

# FEATURED ARTICLES

## Language Access is an Empowerment Right: Deprivation of Plenary Language Access Engenders an Array of Grave Rights Violations

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### I. Introduction

Language barriers impede more than twenty-five million limited- and non-English proficient persons residing in the United States from accessing critical resources and fundamental services necessary for their safety and wellbeing and for the safety and wellbeing of the 279 million native English speakers who inhabit the same space. Deprivation of plenary language access<sup>1</sup> undermines human dignity, exacerbates many immigrants' innate vulnerabilities, and harms society at large by impeding the efficacy of the healthcare and justice systems. The availability of qualified interpreters and translators in critical contexts is essential to protect, empower and enfranchise limited- and non-English proficient persons. Language access is an empowerment right.<sup>2</sup> It is *so* essential to achieving any meaningful exercise of a bundle of inalienable civil, political, economic, social and cultural rights that it engenders a corresponding right to a qualified interpreter in certain venues and circumstances.

### II. Scope and Gravity of the Language Access Crisis

Poet Walt Whitman, in "Song of Myself," described the United States as "the nation of many nations."<sup>3</sup> The U.S. is home to millions of immigrants—family-based migrants, independent laborers, refugees, asylees and victims of human trafficking. People migrate to work, to escape persecution, to pursue education and economic opportunity, and to secure a better life for their children.

According to the U.S. Census Bureau, nearly one in every five U.S. residents speaks a language *other* than English at home.<sup>4</sup> More than twenty-five million people or 8.1% of the population polled in the most recent U.S. Census either were non-English-proficient ("NEP") or had limited-English proficiency ("LEP")<sup>5,6</sup> According to the University of Maryland's National Foreign Language Center's Language Access Initiative ("LAI"):

The U.S. is in the midst of an immigrant population boom similar in scale to the previous boom of some hundred years ago. In the 1990s alone, the foreign-born population grew by a staggering 57.4 percent, thereby increasing the size of the foreign-born population in the country to more than 31 million people, according to the 2000 U.S. Census. The Population Reference Bureau has estimated that roughly one third of overall U.S. population growth results from net migration. With a U.S. Census Bureau-predicted population size of 403,687,000 people by 2050, this suggests that the U.S. may well receive an additional 50 million new immigrants over the next fifty years.<sup>7</sup> ...In short, the Limited English Proficient (LEP) population has doubled over the last twenty years from 6% to 12% (some 25 million adults). ...This has placed enormous strains on many public and private services organizations.<sup>8</sup>

Brookings Institution demographers have noted the burgeoning linguistic challenges plaguing U.S. regions as migrants settle beyond the traditional gateway states:<sup>9</sup>

The impact particularly at the metropolitan level has been great as many cities and suburbs have had to adjust to new populations that place immediate demands on schools and health care systems, particularly with regard to language services.<sup>10</sup>

"Unlike the traditional receiving states," observed Ann Morse, states unaccustomed to meeting the needs of immigrants "tend to have little experience or infrastructure to respond to the language and cultural challenges of the new arrivals."<sup>11</sup> The United States is rapidly transforming into a minority-majority state. Former U.S. President Bill Clinton predicted in 1998 that, "In little more than fifty years there will be no majority race in the United States. No other nation in history has gone through demographic change of this magnitude in so short a time."<sup>12</sup> California, the most populous

U.S. State with a population of approximately 33-37 million, illustrates the trend:

For the first time in history, as the most recent census revealed, “non-Hispanic whites” had become a minority group within the state [of California], making up no more than 47% of the overall population. With Hispanics representing one in every three residents and a large and still growing Asian population, California has now become a region in which every resident is a member of a “minority” group.<sup>13</sup>

Twenty-first century U.S. demography and global migration trends suggest that the language access crisis is unlikely to abate.

The daily lives of NEP and LEP individuals residing in the United States are profoundly impacted by their inability—on account of language barriers—to access critical resources such as child protective services, police, fire fighters, emergency medical services, pharmacies, primary and secondary schools, public benefits offices, the courts, legal services providers, crime-victim resources, driver’s licenses, business licenses, and other services essential to basic public safety and welfare. According to the Director of the Institute for Language and Education Policy (“ILEP”), James Crawford:

Restricting government’s ability to communicate in other languages [threatens] the rights and welfare of millions of people, including U.S. citizens, who are not fully proficient in English.<sup>14</sup>

The NEP and LEP population includes undocumented immigrants, lawful permanent residents (green card holders), and naturalized U.S. Citizens.<sup>15</sup> The U.S.-born English-proficient children and dependents of limited- and non-English-speakers suffer, too, when we restrict language access.<sup>16</sup>

Language access barriers can have devastating consequences for LEP and NEP individuals and their families. New York Times writer Nina Bernstein captured a particularly poignant example of the potential impacts of language-access deprivations in the medical services arena.<sup>17</sup> The incident involved a pregnant NEP patient with life-threatening complications:

[D]octors pressed her to sign a consent form in English for emergency surgery. Understanding that the surgery was needed “to save the baby,” the young married woman awoke to learn that the operation had instead left her childless and sterile.<sup>18</sup>

In a similar case, language-access barriers caused a pregnant LEP woman to misunderstand her physician—she understood that doctors intended to undertake a surgical

procedure to adjust her baby’s placement in utero, only to discover a month later that she was no longer pregnant because the surgeon had performed an abortion.<sup>19</sup> In January 2008, a limited-English proficient Korean man and lawful permanent resident, Jong Yeol Lee, was arrested in his child’s presence in their family home and detained for four days by police on account of mistaken identity—the man shared a very common Korean name with the subject of a criminal warrant. During the four-day incarceration, Lee requested but was denied an interpreter.<sup>20</sup> A resultant complaint filed by the Asian Pacific American Legal Resource Center (“APALRC”) against the police department on behalf of Lee resulted in a finding of non-compliance with the District of Columbia’s 2004 Language Access Act by the District’s Office of Human Rights (OHR is responsible for enforcing the D.C. Human Rights Act of 1977 and other laws and policies on nondiscrimination).<sup>21</sup> The police department reportedly took subsequent steps to improve its language access protocol. According to LAI:

[Language access] laws and regulations have been a necessary response to the increasingly pressing need for language services of a skyrocketing LEP immigrant population. Federal, state, and local government agencies have scrambled in recent years to develop language assistance plans, hire language access coordinators, and train and/or contract foreign language interpreters and translators.<sup>22</sup>

LAI warns that “communications failures can have dire consequences.”<sup>23</sup> Denying LEP and NEP persons language access to critical government services is tantamount to unofficially declaring English as the official U.S. language. ILEP Director, James Crawford, describes Official-English—English-only—laws and policies as punitive, divisive and “[i]nconsistent with American values”:

Official-English legislation offers no practical assistance to anyone trying to learn English. In fact, it is likely to frustrate that goal by outlawing programs designed to bring immigrants into the mainstream of our society... The campaign to declare English the official language often serves as a proxy for hostility toward minority groups... It is exacerbating ethnic tensions in a growing number of communities... Official-English laws have been declared unconstitutional in state and federal courts, because they violate guarantees of freedom of speech and equal protection of the laws.<sup>24</sup>

The United States is beginning to take notice of the fact that more than twenty-five million LEP and NEP persons residing within its borders require language access to critical resources and fundamental services for their own safety and wellbeing and for the safety and wellbeing of the 279 million

native English-speakers who inhabit the same space.<sup>25</sup>

### III. The Challenges of Achieving Linguistic Integration

Perhaps the most prevalent argument proffered in opposition to language access is the familiar refrain that anybody who aspires to immigrate to the United States, whether in pursuit of basic subsistence, freedom from persecution, education or economic opportunity, should be obligated to learn the English language post-haste. If we accommodate limited- and non-English speakers, the argument goes, what motivation will they have to learn English? At the heart of this debate lies a complex web of deeply-entrenched norms surrounding cultural identity, race, nationalism and state sovereignty.

The development of English proficiency among limited- and non-English speaking immigrants today mirrors that of the Nineteenth and early Twentieth Centuries when many Americans' Italian, German and Eastern European ancestors migrated to America.<sup>26</sup> Without indulging in a protracted linguistic history of the vast and fluid territories that now comprise the United States of America, suffice it to note that there are countless valid reasons why many of its inhabitants have not yet achieved English proficiency. Some limited- and non-English speakers are recently-arrived refugees and asylees. Others are forcibly isolated human-trafficking victims and battered immigrant partners of U.S. Citizens or Legal Permanent Residents. It is not uncommon for immigrants, many of whom are paid significantly less than the minimum wage, to work two or three jobs in order to support their families, leaving little or no time for language studies. Immigrants often cannot access or afford the collateral costs of attending English as a Second Language ("ESL")<sup>27</sup> classes, such as transportation or childcare, and pricey tuition and lengthy ESL waitlists present additional obstacles.<sup>28</sup> Wait-times for professionally instructed English classes are running as long as two years.<sup>29</sup>

Learning a foreign language can prove a daunting task—it takes approximately two to three years to master a foreign language at a conversational level and seven years to achieve proficiency at a scholastic level.<sup>30</sup> The task is exponentially more daunting for immigrants who are pre-literate in their own native languages due to lack of access to education in their countries of origin. For most immigrants, learning English is only one component of the epic struggle to integrate into mainstream society, feed and shelter their families, and cope with the trauma, loss and severed ties that characterize their migration to the United States.<sup>31</sup> Instructor Leya Speasmaker, who has taught ESL for more than twelve years, observed:

I have never, ever met an immigrant who didn't want to learn English. Why would they not? [As English-speakers], they...earn more money..., parenting their [English-

speaking] children [is] easier, they...have easier access to services they need and life, in general, is easier.<sup>32</sup>

ESL is the fastest growing area of adult education in the United States<sup>33</sup> yet, according to the Asian American Justice Center, funding to support adult ESL instruction is severely limited nationwide and demand for ESL far exceeds supply.<sup>34</sup> A national study on linguistic integration conducted by the Migration Policy Institute concluded that "ensuring that immigrants have the opportunity to acquire strong English language and literacy skills is among the most neglected domestic policy issues in our nation today."<sup>35</sup>

The frenetic pace of global migration dictates that peace and prosperity will turn upon tolerance for ethnic, racial, cultural, religious and linguistic diversity. The University of Maryland's National Foreign Language Center understood this well when it launched a Language Access Initiative ("LAI") in 2004 emphasizing the simultaneous promotion of non-English services for NEP and LEP immigrants and foreign language proficiency and cultural sensitivity among native English-speakers:

Our focus has included enhancing Americans' knowledge of foreign languages and cultures through a variety of pedagogically rigorous foreign language learning and training tools and programs. Broadly speaking, we sought to make the non-English speaking world more "comprehensible" to Americans. Our current initiative, by contrast, seeks to make the U.S. itself more comprehensible to the legions of Limited English Proficient (LEP) new immigrants in need of fundamental services. This involves, specifically, development of tools, services, and policies to vastly expand interpretation and translation capacity as well as language-sensitive recruitment, training, and management initiatives.<sup>36</sup>

Effective advocacy calls for a balance between ensuring NEP and LEP populations' access to critical services and ESL instruction, and promoting foreign-language studies and tolerance for diversity among U.S. nationals. James Crawford warned the U.S. House Committee on Education Reform that, "in an era of globalization, when multilingual skills are essential to economic prosperity and national security...[l]anguage skills should be conserved and developed, not suppressed."<sup>37</sup> Youssou N'Dour observed that, "far from being an obstacle, the world's diversity of languages...is a great treasure, affording us precious opportunities to recognize ourselves in others."<sup>38</sup> Language access and linguistic integration are indivisible means to promote tolerance and diversity in a rich cultural context.<sup>39</sup>

#### IV. Language Access Barriers Exacerbate Undocumented Immigrants' Unique Vulnerability to Victimization

Undocumented LEP and NEP immigrants can be acutely vulnerable to victimization. U.S. recognition of the uniquely vulnerable status of undocumented immigrants is evidenced by numerous protections legislated for their benefit. For example, undocumented immigrants are guaranteed emergency medical care, undocumented children are entitled to attend public schools without risk of deportation, and the federal legal aid eligibility guidelines enable indigent, undocumented immigrant crime-victims to qualify for pro bono legal services.

Congress has provided for special immigration remedies for undocumented immigrant victims of violent crimes. For example, the U visa,<sup>40</sup> the T visa,<sup>41</sup> the Violence Against Women Act ("VAWA") self-petition and VAWA cancellation of removal are immigration law remedies that enable some immigrant crime victims and their dependents to remain in the United States, avail themselves of protective remedies and resources not available in their countries of origin, obtain employment authorization and, eventually, secure legal permanent residency and naturalize.<sup>42</sup> The enactment, reform and reauthorization of these legal remedies is indicative of the United States' commitment to combating violent crime and preventing the victimization of an exceptionally vulnerable population by encouraging and empowering undocumented crime victims to report violent crimes without fear of deportation and empowering them to safely participate in the justice system.

The fact that the victim-witness' endowment of lawful status often extend well beyond the period of witness utility—i.e., conclusion of the criminal investigation or prosecution—indicates that the United States values the victim-witness' safety and wellbeing, including the right to protection from re-victimization and retribution for testifying against perpetrators. U and T visas and legal permanent residency-based thereon are conditioned upon the victim-witness' cooperation in the investigation or prosecution of the underlying crime.<sup>43</sup> Without the assistance of a qualified interpreter, LEP and NEP crime victims can neither report violent crimes nor comply with reasonable requests for cooperation in the investigation or prosecution, and are precluded from availing themselves of the civil, criminal or immigration remedies that Congress enacted for their benefit and their dependent children's, and for the safety and welfare of society at large.<sup>44</sup>

#### V. Language Access in the Justice System

Access to the justice system is pivotal to achieving legal redress for rights violations, including deprivation of language access. Despite the existence of federal language-access legislation, and the fact that numerous U.S. states have passed laws requiring that courts provide interpreters in civil court,<sup>45</sup>

indigent limited- and non-English speakers are frequently denied access to court interpreters and translators.<sup>46</sup> According to Laura Abel, Deputy Director of the Justice Program at the New York University School of Law's Brennan Center for Justice:

Nearly 25 million people in this country have limited proficiency in English (LEP), meaning that they cannot protect their rights in court without the assistance of an interpreter. At least 13 million of those people live in states that do not require their courts to provide interpreters to LEP individuals in most types of civil cases...And many live in states that do not ensure that the "interpreters" they provide can speak English, speak the language to be interpreted, or know how to interpret in the specialized courtroom setting.<sup>47</sup>

A recent study of thirty-five State courts conducted by the Brennan Center for Justice stated that:

- 46% fail to require that interpreters be provided in all civil cases;
- 80% fail to guarantee that the courts will pay for the interpreters they provide, with the result that many people who need interpreters do not in fact receive them; and
- 37% fail to require the use of credentialed interpreters, even when such interpreters are available.<sup>48</sup>

The Florida Supreme Court Task Force on Racial and Ethnic Bias observed that:

To a minority for whom English is not the primary language, language barriers only heighten the desperation that justice is simply beyond reach, no matter what the truth or consequences.<sup>49</sup>

Without plenary language access, courts are unable to make accurate findings, laws go unenforced, children and families suffer, and society loses faith in the justice system.

##### A. Unqualified and Inappropriate Interpreters

No formal interpreter certification is available for most languages. Interpreters can take a State certification examination in a select few widely-spoken foreign languages in the United States, Spanish being the most common. Each State sets its own interpreter standards for State courts and some States have adopted the typically more rigorous federal court interpreter examination.<sup>50</sup> National Association of Judiciary Interpreters and Translators ("NAJIT") chairwoman Isabel Framer estimated that, of approximately three thousand certified interpreters in the United States, only five hundred interpret in a language other than Spanish.<sup>51</sup> In some states,

where no formal certification process is available in a given language, a freelance interpreter may “register” him—or herself with the Secretary of State without establishing any minimum qualifications in the foreign language.<sup>52</sup> Purportedly in the interests of equity and judicial efficiency, some bench officers even find “good cause” to permit non-interpreters—generally friends, neighbors, or even children of the litigant—to interpret for indigent limited- and non-English proficient litigants in court in lieu of an interpreter. One result of utilizing unqualified—although perhaps well-intentioned—interpreters is inaccuracy. The inaccurate interpretation or translation of a single word can drastically alter the meaning of a communication and the outcome of a proceeding or exchange<sup>53</sup>:

Individuals, whether they work in the court system or quasi-judicial setting, need to understand that the interpreter is the nexus among all of the parties, and if the interpreter is not competent, it can render everyone incompetent. Nationally, there is a great need to take action and increase the pool of qualified and certified interpreters...many are still under the belief that being bilingual is sufficient for being a court interpreter, and that’s far from the truth.<sup>54</sup>

Expert, accurate interpretation demands far more than mere word substitution. Interpreting the meaning underlying the words requires a sophisticated understanding of the impact of cultural nuance, dialect and colloquialism on language.

In the interest of ensuring reliable, accurate and consistent translation and interpretation, each U.S. State should establish uniform minimum qualifications standards and testing for all court interpreters and translators. National standards have been promulgated for innumerable other professionals, including attorneys who must pass a multi-state (national) component of the bar examination in addition to meeting State licensing requirements. The federal government has already established rigorous foreign language training, standards and language competency tests in the process of cultivating and evaluating linguists for national defense purposes, diplomatic and Foreign Service functions, and other federal agency needs. These minimum qualifications, practice standards and testing mechanisms could be exported to a model uniform court translator/interpreter licensing scheme.

Equally as important as ensuring an interpreter’s skill and proficiency is the assessment of whether a particular interpreter is an *appropriate* choice in any given situation. Victim advocates and other justice system actors must assess whether a particular interpreter is an appropriate match for a particular victim or witness. For example, while in certain circumstances positive results inure through the use of a same-nationality interpreter familiar with the victim’s cultural norms and customs, in other circumstances utilizing a same-nationality interpreter can produce cultural or interpersonal

conflicts arising out of the interpreter’s close ties to the victim’s and/or the perpetrator’s community or family, thereby intimidating or even endangering the victim. One advocate reported learning, only after the commencement of criminal proceedings against a human trafficker, that the court-appointed interpreter assigned to a trafficking victim-witness was a close personal acquaintance of the criminal defendant.<sup>55</sup>

Children and family members are too often used as interpreters in emergency circumstances. For example, an NEP breast cancer patient forced to rely upon her sister for medical interpretation discovered that her sister had consented on her behalf to a mastectomy without first consulting her.<sup>56</sup> In another case, language-access barriers caused a NEP New York man to receive devastating emergency medical information from a young child, “When a Spanish-speaking hospital receptionist refused to interpret during her lunch hour, doctors at St. Vincent’s Staten Island Hospital turned to a seven-year-old child to tell their patient, an injured construction worker, that he needed an emergency amputation.”<sup>57</sup> According to comments and recommendations submitted by the New York Immigration Coalition to the Department of Health and Human Services:

Not only do minors not have the knowledge of English and/or medical terminology required to interpret, the use of minors can upset familial relationships that are deeply rooted in the LEP person’s culture, and is particularly problematic in the areas of oncology, gynecology, reproductive health, sexually transmitted diseases, injuries from domestic violence and other sensitive crimes, and mental health treatment. We strongly urge [the Office of Civil Rights] to amend the guidance to prohibit the use of minors as interpreters regardless of the beneficiary’s request, unless it is an emergency medical situation with no alternative means of providing language assistance.<sup>58</sup>

The use of LEP and NEP persons’ children and other family members as interpreters can violate the intended beneficiary’s rights to dignity, privacy, confidentiality and informed consent.

#### *B. Cost-Prohibitive Interpreter and Translator Fees*

Poverty presents another daunting barrier to justice for LEP and NEP litigants and their dependents. In many states, indigent litigants are routinely denied interpreter-fee waivers in civil and administrative law proceedings. Denying an indigent litigant’s interpreter-fee waiver effectively deprives him or her, and his or her dependants, of any meaningful day in court.<sup>59</sup>

Certified interpreters typically charge law firms and litigants anywhere from fifty to two hundred fifty dollars per hour for their services. Interpreters are paid for their time, irrespective of whether they are actually engaged in interpretation or simply waiting for the judge to call the case.

In many courtrooms, where a hearing docketed for 8:30 a.m. may not even commence until 3:30 p.m., and may then be held over or continued to the following court day, the cost to litigants can prove staggering or prohibitive. In recent years, interpreters employed directly by State courts in California, Virginia and other jurisdictions, already in short supply, have gone on strike to protest unfair wages.<sup>60</sup>

Document translation fees can prove equally exorbitant. The average cost of expert document translation services ranges anywhere from twenty-six to fifty cents per *source-word*—the translated version usually contains more words— or seventy-eight to one hundred fifty dollars per 300-word page.<sup>61</sup> Standard languages tend to be less expensive whereas rare languages cost more. Expert translators may charge a project-minimum fee. Complex or technical translations requiring native acumen and subject-matter expertise are typically more expensive. An indigent litigant cannot possibly afford to hire a qualified interpreter or translator. Even when legal representation is available gratis, most pro bono legal services providers are not likely to be willing or able to absorb substantial interpreter or translator fees.

Federal and/or state laws obligate most state courts to provide interpretation and translation services to LEP and NEP litigants free of charge.<sup>62</sup> Yet, according to a recent Brennan Justice Center study, many state courts continue to flout their language-access responsibilities in blatant violation of litigants' civil rights:

[I]n plain failure to fulfill this mandate, many state laws authorize these services for low-income litigants only in criminal proceedings, not in civil proceedings. And even when judges and court officials recognize an obligation to provide court interpreters, for civil litigants who cannot afford it, they often fail to provide competent interpreters.<sup>63</sup>

In a February 2009 letter to the Executive Director of Indiana's Supreme Court Division of State Administration, the Chief of the Coordination and Review Section of the U.S. Department of Justice Civil Rights Division, Merrily A. Friedlander, emphatically reminded the State of its *affirmative* language-access obligations to LEP and NEP litigants and witnesses:

[S]tate courts, such as the Indiana Courts, that receive federal financial assistance from the Department of Justice and/or other federal agencies must comply with Title VI [of the Civil Rights Act of 1964<sup>64</sup>] and its implementing regulations,<sup>65</sup> which prohibit discrimination on the basis of race, color and national origin...As part of that obligation, a court system that receives federal financial assistance should not permit the assessment of interpreter costs to a litigant if a party or the party's witness is LEP...These principles apply to civil as well as criminal proceedings,

regardless of state laws to the contrary.<sup>66</sup>

The letter was provoked by a 2008 Indiana court decision holding that LEP defendants were not entitled to free court interpreter services unless they could prove that they were indigent.<sup>67</sup> Friedlander reminded the Indiana courts that the U.S. Department of Justice conducts administrative investigations into states' language access compliance. The Justice Department's Title VI LEP guidance states, with regard to the courts, that:

[E]very effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials and motions...When oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person.<sup>68</sup>

Friedlander clarified that the Department of Justice "considers charging [any] LEP parties for the costs of interpreters to be inappropriate" and described exemplary Title VI compliance as requiring free interpreter services "in important interactions with court personnel, as well as providing translations of vital documents and signage."

Public service initiatives could help to reduce the language access deficit for LEP and NEP persons reliant upon non-compliant state courts and entities not bound by language-access laws and guidelines. Legal and social service providers should unite to establish local, state, national and global pro bono interpreter and translator networks to address their indigent clients' needs.<sup>69</sup> Desperate to meet the language access needs of their indigent clients, some legal service providers currently cold-call interpreters from state and federal interpreter registries, a time-consuming, ad hoc solution with inconsistent results. All states could mandate that certain professionals, including interpreters and translators, meet minimum pro bono service requirements in order to maintain their professional licenses or certifications.<sup>70</sup> State, corporate and private grant-makers should restrict eligibility for funding to entities that effectively accommodate eligible limited- and non-English speakers. The Hague Permanent Bureau in The Netherlands is an example of an entity that is well-positioned to establish and administer a global pro-bono network of specialized interpreters and translators for indigent LEP and NEP persons litigating under international treaties in the contracting states<sup>71</sup> domestic courts.<sup>72</sup>

## VI. Domestic Instruments Guarantee Plenary Language Access

A discreet number of domestic instruments are typically cited to advance language access. The Fourteenth Amendment to the United States Constitution, Title VI of the 1964 Civil Rights Act<sup>73</sup> and Executive Order 13166<sup>74</sup> form the

federal law basis for language access rights. At the state level, comprehensive language access legislation has materialized in only a marginal number of cities and states.<sup>75</sup>

#### A. *The Fourteenth Amendment to the United States Constitution*

Section 1 of the Fourteenth Amendment to the United States Constitution—ratified on July 9, 1868—guarantees that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” The United States Supreme Court, in *Yick Wo v. Hopkins*,<sup>76</sup> held that a facially neutral city ordinance violated the Equal Protection Clause of the Fourteenth Amendment, because it disparately impacted Chinese laundry-business owners. Regrettably, the Court, in *Washington v. Davis*,<sup>77</sup> later rejected the notion that disparate impact, in itself, was sufficient to support a finding of discrimination under the Fourteenth Amendment, and shifted the burden of proof to the defendant to establish a rational and reasonably related purpose for challenged practices that have a disparate impact. In subsequent case law, the Supreme Court required evidence of “intentional” discrimination in the defendant’s other policies and practices in order to show unlawful discrimination in the challenged practice.<sup>78</sup>

#### B. *Title VI of the Civil Rights Act*

Title VI of the Civil Rights Act of 1964 prohibits intentional discrimination on the basis of race, color, or national origin in federally-funded and federally-assisted programs and activities.<sup>79</sup> Some U.S. case law interpreting Title VI has treated certain language-access denials as proscribed national-origin discrimination.<sup>80</sup> The United States Government has issued emphatic guidance to the effect that Title VI language-access obligations extend beyond the federally-funded programs of work to a recipient’s entire operation and its sub-recipients’ operations:

[A]ll State agencies, community-based organizations, national voluntary agencies, mutual assistance associations, facilities for unaccompanied alien children and any other organizations receiving [federal] funding, either directly or as sub-recipients, must comply with Title VI. Organizations are required to comply with the provisions of Title VI even though the funding may only support one part of their program. As an example, if ORR provides funding to a state department of health in a preventive health discretionary grant, all of the operations within the state department of health, not only the preventive health programs would be subject to Title VI.<sup>81</sup>

Under Title VI, state courts that receive federal funding are among the entities that have an affirmative obligation to eliminate racial and cultural biases. A court system’s failure

to comply with or to consider those obligations when implementing new policies can give rise to an inference of intentional discrimination.<sup>82</sup> Aggrieved parties may seek redress directly from the federal funding agency or may file suit in federal court.<sup>83</sup>

#### C. *Executive Order 13166*

Former U.S. President Bill Clinton’s Executive Order 13166, released on August 11, 2000 and titled *Improving Access to Services for Persons with Limited English Proficiency*, requires that all federally-funded and federally-assisted programs, services and activities ensure language access so as to be equally accessible to all LEP and NEP persons eligible for their services.<sup>84</sup> The objectives of Executive Order 13166 include:

[Each] Federal agency shall... develop and implement a system by which LEP persons can meaningfully access... services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance...provide meaningful access to their LEP applicants and beneficiaries...[The] Department of Justice has...issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI...[Recipients] must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.<sup>85</sup>

Although the Executive Order does not explicitly define the term “meaningful access,” the U.S. Department of Justice has issued guidelines to assist implicated entities in assessing what would constitute meaningful access in their respective contexts and service regions.<sup>86</sup> The Executive Order also requires each federal funding agency to draft internal Title VI compliance guidelines specifically tailored to its recipients, taking into consideration the types of services provided and the individuals served, “[Input] from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.”<sup>87</sup> The Order explicitly precludes judicial review, “[Executive Order 13166] does *not* create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.”<sup>88</sup> The Executive Order aims to ameliorate internal management of the U.S. Executive Branch, and simultaneously reaffirms the Executive’s

commitment to promoting English language instruction for immigrants. The U.S. Government Accountability Office (“GAO”) is expected to release a 2009 report<sup>89</sup> on the results of audits it conducted to assess federal agencies’ compliance with Executive Order 13166.

There are four principal factors that federal and federally-funded entities should analyze in assessing their federally-mandated language access obligations under Title VI and Executive Order 13166:

1. the number or proportion of LEP [and NEP] persons eligible to be served or likely to be encountered by the [federally funded] program or grantee/recipient;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity or service provided by the program to people’s lives; and
4. The resources available to the grantee/recipient and costs.<sup>90</sup>

The U.S. Department of Justice (“DOJ”) recommends, as among the fundamental resources essential to language access compliance and implementation plans,<sup>91</sup> that agencies procure oral interpretation services, bilingual staff, telephone interpreter lines, written language services, and utilize community volunteers.<sup>92</sup>

#### *D. The D.C. Language Access Act*

The Washington, D.C. Language Access Act of 2004 (“the Act”) became effective on June 19, 2004.<sup>93</sup> The goal of the Act is to provide greater access to District government programs and services for limited- and non-English proficient residents of the District of Columbia. Twenty-five agencies are identified by name in the Act.<sup>94</sup> By October of 2006, *all* of the designated agencies were required to have achieved the following critical tasks:<sup>95</sup>

- (1) Collect data on the languages spoken by the Limited English Proficient (LEP) and Non-English Proficient (NEP) constituent populations they serve and encounter, or are likely to serve and encounter;
- (2) Assess the need for and offer oral language services;
- (3) Provide written translation of vital documents into any non-English language spoken by a LEP/NEP population that constitutes 3 percent or 500 individuals, whichever is fewer, of the population served or encountered, or likely to be served or encountered by the covered entity; and
- (4) Establish and implement Biennial Language Access Plans (BLAP) and designate Language Access Coordinators for all entities covered under the Act.<sup>96</sup>

Six high-need languages were identified for the D.C. area.<sup>97</sup>

Entities covered by the Act must also ensure that their contractors, subcontractors, grantees and sub-grantees comply with the Act.<sup>98</sup>

The Equal Rights Center (“ERC”)<sup>99</sup> conducted a compliance study<sup>100</sup> of select District agencies targeted by the Act. ERC testers visited or telephoned thirty-eight test sites inquiring, in the Act’s officially-designated languages, about basic services (e.g., a first-time driver’s license from the Department of Motor Vehicles, a liquor license from the City, and so forth). The results were egregiously disappointing. Of the thirty-eight sites tested, D.C. government entities passed 13.1% of the time and failed 86.9% of the time. All five government departments tested were supposed to have attained full compliance with the provisions of the Act before the end of 2004, two and a half years before the ERC testing began.

The D.C. Office of Human Rights (“OHR”) found numerous agencies to be only partially compliant with their obligations under the Act. Not-fully-compliant agencies included the Department of Health, the Department of Human Services, the D.C. Public Schools, the Metropolitan Police, the Department of Motor Vehicles, Consumer and Regulatory Affairs, the Fire Department and Emergency Medical Services, the Department of Human Resources, and the Department of Employment Services. These critical agencies serve both documented and undocumented, LEP and NEP D.C.-area residents and their dependents.

The Washington, D.C. City Council holds annual public hearings to address Government compliance with the Act. The hearings afford D.C.-area community-based organizations and affected residents the opportunity to report back on the designated agencies’ performance with respect to executing their legal obligations under the Act. Testimony typically comes from agencies and citizens representing three major groups, Latinos, Africans and Asians, communities corresponding to the language groups implicated by the Act. The testimonials and reports uniformly indicate poor to dismal performance and illustrate some of the serious impacts that failure to provide language access can have on LEP and NEP District residents. For example, residents reported being unable to communicate with firefighters or ambulance EMTs—emergency medical technicians—during emergencies; parents were unable to understand notices from their children’s public schools announcing such urgent matters as Staphylococcus infections that forced some local schools to close; medical clinics were unable to timely attend to patients; residents who lost their jobs were improperly denied unemployment benefits and were unable to appeal due to language barriers; city officials sometimes supplied an interpreter in the wrong language; residents were unable to report abuse and neglect of children because social service providers could not take the complaint in another language; and one Ethiopian resident committed suicide after trying in vain to access mental health

care in his native language.<sup>101</sup>

Numerous community groups reported that undocumented immigrants in D.C. are reluctant to access the government services to which they are lawfully entitled for fear of deportation. They cite recent violent immigration raids as one reason for the heightened fear of government officials. Corrupt authorities in refugees' countries of origin were another motivation for District residents' fear and distrust. Testimony addressed the link between poverty and LEP/NEP populations, the need to fund English language classes, and the importance of effectively integrating immigrant populations into the community at large by ensuring meaningful access to critical services.

The testifying groups called for agency accountability under the Act, an oversight regime, a formal complaint mechanism, and meaningful legal redress for residents denied their rights under the Act. Language access advocates called upon the non-compliant agencies to hire more bilingual staff at all levels, to train existing staff on how to comply with the Act, and to set up outgoing recorded voice-messages in the target languages so that residents are encouraged to leave voicemail and set up appointments. They called for a language hotline that would direct residents to appropriate agencies and persons with linguistic competence in the relevant subject matter. Community groups pointed out that low literacy rates require that mass media (e.g., T.V. and radio), rather than written materials, be used to communicate with certain LEP and NEP populations. A common refrain among the various witnesses was that *several years* after the Act went into effect, LEP and NEP residents were still not aware that these rights exist. The Coalition called for a multi-media, multi-language public information campaign.

The community-based NGOs that attend the City Council language access hearings are already engaged in the communities they serve. They possess cultural and linguistic competencies and have earned the trust of local LEP and NEP populations. As members of the D.C. Language Access Coalition, many of them worked directly with City Council members to draft the Act and to advance language access in the District.

According to the D.C. Language Access Coalition, witness testimony, and the OHR annual report delivered at the September 2008 City Council meeting on language access *again* revealed grossly inadequate progress toward compliance since the 2006 deadline:

The hearing itself exemplified clearly to all present there that the city needs to make more of a concerted effort to provide language access services (i.e. interpretation and translation) to District residents who require them in order to attain essential city services ...The [OHR] report was intended to provide details and statistical data describing the state of language access compliance within the

District government...However, as testimony from OHR continued, it became evident that the report, despite being an effort to illustrate some of the progress achieved within the past year was clearly lacking, especially in data analysis, which was incomplete at best due to the fact that data was not collected from all applicable agencies specified under the Language Access Act.<sup>102</sup>

The OHR report<sup>103</sup> states that only one of the twenty-five named agencies had achieved full compliance with the Act.<sup>104</sup>

Although the D.C. courts are not expressly named under the Act, the regulations to the Act render it applicable to "any District government agency, department, or program that furnishes information or renders services, programs, or activities directly to the public or contracts with other entities, either directly or indirectly, to conduct programs, services or activities to the public."<sup>105</sup> In order to ensure equal access to justice for Language Access Act complainants and other LEP/NEP litigants, the D.C. courts should strive to meet or exceed the minimum language-access standards set forth in the Act.

According to D.C. Language Access Coalition Director, Jennifer Deng-Pickett, the D.C. Language Access Act is one of only a handful of comprehensive language access laws in the United States.<sup>106</sup> The Uniform Law Commission ("ULC") could draft a comprehensive model Language Access Act and encourage all U.S. states and territories to adopt, implement and enforce similar legislation.<sup>107</sup>

## VII. Using International Human Rights Principles and Instruments to Advance Language Access

At first blush, international law—whether established by instrument or by custom—appears to wholly bind U.S. courts and decision-makers. The U.S. Constitution's Supremacy Clause renders ratified international treaties as the "supreme law of the land."<sup>108</sup> In theory, treaty law trumps inconsistent state law, regardless of state autonomy within the United States federal system of government. However, in practice, international treaties are generally non-self-executing in the United States – they take effect only after Congress implements them. And, a later-in-time federal statute "supersedes earlier inconsistent international law."<sup>109</sup> So, in effect:

Congress is free to override...international law...[Courts] and other decision-makers within the United States would follow the Congressional directive, but the United States would be in violation of its international obligation to its other treaty partner(s) unless there is some valid reason under international treaty law to excuse U.S. performance.<sup>110</sup>

Nonetheless, the *Charming Betsy*<sup>111</sup> canon requires U.S. courts "to construe federal statutes, where reasonably possible,

so that they do not violate international law.”<sup>112</sup> The U.S. “courts uniformly have held that when there is a conflict between a federal statute and *customary international law* (CIL),<sup>113</sup> the statute prevails...without regard to timing.”<sup>114</sup> In practice, the binding authority of international law in the United States remains uncertain, but its persuasive value is increasingly, if somewhat inconsistently, evidenced in the dicta of U.S. state and federal case law.

#### *A. Positive Liberties and the Affirmative Duties of the State*<sup>115</sup>

The United States has historically viewed rights as protection from excessive government intervention into individuals’ self-determination.<sup>116</sup> The events of September 11, 2001 brought new attention to individuals’ positive liberties and states’ affirmative duties. International human rights instruments generally require states to *respect, protect* and *fulfill* treaty obligations. The Inter-American Court of Human Rights (“IACHR”) has helped to clarify the scope of positive liberties and the corresponding affirmative duties of states. In *Velasquez-Rodriguez*, the IACHR held that the state is obligated to “conduct itself so as to effectively ensure the free and full exercise of human rights.”<sup>117</sup> The state may not acquiesce and “has a legal duty to take reasonable steps to prevent human rights violations” by means “legal, political, administrative and cultural;” to investigate thoroughly; and to ensure that violators are punished and victims compensated.<sup>118</sup> The IACHR found human rights to be inherent attributes of human dignity superior to state sovereignty.<sup>119</sup> In *Maria da Penha Fernandes v. Brazil*, the Inter-American Commission on Human Rights concluded that states have an affirmative due diligence obligation to conduct a “serious, impartial and exhaustive investigation;” identify events and state action that prevented rapid and effective prosecution; adopt corrective measures; and afford the victim a fair trial, judicial protection, and just compensation.<sup>120</sup> A state’s failure to comply with the *due diligence* standard would constitute a pattern of discrimination *condoning* the rights violations.<sup>121</sup> It could be argued that, by depriving limited- and non-English proficient crime-victims of plenary language access in all venues and proceedings essential to escaping or redressing violence, the U.S. courts fail to meet the due diligence standard and, in effect, condone or perpetuate victimization.<sup>122</sup>

Increasingly, international human rights advocates and instruments emphasize the indivisibility of certain rights. For example, the Committee on Economic, Social and Cultural Rights<sup>123</sup> defined food and water as indispensable to human dignity. Water is deemed “prerequisite for the realization of other human rights” and food is “of crucial importance for the enjoyment of all rights.”<sup>124</sup> Language access is similarly indivisible from and indispensable to indigent limited- and non-English proficient persons’ bundle of inalienable civil, political, social, economic and cultural rights.

## *B. International Human Rights Principles and Instruments*

### *1. Human Dignity*

The notion of human dignity is a fundamental principle of international human rights law. The Universal Declaration of Human Rights sets forth that:

...the inherent dignity and...the equal and inalienable rights of all members of the human family [are] the foundation of freedom, justice and peace in the world...[The] peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.<sup>125</sup>

Human dignity, then, is universal and all persons are innately entitled to human dignity, without discrimination on any basis. Human dignity is an important underlying principle in the language access movement, for human dignity is quashed when an individual lacks the ability to understand or be understood in the face of rights violations.

### *2. Non-Discrimination and Equality Before the Law*

Most international human rights instruments include clauses prohibiting *discrimination* on the basis of sex or race, and guaranteeing *equality before the law*. These principles are fundamental to the international human rights regime and consistently appear in human rights instruments. Article 14.1 of the International Covenant on Civil and Political Rights (“ICCPR”) guarantees that “All persons shall be equal before the courts and tribunals,”<sup>126</sup> and Article 14.3(f) guarantees “the free assistance of an interpreter if he cannot understand or speak the language used in court.”<sup>127</sup> Precluding LEP and NEP litigants from representing their interests and their children’s before the domestic courts by depriving them of language access violates the principles of non-discrimination and equality before the law. These fundamental principles already form the foundation of domestic language access advocacy. Notably, most existing domestic language-access instruments were enacted in pursuit of racial equality, without consideration for or reference to gender equality.

### *3. Due Process and Fair Trial*

The rights to due process and a fair trial appear in numerous international instruments. However, few or no human rights instruments address the right to an interpreter outside of the context of criminal justice proceedings. The events of September 11, 2001 that led to grave civil rights violations at Guantánamo Bay have focused international

attention on the importance of due process rights in the criminal context. The United States drew intense scrutiny and criticism from the international community for failing to observe legal notification requirements at Guantánamo prior to derogating from minimum international due process and fair trial requirements. Even during times of armed conflict or war, international humanitarian law operates to ensure that minimum due process and fair trial rights and obligations are not suspended.

The U.N. Commission on Human Rights has made clear that an “illusory” fair trial is inadequate.<sup>128</sup> A trial in which a party to the action can neither understand nor be understood is illusory at best. The international community would deem it ludicrous to suggest that a linguistically diverse multi-national panel of commissioners sitting on an international tribunal be deprived of or charged a fee for interpreters. There is evidence in both domestic and international law that, for individual participants non-proficient in the language in which the court conducts proceedings, access to an interpreter is deemed essential to due process and a fair trial.

Unfortunately, references to the connection between language access and due process/fair trial are largely limited to defendants in criminal proceedings, whereas LEP and NEP litigants are routinely deprived of plenary language access in the civil courts. An underlying basis for the rights to due process and a fair trial in both the international and the municipal context is the fact that a criminal conviction may result in incarceration or even capital punishment – in other words, deprivations of life or liberty.

The same argument should apply to limited- and non-English proficient victims—and witnesses—seeking redress in the *civil* courts. If, for example, a NEP or LEP victim of domestic violence fails to secure protection orders, divorce, child custody, maintenance, public benefits, lawful immigration status, and a host of collateral rights, he or she is unlikely to break free of the cycle of violence. He or she and his or her dependents may be forced to remain with his or her abusive spouse or partner. Consequently, the victim and his or her dependents are deprived of liberty and, in severe cases, of life. Where a battered immigrant or his or her dependents face a potential deprivation of life or liberty, and a relevant legal proceeding is conducted in a language other than his or her native tongue, he or she must likewise be entitled to an interpreter.

#### 4. *Gender Equality and Protection from Gender-based Violence*

Many international instruments guarantee men and women equality and protection from gender-based violence. Although domestic violence traverses race, ethnicity, sexual orientation, socio-economic, age and gender lines, a substantial body of scholarship and advocacy focuses on gender-based violence against women and girls because of the unique

vulnerabilities occasioned by females’ marginalized status.<sup>129</sup> The international community has long acknowledged violence against women as a global epidemic and a distinctly grave human rights violation.<sup>130</sup> The United Nations General Assembly, in its preamble to the 1993 Declaration on the Elimination of Violence Against Women, affirmed that “violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms . . . .”<sup>131</sup> The United Nations General Assembly expressed concern about “the long-standing failure to protect and promote those rights and freedoms in the case of violence against women.”<sup>132</sup> And, the 1995 Beijing Declaration and Platform for Action, formulated at the Fourth World Congress on Women, noted that “violence against women is an obstacle to the achievement of the objectives of equality, development and peace.”<sup>133</sup> Women and girls are too often powerless to draw attention to their own plight or to posit, promote and implement solutions:

Nowhere are women full participants in society. Women are disadvantaged in access to education and health care. They are considerably less mobile because of their traditional role caring for others...Their work remains grossly unpaid, unrecognized and undervalued... women’s political opportunities are severely limited. They are generally denied access to power structures and participation in decision-making at all levels...<sup>134</sup>

Few populations are more vulnerable or marginalized than battered, indigent, undocumented, immigrant women who lack the ability to effectively communicate in the native language of the country where they reside.

Equal access to the justice system is pivotal to protecting and empowering battered immigrant women and their dependents. Many states’ legal systems severely marginalize women and children:

Divorce, or female-initiated divorce, is prohibited. Women’s and children’s travel and movement are restricted or linked to the permission of male guardians. Women and children are treated as chattel of male partners or other male family members. Maternal custody of children of a certain age-range is precluded. Women are denied property rights and prohibited from working, and are therefore unable to independently support themselves and their dependents. In many states, a female victim of domestic violence is thrice-marginalized. First, because she lacks status in her home state (having little or no access to property, education, the legal system, etc.); second, because her culture relegates matters of domestic violence to the private sphere, offering her no protection or redress; and third, because even sympathetic system actors may perceive and treat her as simple, uneducated, defenseless, or incapable of identifying

and pursuing her own best interests or her child's.<sup>135</sup>

In the United States, in spite of the women's rights movement, non-English proficient women still lack *voice*. Absent an interpreter, they can neither hear nor be heard.

Language access barriers present a disparately daunting obstacle for non-English proficient battered immigrant women, who are uniquely vulnerable to an array of grave rights violations. Despite *de jure* equality and a host of domestic and international instruments that entitle women and girls to a multitude of civil, political, social, economic and cultural rights, *de facto* language access barriers precipitate or perpetuate pervasive rights violations against limited- and non-English proficient women and their dependent children. For example, in cases involving domestic violence, language access barriers tend to have a *de facto* disparate discriminatory impact on women because substantially more women than men seek protection from domestic violence.<sup>136</sup> Whereas LEP and NEP batterers—criminal defendants—are routinely afforded court interpreters in domestic violence proceedings, many of their LEP and NEP victims are deprived of plenary language access to the justice system. The same argument bears on child custody proceedings, because the majority of custodial parents are mothers.<sup>137</sup> According to Cecilia Medina:

[T]he general principle of non-discrimination and the specific provisions concerning sexual discrimination are enough to challenge any domestic legal provision that discriminates against [parents], such as legal incapacity ... [or] exclusion from representing their children.<sup>138</sup>

LEP and NEP victims of gender-based violence (e.g., battered immigrant women and girls) are likely to fall within multiple protected categories under international law.

Plenary language access is essential to empower battered women and girls to break free of the cycle of domestic violence. Insofar as a battered immigrant woman is unable to exercise her right to a fair trial or administrative proceeding, she is unable to exercise her rights to secure protective orders for herself and her dependants, divorce her abuser, obtain child custody and maintenance orders,<sup>139</sup> pursue victim-based immigration remedies, contest removal/deportation, or obtain vital public benefits for herself and her children. If she fails to secure child-custody, maintenance and protective orders, it is likely that she and her dependents will either be re-victimized or forced to remain in the abusive relationship. Without a meaningful restraining order proceeding, there may be no formal finding of domestic violence. A formal finding of domestic violence is powerful evidence of one of the key eligibility requirements of domestic violence-based immigration remedies.<sup>140</sup> If she cannot pursue a victim-based immigration remedy (e.g., for lack of evidence), she will be unable to qualify for public benefits or secure employment

authorization.<sup>141</sup> If she is unable to lawfully work, collect public benefits, or contest an improper denial of public benefits (for lack of an interpreter), she may be unable to support herself and her children independent of the abuser. If she is denied meaningful participation in divorce or child custody proceedings, she will be unable to secure maintenance—child support and spousal support or palimony—and may forfeit her right to an equitable distribution of marital assets or continued exclusive use of the family residence. If she cannot understand or participate in her own immigration proceeding, she may be effectively prevented from adjusting to lawful immigrant status or pursuing cancellation of removal or deportation. If she is ordered removed or deported from the United States, she may be separated indefinitely from her minor children, who will likely remain in the custody of the batterer.

### 5. Equity in Family Life

“Without equity in the family there will not be equity in society.”<sup>142</sup> The international community has long embraced gender-equality in the family context:

States...should ensure that by their laws *both* parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities for their children.<sup>143</sup>

Numerous human rights instruments guarantee all persons the right to enter into marriage with full and free consent—which implies the right not to marry and, arguably, the right to divorce—the right to own and transfer marital property on an equal basis regardless of gender, and the right to raise and protect their children. Yet, language access barriers prevent LEP and NEP parents and their children from accessing justice through the family courts. Even courts that routinely ensure a qualified, free interpreter in criminal court and domestic violence restraining order proceedings generally do not provide similar language access in custody or divorce proceedings.

Denying parents plenary language access to the family courts contributes to LEP/NEP women's marginalization as primary caregivers, excludes LEP/NEP fathers from actively parenting and supporting their children, and perpetuates gendered constructions about parenting. The United Nations' Committee on the Elimination of Discrimination Against Women observed that:

The responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women...[These factors] impact on women's lives and also affect their physical and mental health, as well as that of their children.<sup>144</sup>

According to the most recent U.S. national census, of an estimated 5.8 million “stay-at-home” parents, 5.6 million were mothers and only 143,000 were fathers.<sup>145</sup> Depriving LEP and NEP mothers of access to family court interpreters prevents them from seeking child support and maintenance to subsidize child-care so that they can engage in public-sphere (productive) work. Depriving LEP and NEP fathers of plenary language access to the family courts excludes them from traditionally private-sphere activities, such as parenting—reproductive work. This, in turn, perpetuates the exclusion of women from the public sphere. The public and private spheres are inextricably linked—“conquering one empowers you to conquer the other.”<sup>146</sup> Proponents of women’s rights are increasingly incorporating language access into their advocacy strategies to promote gender equity in family life.

### *6. The Rights of the Child*

Domestic laws are not always child-focused. When parents wage war over their rights to the child, the child’s rights may go unrequited.<sup>147</sup> The international Convention on the Rights of the Child<sup>148</sup> (“CRC”) sets forth a children’s bill of rights:

States...shall respect and ensure the rights... [of] each child...without discrimination of any kind, irrespective of the child’s or his or her parent’s...sex.<sup>149</sup> ...The child... shall have the right to know and be cared for by his or her parents.<sup>150</sup> States [shall] undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations...without unlawful interference. Where a child is illegally deprived of some or all elements of his or her identity, States...shall provide appropriate assistance and protection...<sup>151</sup> States...shall ensure that a child shall not be separated from his or her parents against their will...except when competent authorities subject to judicial review determine, in accordance with applicable laws and procedures, that such separation is necessary for the best interests of the child.<sup>152</sup>

An effective child-custody and child-protection regime should emphasize the child’s right to safety, stability and well-being. None of these are possible unless both parents—or legal guardians—and children enjoy unfettered language access to all aspects of the juvenile, dependency and family court systems.<sup>153</sup>

Denying LEP and NEP parents and guardians of minor children the legal protections that we afford to English-proficient parents prevents them from effectively advocating on behalf of their children and dependants. It discourages them from actively engaging in parenting, and from protecting their families. If the child and/or the more fit parent cannot understand or meaningfully participate in the proceedings, the child’s best interests cannot be determined or adequately

represented. By denying language access to the family courts, we are saying to LEP and NEP parents, society does not value your contributions to childrearing. To children of LEP and NEP parents we are saying, your safety and well being and your relationship with your non-English speaking parent are not important.

Language access advocates share many common goals with children’s rights advocates, particularly with respect to the rights and well being of LEP and NEP parents’ minor children. Child advocacy presents a relatively uncontroversial vehicle (free of charged issues of race, nationality, immigration status, sovereignty and gender) through which to advance language access.

### *7. Health and Reproductive Freedom*

Numerous international instruments guarantee individuals the right to a high standard of health and to reproductive freedom.<sup>154</sup> Many U.S. hospitals, urgent care facilities, family planning facilities, pharmacies and other medical services providers do not currently ensure adequate language access, even in emergency facilities and under exigent circumstances. Health and reproductive freedom are inaccessible to LEP and NEP patients absent plenary language access to critical venues, services and informational materials.

### *8. Education, Work and an Adequate Standard of Living*

All persons are equally entitled to free education at the primary and secondary levels, with minimum quality standards. Undocumented immigrant children residing in the United States are entitled to attend the free public schools without risking deportation. However, LEP and NEP parents of school-aged children are often deprived of language access to their children’s schools. Important parental notifications and meaningful participation in furtherance of children’s rights to education cannot be realized without language access for LEP and NEP *parents*.

Numerous human rights instruments address the rights to work and to enjoy an adequate standard of living. Without lawful employment authorization neither of these rights can be realized. Obtaining employment authorization requires language access to legal services providers and the full range of immigration courts and administrative offices.

### *9. Cultural Rights*

In international human rights vernacular, “linguistic rights” customarily refer to the cultural rights of minority populations lawfully resident in a given territory to use and preserve their native language. For example, Article 27 of the International Covenant on Civil and Political Rights (“ICCPR”) provides, “In those states in which ethnic...or linguistic minorities exist,

persons belonging to such minorities shall not be denied the right, in community with the other members of their group... to use their own language.”<sup>155</sup> International instruments that protect minority language groups do not necessarily extend language rights to non-nationals, nor do they address the need for language access to critical resources.<sup>156</sup> The scope and formal definition of linguistic rights needs to be expanded within the international human rights framework to include language access rights.

### *C. Rights Without Reservations*

The United States, like many other states party to international instruments, has a history of taking reservations to important treaty obligations. For example, the foreign parent of an internationally abducted child may be denied his or her rights under the 1980 Hague Convention on the Civil Aspects of International Child Abduction<sup>157</sup> (“Hague Abduction Convention”) on account of the U.S. Reservations to Articles 24 and 26. By taking exception to Article 24, the U.S. requires all foreign applicants to translate incoming Hague petitions and evidence into English.<sup>158</sup> By taking exception to Article 26, the U.S. is declining to pay foreign applicants’ Hague legal costs—including interpretation and translations of pleadings and documentary evidence.<sup>159</sup> The U.S. reservations to the Hague Abduction Convention discriminately impact LEP and NEP litigants engaged in Hague proceedings in our domestic courts. Indigent limited- and non-English proficient left-behind parents (petitioners) typically cannot afford to hire an attorney, a court interpreter or a translator, and may therefore be unable to prosecute, understand or meaningfully participate in legal proceedings that will determine the future of their children. In the case of an abducting parent who is responding to a Hague petition in the United States, the inability to be understood by his or her attorney or the court impedes him or her from asserting available affirmative defenses, such as the grave risk defense which could prevent an abused child’s return to a country that lacks effective child-protective mechanisms.<sup>160</sup> Both the parent and the child are effectively denied their rights to meaningful access to the courts, a fair trial, a parent-child relationship and protection from abuse or neglect. The United States, one of the wealthiest states party to the Hague Conference on Private International Law, generally cites cost as the motivation for taking the treaty reservations.

Indigent LEP and NEP litigants could assert that U.S. reservations that deprive foreign nationals of language access to our domestic courts and legal services providers effectively render it virtually impossible for many foreign parents to achieve a fair trial, on account of the prohibitively high cost of court interpretation and translation in the United States.<sup>161</sup> Such reservations arguably defeat the very object and purpose of a treaty by preventing indigent LEP/NEP litigants from

bringing or defending an action, and by precluding a fair trial or meaningful participation in our justice system. The reservations would, consequently, be severable and U.S. treaty obligations would be enforceable without the benefit of the reservations.<sup>162</sup> Treaty reservations that inhibit limited- and non-English proficient persons’ access to the domestic institutions responsible for executing U.S. treaty obligations are also inconsistent with the spirit and the letter of U.S. domestic law and policy on point. The United States should withdraw such reservations and refrain from taking similar reservations with respect to future international treaties.

### *D. The Treaty on Treaties*

Although the United States is not a state party to the Vienna Convention on the Law of Treaties<sup>163</sup> (known as the “Treaty on Treaties”), it has acknowledged that many of the treaty’s provisions have achieved the status of customary international law (“CIL”), and are therefore binding on all states, *pacta sunt servanda*. A persuasive argument could be made challenging the United States’ failure to facilitate plenary language access as defeating the object and purpose of the various instruments that it has ratified which create a private cause of action.

## **VIII. Language Access Advocacy Strategies and Solutions**

President Barack Obama has articulated a commitment to advancing civil rights and substantially increased the U.S. Justice Department’s Civil Rights Division 2010 budget to \$143 million.<sup>164</sup> A Federal Interagency Working Group on Limited English Proficiency, comprised of representatives of more than thirty-five federal agencies, has formed at the request of the Assistant Attorney General for Civil Rights in order to:

build awareness of the need and methods to ensure that limited English proficient persons have meaningful access to important federal and federally assisted programs, and to ensure implementation of language access requirements under Title VI, the Title VI regulations, and Executive Order 13166 in a consistent and effective manner across agencies.<sup>165</sup>

The Working Group addresses the impact of language access on issues ranging from national disaster preparedness<sup>166</sup> to public health. The Working Group convenes an annual national Federal Agency Conference on Limited English Proficiency,<sup>167</sup> and has established a website in order to:

[promote] a positive and cooperative understanding of the importance of language access to federally conducted and federally assisted programs... [support] fair, reasoned and consistent implementation of Executive Order 13166,

Title VI of the Civil Rights Act of 1964, and the Title VI regulations regarding language access...[and act] as a clearinghouse, providing and linking to information, tools, and technical assistance regarding limited English proficiency and language services for federal agencies, recipients of federal funds, users of federal programs and federally assisted programs, and other stakeholders.<sup>168</sup>

D.C. Language Access Coalition Director, Jennifer Deng-Pickett, predicts that the U.S. language access movement will enjoy substantial positive changes and increased compliance under the new Administration.<sup>169</sup>

Proponents of plenary language access are engaged in a variety of innovative advocacy at the national, state and local levels.<sup>170</sup> On June 23, 2009, Senator Herb Kohl, Democrat from Wisconsin, introduced a bill, the State Court Interpreter Grant Act, which would designate fifteen million dollars to fund interpreter services for state court litigants.<sup>171</sup> The National Language Access Advocates Network's ("N-LAAN") Committee on Language Access in the Courts promoted passage of an earlier iteration of Senator Kohl's bill, S. 702, to improve language access to state court litigants.<sup>172</sup> Most U.S. states have joined the Consortium for State Court Interpreter Certification.<sup>173</sup> A National Center for State Courts language access report focuses on interpretation in domestic violence proceedings. A California coalition published a comprehensive guide on language access legal advocacy.<sup>174</sup>

The D.C. Office of Human Rights website urges readers, in seven different languages, to take a know-your-rights survey and pledge,<sup>175</sup> and D.C. Mayor Adrian Fenty recently launched a language access campaign to notify and educate LEP and NEP District residents about their rights to access government services, including their language access rights under the D.C. Language Access Act. On August 12, 2008, the Hawaii Department of Human Services entered into a statewide Resolution Agreement to ensure that LEP and NEP persons have equal access to its programs and services.<sup>176</sup> In 2006, the New York State Office of Court Administration issued a comprehensive action plan to improve language access in the New York courts.<sup>177</sup> The New York plan included mandatory interpreter testing, training, and pay raises for per diem court interpreters. The New York-based coalition, Justice Speaks, conducted a national survey of 157 court interpreters and formulated recommendations for language access reform.<sup>178</sup> Pennsylvania advocates testified before the State Supreme Court's Committee on Racial and Gender Bias in the Justice System and helped draft the language access provisions of the Committee's annual report.

Nationwide, recipients of federal Legal Services Corporation ("LSC") funding are hiring bilingual staff, subscribing to language lines for interpreter services,<sup>179</sup> translating written materials and posting signs or color-coded cards that enable clients to indicate their native languages.<sup>180</sup>

Government and non-profit agencies across the country are beginning to initiate internal language-access audits to assess whether they are effectively serving LEP and NEP populations and complying with state and federal language-access laws and regulations. Myriad system actors are actively engaged in the burgeoning movement to promote plenary language access.

## IX. Conclusions

Language access is indivisible from and indispensable to achieving equal enjoyment of limited- and non-English speakers' bundle of inalienable civil, political, social, economic and cultural rights. Access to qualified interpreters and translators in critical venues and circumstances is essential to protect, empower and enfranchise LEP and NEP persons and their dependents. Deprivation of language access undermines human dignity, exacerbates immigrants' innate vulnerabilities, and harms society at large by impeding the efficacy of the healthcare and justice systems. Simultaneously advancing plenary language access and linguistic integration promotes tolerance for diversity, reduces crime and victimization, protects and empowers society's most vulnerable, marginalized populations and mitigates an array of grave rights violations.

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## Appendix A – International Sources of Human Rights

<b>Rights</b>	<b>Source(s) of Right*</b>
Access to Justice	Access to Justice Report
Children's Rights	CRC; Hague Child-Protection Convention; Hague Abduction Convention
Cultural Rights	CESCR
Dignity	UDHR; UN Charter; This right appears early (Preamble, Art.1 or Art. 2) in most contemporary IHR treaties
Due Process & Fair Trial	Article 14 of the International Covenant on Civil and Political Rights (ICCPR), as well as articles 105 and 106 of the Third Geneva Convention and article 75 of the Additional Protocol I (considered declaratory of international customary law) all recognize the <i>right to a fair trial</i> . The principles of Due Process and Fair Trial have achieved Customary International Law (CIL) status by their inclusion in most humanitarian and human rights instruments, by extensive <i>opinio juris</i> on point, and by extensive evidence of state practice.
Education	Conv. Against Discrimination in Education (1962)
Employment & Adequate Standard of Living	CEDAW Gen. Recc. 13; CESCR Art. 1.2 Subsistence; Art. 11.1 Adequate standard of living
Equality Before the Law	This right appears early (in the Preamble, or Art.1 or 2) in most contemporary IHR treaties
Indivisibility of Rights (Empowerment Rights)	CESCR Comment 13
Gender Violence (and Violence, generally)	CEDAW Gen. Recc. 21; Declaration on the Elimination of Violence Against Women; Violence & Women Conference
Freedom of Movement	CEDAW
Gender Violence (and Violence, generally)	CEDAW Gen. Recc. 21; Declaration on the Elimination of Violence Against Women; Violence & Women Conference
Health, Reproductive Freedom & Sexuality	CESCR
Linguistic Minorities' Rights	ICCPR Art. 27
Marriage (Consent & Dissolution of Marriage)	CEDAW Gen. Recc. 21; HRC Gen. Comment 19; Equality in Marriage & Family Relations Act; Population & Development
Non-Discrimination	This right appears early (Art.1 or Art. 2) in most contemporary IHR treaties
Property (Ownership & Transfer)	CESCR; CEDAW

\*See Appendix B for complete formal titles of instruments. This is not intended to be an exhaustive list of sources.

Appendix B – Select International Instruments and Institutions

<b>Acronym for Instrument or Institution</b>	<b>Formal Title of International Instrument or Institution</b>	<b>Status of Instrument or Institution with Respect to the United States</b>
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Ratified 20 November 1994
CEDAW	International Convention on the Elimination of All Forms of Discrimination Against Women	Not Ratified (Signed 17 July 1980)
CEDAW Gen. Recc. 12	Committee on the Elimination of Discrimination Against Women, General Recommendation 12 (1989)	Persuasive Authority
CEDAW Gen. Recc. 13	Committee on the Elimination of Discrimination Against Women, General Recommendation 13	Persuasive Authority
Access to Justice Report	Special Commission Report on Access to Justice	
CEDAW Gen. Recc. 19	Committee on the Elimination of Discrimination Against Women, General Recommendation 19	Persuasive Authority
CEDAW Gen. Recc. 21	Committee on the Elimination of Discrimination Against Women, General Recommendation 21 (1994)	Persuasive Authority
CEDAW-OP	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	Not Ratified
CERD	International Convention on the Elimination of All Forms of Racial Discrimination (1969)	Ratified
CESCR	International Covenant on Economic, Social and Cultural Rights (1976)	Not Ratified (Signed 8 September 1992)
CESCR Comment 13	Committee on Social, Economic and Cultural Rights, Comment 13	Persuasive Authority
CPRW	Convention on the Political Rights of Women (1954)	
CRC	Convention on the Rights of the Child (1989)	Not Ratified (Signed) [To date, only the U.S. and Somalia have declined to ratify the CRC]
CRC-OP-AC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	Ratified 23 January 2003
CRC-OP-SC	Optional Protocol on the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	Ratified 23 January 2003
DEVAW	Declaration on the Elimination of Violence Against Women (1993)	Persuasive Authority
Equality in Marriage & Family Relations	Equality in Marriage and Family Relations (1994)	Persuasive Authority
UNCHR Guantánamo Report	U.N. Commission on Human Rights, joint report on the situation of detainees at Guantánamo Bay (2006)	Persuasive Authority

Hague Abduction Convention	Hague Convention on the Civil Aspects of International Child Abduction (1980)	Ratified
Hague Child-Protection Convention	Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996)	Pending Ratification (Deputy Secretary Maura Harty announced on 12/7/07 the U.S.' intent to ratify – this could take several years)
HRC Gen. Comment 19	Human Rights Committee: General Comment 19 (1990)	Persuasive Authority
ICC Treaty	International Criminal Court (ICC)	Not a Party
ICCPR	International Covenant on Civil and Political Rights	Ratified 8 June 1992
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights	Not Ratified
ICCPR-OP2-DP	Second Optional Protocol to the International Covenant on Civil and Political Rights	Not Ratified
MWC	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Not Ratified
Population & Development	Population & Development: The Family, Its Roles, Rights, Composition and Structure (1994)	Persuasive Authority
Conv. Against Discrimination in Education	Convention Against Discrimination in Education (1962)	
The Charter	The United Nations Charter	Persuasive Authority
UDHR	The Universal Declaration of Human Rights (1948)	Persuasive Authority
Third Geneva Convention	Third Geneva Convention and Additional Protocol I	Ratified
Vienna Convention	Vienna Convention on the Law of Treaties (known as the <i>Treaty on Treaties</i> )	Not Ratified
Violence & Women Conference	Fourth World Conference on Women: Violence and Women (1995)	Persuasive Authority

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expert before courts, and U.S. and foreign legislative committees. She holds a Master degree in international affairs from American University's School of International Service; a Juris Doctor degree from the University of San Diego School of Law, and a Master of Laws from American University Washington College of Law, with a dual specialization in *International Human Rights* and *Gender and the Law*. In this article, Alanen draws in part upon her own experience directly serving limited- and non-English proficient populations. Ms. Alanen can be reached via e-mail at [jalanen@yahoo.com](mailto:jalanen@yahoo.com).

1 D.C. Office of Human Rights, *Know Your Rights: Implementation of the D.C. Language Access Act of 2004, A Compliance Review for Fiscal Year 2008, Executive Summary* (explaining that the term *language access*, as used here,

refers to ensuring that persons who have limited or no English language proficiency are able to access information, programs and services at a level equal to English proficient individuals). Available at [http://ohr.dc.gov/ohr/lib/ohr/pdf/dcohr\\_compliance\\_1107fn.pdf](http://ohr.dc.gov/ohr/lib/ohr/pdf/dcohr_compliance_1107fn.pdf) (last visited Nov. 13, 2009).

2 U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm. on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education, delivered to the Committee on Economic, Social and Cultural Rights* U.N. General Comment No. 13, E/C.12/1999/10 (Dec. 8, 1999) (characterizing the term “empowerment right” as “both a human right in itself and an indispensable means of realizing other human rights”).

3 Jorge Ramos, *The Latino Wave: How Hispanics Will Elect the Next American President*, ix (Rayo) (2004) (quoting poet Walt Whitman, *Song of Myself*, available at [http://www.princeton.edu/~batke/logr/log\\_026.html](http://www.princeton.edu/~batke/logr/log_026.html) (last visited Nov. 14, 2009)

4 U.S. Census Bureau, *Census 2000 Brief*, available at [http://usgovinfo.about.com/gi/o.htm?zi=1/XJ&zTi=1&sdn=usgovinfo&cdn=newsissues&tm=6&gps=301\\_99\\_1455\\_880&f=00&tt=2&bt=0&bts=0&zu=http%3A/www.census.gov/prod/2003pubs/c2kbr-29.pdf](http://usgovinfo.about.com/gi/o.htm?zi=1/XJ&zTi=1&sdn=usgovinfo&cdn=newsissues&tm=6&gps=301_99_1455_880&f=00&tt=2&bt=0&bts=0&zu=http%3A/www.census.gov/prod/2003pubs/c2kbr-29.pdf) (last visited Nov. 13, 2009). One in five U.S. residents (over age five) amounts to approximately 47 million individuals or 18% of the population polled.

5 The D.C. Office of Human Rights (OHR) defines *LEPs* as “persons who do not speak English as their primary language and who speak, read, write and understand English less than very well,” and uses the term *NEP* to describe “an individual who cannot speak, read, write and/or understand the English language.” See, Language Access Program FAQs, available at <http://ohr.dc.gov/ohr/cwp/view,a,3,q,636177.asp> (last visited Nov. 13, 2009). Some prefer to use the terms English Language Learners (ELL) or Culturally and Linguistically Diverse (CLD) to describe these populations.

6 U.S. Census Bureau, *US Census Press Release*, available at [http://www.census.gov/Press-Release/www/releases/archives/facts\\_for\\_features\\_special\\_editions/010327.html](http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/010327.html) (last visited Oct. 28, 2009) (defining LEP persons as anyone over the age of five who speaks a language other than English at home and describes him- or herself as speaking English less than very well. According to the U.S. Census Bureau, in 2002 the total U.S. population age five and older was 262.4 million. According to the 2000 U.S. Census, 47 million people or 18% of the U.S. population age five and older spoke languages other than English at home, and more than 21 million of them either spoke no English at all or did not speak English proficiently).

7 National Foreign Language Center, *Language Access - NFLC*, available at [http://www.nflc.org/policy\\_and\\_strategy/language\\_access](http://www.nflc.org/policy_and_strategy/language_access) (last visited Oct. 28, 2009) (explaining the Language Access Initiative).

8 *Id.* (citing Ann Morse, Immigrant Policy Project, National Conference of State Legislatures, “Demographics and the 2000 Census: A Quick Look at U.S. Immigrants” (January 30, 2002) that “forty percent of foreign born children also have difficulty with English”).

9 Audrey Singer, Susan W. Hardwick and Caroline B. Brettell, eds., *Twenty-First-Century Gateways: Immigrant Incorporation in Suburban America*, Brookings Institution Press (2008). Available at <http://www.brookings.edu/press/Books/2008/twentyfirstcenturygateways.aspx> (last visited Nov. 10, 2009)

10 National Foreign Language Center, *supra* note 7 (citing Audrey Singer, “The Rise of New Immigrant Gateways,” *Living Cities Census Series*, The Brookings Institution (February, 2004), at 2).

11 *Id.* (citing Ann Morse, Immigrant Policy Project, National Conference of State Legislatures, “Demographics and the 2000 Census: A Quick Look at U.S. Immigrants” (January 30, 2002)).

12 Ramos, *supra* note 3, at ix.

13 National Foreign Language Center, *supra* note 7.

14 *Official English Legislation: Bad for Civil Rights, Bad for America's Interests, and Even Bad for English, Before H. Subcomm. on Educ. Reform*, 109th Cong. (2006) (statement of James Crawford, Director of the Institute for Language and Education Policy).

15 According to the D.C. Office of Bilingual Education, many English Language Learners (LEP and NEP students) are U.S.-born Citizens. D.C. Public Schools, teaching and learning, Office of Bilingual Education, “Linguistically and Culturally Diverse Student Fact Sheet” (SY 2007-2008).

16 Last year alone, more than 108,000 immigrants, some of them battered immigrant women and breastfeeding mothers, were removed or deported from the United States resulting in prolonged or permanent separation from their U.S. Citizen children. Urban Institute forum and web cast “In Whose Best Interests? U.S. Immigration Enforcement and Citizen Children,” March 23, 2009.

17 The recently established non-profit organization, Certification Commission for Healthcare Interpreters, is undertaking efforts to improve medical interpretation. See, [www.healthcareinterpretercertification.org](http://www.healthcareinterpretercertification.org) (last visited Nov. 13, 2009)

18 See Nina Bernstein, *Language Access Barrier Called Health Hazard in E.R.*, *The New York Times* (Apr. 21, 2005), available at <http://query.nytimes.com/gst/fullpage.html?res=9A0DEEDD1731F932A15757C0A9639C8B63> (last visited Nov. 10, 2009).

19 New York Immigration Coalition, *LEP Comments Submitted to the Department of Health and Human Services*, available at <http://www.thenyic.org/templates/documentFinder.asp?did=198> (last visited Nov. 10, 2009).

20 *ABC 7 News* (ABC television broadcast Dec. 18, 2008) available at <http://www.youtube.com/watch?v=EtcEAlP-sBc> (last visited Oct. 28, 2009).

21 See D.C. Office of Human Rights, *supra* note 1

22 National Foreign Language Center, *supra* note 7.

23 *Id.*

24 *Official English Legislation: Bad for Civil Rights, Bad for America's Interests, and Even Bad for English, Before H. Subcomm. on Educ. Reform*, 109th Cong. (2006) (statement of James Crawford, Director of the Institute for Language and Education Policy).

25 According to the U.S. Census Bureau, in 2008 the total U.S. population was just over 304 million. <http://quickfacts.census.gov/qfd/states/00000.html> (last visited Nov. 10, 2009).

26 Shirin Hakimzadeh and D'Vera Cohn, Pew Hispanic Forum, *English Usage Among Hispanics in the United States*, available at <http://pewhispanic.org/reports/report.php?ReportID=82> (last visited Oct. 28, 2009); See also Janet Murguia and Cecilia Muñoz, *The American Prospect, From Immigrant to Citizen*, available at [http://www.prospect.org/cs/articles?article=from\\_immigrant\\_to\\_citizen](http://www.prospect.org/cs/articles?article=from_immigrant_to_citizen) (last visited Oct. 28, 2009).

27 Some other terms commonly used to describe this category of English instruction include English for Speakers of Other Languages (ESOL), English as a Foreign Language (EFL), and English as an Additional Language (EAL).

28 See James T. Tucker, U.S. Department of Education, Office of Vocational and Adult Education, *The ESL Logjam: Waiting Times for Adult ESL Classes and the Impact on English Learners* 6 (Los Angeles, CA: The National Association of Latino Elected and Appointed Officials) (2006).

29 *Id.* at 3.

30 Interview with Leya Speasmaker, English Language Teacher, Washington, D.C. (Sept. 25, 2009).

31 See generally, Dr. Janet Bauer, *Speaking of Culture: Immigrants in the American Legal System*, in *Immigrants in Courts* 8-28 (Joanne Moore, ed, 1999).

32 Interview with Leya Speasmaker, English Language Teacher, Washington, D.C. (Sept. 25, 2009).

33 U.S. Dept of Educ., Office of Vocational and Adult Education, available at <http://www.ed.gov/offices/OVAE/9499hinvest.html> (last visited Oct. 28, 2009).

34 Asian American Justice Center, *Adult Literacy Education in Immigrant Communities*, ix (2007).

35 Margie McHugh, Julia Gelatt, and Michael Fix, *Adult English Language Instruction in the United States; Determining Need and Investing Wisely*, National Center on Immigrant Integration Policy (July 2007), available at [http://www.migrationpolicy.org/pubs/NCIIP\\_English\\_Instruction073107.pdf](http://www.migrationpolicy.org/pubs/NCIIP_English_Instruction073107.pdf) (last visited Nov. 13, 2009).

36 National Foreign Language Center, *supra* note 7.

37 *Official English Legislation: Bad for Civil Rights, Bad for America's Interests, and Even Bad for English, Before H. Subcomm. on Educ. Reform*, 109th Cong. (2006) (statement of James Crawford, Director of the Institute for Language and Education Policy).

38 Youssou N'Dour. <http://www.baylor.edu/gcllc/>.

39 A thorough exploration of solutions to the global language access crisis cannot exclude the possibility of a universal second language or a constructed auxiliary language. French and English have each been formally designated as the official languages of various international instruments and organs, but the recent trend is to include other major language groups. Esperanto is perhaps the most widely-known constructed international auxiliary language in the world. The objective behind Esperanto was to create an easy and flexible universal second language in order to foster global peace and cooperation. Esperanto has not been adopted by any sovereign state, to date, but has achieved considerable usage in international travel, correspondence, cultural exchange, conventions, literature, and broadcasting.

40 See INA §§101(a)(15)(U), 214(0), 245(1); Victims of Trafficking and Violence Protection Act, Pub. L. 106-386, 114 Stat.1464 (Oct. 28, 2000) (the U visa is available to eligible victims of certain violent crimes); see also, Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 119 Stat. 2960 (Jan. 5, 2006); Trafficking Victims Protection Reauthorization Act of 2008, S. 3061, 110th Cong. (2008).

41 See INA §§101(a)(15)(T), 214(n), 245(1); Victims of Trafficking and Violence Protection Act, Pub. L. 106-386 (Oct. 28, 2000) as amended by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193 Dec. 19, 2003 (the T visa is available to eligible victims of labor- and sex-trafficking); See also, Violence Against Women and Department of Justice Reauthorization Act of 2005; and Trafficking Victims Protection Reauthorization Act of 2008.

42 See Julia Preston, *New Policy Permits Asylum for Battered Women*,

The New York Times (July 15, 2009), available at [http://www.nytimes.com/2009/07/16/us/16asylum.html?\\_r=1&th&emc=th](http://www.nytimes.com/2009/07/16/us/16asylum.html?_r=1&th&emc=th) (last visited Oct. 28, 2009); see also, *Matter of R-A* (Rodi Alvarado).

43 See INA §§101(a)(15)(U), 214(0), 245(1) and INA §§101(a)(15)(T), 214(n), 245(1). Visa eligibility requirements include that the victim must have suffered substantial physical or mental abuse as the result of the criminal activity and must comply with reasonable law enforcement requests for cooperation in the investigation or prosecution. Without a written declaration from a law enforcement agency attesting to the cooperation, victims may be unable to obtain a U visa (there is a limited exception from this requirement for victims who are under age eighteen at the time of victimization).

44 Susana SaCouto, Esq., professor of law at Washington College of Law, reports that at least one NEP undocumented immigrant woman client seeking asylum was denied permission to use a qualified interpreter before the immigration judge. Even where litigants or their legal services providers can afford to hire a qualified interpreter, there is no guarantee that the interpreter will be permitted to participate in legal proceedings.

45 American Bar Association Commission on Domestic Violence, *State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Proceedings* (2007), available at <http://www.abanet.org/domviol/home.html> (last visited Oct. 28, 2009) (compiling state court-interpreter laws).

46 See, e.g., John Schwartz, *Study Finds Gap In Aid for Non-English Speakers in Civil Court*, The New York Times (July 3, 2009), available at [http://www.nytimes.com/2009/07/04/us/04interpret.html?\\_r=2&ref=us](http://www.nytimes.com/2009/07/04/us/04interpret.html?_r=2&ref=us) (last visited Oct. 28, 2009) (highlighting the case of Maythe Ramirez, who was unable, for lack of an interpreter, to explain to the family court judge deciding her child's custody case that her child's father beat her).

47 Laura, Abel, *Language Access in the State Courts*, Brennan Center for Justice (July 4, 2009), Executive Summary at 1. available at [http://www.brennancenter.org/content/resource/language\\_access\\_in\\_state\\_courts](http://www.brennancenter.org/content/resource/language_access_in_state_courts) (last visited on Oct. 28, 2009).

48 *Id.*

49 The National Center for State Courts, White Paper, *Improving the Courts' Capacity To Serve Limited English Proficient Persons Seeking Protection Orders*, available at [http://www.ncsconline.org/D\\_RESEARCH/Documents/LEP\\_AttachQ\\_WhitePaper.pdf](http://www.ncsconline.org/D_RESEARCH/Documents/LEP_AttachQ_WhitePaper.pdf) (last visited Oct. 28, 2009).

50 Federal statute mandates that the federal courts use certified interpreters whenever reasonably available; see, Court Interpreter Act, 28 U.S.C. 1827 (d)(1) and (j). See also, Constance Emerson Crooker, *An Interpreter Checklist*, available at <http://www.nacdl.org/CHAMPION/ARTICLES/98jun03.htm> (last visited Nov. 13, 2009).

51 Maité Jullian, *Shortage of court interpreters worsening in U.S.*, USA Today (Nov. 18, 2008) available at [http://www.usatoday.com/news/nation/2008-11-18-court-interpreters\\_N.htm?csp=34](http://www.usatoday.com/news/nation/2008-11-18-court-interpreters_N.htm?csp=34) (last visited Oct. 28, 2009). (reporting that Framer told USA Today "I don't know of many jurisdictions that would say they have enough qualified court interpreters").

52 Some languages or dialects are so obscure as to preclude verification of proficiency. In some cases, the individual seeking registration as an interpreter in a language for which no interpreter examination exists need only represent him- or herself to be proficient in the foreign language (in addition to meeting other requirements such as proving English language

proficiency) in order to qualify. *See, for example*, <http://www.courtinfo.ca.gov/programs/courtinterpreters/becoming-faq.htm#regreq>, at para. 9 (last visited Nov. 13, 2009).

53 For example, the English word “embarrassed” has sometimes been mistranslated as “embarazada,” which means *pregnant* in Spanish.

54 Kathryn Alfisi, *Language Barriers to Justice*, Washington Lawyer 18, 21 (April 2009); *See generally*, Margo Gottlieb & Else Hamayan, *Assessing Oral and Written Language Proficiency in English Language Learners*, (Crown Press 2006); Frank Johnson, *Being Bilingual is Not Enough*, *American Translators Association Chronicle* (July 2008) available at [http://www.atanet.org/chronicle/feature\\_article\\_july2008.php](http://www.atanet.org/chronicle/feature_article_july2008.php) (last visited Oct. 28, 2009).

55 7<sup>th</sup> Annual Freedom Network Conference “Increasing Awareness, Assisting Survivors and Prosecuting Traffickers” convened in Dallas, Texas on March 18-19, 2009 (author was in attendance).

56 New York Immigration Coalition, *LEP Comments Submitted to the Department of Health and Human Services*, available at <http://www.thenyic.org/templates/documentFinder.asp?did=198> (last visited Oct. 28, 2009).

57 *See* Nina Bernstein, *Language Access Barrier Called Health Hazard in E.R.*, *The New York Times* (Apr. 21, 2005), available at <http://query.nytimes.com/gst/fullpage.html?res=9A0DEEDD1731F932A15757C0A9639C8B63> (last visited Oct. 28, 2009).

58 New York Immigration Coalition, *supra* note 56.

59 *See* Julia Alanen, *Dearth of Court Interpreters Deprives People of Justice*, *Los Angeles Daily Journal* (Sept. 3, 2002) available at <http://www.lafla.org/news/view8.asp> (last visited Oct. 28, 2009).

60 *See, e.g.*, Anna Gorman, *Court interpreters strike for 22% pay increase - Workers at L.A. County courthouses pledge to stay out indefinitely: Widespread disruption of legal system results*, *Los Angeles Times* (Sept. 6, 2007).

61 Interview with Jessica Sarra, Esq., Director of Global Operations at The International Centre for Missing and Exploited Children (ICMEC) (Nov. 13, 2009). Sarra frequently contracts out for translations of model legislation, training materials and informational materials in a wide range of foreign languages. Sarra estimates translation costs at 26-40 cents per word depending on the language. ICMEC’s rates may be lower than average due to discounted rates for non-profit organizations. The U.S. Patent and Trade Office budgets \$150.00 per page (50 cents per word) for translations of legal documents.

62 *See* Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. §2000d); *see also* Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50,121 (August 16, 2000); Department of Justice: Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41, 455 (June 18, 2002).

63 *Language Access Advocacy: Language Access in the Courts and Law Enforcement* (Contributions by Laura Abel and Paul Uyehara), Management Information Exchange: An exchange of information for legal services, Vol. XXII No. 4, 33(Winter 2008).

64 42 U.S.C. §§ 2000d to 2000d-7.

65 28 C.F.R. §§ 42.101-.112 (2009).

66 Letter from Coordination and Review Section, Civil Rights Division, Department of Justice to Lilia G. Judson, Indiana Courts (Feb. 4, 2009), available at [http://www.lep.gov/whats\\_new/](http://www.lep.gov/whats_new/)

[IndianaCourtsLetterfromMAF2009.pdf](http://www.in.gov/courts/letters/IndianaCourtsLetterfromMAF2009.pdf) (last visited Oct. 25, 2009).

67 *Arrieta v. State*, 878 N.E. 2d 1238 (Ind. 2008).

68 67 Fed. Reg. 41,455, 41,471 (June 18, 2002) (emphasis added), and 41,462.

69 The National Center for Missing and Exploited Children’s International Child Abduction Attorney Network (ICAAAN) is an excellent model of a national *pro bono* attorney network. The Center has recruited more than 2,000 attorneys to litigate child abduction cases on behalf of indigent left-behind parents. NCMEC’s legal counsel provides the volunteer attorneys with legal technical assistance and training materials.

70 This requirement already exists for attorneys and certain other professionals in many states.

71 The term “contracting state” in this context refers to a sovereign nation (country) that has ratified a particular international treaty.

72 Member-state sliding-scale dues could subsidize training and administrative costs.

73 42 U.S.C.S. § 2000d (2009).

74 Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000). *See*, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000\\_register&docid=fr16au00-137.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000_register&docid=fr16au00-137.pdf) (last visited Nov. 13, 2009).

75 Examples of cities and states that have passed comprehensive language-access legislation include Hawaii, Maryland, New York, Oakland, Philadelphia, San Francisco and Washington D.C.

76 *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

77 *Washington v. Davis*, 426 U.S. 229 (1976).

78 *See, e.g., Keyes v. Sch. Dist.*, 413 U.S. 189, 209 (1973).

79 Most funding agencies’ internal implementing regulations also prohibit the recipients of federal funding/assistance from engaging in practices that have a discriminatory impact.

80 *See, e.g., Lau v. Nichols*, 414 U.S. 563, 568 (1974). (interpreting Title VI as prohibiting national-origin discrimination based on LEP/NEP status in the context of ordering California public schools to provide education for all students regardless of the language(s) that they spoke.

81 Revised HHS “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibitions Against National Origin Discrimination Affecting Limited English Proficient Persons,” ORR State Letter, Sept. 16, 2005, available at <http://www.acf.hhs.gov/programs/orr/policy/sl05-20.doc> (last visited on Oct. 25, 2009). The ORR letter notes that federal funding or financial assistance “can include in-kind or other non-cash assistance.” The revised HHS LEP Guidance, which incorporates guidance from the U.S. Department of Justice, is available at <http://www.hhs.gov/oct/civilrights/resources/specialtopics/lep/policyguidancedocument.html> (last visited Oct. 25, 2009).

82 *Diaz v. San Jose Unified Sch. Dist.*, 733 F. 2d 660, 665 (9th Cir. 1984). (perpetuating segregation despite its finding that a school board was aware of student segregation in its district, and that it had an obligation to desegregate the schools).

83 42 U.S.C. § 2000d et seq. Ironically, the very venues designated to redress language-access violations remain somewhat inaccessible to many indigent limited- and non-English speakers (particularly those who are preliterate) that cannot afford legal counsel or a qualified interpreter or translator.

84 *See*, The U.S. Department of Justice, *Commonly Asked Questions and*

Answers Regarding Executive Order 13166, available at <http://www.usdoj.gov/crt/cor/Pubs/lepqa.php> (last visited Oct. 25, 2009).

85 Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000). See also, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000\\_register&docid=fr16au00-137.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000_register&docid=fr16au00-137.pdf) (last visited Nov. 13, 2009).

86 See, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 117 (Dep't Justice, 2002); Enforcement of Title VI of the Civil Rights Act 1964—National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance, 65 Fed. Reg. 159 (Dep't Justice, 2000); and 67 Fed. Reg. 41,455 (Dep't Justice, 2002), available at <http://www.usdoj.gov/crt/cor/Pubs/lepqa.php> (last visited Oct. 25, 2009).

87 Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000).

88 Id. at Section 5.

89 To view GAO reports, visit: <http://gao.gov/docsearch/topic.php> (last visited Nov. 10, 2009).

90 U.S. Dep't of Justice, *Affirming LEP Access & Compliance in Federal and Federally Assisted Programs*. [www.usdoj.gov/crt/cor](http://www.usdoj.gov/crt/cor). The Department of Justice operates a Title VI Hotline: 1-888-TITLE-06 (or 1-888-848-5306).

91 For examples of existing Federal Agency language access implementation plans, visit [http://www.lep.gov/guidance/guidance\\_index.html](http://www.lep.gov/guidance/guidance_index.html) (last visited Oct. 25, 2009).

92 U.S. Dep't of Justice, *Affirming LEP Access & Compliance in Federal and Federally Assisted Programs*. [www.usdoj.gov/crt/cor](http://www.usdoj.gov/crt/cor). The Department of Justice operates a Title VI Hotline: 1-888-TITLE-06 (or 1-888-848-5306).

93 In 2000, Council Members Schwartz and Graham co-sponsored this ground-breaking bill.

94 For a list of the 25 agencies and their most recent compliance ratings, see Implementation of the D.C. Language Access Act of 2000: A Compliance Review for Fiscal Year 2008, 15, available at [http://ohr.dc.gov/ohr/lib/ohr/pdf/dcohr\\_compliance\\_1107fin.pdf](http://ohr.dc.gov/ohr/lib/ohr/pdf/dcohr_compliance_1107fin.pdf) (last visited Apr. 11, 2009).

95 Some of the designated agencies were required to attain compliance earlier, in 2004 or 2005.

96 D.C. CODE ANN. §§ 3 to 4 (LexisNexis 2009). See also, <http://www.ohr.dc.gov/ohr/frames.asp?doc=/ohr/lib/ohr/la667c-1.pdf> (last visited Nov. 13, 2009).

97 Amharic, Chinese, English, Korean, Spanish, and Vietnamese were the qualified language groups.

98 This additional requirement extends the Act's reach to many non-governmental, e.g., private or community-based, organizations.

99 The Equal Rights Center (ERC) was founded when the Fair Housing Council of Greater Washington merged in 1999 with the Fair Employment Council of Greater Washington. ERC's programs of work include civil rights education and outreach, research, testing, counseling, enforcement and advocacy for legally protected groups in the areas of fair housing, fair employment, disability rights and immigrant rights, and equal access – including language access - to public accommodations and government services, available at <http://www.equalrightscenter.org/about/> (last visited Oct. 25, 2009).

100 The Equal Rights Center, *Failure to Communicate: Report on Language Barriers in D.C. Government Services October 2007*, available at <http://www.equalrightscenter.org/publications/>

LanguageAccessAct.php (last visited Oct. 25, 2009).

101 Author was present for the 2007 D.C. Council hearing on the 2004 Language Access Act when these testimonies were delivered. Disturbingly absent during the 2007 language access hearings was any testimony regarding the impact of language-access deprivations on LEP and NEP victims of domestic violence.

102 Annual Hearing on the Status of the D.C. Language Access Act, available at <http://www.dclanguageaccess.org/cm/node/67>.

103 Implementation of the D.C. Language Access Act of 2000: A Compliance Review for Fiscal Year 2008, at 15, available at, [http://ohr.dc.gov/ohr/lib/ohr/pdf/dcohr\\_compliance\\_1107fin.pdf](http://ohr.dc.gov/ohr/lib/ohr/pdf/dcohr_compliance_1107fin.pdf) (last visited Oct. 25, 2009).

104 Another potential source of legal redress might be the 1789 Alien Torts Statute (or Alien Tort Claims Act, hereinafter ATS). ATS allows non-citizens to sue in U.S. courts for human rights violations. It is important to note that under ATS the United States' assertion of personal jurisdiction does not necessarily imply that U.S. law will be applied. Perhaps the best-known ATS case is *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980). At issue in *Filartiga* was the death by torture of Paraguayan citizen Filartiga's son by another Paraguayan citizen, Peña-Irala, in Paraguay. The U.S. Court of Appeals ruled that the United States has jurisdiction over alien torts arising under customary international law, and cited various sources of soft law as evidence of state practice. The jurisdictional basis in *Filartiga*, akin to universal jurisdiction, was Peña-Irala's violation of what was traditionally called the *Law of Nations* (proscribing, among other things, torture as *malum in se*). In *Kadic v. Karadzic*, 70 F.3d 232, 239 (2d Cir. 1995), the U.S. Court of Appeals extended the scope of ATS to non-state actors, holding that "Certain forms of conduct violate the law of nations whether undertaken by those acting under the auspices of a state or only as private individuals." The U.S. Court of Appeals extended the scope of ATS to non-state actors, holding that "Certain forms of conduct violate the law of nations whether undertaken by those acting under the auspices of a state or only as private individuals." The Kadic Court's non-state actor liability was very narrowly limited. The rights to due process and a fair trial have achieved universal status and it is conceivable that domestic violence will someday be broadly deemed *malum in se*. The ATS may prove useful in limited cases by empowering non-citizens to sue state or non-state actors in U.S. courts for human rights abuses.

105 D.C. MUN. REGS., tit. 4, §1205.2 (2009)

106 Telephone interview with Jennifer Deng-Pickett, Director, D.C. Language Access Coalition, Washington D.C. (Apr. 22, 2009) (on file with author). For information about the D.C. Language Access Coalition, visit [www.dclanguageaccess.org](http://www.dclanguageaccess.org). Deng-Pickett testified at the 2008 City Council language-access hearings.

107 To view examples of ULC model state legislation, visit <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=2&tabid=60> (last visited Oct. 25, 2009).

108 *Supremacy Clause*, U.S. CONST. art. VI, cl. 2. The Supremacy Clause applies to international treaties ratified by the U.S. President with the advice and consent of two-thirds of the Senate.

109 Barry E. Carter et al., *International Law*, 715 (Little, Brown eds., Aspen Publishers, 5th ed. 2007) (1991).

110 *Id.*

- 111 *Murray v. The Charming Betsy*, 6 U.S. 64 (1804).
- 112 Carter et al., *supra* note 109.
- 113 Some international law principles achieve customary international law (CIL) status by their inclusion in most humanitarian and human rights instruments, by extensive *opinio juris* on point, and by extensive evidence of state practice in conformity with the principles. Customary international laws are deemed universally applicable to all states regardless of whether they have executed binding instruments on point.
- 114 Carter et al., *supra* note 109 (Emphasis added).
- 115 The term “state” in the international law context refers to a sovereign nation (country). Interchangeable use of the terms “state” and “country” can prove confusing to readers who are nationals of federal systems. However, “state,” “state party,” “contracting state,” and “sovereign state” are the terms typically used in international instruments.
- 116 U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm’n on Human Rights, *Report of the Special Rapporteur on the Right to Education*, U.N. Doc. E/CN.4/2002/60/Add.1 (Jan. 17, 2002).
- 117 Velasquez-Rodriguez Case, Inter-Am. C. H.R. Report No. 4, at 91, 152 (July 29, 1988), reprinted in 28 *I.L.M.* 291 (1989).
- 118 Velasquez-Rodriguez Case, Inter-Am. C. H. R., 9 HUM. Rts. L. J. 174, 212 (1988).
- 119 *Id.*
- 120 Da Penha v. Brazil, Case 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20, rev. 704 ¶ 61 (2000), available at <http://www1.umn.edu/humanrts/cases/54-01.html>. The rights violation implicated in this case involved domestic violence
- 121 Da Penha Fernandes v. Brazil, Case 12.052, Inter-Am. C.H.R. Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20, (Apr. 16, 2001).
- 122 International instruments may impose *territorial* and *extraterritorial* obligations on states. Extraterritorial duties obligate states to help other states meet their minimum treaty obligations. For example, the Convention on Economic, Social and Cultural Rights imposes extraterritorial obligations on states to help other states fulfill the rights to food and water. States should aid one another to ensure that linguistic minorities at home and abroad secure language access to critical remedies and resources, *particularly* when the language at issue is the assisting state’s native tongue.
- 123 The Committee on Economic, Social and Cultural Rights is a United Nations body comprised of 18 experts who meet three times annually to examine the reports submitted by UN member states detailing their compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- 124 U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm. on Economic, Social and Cultural Rights, *General Comment No. 15: the Right to Water*, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003); *See also*, U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm. on Economic, Social and Cultural Rights, *General Comment No. 12: the Right to Adequate Food*, U.N. Doc. E/C.12/1999/5 (May 12, 1999).
- 125 Universal Declaration of Human Rights, G.A. Res. 217(III)A, at 71-72, U.N. GAOR, 3rd Sess., 183rd plen. mtg., U.N. Doc. A/RES217(III)[A] (Dec. 12, 1948).
- 126 International Covenant on Civil and Political Rights, art. 14, para. 1, Dec. 16, 1966, 999 U.N.T.S. 171, 176 (*entered into force* Mar. 23, 1976).
- 127 *Id.* art. 14, para. 3, at 177. The United States has ratified the ICCPR.
- 128 *See*, U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm’n on Human Rights, Working Group on Arbitrary Detention, *joint report: situation of detainees at Guantánamo Bay*, ¶ 85, U.N. Doc. E/CN.4/2006/120 (Feb. 27, 2006).
- 129 Julia Alanen, When Human Rights Conflict: Mediating International Parental Kidnapping Disputes Involving the Domestic Violence Defense, 40 U. Miami Inter-Am. L. Rev. 49, at 64 (2008).
- 130 *Id.* at 64-65.
- 131 Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, preamble, U.N. GAOR, 48th Sess., 85th plen. mtg., U.N. Doc. A/RES/48/104 (Dec. 20, 1993).
- 132 *Id.*
- 133 World Conference on Women, Sept. 4-15, 1995, *Beijing Declaration and Platform for Action*, ¶ 112, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995).
- 134 Judith Gardam, *Women and Armed Conflict: The Response of International Humanitarian Law*, in *Listening to the Silences: Women and War* 109, 119 (Helen Durham and Tracey Gurd, eds. Martinus Nijhoff 2005).
- 135 Alanen, *supra* note 129, at 65-66.
- 136 There is considerable debate over figures concerning how many men suffer domestic violence, in part because of the relative lack of domestic violence resources for men, the difficulty of assessing the likelihood that male victims will feel comfortable reporting being abused, and the relative responsiveness to male victims of domestic violence system actors.
- 137 According to the most recent U.S. national census, 10.4 million of the 12.9 million primary caregivers (single parents living with their children) in the U.S. are females. Bureau of the Census U.S. Dep’t of Commerce, *Single-Parent Households Showed Little Variation Since 1994*, *Census Bureau Reports* (Mar. 27, 2007), available at [http://www.census.gov/Press-Release/www/releases/archives/families\\_households/009842.html](http://www.census.gov/Press-Release/www/releases/archives/families_households/009842.html) (last visited Oct. 26, 2009).
- 138 Cecilia Medina, *Toward a More Effective Guarantee of the Enjoyment of Human Rights by Women in the Inter-American System*, in *Human Rights of Women* 257, 271 (Rebecca J. Cook ed., 1994).
- 139 Many family courts provide interpreters, but not translators, (for a few key language groups) in domestic violence restraining order proceedings, but not in other family court proceedings. Providing language-access *exclusively* in civil restraining order proceedings is a grossly inadequate response to the domestic violence crisis.
- 140 For example, under the Violence Against Women Act (VAWA), 18 U.S.C.A. §§2261 to 2266, a self-petitioner must demonstrate that s/he was subjected to battery or extreme cruelty. The nature of domestic violence and the isolation of victims often make for scarce evidence of the abuse. The Violence Against Women Act (VAWA) is part of the Violent Crime Control and Law Enforcement Act of 1994, reauthorized by Congress in the Victims of Trafficking and Violence Protection Act of 2000, and the Violence Against Women and Department of Justice Reauthorization Act of 2005.
- 141 Numerous victim-based immigration remedies provide for access to public benefits and employment authorization.
- 142 Radhika Coomaraswamy, *To Bellow Like a Cow: Women, Ethnicity and the Discourse of Rights*, in *Human Rights of Women: National and International Perspectives* 39, 56 (Rebecca J. Cook ed., 1994). Coomaraswamy is a U.N.

Special Rapporteur on women's issues.

143 Office of the High Commissioner for Human Rights, *CEDAW General Recommendation 21: Equality in marriage and family relations*, ¶ 20, HRI/GEN/1/REV.1 (1994) (emphasis added), available at <http://www.unhcr.ch/tbs/doc.nsf/0/7030ccb2de3baae5c12563ee00648f1f?Opendocument> (last accessed Nov. 14, 2009). It is interesting to note that the United States has *not* yet ratified the Convention on the Elimination of All Forms of Discrimination Against Women.

144 *Id.* at ¶ 21.

145 Bureau of the Census U.S. Dep't of Commerce, *Stay-at-Home Moms are More Likely Younger, Hispanic and Foreign-Born Than Other Mothers* (Oct. 1, 2009), available at [http://www.census.gov/Press-Release/www/releases/archives/families\\_households/014266.html](http://www.census.gov/Press-Release/www/releases/archives/families_households/014266.html) (last visited Oct. 26, 2009).

146 Medina, *supra* note 138, at 279.

147 Relatively few children are assigned *guardians ad litem* (GALs) or undergo thorough court-ordered custody evaluations. Counsel for the mother or father has a duty to zealously advocate for the adult client and advance that adult's perceptions about what is best for him or herself and for the child.

148 Convention on the Rights of the Child, G.A. Res. 44/25, at 166, U.N. GAOR, 44th Sess., 61st plen. mtg., U.N. Doc. A/RES/44/25 (Nov. 20, 1989) (*entry into force* 2 Sept. 2, 1990).

149 *Id.* at art. 2, para. 1. All nations, *except* Somalia and the United States, have ratified the CRC.

150 *Id.* at art. 7.

151 *Id.* at art. 8, Para. 1, and 2

152 *Id.* at art. 9, Para. 1 (Article 9 cites abuse or neglect as examples. Article 9.3 requires that states ensure that a child who is separated from a parent is able to maintain personal relations and direct contact with both parents on a continuous basis, except where contrary to the child's best interests).

153 This must necessarily include language-access to court mediation and facilitation services, child custody evaluators, professional visitation monitors, file clerks, courthouse signage, forms, instructions and transcripts, settlement conferences, and so forth, in addition to court-room proceedings.

154 Reproductive freedom may implicate a series of rights, including among others the right to reproductive health, including high quality pre- and post-natal care; the right to *information* about reproductive health; the right to informed *consent* to reproduction, and so forth.

155 International Covenant on Civil and Political Rights, *supra* note 126, at art. 27, 999 U.N.T.S., 179.

156 See, e.g., International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), at art. 3, U.N. GAOR, 21st sess., Supp. No. 16, U.N. Doc. A/RES/2200(XXI)A-C (Dec. 16, 1966) (Some international human rights instruments permit developing states parties to determine the degree to which they will protect the rights of non-nationals. The United States would not qualify as a *developing state*).

157 Hague Convention on the Civil Aspects of International Child Abduction, *opened for signature* Oct. 25, 1980, S. Treaty Doc. No. 99-11, 1343 U.N.T.S. 89, *reprinted in* 19 I.L.M. 1501 (1980) [hereinafter "Hague Convention"] (*entered into force* Dec.1, 1983).

158 The two official languages of the Convention are English and French, and Article 24 makes it obligatory for each Central Authority

to accept either a French or an English translation where no translation to the requested state's language is possible. By accepting Article 24, the U.S. would potentially be required to translate from one foreign language, French, should certain states parties elect French over English.

159 Kathy Ruckman, Esq., Chief of the State Department's Office of Children's Issues has stated during Hague Abduction Convention trainings at which the author was present that a Hague case costs litigants approximately \$30,000 on average to litigate in the United States.

160 See Hague Convention, *supra* note 157, at art. 13 (b), *opened for signature* Oct. 25, 1980, S. Treaty Doc. No. 99-11, *reprinted in* 19 I.L.M. 1501 (1980) (*entered into force* Dec. 1, 1983).

161 Vienna Convention on the Law of Treaties, art. 18, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 [hereinafter "Vienna Convention"] (*entered into force* Jan. 27, 1980).

162 Carter et al., *supra* note 109, at 112 ("[The U.N. Human Rights Committee] took the view that a reservation incompatible with the object and purpose of a treaty 'will generally be severable, in the sense that the [treaty] will be operative for the reserving party without the benefit of the reservation.'").

163 See Vienna Convention, *supra* note 161.

164 *Inside Obama's First Budget* (NPR radio broadcast Feb. 26, 2009), available at <http://www.npr.org/news/specials/2009/budget/> (last visited Oct. 29, 2009).

165 LEP.gov, Federal Interagency Working Group on Limited English Proficiency, LEP Working Group's Mission, available at <http://www.lep.gov/iwglep.htm> (last visited Oct. 29, 2008).

166 LEP.gov, Federal Interagency Working Group on Limited English Proficiency, Transcript of remarks by Assistant Attorney General Wan Kim to the Federal Interagency Working Group on Limited English Proficiency (Dec. 6, 2006), available at [http://www.lep.gov/wan\\_kim\\_12\\_6\\_06.html](http://www.lep.gov/wan_kim_12_6_06.html) (last visited Oct. 29, 2009).

167 LEP.gov, Federal Interagency Working Group on Limited English Proficiency, 2007 Federal Interagency Conference on Limited English Proficiency (Mar. 15-16, 2007) available at [http://www.lep.gov/guidance/agenda\\_31507.pdf](http://www.lep.gov/guidance/agenda_31507.pdf) (last visited Oct. 29, 2009) (The U.S. Department of Justice convened its' first national Limited English Proficiency Conference in September of 2004.).

168 LEP.gov, Federal Interagency Working Group on Limited English Proficiency, Mission of LEP.gov Website of the Federal Interagency Working Group on Limited English Proficiency, available at <http://www.lep.gov/> (last visited Oct. 29, 2009).

169 Telephone interview with Jennifer Deng-Pickett, Director, D.C. Language Access Coalition, Washington, D.C. (Apr. 22, 2009) (on file with author).

170 The examples of language-access initiatives and instruments that follow are not an exhaustive list, but rather discreet examples of different forms of language-access advocacy being pursued across the United States.

171 State Court Interpreter Grant Program Act, S. 1329, 111th Cong. (2009).

172 State Court Interpreter Grant Program Act, S. 702, 110th Cong. (2009).

173 Laura Abel, Brennan Center for Justice, *Language Access in the State Courts, Executive Summary*, at 1 (July 4, 2009), available at <http://www.brennancenter.org/>

brennancenter.org/content/resource/language\_access\_in\_state\_courts (last visited Oct. 29, 2009).

174 Coalition of California Legal Advocates, Language Access to the Courts in California: A Legal Advocate's manual (2006), *available at* [http://www.lsnr.net/special/language\\_access\\_11-16-06.pdf](http://www.lsnr.net/special/language_access_11-16-06.pdf) (last visited Oct. 29, 2009).

175 *See*, D.C. Office of Human Rights, Language Access Pledge, <http://ohr.dc.gov/ohr/cwp/view,a,3,q,641245.asp> (last visited Oct. 29, 2009).

176 U.S. Dep't of Health & Human Serv., Hawaii Department of Human Services Resolution Agreement, § IV(C), *available at* <http://hhs.gov/oct/civilrights/activities/agreements/hawaiiagree.html> (last visited Oct. 29, 2009) (Section IV(C) of Hawaii's Resolution Agreement lays out useful guidelines for how to identify the most frequently-encountered languages and the number of eligible persons likely to be affected by language access barriers in a given service area.).

177 *See*, New York State Unified Court System, Court Interpreting in New York: A Plan of Action (April 2006).

178 *See*, Purvi Shah et al., *Talking the Talk: A National Study of Court Interpreters, Preliminary Data and Recommendations on Language Access in NYS Courts* (2008), *available at* <http://www.sakhi.org/CIP/NationalCourtInterpreterSurveyPreliminaryReport.pdf> (last visited Nov. 13, 2009).

179 The AT&T Language Line is an example of the telephonic interpreter services that agencies are using to serve LEP and NEP persons whose native languages are not represented by bilingual agency staff.

180 The color-coded cards with characters in the target language are targeted to assist the significant percentage of clients that are pre-literate.

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