.

In another case, a California court determined that an interpreter was unnecessary because the defendant was reacting to witness testimony (frowning and other facial expressions) before the interpreter could interpret from English to Spanish.<sup>122</sup> The court determined that this was an indication that the defendant comprehended enough English to proceed to trial without an interpreter.<sup>123</sup>

Conversely, the Court of Appeals in Ohio was called on to determine if a trial court abused its discretion in failing to appoint an interpreter for an Arabic speaking defendant.<sup>124</sup> It found that the

116. *In re Raymundo B.*, 203 Cal. App. 3d at 1456-57; *see also* *People v. Sanchez*, No. H043523, 2017 WL 2982391, at \*2 (Cal. Ct. App. July 13, 2017), *cert. denied*, (Sept. 20, 2017) (requiring the defendant to demonstrate an affirmative showing of need because only defendants who show they do not understand English are entitled to an interpreter).

117. *In re Raymundo B.*, 203 Cal. App. 3d at 1456-57.

118. *Id.*

119. *Id.* (finding that the defendant's ability to participate in his education in English and ability to effectively communicate with law enforcement is indicative of his English language proficiency).

120. *Id.*

121. *Id.*

122. *Gomez*, 204 Cal. Rptr. at 657 (highlighting judicial discretion in appointing an interpreter where a judge determined defendant's language ability by observing facial features in response to witness testimony and defendant's ability to understand questions posed to him prior to completed interpretation of the questions).

123. *Id.* at 660 (denying the motion, the court stated that the appellant had "an ability in English. It is certainly not the greatest ability, but appears to me that he has a level of understanding that I expect is comparable to people who speak English, but who are uneducated people. And I could tell by facial expressions that I could see, his response to questions without the interpreter, that he has an ability.").

124. *Abouelhana*, 2021-Ohio-91, at ¶ 1.

trial court “failed to make a sufficient open-ended inquiry to even assess whether an interpreter was needed.”<sup>125</sup> On a motion for a new trial, the defendant was able to establish his legitimate need for an interpreter by calling an acquaintance to testify. The acquaintance testified that the defendant only understood about sixty percent of their conversations, had never seen him handle business with an English-speaking customer on his own, and the defendant often took someone with him to aid in communication while negotiating business deals.<sup>126</sup> The defendant also reviewed the transcript from his original trial with an Arabic interpreter. The interpreter then testified that the defendant had not understood the charges against him and was often confused by questions while on the stand.<sup>127</sup> The dissent felt that the court did not need to conduct an inquiry because the defendant had been living in America for forty years and had successfully run a business for thirty-five years.<sup>128</sup>

#### *D. Unique Issues Faced by Arabic Speaking Individuals*

There are nearly 3.7 million Arab-Americans in the United States.<sup>129</sup> The five states with the largest Arab-American populations are California, Michigan, Texas, New York, and Illinois.<sup>130</sup> According to a study conducted by the Pew Research Center, Arabic is the fastest growing language in America.<sup>131</sup> In fact, between 2010 and 2014, the number of Arabic speakers grew by twenty-nine percent making it the seventh most commonly spoken non-English language in the United States.<sup>132</sup> The study showed that the percentage of Arab Americans who are not proficient in English (38%) is comparable to the percentage of Spanish speakers who are not proficient in English (42%).<sup>133</sup>

As the Arabic speaking population grows in America, so does the need for Arabic interpreters. Several states have recognized this

---

125. *Id.* at ¶ 14.

126. *Id.* at ¶ 12.

127. *Id.* at ¶ 11.

128. *Id.* at ¶ 19.

129. *National Arab American Demographics*, ARAB AM. INST., [www.aaiusa.org/demographics](http://www.aaiusa.org/demographics) [perma.cc/6BBR-U8VV] (last visited Mar. 10, 2023).

130. *Id.*

131. Jeannette Richard, *Pew Study: Arabic is Fastest Growing Language in U.S.*, CNS NEWS (June 17, 2016), [www.cnsnews.com/news/article/jeannette-richard/pew-study-arabic-fastest-growing-language-us](http://www.cnsnews.com/news/article/jeannette-richard/pew-study-arabic-fastest-growing-language-us) [perma.cc/KAA4-9UAJ] (comparing the growth of Arabic to the growth of other languages such as Spanish, which only saw a 6% growth compared to the 29% growth seen in Arabic).

132. *Id.*

133. Anna Brown, *The Challenges of Translating the U.S. Census Questionnaire into Arabic*, PEW RSCH. CTR. (June 3, 2016), [www.pewresearch.org/fact-tank/2016/06/03/the-challenges-of-translating-the-u-s-census-questionnaire-into-arabic/](http://www.pewresearch.org/fact-tank/2016/06/03/the-challenges-of-translating-the-u-s-census-questionnaire-into-arabic/) [perma.cc/K5ZE-JKXB].

need. In Illinois, the Circuit Court of Cook County lists Arabic as one of their most frequently requested languages for interpretation.<sup>134</sup> King County in Washington State has a Certified Interpreter Program offered in the Levantine and Egyptian dialects.<sup>135</sup> Moreover, Arabic speakers can request interpretation services in several other dialects including Baharna, Moroccan, Standard Arabic, or Sudanese.<sup>136</sup> On the other hand, in 2016, New York reported a shortage in court interpreters for Arabic, along with Bengali and Urdu interpreters.<sup>137</sup> In 2020, New York City courts continued to struggle in meeting the demand for language interpreters for languages other than Spanish.<sup>138</sup> While Arabic was the third highest requested language, New York courts had one interpreter for both Arabic and French in the entire Bronx criminal system; whereas fifteen Spanish interpreters were available for the same jurisdiction.<sup>139</sup> While this shortage persists the need for Arabic interpreters continues.<sup>140</sup> Shortage leads to “postponed hearings, delayed arraignments and miscommunication caused by the limited number of interpreters, making the already high-stakes, onerous process of navigating the legal system even more challenging for those who rely on such services.”<sup>141</sup>

For instance, in *State v. Aljaffar*, Mahadi Aljaffar was a Saudi

134. *Office of Interpreter Services*, STATE ILL. CIR. CT. COOK CNTY., [www.cookcountycourt.org/ABOUT-THE-COURT/Office-of-the-Chief-Judge/Court-Related-Services/Office-of-Interpreter-Services](http://www.cookcountycourt.org/ABOUT-THE-COURT/Office-of-the-Chief-Judge/Court-Related-Services/Office-of-Interpreter-Services) [perma.cc/S5VC-7ZX6] (last visited Mar. 10, 2023) (stating that LEP individuals will be provided with an interpreter at no cost to the individual in need of that service).

135. *Office of Interpreter Services*, KING CNTY. SUPER. CT., [kingcounty.gov/~media/courts/superior-court/docs/interpreter-services/interpreter-services-fact-sheet-pdf.ashx](http://kingcounty.gov/~media/courts/superior-court/docs/interpreter-services/interpreter-services-fact-sheet-pdf.ashx) [perma.cc/U2VE-PCGQ] (last accessed Apr. 23, 2023).

136. *Request an Interpreter*, KING CNTY. SUPER. CT., [blue.kingcounty.gov/courts/superiorcourt/interpreters/default.aspx](http://blue.kingcounty.gov/courts/superiorcourt/interpreters/default.aspx) [perma.cc/86PR-88RL] (last visited Apr. 3, 2023) (select “Language” to view available options, including named Arabic dialects) (providing interpreter services and language options including five different Arabic dialects and five variations of American Sign Language).

137. *New Report from Legal Services NYC Reveals Language Access Issues in New York City’s Civil Courts*, LEGAL SERVS. NYC (Dec. 20, 2016), [www.legalservicesnyc.org/news-and-events/press-room/1094-new-report-from-legal-services-nyc-reveals-language-access-issues-in-new-york-citys-civil-courts](http://www.legalservicesnyc.org/news-and-events/press-room/1094-new-report-from-legal-services-nyc-reveals-language-access-issues-in-new-york-citys-civil-courts) [perma.cc/87YS-LBDP].

138. Daniel Parra, *City’s Cts. Seen Lacking in Interpreters*, CITY LIMITS (May 25, 2020), [www.citylimits.org/2020/05/25/citys-courts-seen-lacking-in-interpreters/](http://www.citylimits.org/2020/05/25/citys-courts-seen-lacking-in-interpreters/) [perma.cc/W7VN-LX2S].

139. *Id.*

140. *See Limited English Proficiency (LEP) Dashboard*, N.Y. STATE UNIFIED CT. SYS., [ww2.nycourts.gov/lep-31271](http://ww2.nycourts.gov/lep-31271) [perma.cc/QC2Q-E5LX] (last visited April 30, 2023) (click “LEP Dashboard”; then click “Language Trends”) (showing data trends for various requested languages in the New York court system including Arabic where 2,403 cases were assigned an Arabic interpreter in 2022).

141. *Office of Interpreter Services*, *supra* note 134.

Arabian national living in Washington; his primary language was Arabic.<sup>142</sup> The state of Washington only had one certified Arabic interpreter who was located across the state, in Seattle.<sup>143</sup> The government claimed it was too difficult to proceed with a certified interpreter due to this distance and shortage.<sup>144</sup> The court proceeded, instead, with a non-certified interpreter who had some experience interpreting in legal proceedings, yet was found to be problematic in several ways. Errors found included: 1) nearly fifty instances of summarizing Aljaffar's testimony using "third person narrative, as opposed to first person direct interpretation," 2) nearly a dozen occasions when the non-certified interpreter "provided commentary rather than direct interpretation," 3) "24 discrepancies between the English spoken at trial and the Arabic interpretation provided," and 4) "three instances where no interpretation was provided at all."<sup>145</sup> However, despite these significant problems, and a finding by the appellate court that the trial court did not make a good faith effort to obtain a certified interpreter, the defendant's conviction was upheld because the court determined non-certified interpretation did not prejudice his case.<sup>146</sup> This was because the Court of Appeals of Washington determined that, even if a certified interpreter was available, it would not have made a difference in the outcome because the errors did not prejudice the jury.<sup>147</sup> However, on appeal, the court stressed that failure to appoint a certified Arabic interpreter is a serious violation and "given the fact that Mr. Aljaffar testified and placed his credibility before the jury, inadequate interpretation could have impacted the jury's verdict."<sup>148</sup>

Arabic speaking individuals are not the only group to face language related barriers.

### *E. Unique Issues Faced by Deaf and Hard of Hearing Individuals*

Deaf and Hard of Hearing individuals encounter the criminal and civil court systems just like any other member of society. When they do, they have a right to access the courts fully and without any barriers.<sup>149</sup> This includes language access and the ability to

---

142. *State v. Aljaffar*, 392 P.3d 1070, 1071 (Wash. Ct. App. 2017) (holding that the defendant's conviction was proper despite the inadequate interpretation provided by a non-certified interpreter because the interpretation did not prejudice the defendant's case).

143. *Id.*

144. *Id.*

145. *Id.* at 1072

146. *Id.* at 1075.

147. *Id.*

148. *Id.* at 1076.

149. See SY DUBOW ET AL., NATIONAL CENTER FOR LAW AND THE DEAF, LEGAL RIGHTS OF HEARING-IMPAIRED PEOPLE 117 (1983) (discussing barriers

communicate with someone at any given point in their involvement with the justice system.<sup>150</sup> What people outside the Deaf community fail to understand is that ASL is not just silent English. ASL is its own language with cultural significance, grammar, sentence structure, and dialects.<sup>151</sup> Also, contrary to popular belief, lip reading is not as easy as it seems, and is not a substitute for ASL interpreters.<sup>152</sup> Even if someone can lip read, the positioning of people in court, people talking over each other or speaking while facing away from the Deaf person, and the increased use of face masks following the COVID-19 pandemic, make lip reading impractical if not impossible.

Deaf and Hard of Hearing litigants are routinely denied access to ASL interpreters. The ACLU of Georgia filed a motion seeking a class action suit on behalf of current and formerly imprisoned inmates.<sup>153</sup> Deaf plaintiffs told stories of having their hands cuffed behind their backs, effectively cutting off their entire method of communication, and lack of programming in prison because of the lack of interpreters.<sup>154</sup>

In one case, a Deaf litigant took part in a mandatory mediation hearing for a family law matter; however, his request for an ASL interpreter was denied because “no funding ha[d] been budgeted for

---

in the legal system for Deaf and Hard of Hearing people).

150. See *Court Interpreters Act: Hearing on H.R. 10228, H.R. 10129, and S. 1315 Before the Subcomm. on Civ. and Const. Rts. of the H. Comm. on the Judiciary*, 95th Cong. 4–6 (1978) (statement of Frederick Richmond (D-NY)). Richmond, the sponsoring witness of the Bilingual, Hearing, and Speech Impaired Court Interpreters Act, stated:

[U]nfortunately, with the deaf community, this communication problem has long been overlooked because it is invisible. Our legal system has not lived up to the basic American ideal of equal justice and fairness to all. Deaf and non-English-speaking Americans have been denied the fundamental right to a fair trial due to their inability to understand the court proceedings . . . If language-handicapped Americans are not given the constitutionally established access to understand and participate in their own defense, then we have failed to carry out a fundamental American premise—fairness and due process for all.

*Id.*

151. *American Sign Language*, NAT'L INST. ON DEAFNESS & OTHER COMM. DISORDERS (Oct. 29, 2021), [www.nidcd.nih.gov/health/american-sign-language](http://www.nidcd.nih.gov/health/american-sign-language) [perma.cc/2B6N-8NBK].

152. Lydia Callis, *Lip Reading is No Simple Task*, SIGN NEXUS (Mar. 21, 2016), [www.signlanguagenyc.com/lip-reading-cart-asl-services/](http://www.signlanguagenyc.com/lip-reading-cart-asl-services/) [perma.cc/8WNS-F4PU].

153. Talila Lewis, *In Georgia, Imprisoned Deaf and Disabled People Don't Stand a Chance* (June 20, 2018), [www.aclu.org/blog/disability-rights/disability-rights-and-criminal-legal-system/georgia-imprisoned-deaf-and](http://www.aclu.org/blog/disability-rights/disability-rights-and-criminal-legal-system/georgia-imprisoned-deaf-and) [perma.cc/8GZ8-7W5H] (stating that the criminal legal system is stacked against vulnerable people, including the Deaf and Hard of Hearing, who are disadvantaged at every stage including arrest, interrogation, trial, sentencing, prison, and parole).

154. *Id.*

interpreters during mediation proceedings.”<sup>155</sup> As a result, he was required to provide an ASL interpreter at his own expense for the mediation proceeding, and ultimately asked a family member to interpret for him, who was neither certified nor had interpreted in court before.<sup>156</sup> The litigant brought a federal ADA claim against both Marion County and the Indiana Supreme Court, but only the first claim against the County was found to have merit by the U.S. District Court for the Southern District of Indiana.<sup>157</sup>

Having family members interpret, as in the above case, is problematic because the job of an interpreter is a “highly-skilled one, requiring proficiency not only in English and the target language, but also in legal jargon and procedures.”<sup>158</sup> When family members are brought in to interpret, they often find themselves advocating for their family members rather than serving as a neutral party who simply interpreters for the LEP individual; this is particularly true if they happen to be familiar with the incident that gave rise to the action.<sup>159</sup> Despite the protections afforded Deaf and Hard of Hearing individuals under the ADA, their language access needs are still considered a non-issue, an afterthought, or a problem for the Deaf or Hard of Hearing person to fix on their own by reading lips or writing notes back and forth. Leaving Deaf and Hard of Hearing individuals to navigate these systems on their own without assistance is the antithesis of the legislative intent behind the ADA.<sup>160</sup>

#### IV. PROPOSAL

Language access barriers arise in the implementation of protections already afforded to LEP litigants. While the laws themselves are not perfect, legislative reform is a long and arduous process. Other issues, like the shortage of qualified interpreters, are difficult to solve with the limited resources available. However, the following recommendations can be instituted on the local level to promote effective and meaningful change.

---

155. King v. Ind. Sup. Ct., No. 1:14-cv-01092-JMS-MJD, 2015 U.S. Dist. LEXIS 58388, at \*6 (S.D. Ind. May 5, 2015) (finding the defendant’s ADA claim regarding the court’s failure to appoint an interpreter may continue).

156. King v. Marion Cir. Ct, No. 1:14-cv-01092-JMS-MJD, 2016 U.S. Dist. LEXIS 69696, at \*11 (S.D. Ind. May 27, 2016).

157. *Id.*

158. *Interpreting Justice*, *supra* note 84 (stating that LEP litigants are at a disadvantage from the moment they walk into a courthouse due to insufficient resources like signage and forms in languages other than English).

159. *Id.*

160. 42 U.S.C. 12101(b) (2022) (“It is the purpose of this Act to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; [and] to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.”).

### A. *Diversifying the Legal Field*

One step the legal profession can take to better serve LEP individuals is to assess their clients' language access needs to help tailor hiring practices. For instance, a legal services agency that determines they have Spanish-speaking clients should strongly consider hiring bi-lingual attorneys and support staff who speak both English and Spanish. As it stands, “[n]early all people of color are underrepresented in the legal profession.”<sup>161</sup> In hiring bilingual attorneys and legal support staff, firms will be better situated to serve more diverse clients and increase representation. Bilingual attorneys are an asset because they can communicate with clients in their native language, verify translations, interpret if necessary outside formal court proceedings, and are better positioned to assist their LEP client in overcoming language barriers.<sup>162</sup> By taking the initiative to hire bilingual attorneys, firms would show potential clients that their language access needs are not an afterthought.

Another advantage to assessing clients' language access needs is that it would demonstrate how often they work with LEP clients, what languages the clients speak, and how much money is spent on language accessibility (if any at all). This allows firms to budget for and implement policies regarding language access for current and future clients. At a minimum, having a language access plan in place can help ensure that an organization's members know what to do and what resources are available when they have an LEP client. Cross-collaboration in the legal community would benefit multiple organizations allowing them to pool their resources, maintain a database of qualified interpreters in the jurisdiction, or a referral list for language accessible legal services. This is useful in situations where there is not a sufficiently high demand for language interpreters to justify allocating resources as an individual firm. However, even if there is not enough demand to budget for language access resources, firms should still implement a policy or process for potential LEP clients. Prioritizing language access would make firms more marketable and create capacity for additional and more diverse clients.

In the legal profession, the “need for personal contact and trust makes both language skill and cultural understanding important.”<sup>163</sup> Consequently, it is necessary for the legal field to

---

161. AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PROFESSION 33 (2020), [www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf](http://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf) [perma.cc/4G7X-2N9G] (providing a snapshot of the legal profession that breaks down lawyers by a variety of characteristics including lawyers by state, gender, race and ethnicity, age, and sexual orientation).

162. Jayesh M. Rathod, *The Transformative Potential of Attorney Bilingualism*, 45 U. MICH. J.L. REFORM 863, 865 (2013).

163. Richard Acello, *Bilingual Lawyers Have a Leg Up in Many Niche*

become more racially and culturally diverse. While racial and cultural diversity does not necessarily mean language diversity in the field, diversity of experiences and thoughts in the legal profession that more closely resemble the diversity within the population will ensure greater empathy and connection with marginalized clients.<sup>164</sup> LEP individuals are also more likely to trust the system when they feel they are adequately represented by those entrusted with carrying out justice.<sup>165</sup> In addition to promoting diversity within the legal field, prospective lawyers and practicing attorneys must also learn how to work with LEP individuals.

### *B. Education in Law School about Language Accessibility and LEP Clients*

In an increasingly globalized world, the legal profession often goes beyond the borders of the jurisdiction in which any one attorney is licensed to practice. In addition, an increasing number of people in the United States speak a first language other than English.<sup>166</sup> Thus, it is necessary to adequately prepare law students to work with LEP clients. Law schools should do more than just teach students the substantive law. Throughout their law school careers, students can expect to learn legal writing and research, how to think analytically and critically, and have opportunities to work with clients through law school clinics, internships, and other paid work, like summer associate positions.<sup>167</sup> One way to better educate students is by offering classes or programs that prepare lawyers to work with language minorities.<sup>168</sup> For example, at the

---

*Practice Groups*, AM. BAR ASS'N J. (March 1, 2013), [www.abajournal.com/magazine/article/bilingual\\_lawyers\\_have\\_a\\_leg\\_up\\_in\\_many\\_niche\\_practice\\_groups](http://www.abajournal.com/magazine/article/bilingual_lawyers_have_a_leg_up_in_many_niche_practice_groups) [perma.cc/959C-GSTN] (finding that another advantage to hiring bilingual lawyers is that bilingual lawyers can assist LEP clients in filling out English forms by translating for them on the spot).

164. See generally Alex M. Johnson Jr., *The Underrepresentation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, 95 MICH. L. REV. 1005 (1997) (analyzing the impact underrepresentation has on the legal field and minority communities).

165. See generally Alicia Bannon & Douglas Keith, *What Research Shows About the Importance of Supreme Court Diversity*, BRENNAN CTR. FOR JUST. (Feb. 1, 2022), [www.brennancenter.org/our-work/analysis-opinion/what-research-shows-about-importance-supreme-court-diversity](http://www.brennancenter.org/our-work/analysis-opinion/what-research-shows-about-importance-supreme-court-diversity) (summarizing research showing that greater representation among the judiciary and in other legal systems increases trust and “promotes richer jurisprudence.”).

166. DIETRICH & HERNANDEZ, *supra* note 29.

167. See *What You Can Expect from Your Law School Experience*, LAW SCH. ADMISSION COUNCIL, [www.lsac.org/discover-law/what-you-can-expect-your-law-school-experience](http://www.lsac.org/discover-law/what-you-can-expect-your-law-school-experience) [perma.cc/3EZ2-7FKW] (last visited Apr. 23, 2023) (discussing expectations of law school year-by-year).

168. See Gillian Dutton et al., *Promoting Language Access in the Legal Academy*, 13 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 6, 17, 41 (2013)

California Western School of Law in San Diego, students can elect to take a Spanish for Lawyers course where they learn to interview and counsel, draft letters to, and represent Spanish-speaking clients.<sup>169</sup>

Another example of a course specifically designed to teach prospective lawyers how to work with LEP individuals is at University of Illinois Chicago School of Law (“UIC Law”).<sup>170</sup> Students at UIC Law must take four legal writing courses to earn their law degree.<sup>171</sup> There are various topic areas within the course options and students with an intermediate proficiency in Spanish may choose to take Spanish for Lawyers, a legal drafting course. The objectives of the course are to “help students develop oral communication-skills to converse in Spanish in a professional setting, develop written communication skills to develop basic legal documents in Spanish, and acquire a working legal vocabulary in Spanish.”<sup>172</sup> These courses are offered to students with an intermediate proficiency or higher as course instruction is taught in Spanish.<sup>173</sup> A course like this prepares students to effectively communicate with clients, and lawyers who can communicate with their clients are “better prepared to represent clients, better equipped for important roles as advocates in judicial and administrative courts and agencies, and better positioned in the competitive legal market.”<sup>174</sup> The interest in a course like this shows

---

(noting that “law schools are increasingly offering ‘Legal Spanish’ and ‘Spanish for Lawyers’ courses” including programs at Seattle University School of Law, Stanford Law School, and American University Law School).

169. *Course Catalog: Electives - Spanish for Lawyers*, CAL. W. SCH. OF L. IN SAN DIEGO, [sourcenet.cwsl.edu/coursecatalog/](http://sourcenet.cwsl.edu/coursecatalog/) [perma.cc/DHB2-VA5S] (last visited Mar. 17, 2023).

170. *Academic Catalog: Law (LAW)*, UNIV. ILL. CHI., [catalog.uic.edu/all-course-descriptions/law/](http://catalog.uic.edu/all-course-descriptions/law/) [perma.cc/C8VR-RH6Y] (last visited Mar. 10, 2023) (describing the course as an “introductory course for students who seek to expand their legal written and communication skills in Spanish.”).

171. *JD Program Overview*, UNIV. ILL. CHI., [law.uic.edu/academics/jd/jd-overview/](http://law.uic.edu/academics/jd/jd-overview/) [perma.cc/R79C-2YG2] (last visited Mar. 10, 2023).

172. Kim D. Chanbonpin & Sarah Dávila-Ruhaak, *Lawyering Skills and Clinical Cooperation: Teaching Spanish for Lawyers at John Marshall*, 29 LEGAL WRITING INST. SECOND DRAFT 29, 30 (2016). The two academic coauthors also posit that:

Developing new norms regarding second-language skills for law students and lawyers also promotes access to justice for non-English speakers. Lawyering skills in Spanish provide students with an enhanced ability to engage in work that furthers social justice, and enables clients to have full access to justice by providing legal services in their native language. . . . These initiatives may serve to redress systemic gaps of access to justice . . .

*Id.* at 32.

173. *Course Catalog: Electives - Spanish for Lawyers*, *supra* note 169; *Academic Catalog: Law (LAW)*, *supra* note 170.

174. Chanbonpin & Dávila-Ruhaak, *supra* note 172, at 29.

that there is a gap in the legal education of students who wish to work with LEP individuals.<sup>175</sup> It is likely that there will be an increase in courses like these as the demand for linguistically diverse attorneys increases.

### C. Increased Training for Judges

Increased training will help judges better implement federal protections like the Court Interpreters Act. Since the appointment of a court interpreter is at a judge's discretion, they decide if a party appearing before them needs an interpreter or is proficient enough in English to continue without one.<sup>176</sup>

The more information judges have about various languages, the impact of culture on language, and other barriers that intersect with language access, the better a judge can determine if a language interpreter is needed.<sup>177</sup> In addition, it is imperative for judges to increase understanding of the "skills required to interpret properly in court, errors made by unqualified interpreters, and the potential threats to justice posed by interpreting errors."<sup>178</sup>

Judges may also benefit from training that addresses the needs of the language groups prevalent in their jurisdictions. For instance, in a state with a large Arabic speaking population, like Illinois,<sup>179</sup> judges would better serve the surrounding Arab community by learning about the culture and language. While Arabs may share a common language, they come from over twenty distinct countries with distinct dialects.<sup>180</sup> Courts must understand the difference in

---

175. See Lauren P. Duncan, *JMLS Course Preps Students to Speak Legally, Bilingually*, CHI. DAILY L. BULL. (Feb. 17, 2017), [www.news.law.uic.edu/wp-content/uploads/2017/02/20788-LB-reprint-JMLS-Feb17-2017-C.pdf](http://www.news.law.uic.edu/wp-content/uploads/2017/02/20788-LB-reprint-JMLS-Feb17-2017-C.pdf) [perma.cc/86E9-2VRR] (reporting that law students from other institutions showed interest in taking the Spanish for Lawyers class).

176. *Tapia*, 631 F.2d at 1209 (finding that the decision to provide an interpreter lies within the trial court's discretion, there is no constitutional right to a court-appointed interpreter, and that the need for an interpreter is a question of fact).

177. STANDARDS FOR LANGUAGE ACCESS IN COURTS, *supra* note 11, at 18 (noting that "court system and individual courts should provide all judges, court personnel, and court-appointed professionals with training on the following: legal requirements for language access; court policies and rules; language services provider qualifications; ethics; effective techniques for working with language services providers; appropriate use of translated materials; and cultural competency.").

178. WILLIAM E. HEWITT, COURT INTERPRETATION: MODEL GUIDES FOR POLICY AND PRACTICE IN THE STATE COURTS 5 (1995). Hewitt also states that, "judges who must make these discretionary decisions are without appropriate guidance or training regarding the skills that are required for court interpreting and the damage that can be done by untrained and inadequately skilled individuals." *Id.* at 19.

179. *National Arab American Demographics*, *supra* note 129.

180. *Arabic Dialects: Different Types of Arabic Language*, TARJAMA, [www.tarjama.com/arabic-dialects-different-types-of-arabic-language/](http://www.tarjama.com/arabic-dialects-different-types-of-arabic-language/)

the language diversity, especially in states with a high Arab population. Without this information, judges, lawyers, law schools, cities, victim services, and other key players are unable to fully grasp the needs of the community, nor develop policies that serve them. Because there are a variety of dialects and regional differences in Arabic, it is not a one-size-fits-all language. So, attorneys and the courts should ensure that the interpreter provided is able to adequately interpret (English to Arabic and vice-versa) in the dialect of the speaker. Similarly, a deeper understanding of the struggles language minorities go through is vital.

For instance, language, culture, and identity are so inextricably tied that judges should be encouraged to understand the social and political context of LEP individuals, in addition to their linguistic needs. For instance, Arab Americans have struggled since 2001 with increased violence and discrimination, anti-Arab sentiment, and Islamophobia, inevitably leading to mistrust of the government, including law enforcement and court systems.<sup>181</sup> Arab American litigants, whether they have English proficiency or not, bring this with them to the judicial system. When denied an interpreter despite a clear need, this mistrust is only deepened. Understanding one's unique cultural background gives the courts more information about the person in front of them and provides a chance for the court to build trust by communicating with the litigant and appointing an interpreter more mindfully.

Deaf and Hard of Hearing individuals also face enumerable intersecting barriers that are tied to their limited English proficiency. Understanding the nuances of Deaf culture would better assist judges and other legal professionals in ensuring meaningful access for Deaf and Hard of Hearing people.

Similarly, the Deaf community faces enumerable intersecting barriers that are tied to their limited English proficiency and cultural identity.<sup>182</sup> Simply appointing an interpreter does not effectively remove a language barrier if those in the room do not understand the nuances of Deaf culture and etiquette. Judges should also receive specific training on working with ASL interpreters as the needs of the Deaf community are not always addressed in language access resources.<sup>183</sup> To fully put policy into

---

[perma.cc/C8X4-V7BB] (last visited Mar. 10, 2023).

181. Kiara Alfonseca, *20 Years After 9/11, Islamophobia Continues to Haunt Muslims*, ABC NEWS (Sept. 11, 2021, 11:52 AM) abcnews.go.com/US/20-years-911-islamophobia-continues-haunt-muslims/story?id=79732049 [perma.cc/F5CN-XVPS].

182. Robyn Correll, *Challenges That Still Exist for the Deaf Community*, VERYWELL HEALTH (June 1, 2022), www.verywellhealth.com/what-challenges-still-exist-for-the-deaf-community-4153447 [perma.cc/54JJ/UEJM] (describing economic, health insurance, social, and public health challenges faced by the Deaf community, which can be further impacted by age, race, and ethnicity).

183. *E.g.*, Ctr. Ct. Innovation, *Effective Court Communication: Assessing the*

practice, judges must be trained on how to make reasonable adjustments to proceedings if an ASL interpreter is in the room. For instance, courtroom personnel people may need to move around so that the interpreter has a clear line of sight between them and the person who needs their services.<sup>184</sup> Other important considerations include allotting extra time for proceedings to ensure effective communication, maintaining eye contact, avoiding side conversations, taking breaks, and accounting for interpreter fatigue.<sup>185</sup>

## V. CONCLUSION

Individuals with limited English proficiency face many obstacles in America. They tend to have lower incomes, lower levels of education, and may face discrimination in employment, housing, healthcare,<sup>186</sup> and education among other barriers. Due to their increased vulnerability, the legal profession has a duty to ensure that our justice system can support individuals who are not proficient in English. Despite the available protections under Title VI of the Civil Rights Act or the Court Interpreters Act, LEP individuals continuously struggle in their attempts to access justice in the courts particularly when these attempts are thwarted by those tasked with administering justice.

These existing laws lay a sufficient and strong foundation to protect individuals from language-based discrimination. But, to ensure LEP litigants have full and meaningful participation in the American court system the legal profession must dutifully implement these laws in accordance with legislative intent. Without proper implementation, these protections are ineffective.

---

*Need for Language Access Services for Limited English Proficient Litigants in Domestic Violence, Sexual Assault, Dating Violence, and Stalking Cases*, NAT'L CTR. ST. CTS. 1, n. 4 (Oct. 2017), [www.innovatingjustice.org/sites/default/files/documents/LEP%20Needs%20Assessment%20Report\\_FINAL.pdf](http://www.innovatingjustice.org/sites/default/files/documents/LEP%20Needs%20Assessment%20Report_FINAL.pdf) [perma.cc/E6QM-BJN3] (conducting research on “ensuring meaningful access to justice” for LEP litigants but focusing on “spoken languages” and excluding ASL).

184. *Communication Access in State and Local Courts*, NAT'L ASS'N OF THE DEAF (2008), [www.nad.org/resources/justice/courts/communication-access-in-state-and-local-courts/](http://www.nad.org/resources/justice/courts/communication-access-in-state-and-local-courts/) [perma.cc/2ZHQ-LKMN] (addressing key barriers deaf people face in state and local court proceedings).

185. Off. Ct. Interpreting Serv., *Interpreter Etiquette & the Do's and Don'ts of Working with an Interpreter*, DIST. COLUMBIA CTS. (April 18, 2022), [www.dccourts.gov/sites/default/files/divisionspdfs/Dos-and-Donts-When-Working-With-an-Interpreter.pdf](http://www.dccourts.gov/sites/default/files/divisionspdfs/Dos-and-Donts-When-Working-With-an-Interpreter.pdf) [perma.cc/NHM4-BYV4] (enumerating best practices and pitfalls to avoid when working with an ASL interpreter).

186. Richard Salame, *Where Limited English Skills Mean Limited Access to the COVID-19 Vaccine*, TYPE (Apr. 30, 2021), [www.typeinvestigations.org/investigation/2021/04/30/covid-language-access-lep/](http://www.typeinvestigations.org/investigation/2021/04/30/covid-language-access-lep/) [perma.cc/3MRW-86VV] (explaining that “[n]ew research shows [LEP people] are more likely to get COVID-19 and to die from it than are fluent English speakers. And poor language access may be delaying their vaccination.”).