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Lost in Translation: Persons with Limited English Proficiency and Police Interaction in the United States

ANASTASIA COPPERSMITH*

This article explores United States jurisprudence of the constitutionality of language rights as it correlates to communications between law enforcement officials and non-English speaking persons in emergency situations. The judicial and legislative bodies provide protections to limited-English speaking minorities in the realms of education, healthcare, and when navigating through the United States court system. However, these protections are not extended to include interactions between language-minority citizens and initial police interactions during emergency situations.

I. INTRODUCTION

As the United States population continues to grow and become more ethnically diverse, language and cultural barriers are increasingly challenging police departments and law enforcement agencies across the nation. A lack of understanding of the English language hinders equal access to the criminal justice system and deters persons with limited English proficiency (“LEP”) from receiving assistance in emergency situations. Further, persons who can communicate and comprehend some English often cannot comprehend the legal terms or procedures employed by law enforcement officials, particularly because interactions with law enforcement officials are often not tied to common language experiences persons with limited English understand.¹ Thus, this article explores the facets of American life where jurisprudence requires language barriers to be met with interpreters, such as in courts, academia, and healthcare. Additionally, it explores why the foundation for language accommodations in these platforms require the United States legislature and judicial system to provide

* Anastasia Coppersmith is a third-year law student at Northern Illinois University College of Law. I would like to thank Professor Anita Maddali for her incredible insight through this writing process and working with me as I grappled through issues of language and race. I would also like to thank my parents, Jerry and Lyn McCain for their constant encouragement and instilling in me a need to serve others. Additionally, I would like to thank my partner, Eric Coppersmith, for all his late-night pep talks, I would not be here without you. Finally, an incredibly special thank you to all my dear Latinx and other multi-lingual friends for your honesty, bravery, and patience as I worked through these impossible questions of language rights, race, and socio-economic injustices, I am forever grateful to all of you.

1. See *Commonwealth v. Pana*, 364 A.2d 895, 898-99 (Pa. 1976).

more comprehensive language access programs to persons when interacting with law enforcement officials before official litigation ensues, such as during home visits and when individuals who lack an understanding of the English language pursue aid through emergency telephone lines.

The extent to which law enforcement agencies in the United States are obligated to provide LEP services to individuals is driven by three overarching considerations including: (1) the constitutional due process and equal protection requirements under the fourteenth amendment; (2) federal statutory and regulatory requirements, primarily stemming from the Civil Rights Act of 1964, the Omnibus Crime Control and Safe Streets Act of 1968; (3) and the individual state statutory and specific agency requirements.² Moreover, the enforcement for language access rights among the criminal justice system is primarily imposed by the United States Department of Justice.³ It is important to note where there already is statutory language and caselaw determining and requiring assistance to LEP individuals in other facets of American life in order to form and comprehend why the precedence used in education, healthcare, and courtrooms can be used to congruently determine requirements of language access procedures and plans in emergency situations with law enforcement officials.

II. LIMITED ENGLISH PROFICIENCY AND LEGISLATION IN OTHER FACETS OF AMERICAN LIFE

The threat of dealing with our complicated criminal justice system is intimidating and stressful enough for most Americans. A speeding ticket itself can send some of us over the edge. But imagine being faced with something as minute as a speeding ticket, or some other small traffic violation, and not knowing why or how to communicate with the State in order to get it resolved. That is the reality for much of the United States population. In Illinois alone, 23% of the population is non- or limited-English speaking.⁴ Moreover, approximately 12.6% of the entire United States population is non- or limited- English speaking.⁵ With growing racial, cultural, and ethnic diversity in the United States, linguistic barriers continue to face the criminal justice system. These challenges have opened the American law to require translators in schools, courts, and when receiving medical care—but have largely not been implemented when law enforcement officials engage with persons in interrogations, traffic violations, home visits, domestic violence calls, and other aspects of everyday life that often are

2. Chi. Police Dep't, Limited English Proficiency, Special Order S02-01-05 (2012).

3. Exec. Order No. 13,166, 3 C.F.R. § 13,166 (2000).

4. *Global Diversity and Heritage*, DATAUSA ILLINOIS, [<https://perma.cc/6HEC-JH6C>] (hereinafter UNITED STATES CENSUS BUREAU).

5. *State v. Santiago*, 542 N.W.2d 466 (Wis. Ct. App. 1995).

considered routine interruptions for many that do speak English.⁶ This note explores where translators are already legally required, as well as why translators should be implemented in every interaction between the State and Limited English Proficiency persons.

A. LIMITED ENGLISH PROFICIENCY PROTECTIONS IN EDUCATION

The Court first addressed the need for language-equality in education in *Lau v. Nichols*.⁷ In *Lau*, a class of non-English speaking Chinese students brought suit against the San Francisco Unified School District for unequal educational opportunities alleging a violation of the Equal Protection Clause of the Fourteenth Amendment as well as a violation of § 601 of the Civil Rights Act of 1964.⁸ The Court of Appeals reasoned:

Every student brings to the starting line of his educational career different advantages and disadvantages caused in part by social, economic and cultural background, created and continued completely apart from any contribution by the school system. That some of these may be impediments which can overcome does not amount to a ‘denial’ by the Board of educational opportunities within the meaning of the Fourteenth Amendment should the Board fail to give them special attention, even though they are a characteristic of a particular ethnic group.⁹

In other words, the appellate court found that the school district did not violate the student’s equal protection rights because every student, English speaking and non-English speaking, was provided the same education.¹⁰ The Supreme Court of the United States however, disagreed with this reasoning.¹¹ The Court disagreed with the student’s equal protection argument but relied solely on § 601 of the Civil Rights Act of 1964 to reverse the Court of Appeals decision.¹²

6. Suzanne duMond-Perez, *Eliminating Language Barriers in Domestic Violence Cases*, NY State Office for the Prevention of Domestic Violence (Summer 2014); *see also* U.S DEP’T OF HEALTH AND HUMAN SERVICES, NATIONAL STANDARDS FOR CULTURALLY AND LINGUISTICALLY APPROPRIATE SERVICES IN HEALTH CARE (2001).

7. *Lau v. Nichols*, 414 U.S. 536 (1974).

8. *Id.* at 564.

9. *Lau v. Nichols*, 483 F.2d 791, 797 (1973).

10. *Id.* at 797; *see also* *Lau*, 414 U.S. at 566 (1974) (where the appellate court stated that the education system cannot provide accommodation for every student’s specific needs and that every student begins with “different advantages and disadvantage.” Thus, the school system is not obligated to provide for every student needs).

11. *Lau*, 414 U.S. at 566 (1974).

12. *Id.*

That section bans discrimination based ‘on the ground of race, color, or national origin,’ in ‘any program or activity receiving Federal financial assistance.’ The school district involved in this litigation receives large amounts of federal financial assistance. The Department of Health, Education, and Welfare (HEW), which has authority to promulgate regulations prohibiting discrimination in federally assisted school systems, 42 U.S.C. s 2000d—1, in 1968 issued one guideline that ‘(s)chool systems are responsible for assuring that students of a particular race, color, or national origin are not denied the opportunity to obtain the education generally obtained by other students in the system.’¹³

The Court found that while English skills are essential to public education in the United States, those skills are only effective if the student already knows English.¹⁴ Thus, students who do not understand English are going to gain nothing from classroom experiences that are incomprehensible due to the language barrier.¹⁵ The hook for the Court to implement this sanction however, came from the fact that the schools were receiving federal financial aid and were not providing English access courses to the students that spoke Chinese as a first language.¹⁶ Thus, schools receiving federal financial assistance were required to provide meaningful assistance to students to learn the content the American school system was teaching, while also implementing English-learning instruction in accordance with state law.¹⁷ Ultimately, the Court concluded that schools that receive federal funding must provide resources to remedy the language deficiency for LEP students to actively and effectively participate in the American school system.¹⁸ The Court has deemed it necessary to provide translation and interpreters for students in the public school system in order for students to participate in the academic American world.¹⁹ Yet, while the Court found language rights are essential in academia, the Court has been tentative of

13. *Id.* at 566-67.

14. *Nichols*, 483 F.2d 791, 797 (1973).

15. *Id.*

16. *Lau*, 414 U.S. at 567 (1974) (the Supreme Court stated that under the Civil Rights Act, congress is authorized to issue rules, regulations and orders to make sure that “recipients of federal aid under its jurisdiction conduct any federally financed projects” cannot discriminate and because the school received federal aid, they had to provide language access programming to limited English proficiency students.).

17. *Id.*

18. *Nichols*, 483 F.2d 791, 797 (1973).

19. *See* U.S. GEN. ACCOUNTING OFFICE, PUBLIC EDUC.: MEETING THE NEEDS OF STUDENTS WITH LIMITED ENGLISH PROFICIENCY, 18 (2001).

finding the same rights to language and interpretation using *Lau*'s precedence in other facets of American life.

The Supreme Court later retracted *Lau*'s interpretation on Title VI²⁰ in the realm of transportation.²¹ The Court found in *Alexander v. Sandoval* that although the Alabama Department of Public Safety received federal financial assistance and administered state driver's license examinations only in English, there was no Title VI violation because § 601 of the Civil Rights Act of 1964 prohibits only intentional discrimination.²² The Court stated in its opinion of *Alexander* that:

[W]e have since rejected *Lau*'s interpretation of § 601 as reaching beyond intentional discrimination. It is clear now that the disparate-impact regulations do not simply apply § 601—since they indeed forbid conduct that § 601 permits—and therefore clear that the private right of action to enforce § 601 does not include a private right to enforce these regulations.²³

In *Alexander*, the Court rejected the finding in *Lau*²⁴ and instead found that private individuals do not have standing under § 601 of the Civil Rights Act to sue a defendant for acts that are not *specifically* prohibited by the text of the statute.²⁵ In order to curb this judicial ruling, Congress enacted 20 U.S.C. § 1703 – Denial of Equal Educational Opportunity Prohibited.²⁶ However, while the sentiment that academic institutions in the United States need to protect LEP students' rights to education, it is important to note that this statute *only* protects LEP persons rights to translation in the realm of academia.²⁷ The specific section of the statute, provision (f), reads:

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by— (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.²⁸

20. *Methelus v. Sch. Bd. of Collier Cty., Fla.*, 243 F.Supp.3d 1266, 1275 (2017).

21. *Alexander v. Sandoval*, 532 U.S. 275, 279 (2001).

22. *Id.*

23. *Id.* at 285.

24. *Id.*

25. *Id.* at 286.

26. 20 U.S.C. § 1703 (2012).

27. *Id.*

28. 20 U.S.C. § 1703(f) (2012).

The United States legislature and judicial institutions have recognized how essential receiving education in the English language is for students to comprehend and participate in American life.²⁹ However, the judiciary and the legislature have failed to extend these protections found under § 601 of the Civil Rights Act of 1964 to initial, crucial interactions between police officers and LEP individuals.³⁰

B. LIMITED ENGLISH PROFICIENCY PROTECTIONS IN THE JUDICIAL SYSTEM

In addition to protecting LEP student rights in the classroom,³¹ the United States Congress and courts throughout the United States have deemed it essential to provide interpreters and translators to persons who speak limited or no English while interacting with the American judicial system.³² The Department of Justice deemed language access in State courts to be a “Critical Civil Right” in a 2016 publication given to every state court in the nation as a reminder of the crucial role that language barriers have against administering proper justice.³³

In 1978, Congress enacted a statute that required courts to provide interpreters while an LEP person is in court.³⁴ This statute requires courts in the United States to provide certified interpreters for judicial proceedings when a party to the case or a witness who may present testimony is present.³⁵ The statute provides:

The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter, in judicial proceedings instituted by the United States, if the presiding judicial officer determines on such officer’s own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such judicial proceedings—

29. See *Lau*, 414 U.S. at 566 (1974); see also *Methelus*, 243 F.Supp.3d 1266, 1276 (2017); see also 20 U.S.C. § 1703 (2012).

30. See generally *Alexander*, 532 U.S. 275, 279 (2001).

31. 20 U.S.C. § 1703 (2012).

32. U.S. DEP’T OF JUSTICE CIVIL RIGHTS DIV., LANGUAGE ACCESS IN STATE COURTS 1 (2016).

33. *Id.*

34. Interpreters in courts of the United States, 28 U.S.C. § 1827 (1978).

35. *Id.*

(A) speaks only or primarily a language other than the English language; or

(B) suffers from a hearing impairment (whether or not suffering also from a speech impairment) so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.³⁶

This statute was implemented in order to provide specific protections to individuals in a state court proceeding who cannot comprehend the complex activities of such institutions due to a language barrier.³⁷

Congress found it necessary to enact this statute after the ruling of *United States ex rel. Negron v. New York*.³⁸ The United States Court of Appeals for the Second Circuit determined that the defendant, a 23-year-old Puerto Rican that emigrated to the United States in 1963, could not be found criminally liable for murder when the trial court failed to provide an interpreter.³⁹

The appellate court found that the failure of the trial court to provide an interpreter at a criminal trial, "lacked the basic and fundamental fairness required by the due process clause of the Fourteenth Amendment."⁴⁰ The court stated that not affording adequate translation and interpretation in criminal trials has the same effect as the state prosecuting "a defendant who is not present at his own trial."⁴¹ While defendant Negron was provided an interpreter at trial, he was assigned an English-only speaking lawyer and provided with only brief summaries of the testimony against him by a court translator.⁴² The court concluded that "the least we [the court] can require is that a court, put on notice of a defendant's severe language difficulty, make unmistakably clear to him that he has a right to have a competent translator assist him, at the state expense if need be, throughout his trial."⁴³ This case made it clear that uniform statutory language needed to be in effect for courts to follow when LEP persons were being tried.⁴⁴ However, the appellate court only analyzed this case under the Fourteenth Amendment because of the Sixth Amendment violations, rather than looking to analyze the defendant's

36. *Id.* at (d).

37. *Id.*

38. *United States ex rel. Negron v. New York*, 434 F.2d 386 (2d Cir. 1970).

39. *Id.*

40. *Id.* at 389.

41. *Id.* See also *Lewis v. United States*, 146 U.S. 370, 372 (1892).

42. *New York*, 434 F.2d at 388.

43. *Id.* at 389.

44. *Id.*

rights under the Civil Rights Act of 1964.⁴⁵ This analysis is essential, because the due process clause within the Fourteenth Amendment provides a bedrock of language access precedence.⁴⁶ Thus, future judicial decisions in cases challenging the need for language access rights in emergency police situations can create a congruent argument that parallels the United States Court of Appeals for the Second Circuit in order to expand language access rights from the court room to conversations with law enforcement officials.⁴⁷

In the case of *Commonwealth v. Pana*, there was such a severe language barrier between the defendant and the court that a juror stated his concern over the appellant's ability to comprehend the language.⁴⁸ The trial court, rather than requiring an interpreter, simply had the district attorney rephrase the questions—under the assumption that the language difficulty of the defendant was fraudulent.⁴⁹ The Supreme Court of Pennsylvania on appeal stated:

A defendant's ability to use an interpreter encompasses numerous fundamental rights. The failure to understand the proceedings may deny him his right to confront witnesses against him, his right to consult with his attorney, or his right to be present at his own trial. The use of an interpreter may also be necessary to protect appellant's right to testify in his own behalf.⁵⁰

The court in *Pana* deemed language interpretation for the needs of comprehending a criminal trial to be a fundamental right under the Fourteenth Amendment of the United States Constitution.⁵¹ This precedence can be used to draw a parallel argument of the need for interpreters in emergency situations between LEP individuals and police officers because it is essential for persons to understand and comprehend their communications with the government from the very beginning.⁵²

45. *Id.*

46. *Id.* (does not analyze the fundamental right under the Fourteenth Amendment, but states that there is no constitutional provision for language access to LEP individuals).

47. United States *ex rel.* Negron v. New York, 434 F.2d 386 (2d Cir. 1970) (analyzing language access rights under the Fourteenth Amendment as a fundamental right to confront and examine witnesses can be paralleled to argue that you have a fundamental right to participate in the fact-finding process and the right of confrontation requires language access provisions in emergency situations).

48. *Commonwealth v. Pana*, 364 A.2d 895, 897 (Pa. 1976).

49. *Id.*

50. *Id.* at 898 (citation omitted).

51. *See id.*; *see generally* U.S. CONST. amend. XIV, § 1; *see also* Negron v. New York, 434 F.2d 386 (2d Cir. 1970).

52. *See* Negron v. New York, 434 F.2d 386 (2d Cir. 1970); *see Pana*, 364 A.2d 895, 897 (Pa. 1976).

Additionally, in *United States v. Cirrincione*, a case in the United States Court of Appeals for the Seventh Circuit, found interpreters necessary in criminal proceedings.⁵³ The court found that defendants in criminal cases are denied due process of the law under the Fourteenth Amendment when they are not able to properly understand the proceeding due to a language barrier.⁵⁴ The appellate court stated:

We hold that a defendant in a criminal proceeding is denied due process when: (1) what is told him is incomprehensible; (2) the accuracy and scope of a translation at a hearing or trial is subject to grave doubt; (3) the nature of the proceeding is not explained to him in a manner designed to insure his full comprehension; or (4) a credible claim of incapacity to understand due to language difficulty is made and the district court fails to review the evidence and make appropriate findings of fact.⁵⁵

The court stated that an interpreter is necessary when the language spoken at trial is undoubtedly incomprehensible to the defendant.⁵⁶ Moreover, when an interpreter is denied when an LEP person is giving testimony, the accuracy and scope of that testimony is highly subject to grave doubt because the LEP individual does not comprehend the judicial proceeding.⁵⁷

It has been established that language rights in the form of interpretation and translators are essential for LEP persons to participate in American schools and the court system.⁵⁸ To preserve the integrity of the judicial system in the United States, translation and meaningful language access to LEP individuals must be maintained.⁵⁹ However, while rights to interpreters have been deemed so essential and crucial to the core of the American judicial system, in the realm of criminal courts and education, these rights have not been extended to include the rights to and necessity of interpreters

53. *United States v. Cirrincione*, 780 F.2d 620, 634 (7th Cir. 1985).

54. *Id.*

55. *Id.*

56. *Id.* at 365.

57. *Id.*

58. *See Cirrincione*, 780 F.2d at 634 (Due process is denied when an interpreter is not present and thus an LEP individual cannot comprehend the court proceedings); *See New York*, 434 F.2d 389. *See also United States v. Martinez*, 616 F.2d 185 (5th Cir. 1980) (where the United States Court of Appeals for the Fifth Circuit stated that an interpreter in court proceedings is essential, but the right only exists when the Defendant in a criminal proceeding requests an interpreter in order to balance public economic interests against the constitutional rights of the defendant).

59. U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIVISION, LANGUAGE ACCESS IN STATE COURTS 1 (2016).

during initial police interactions when some of the most important and pertinent information is obtained by law enforcement officials.⁶⁰

C. LIMITED ENGLISH PROFICIENCY PROTECTIONS DURING ARRESTS

In addition to finding interpreters necessary in education and during criminal judicial proceedings, the judiciary and legislature have also found the need for interpreters essential during arrests of LEP persons. In the landmark case of *Miranda v. Arizona*, the Court stated that before police can question a suspect or arrest a suspect, a list of relevant fundamental rights needs to be explained to the person, these rights are known commonly as the Miranda rights. The Miranda warnings generally include: (1) you have the right to remain silent; (2) anything you say can and will be used against you in a court of law; (3) you have the right to talk to a lawyer and have him present with you while you are being questioned; (4) if you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish; (5) you can decide at any time to exercise these rights and not answer any questions or make any statements.⁶¹ Not only must the warnings be given aloud to the individual that is being arrested, the warnings also need to be conveyed to the defendant, so that a defendant can knowingly and intelligently decide whether to exercise any of their rights under *Miranda*.⁶² *Miranda* provided essential jurisprudence for defendant's rights when navigating through the complicated criminal justice system.⁶³ However, *Miranda* raised issues on what the standard of "knowingly" and "intelligently" meant for LEP individuals.⁶⁴

The United States District Court for the District of Massachusetts defined "knowingly" and "intelligently" as it pertained to language access in *United States v. Nakhoul*.⁶⁵ Defendant Nakhoul was of Lebanese decent, living in the United States.⁶⁶ The court used a totality of the circumstances test⁶⁷, including Defendant Nakhoul's background, to determine whether the

60. *Id.*

61. Susan Berk-Seligson, *THE MIRANDA WARNINGS AND LINGUISTIC COERCION: THE ROLE OF FOOTING IN THE INTERROGATION OF A LIMITED-ENGLISH-SPEAKING MURDER SUSPECT*, in *LANGUAGE IN THE LEGAL PROCESS*, 128 (Janet Cotterill ed., 2002).

62. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

63. *Id.* See also *United States v. Nakhoul*, 596 F. Supp. 1398 (D. Mass. 1984).

64. *Miranda*, 384 U.S. at 444.

65. *United States v. Nakhoul*, 596 F. Supp. 1398 (D. Mass. 1984).

66. *Id.*

67. *Id.* at 1402. See also *North Carolina v. Butler*, 441 U.S. 369, 372 (1979) (the "totality of circumstances" test used in Defendant Nakhoul's case derived from the precedence of *Butler* in which the Supreme Court looked to a wide array of circumstances, including Defendant Butler's background, experience, and conduct to determine the defendant's ability to waive their Miranda Rights. In Defendant Nakhoul's case, the court considered the

defendant had a full understanding of his rights in the United States legal system.⁶⁸ The court concluded that because of the language barrier, it is reasonable to infer that Defendant Nakoul's understanding of the law in the United States, as well as the Constitutional rights afforded to him, would be limited.⁶⁹ Thus, because Defendant Nakhoul did not knowingly and intelligently waive his rights, and he was unaware that he could stop questioning at any time, the court found that his testimony was inadmissible.⁷⁰ This precedent has been uniformly followed by courts in the United States, holding that LEP individuals must understand the constitutional provisions provided to them, in order for their testimony to be valid in a court of law.⁷¹

This precedent was reiterated in *United States v. Short*.⁷² The defendant in *Short* was convicted for aiding and abetting her husband's sexual abuse of her three-year-old daughter.⁷³ The United States Court of Appeals for the Sixth Circuit considered whether incriminating statements that defendant Short made were admissible, when Short spoke limited English and stated that she did not understand what was going on.⁷⁴ The court found that Short did not knowingly and intelligently voluntarily speak to the agents that arrested her.⁷⁵ The court stated that the *Miranda* rights given to Short were inadmissible, because they were given only in English when Short was of West German descent with limited English and only lived in the United States for three months at the time of her arrest.⁷⁶ This case furthered the precedence for proper translation of *Miranda* rights during police questioning and arrest on the legal jurisprudence that if a defendant does not knowingly and intelligently comprehend the rights provided for them in the United States Constitution, they cannot adequately navigate the complicated American criminal justice system.⁷⁷

Moreover, lack of correct translations with Miranda warnings causes an additional rift between law enforcement officers and LEP persons.⁷⁸ When the wrong translation is used, or a slight mistranslation, appellate courts have

defendant's background, inability to speak and understand the English language, and the poor legal support provided to him to determine that his conviction should be overturned).

68. *Nakhoul*, 596 F. Supp. at 1398.

69. *Id.*

70. *Id.*

71. *Id.*; see also *United States v. Short*, 790 F.2d 464 (6th Cir. 1986); *State v. Santiago*, 556 N.W.2d 687, 696 (Wis. 1996).

72. *Short*, 790 F.2d at 464.

73. *Id.*

74. *Id.* at 466.

75. *Id.* at 469.

76. *Id.*

77. *Short*, 790 F.2d at 464.

78. *State v. Santiago*, 556 N.W.2d 687, 696 (Wis. 1996).

been found to grant relief.⁷⁹ In *State v. Santiago*, the Supreme Court of Wisconsin ruled that the defendant's testimony was inadmissible, because the police officer that administered the defendant's Miranda rights used "street-Spanish" that was incomprehensible to a non-English speaking person.⁸⁰ The defendant in *Santiago* was detained by narcotics officers for holding approximately fifteen grams of marijuana.⁸¹ The defendant spoke extremely limited English; Spanish-speaking officer, John Garcia, was called to the scene to communicate with the defendant.⁸² Courts across the United States have ruled that "when a person cannot communicate in English, law enforcement officers should give the Miranda warnings in a language the suspect understands in order to ensure that the suspect comprehends the Miranda warnings and can *knowingly* and *intelligently* waive the Miranda rights."⁸³ In *Santiago*, Officer Garcia mistranslated "appoint you a lawyer."⁸⁴ Officer Garcia misinterpreted "appoint," and actually stated, "to point to."⁸⁵ The Supreme Court found that Officer Garcia's use of street-Spanish did not substantially convey to the defendant their constitutional rights, and therefore, the warnings given to him were inadequate and were suppressed as a result.⁸⁶ Thus, courts in the United States have not only determined the necessity for translation when administering a defendant's Miranda rights, they have also stated that the Miranda rights need to be properly translated so that the defendant can *knowingly* and *intelligently* waive those rights.⁸⁷

Competent translation by law enforcement officials requires not only the ability to speak the foreign language, but also the ability to understand what the LEP person is saying, translate the dialect of the LEP individual, and competently explain essential information, so that the LEP individual can knowingly and intelligently be informed of all their rights as required by law.⁸⁸ In order to avoid mistranslation and break through the language barrier, the American Bar Association (ABA) recently published a report pushing for legislative bodies in the United States to provide uniform Miranda warning cards with proper translations transcribed to police officers

79. *Santiago*, 556 N.W.2d at 696; *see also Short*, 790 F.2d at 464; *see also United States v. Nakhoul*, 596 F. Supp. 1398 (D. Mass. 1984); *but see Valdez v. Ward*, 219 F.3d 1222 (Okla. 2001) (where the Court of Appeals found that a Spanish-dominant defendant did knowingly and intelligently waive his Miranda rights).

80. *Santiago*, 556 N.W.2d 687, 696 (1996).

81. *Id.* at 690.

82. *Id.*

83. *Id.*; *see also State v. Neave*, 344 N.W.2d 181 (1984).

84. *Santiago*, 556 N.W.2d 687, 691 (1996).

85. *Id.*

86. *Id.* at 696.

87. *Id.*

88. *See United States v. Gaviria*, 775 F. Supp. 495, 501 (D.R.I. 1991); *see Santana v. N.Y.C. Transit Auth.*, 505 N.Y.S.2d 775, 779 (Sup. Ct. 1986).

in the United States.⁸⁹ This legislative call for proper translation would provide police an efficient means of communicating with a defendant what their rights are before questioning ensues with a translator. The ABA noted throughout their report numerous problems with mistranslations and interpretations of the Miranda warnings.⁹⁰ The report cited a multitude of cases that also involved police officers calling on their own education or abilities in Spanish.⁹¹ This leads to translations that are often quite limited.⁹² Thus, the ABA found that having a correct Miranda translation readily available in the form of card will effectually provide correct Miranda warnings, so that suspects can understand their rights as granted by the Constitution.⁹³ The ABA also called for the proper translation of the Miranda rights to be readily available online in order to provide LEP communities with better resources.⁹⁴

The requirement that a defendant intelligently and knowingly waive their *Miranda* rights places a burden on the State to ensure that those rights are not only translated correctly, but that they are available in hundreds of different languages, if necessary, in order to protect LEP individual's rights.⁹⁵ Ensuring that those rights are properly translated to best communicate with LEP persons solidifies that proper due process and equal protection standards are being followed uniformly throughout the nation.⁹⁶ As the United States becomes more diverse and minority populations grow, the need for proper judicial communication between LEP individuals and law enforcement congruently rises as well.⁹⁷ Courts have deemed it necessary for proper translation to be afforded to LEP persons in schools, court proceedings, and

89. R. Alexander Acosta, *The Need for Accurate, Readily Available Spanish Miranda Warnings*, 2016 A.B.A. Special Committee on Hispanic L. Rights and Responsibilities Rep. 110. [<https://perma.cc/NAF3-YHG3>].

90. *See id.*

91. *See id.* *See also* *People v. Aguilar-Ramos*, 86 P.3d 397, 399 (Colo. 2004) (in which a police officer had 1-2 years of Spanish in high school and used those limited skills to translate to an LEP person); *State v. Moreno*, 265 S.W.3d 751, 752 (Ark. 2007) (officer had Spanish-speaking relatives, but no formal communication training); *State v. Santiago*, 556 NW.2d 687, 691 (Wis. 1996) (Spanish-speaking officer who is not literate in Spanish tried to communicate with LEP person with no formal training).

92. *Id.* at 6.

93. *Id.* at 7.

94. *Id.*

95. Guidance to Federal Financial Assistance Recipients Regarding Title IV Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons 67 Fed. Reg. 41,455 (June 18, 2002).

96. *See* Exec. Order No. 13,166 (2000).

97. *See* *Nichols*, 414 U.S. 536 (1974); *Rios v. Read*, 480 F. Supp. 14 (E.D.N.Y. 1978); *Castaneda v. Pickard*, 648 F.2d 989 (5th Cir. 1981); *see also* DEPARTMENT OF JUSTICE, FEDERAL COORDINATION AND COMPLIANCE SECTION LIMITED ENGLISH PROFICIENCY (2011); Chicago Police Department, Limited English Proficiency, Special Order S02-01-05 (2012); Department of Justice Language Access Plan (2012).

while being arrested.⁹⁸ However, proper translations also need to be afforded to LEP individuals before an arrest and the need for Miranda warnings to be administered ensues.

Language rights in the form of interpretation and translators are essential for LEP persons to participate in American schools, the court system, and when an LEP individual is under arrest.⁹⁹ The Department of Homeland Security issued a resource guide for law enforcement agencies to best provide meaningful access to LEP individuals.¹⁰⁰ However, while rights to interpreters have been deemed so essential and crucial to the core of the American judicial system in the realm of education, criminal courts, and arrests these rights have not been extended to include the rights and needs of interpreters during initial police interactions during emergency situations when some of the most important and pertinent information is obtained by law enforcement officials.

I. WHERE LIMITED ENGLISH PROFICIENCY PROTECTIONS FAIL IN INTERACTIONS BETWEEN POLICE AND NON-ENGLISH- SPEAKING PERSONS

Interactions with LEP individuals occur between law enforcement officials and civilians every day in the United States. However, these communications are often filled with broken translations that can lead to an array of problems—such as an inaccurate police report or to a victim lacking necessary assistance simply because the law enforcement officials did not

98. *See* Lau, 414 U.S. at 566 (1974); *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, (2nd Cir. 2009) (the appellate court used precedence set from LEP healthcare cases to determine that interpreters are also necessary for sign language purposes in hospital settings); *Santiago*, 556 N.W.2d 687, 691 (1996).

99. *See* *Santiago*, 556 N.W.2d 687, 691 (1996) (Due process is denied when an interpreter is not present and thus as LEP individual cannot comprehend the court proceedings.); *See* *New York*, 434 F.2d 389 (2nd Cir. 1970). *See also* *United States v. Martinez*, 616 F.2d 185 (5th Cir. 1980) where the United States Court of Appeals for the Fifth Circuit stated that an interpreter in court proceedings is essential, but the right only exists when the Defendant in a criminal proceeding requests an interpreter in order to balance public economic interests against the constitutional rights of the defendant. *See also* *United States v. Botello-Rosales*, 728 F.3d 865 (9th Cir. 2013) in which a defendant was read Miranda rights by a non-Spanish speaking officer and the word “free” meaning “no-cost” was translated into “free” meaning “liberty” and the appellate court found a violation of the defendant’s constitutional rights.

100. DEPARTMENT OF HOMELAND SECURITY, LEP RESOURCE GUIDE FOR LAW ENFORCEMENT (2002); *see also* Guidance to Federal Financial Assistance Recipients Regarding Title IV Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons 67 Fed. Reg. 41, 455 (June 18, 2002).

comprehend the reason for their visit due to a language barrier.¹⁰¹ While police and other law enforcement agencies are required to provide proper translation at the time of arrests, and courts are required to afford translations during proceedings,¹⁰² often the first interactions between an LEP individual and police are muddled and misinterpreted which can result in a law enforcement official's lack of accurate vital information.¹⁰³

- I. Law Enforcement Agencies and the Current Doctrines in Place When Providing Language Access to Limited English Proficiency Individuals

The extent to which law enforcement agencies in the United States are obligated to provide LEP services to individuals is driven by three overarching considerations including: (1) the constitutional due process and equal protection requirements under the Fourteenth Amendment; (2) federal statutory and regulatory requirements, primarily stemming from the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968; and (3) the individual state statutory and specific agency requirements.¹⁰⁴ Moreover, the enforcement for language access rights among the criminal justice system is primarily enforced by the United States Department of Justice.¹⁰⁵

Considerations arising from the constitutional due process and equal protection requirements under the Fourteenth Amendment are flexible and lofty. The specific provision of the United States Constitution reads:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law;

101. Chicago Police Department, Limited English Proficiency, Special Order S02-01-05 (2012); see Ray Rivera & Karen Zraick, *Audit Says Police Fall Short in Providing Interpreters*, N.Y. TIMES, (Nov. 18, 2010), <https://www.nytimes.com/2010/11/19/nyregion/19translate.html> [<https://perma.cc/AGG9-ET2J>].

102. See *United States v. Rosa*, 946 F.2d 505, 508 (7th Cir. 1991); *People v. Escalante*, 627 N.E.2d 1222 (Ill. App. Ct. 1994).

103. See *People v. Marrero*, 381 N.Y.S.2d 687 (App. Div. 1976) (where the police used a son to interpret for his father during the arrest and later at the police station); see also *People v. Jordan*, 488 N.Y.S.2d 89 (App. Div. 1985) (where in a murder case the police used the defendant's brother to translate the Miranda warnings to him); see also *Bauta v. State*, 698 So. 2d 860 (Fla. Dist. Ct. App. 3d. Dist. 1997) (where a child was sexually assaulted and the mother was used to translate integral information of the assault to the police officer).

104. CHICAGO POLICE DEPARTMENT, LIMITED ENGLISH PROFICIENCY SPECIAL ORDER S02-01-05 (2012), <http://directives.chicagopolice.org/directives/data/a7a57be2-12cbc5de-9d012-cbca-ea9f9f9e6c66a88c.html> [<https://perma.cc/P4QA-9SU3>].

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

nor deny to any person within its jurisdiction the equal protection of the laws.¹⁰⁶

The Due Process Clause comes into play for language-minority persons when government benefits may be lost due to the lack of translation.¹⁰⁷ This is a severe reality when LEP individuals call for emergency assistance and are denied relief because the responding law enforcement official cannot comprehend their language, and so no help is afforded.¹⁰⁸

Courts have also relied on the language established by the Civil Rights Act of 1964 in section 601 which reads, “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”¹⁰⁹ This specific provision provided the platform for President Bill Clinton’s Executive Order 13,166.¹¹⁰ The Executive Order implements regulations for agencies that receive federal funding to “[i]mprove access to services for persons with limited English proficiency.”¹¹¹ The goals of the Executive Order were to ensure that LEP individuals had meaningful access to federally subsidized programs.¹¹² Additionally, the Executive Order mandated:

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency’s programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies’ plans.¹¹³

While the goals and requirements of Executive Order 13,166 would have implemented integral resources for LEP persons in the realm of emergency services, the executive order left no consequential language for

106. U.S. CONST. amend. XIV, § 1.

107. See *Carmona v. Sheffield*, 475 F.2d 738 (9th Cir. 1973) (LEP persons were denied unemployment solely because they did not speak English. The appellate court denied relief stating that their claim was too shocking to be taken seriously.).

108. Ray Rivera & Karen Zraick, *Audit Says Police Fall Short in Providing Interpreters*, N.Y. TIMES, (Nov. 18, 2010), <https://www.nytimes.com/2010/11/19/nyregion/19translate.html> [https://perma.cc/AGG9-ET2J].

109. Civil Rights Act of 1964 Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000d).

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

111. *Id.*

112. *Id.*

113. *Id.*

taking away federal funding for agencies that failed to meet the standard of meaningful interactions with LEP persons.¹¹⁴ The Department of Justice, however, did implement compliance reviews of larger police departments, but did not require any serious compliance sanctions if the standards after the review were still not met.¹¹⁵

Finally, legislative precedence requiring the need for enforcement of Language Access Procedures to be implemented when emergency officials are responding to an LEP person can be found in the Omnibus Crime Control and Safe Streets Act of 1968.¹¹⁶ The act stated that in order to receive federal grants, law enforcement agencies needed to establish a state planning agency that had implemented the following provisions:

(1) develop . . . a comprehensive statewide plan for the improvement of law enforcement throughout the State; (2) define, develop, and correlate programs and projects for the State and the units of general local government in the State or combinations of States or units for improvement in law enforcement; and (3) establish priorities for the improvement in law enforcement throughout the State.¹¹⁷

These provisions have been utilized still by the Department of Justice when requiring that law enforcement officials develop meaningful access to emergency programming developed to benefit LEP persons.¹¹⁸

- II. The Current State of Police Interactions with Limited English Proficiency Persons.

Law enforcement agencies have consistently relied on what the American Bar Association calls “unofficial interpreters” in the form of a suspect or victim’s neighbor, children, family members, or friends to procure information as to the situation the law enforcement officials are responding to.¹¹⁹ The United States Department of Justice filed a compliance review of the Chicago Police Department that found:

Employees [of the Chicago Police Department] also stated that they rely on the LEP person’s family members (including minors), friends, neighbors, local merchants, and bystanders to interpret. Additionally, several employees

114. *Id.*

115. See DANA V. STARKS, CHICAGO POLICE DEPARTMENT COMPLIANCE REVIEW, Dep’t of J. 05 OCR 0040, 6 (2007), <https://ojp.gov/about/ocr/pdfs/IL-05-OCR-0040.pdf> [<https://perma.cc/G66V-7TG4>].

116. Omnibus Crime Control and Safe Streets Act, Pub. L. 90-351, 82 Stat. 197 (1986) (an act to reduce crime and increase the effectiveness and fairness of the criminal justice system and the coordination of law enforcement agencies and officials).

117. *Id.* § 203.

118. DANA V. STARKS, CHICAGO POLICE DEPARTMENT COMPLIANCE REVIEW, Dep’t of J. 05 OCR 0040, 6 (2007), <https://ojp.gov/about/ocr/pdfs/IL-05-OCR-0040.pdf> [<https://perma.cc/G66V-7TG4>].

119. David Kaufman, *What Did You Say? The Perils of Clients Who Don’t Speak English*, A.B.A. J., Apr.-May 2007, at 22-25.

said that they communicate with LEP persons by using hand gestures and having the LEP person speak in broken English. Some employees candidly stated that there have been instances where they were unable to communicate with an LEP person, so they regretfully did not provide service.¹²⁰

The Department of Justice found that police officers in the city of Chicago were using children and hand gestures to effectively communicate with LEP persons.¹²¹ This form of communication leads to poor policing and individuals left needing proper assistance without a community that is willing to properly provide aid.¹²² This problem spans further than the city walls of Chicago.¹²³

The New York Times reported that Esther Jimenez called the police when her spouse attacked her in front of her children, leaving scratches on her arms.¹²⁴ “He had pushed her into a wall, she said, and knocked their youngest child from her arms.”¹²⁵ Jimenez called the police to report the domestic abuse.¹²⁶ However, because Jimenez spoke only Spanish, and the officers that responded spoke English, the police could not understand.¹²⁷ Instead of filing a police report and calling an interpreter to the scene, the officers departed, inadvertently leaving Jimenez and her children subject to further violence.¹²⁸

The Department of Justice requires that all recipients of Federal Financial Assistance from the Department of Justice provide meaningful access to interpreters for LEP persons in all government related situations.¹²⁹ To determine whether meaningful linguistic access is provided by a recipient of federal aid, the Department of Justice uses a balancing test that looks to

120. DANA V. STARKS, CHICAGO POLICE DEPARTMENT COMPLIANCE REVIEW, Dep’t of J. 05 OCR 0040, 6 (2007). [<https://perma.cc/G66V-7TG4>].

121. *Id.*

122. *See id.*

123. NATIONAL CENTER FOR STATE COURTS, LANGUAGE ACCESS PROGRAMS BY STATE (2017) [<https://perma.cc/H7P5-DCW8>] (research services provided by Thomson Reuters) (interactive map shows the language access plans of each state, most of which do not have any language access plans—but do provide specific statutory language for training interpreters.)

124. Ray Rivera & Karen Zraick, *Audit Says Police Fall Short in Providing Interpreters*, N.Y. TIMES, Nov. 18, 2010, <https://www.nytimes.com/2010/11/19/nyregion/19translate.html> [<https://perma.cc/AGG9-ET2J>].

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. 28 C.F.R. § 42.104(b)(2) (2003); *see also* Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000) (in which President Bill Clinton stated that because the government provides the funding for federal assistance programs, any federal agency or agency receiving federal funds *must* establish a system to provide meaningful access to LEP persons in a way that does not unduly burden the respective agency); *see also* Guidance to Federal Financial Assistance Recipients Regarding Title IV Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002).

four factors.¹³⁰ The four factors are: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (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.¹³¹

This balancing test is meant to provide meaningful access to LEP persons in need of essential resources while also not placing an undue economic burden on small governments, and for our purposes, police departments.¹³² The Department of Justice used this balancing test while conducting a compliance review of the Chicago Police Department's interaction with LEP individuals to ensure the Chicago Police Department was providing adequate and meaningful resources to individuals that spoke English "less than very well."¹³³ The results of the compliance review display the need for language access legislation on a federal and state level to provide the best protections for LEP persons.

In order to receive federal funding, the Chicago Police Department needs to comply with the balancing factor test laid out by the Department of Justice.¹³⁴ First, the Department of Justice looks to the number or proportion of LEP persons that are likely beneficiaries of a recipient's services.¹³⁵ At the time the compliance review of the Chicago Police Department took place, the United States Census Bureau found that that the city of Chicago held approximately 331,084 persons that spoke English "less than very well."¹³⁶

130. Guidance to Federal Financial Assistance Recipients Regarding Title IV Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons 67 Fed. Reg. 41,455 (June 18, 2002).

131. *Id.*

132. *Id.*

133. DANA V. STARKS, CHICAGO POLICE DEPARTMENT COMPLIANCE REVIEW, Dep't of J. 05 OCR 0040, 6 (2007). [<https://perma.cc/G66V-7TG4>]. The Chicago Police Department provides language assistance to persons based on the neighborhood, "[I]t (Chicago Police Department) has an understanding as to where language assistance is needed because many neighborhoods in Chicago consist of ancestral enclaves (i.e. Little Italy, Chinatown, Little Korea)." See also United States Census Bureau, American Community Survey, Chicago, Illinois 2016. (The number of minority persons in Chicago, Illinois over the age of five reported to speak English less than "very well" in 2016 was 386,777).

134. 28 C.F.R. § 42.104(b)(2) (2003).

135. Guidance to Federal Financial Assistance Recipients Regarding Title IV Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002).

136. United States Census Bureau, American Community Survey, Chicago, Illinois 2016.

Next, the Department of Justice analyzes the frequency with which LEP persons come into contact with the recipient's programs or activities.¹³⁷ In order to meaningfully provide assistance of police services to LEP individuals, the Chicago Police Department utilizes a Language Line.¹³⁸ A language line is a form of telephone interpreting in which interpreting services simultaneously connect the parties with whom there is a language barrier with a professional interpreter rather than using family members, friends, or volunteers as agencies had done in the past.¹³⁹ The Language Line used by the Chicago Police Department is a provider that offers interpreters in nearly 160 languages.¹⁴⁰ In 2004 and 2005, the Chicago Police Department used the language line 71,444 times for emergency calls, and 40,795 times for non-emergency calls.¹⁴¹ However, the Chicago Police Department does not collect data of the total of calls received by LEP persons.¹⁴² Additionally, not every person that connects with the Chicago Police Department and speaks English "less than very well" is connected with an interpreter through a language line.¹⁴³

When analyzing the frequency with which LEP persons are likely to utilize the services provided by the Chicago Police Department, it is important to note that the statistical data available is insufficient. Often times, police officers will rely on their own language skills, language skills of coworkers, or language skills of friends and family of the LEP individual before utilizing the Language Line.¹⁴⁴ Additionally, during field-encounters and home visits to an LEP person's home, the Chicago Police Department requires officers to seek assistance from a bilingual police officer before employing the use of the Language Line.¹⁴⁵ The bilingual police officers that respond to a scene before a language line is employed are Department-

137. Guidance to Federal Financial Assistance Recipients Regarding Title IV Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002).

138. DANA V. STARKS, CHICAGO POLICE DEPARTMENT COMPLIANCE REVIEW, Dep't of J. 05 OCR 0040, 6 (2007). [<https://perma.cc/G66V-7TG4>]. (Language Lines are a form of language access employed by several government agencies, such as the United States Immigration and Customs Enforcement.). See also UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, LANGUAGE ACCESS PLAN 15 (2015).

139. HOLLY MIKKELSON, TELEPHONE INTERPRETING: BOON OR BANE? 251 (Luis Pérez González 2003).

140. DANA V. STARKS, CHICAGO POLICE DEPARTMENT COMPLIANCE REVIEW, Dep't of J. 05 OCR 0040, 6 (2007). [<https://perma.cc/G66V-7TG4>].

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. DANA V. STARKS, CHICAGO POLICE DEPARTMENT COMPLIANCE REVIEW, Dep't of J. 05 OCR 0040, 6 (2007). [<https://perma.cc/G66V-7TG4>].

Authorized Interpreters.¹⁴⁶ In order to become a Department-Authorized Interpreter, a police officer needs to complete a certification program to ensure the adequacy of the officer's linguistic abilities.¹⁴⁷ Outside of the Department of Justice's monetary incentive for police departments to employ interpreters when responding to LEP individual's needs,¹⁴⁸ there is no federal legislation, or state legislation in Illinois requiring police departments to utilize interpreters when assisting peoples with limited English proficiency.

Third, the Department of Justice balances the number of LEP individuals and frequency of their use of the Chicago Police Department services with the nature and importance of the program, activity, or service provided.¹⁴⁹ Services provided by law enforcement agencies are among the most important programs within the United States because of the situations to which they respond.¹⁵⁰ Yet, the Office of Emergency Management and Communications for the city of Chicago that handles emergency calls are required to handle the calls of LEP persons if the department is capable. Otherwise, the telephone operators rely on bilingual coworkers, as well as the LEP caller's friends and family, including minors before employing the use of a trained interpreter.¹⁵¹

- III. The Need for Legislation for Language Access Provisions Due To Poor Policing and Lack of Protections for Limited English Proficiency Persons

This balancing test is problematic because using family members or friends to interpret can place a dependence on the person in need of emergency services to rely on their abuser to serve as an interpreter.¹⁵² Moreover, the United States Department of Health and Human Services ("HHS") stated in a report on the National Standards for Culturally and Linguistically Appropriate Services in Health Care that using family members can lead to inaccurate information.¹⁵³ Specifically, the HHS stated

146. Chicago Police Department, Limited English Proficiency, Special Order S02-01-05 (2012).

147. *Id.*

148. 28 C.F.R. § 42.104(b)(2) (2003).

149. Guidance to Federal Financial Assistance Recipients Regarding Title IV Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002).

150. See U.S. DEPARTMENT OF JUSTICE, COMMUNITY RELATIONS SERVICES TOOLKIT FOR POLICING, IMPORTANCE OF POLICE-COMMUNITY RELATIONSHIPS AND RESOURCES FOR FURTHER READING (2015).

151. DANA V. STARKS, CHICAGO POLICE DEPARTMENT COMPLIANCE REVIEW, Dep't of J. 05 OCR 0040, 6 (2007) [<https://perma.cc/G66V-7TG4>].

152. Suzanne duMond-Perez, *Eliminating Language Barriers in Domestic Violence Cases*, NY State Office for the Prevention of Domestic Violence (Summer 2014).

153. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL STANDARDS FOR CULTURALLY AND LINGUISTICALLY APPROPRIATE SERVICES IN HEALTH CARE (2001).

that “[i]n order to ensure complete, accurate, impartial, and confidential communication, family, friends or other individuals, should not be required, suggested, or used as interpreters.”¹⁵⁴ Additionally, the same report noted that “minors should never be used as interpreters, nor allowed to interpret for their parents.”¹⁵⁵ While the governing bodies of the United States hold clear and stringent standards against family and friends to be used as interpreters in the realm of healthcare, the United States Department of Justice and Congress have been less quick to hold law enforcement agencies to the same standard, despite the essential role that law enforcement agencies play in American society.

For example, in *Bauta v. State*, a case in the District Court of Appeal for the State of Florida, police officers used a victim’s mother to act as an interpreter for her daughter.¹⁵⁶ The investigating officer went to the child’s home after an initial call to police.¹⁵⁷ The officer did not speak Spanish, and the child did not speak English, but rather, only Spanish.¹⁵⁸ Thus, the initial interview with the child, rather than calling an interpreter, consisted of a conversation between the officer and the child, using the mother to interpret in English for the officer.¹⁵⁹ This is problematic because of the emotionally-charged situation the police officer was responding to. In order to obtain the most accurate information, employing third-party, unbiased interpreters to collect victim testimony is essential to preserving justice, and thus, should be standard practice by police agencies.

Moreover, law enforcement agencies often utilize relatives as *ad hoc* interpreters.¹⁶⁰ A more shocking situation of police officers using relatives to interpret for family members arose in the case of *People v. Kourani*, where law enforcement agencies used the victim of a robbery to translate for the perpetrator of the crime, and the victim and the defendant also happened to be brothers.¹⁶¹ The defendant, Zocker Kourani, burglarized the victim’s, Ibrahim Kourani, (also the defendant’s brother’s) home.¹⁶² After the defendant was in custody, the police officers telephoned Ibrahim twice to ask

154. *Id.* at 12.

155. *Id.*

156. *Bauta v. State*, 698 So.2d 860 (Fla. Dist. Ct. App. 3d Dist. 1997).

157. *Id.* at 865.

158. *Id.*

159. *Id.*

160. *See People v. Marrero*, 381 N.Y.S.2d 687 (App. Div. 1976) (where the police used a son to interpret for his father during the arrest and later at the police station). *See also People v. Jordan*, 488 N.Y.S.2d 89 (App. Div. 1985) (where in a murder case the police used the defendant’s brother to translate the Miranda warnings to him); *Bauta v. State*, 698 So.2d 860 (Fla. Dist. Ct. App. 3d Dist. 1997) (where a child was sexually assaulted and the mother was used to translate integral information of the assault to the police officer).

161. *People v. Kourani*, 683 N.Y.S.2d 570 (App. Div. 1998).

162. *Id.* at 573.

him, the victim, to translate the officer's requests in Arabic to the defendant.¹⁶³ This use of family members as interpreters is devastating to the pursuit of justice in our policing system because it places the victim of a crime in a position of responsible advocacy for the defendant while also placing the defendant in a position where he is unable to achieve true justice due to the lack of interpretation and translation provided to him by the law enforcement agency.

In addition to using family members as translators during police investigations, police officers have also regularly turned to persons near a crime scene in order to translate. In the case of *People v. Feliciano*, police officers used a victim of a robbery's employer, rather than a trained interpreter.¹⁶⁴ The victim of a robbery gave a description of the defendant to the police through his employer because the victim spoke little English.¹⁶⁵ However, because the police used an untrained interpreter in the form of the victim's employer to translate the description of the defendant, the discrepancies of the translation were called into question at trial.¹⁶⁶ Ultimately, little merit was given to the discrepancies because the court recognized the information was likely lost in translation, the use of a trained interpreter would have estopped this defense from arising, and could have possibly led to an arrest of the defendant more quickly because the police would have been privy to accurate information regarding the defendant.¹⁶⁷

Another instance where police used an *ad hoc* interpreter rather than employing an officially trained translator occurred in *Maqueira v. State*.¹⁶⁸ In this case, the police used a fellow inmate that stated the defendant confessed the murders to him.¹⁶⁹ The inmate then served as an interpreter between the defendant and the police officers.¹⁷⁰ Using another inmate to translate the needs of a defendant in a criminal trial is severely problematic and a dubious form of police work because it places an unfair burden on an inmate who may be biased in hopes of a reward from police officers if the inmate coerces the defendant to cooperate. Further, using an untrained interpreter leads to inaccurate information that police use to convict a defendant.

The United States legislature has deemed the use of interpreters so vital to the pursuit of justice that every state and the federal government has developed statutory language providing for the training and allocating

163. *Id.* at 574.

164. *People v. Feliciano*, 548 N.Y.S.2d 647 (App. Div. 1989).

165. *Id.* at 648.

166. *Id.*

167. *Id.*

168. *Maqueira v. State*, 588 So.2d 221 (Fla. 1991).

169. *Id.* at 223.

170. *Id.*

resources to certify interpreters in the courts.¹⁷¹ The United States legislature has developed statutory language for the use and training of interpreters in the courts.¹⁷² The statute requires certified interpreters to be used in judicial proceedings when a party to the case or a witness:

(A) speaks only or primarily a language other than the English language; or (B) suffers from a hearing impairment (whether or not suffering also from a speech impairment) so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.¹⁷³ Thus, the legislature has deemed it vital to provide interpreters to LEP persons when in judicial proceedings—the same logic can be used to congruently form the need for trained interpreters, rather than *ad hoc* translators, to be used in police investigations and emergency situations.¹⁷⁴

It is clear that when police use untrained interpreters in the course of their investigations, mistakes and ethical violations are made.¹⁷⁵ Thus, in order to meet the correct standards laid out by the Department of Justice,¹⁷⁶ due to the importance of the service that police departments provide,¹⁷⁷ police

171. NATIONAL CENTER FOR STATE COURTS, LANGUAGE ACCESS PROGRAMS BY STATE, <https://www.ncsc.org/services-and-experts/areas-of-expertise/language-access/resources-for-program-managers/lap-map/map.aspx> [<https://perma.cc/XQ6Z-XTYC>] (interactive map shows the language access plans of each state).

172. 28 U.S.C. § 1827 (2012).

173. *Id.*

174. *Id.*

175. See *Maqueira v. State*, 588 So.2d 221 (Fla. 1991). See also *Bauta v. State*, 698 So.2d 860 (Fla. Ct. App. 3d Dist. 1997); *People v. Kourani*, 683 N.Y.S.2d 570 (App. Div. 1998); *People v. Feliciano*, 548 N.Y.S.2d 647 (App. Div. 1989).

176. Guidance to Federal Financial Assistance Recipients Regarding Title IV Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002).

177. See U.S. DEPARTMENT OF JUSTICE, COMMUNITY RELATIONS SERVICES TOOLKIT FOR POLICING, IMPORTANCE OF POLICE-COMMUNITY RELATIONSHIPS AND RESOURCES FOR FURTHER READING (2015).

Strong relationships of mutual trust between police agencies and the communities they serve are critical to maintaining public safety and effective policing. Police officials rely on the cooperation of community members to provide information about crime in their neighborhoods, and to work with the police to devise solutions to crime and disorder problems. Similarly community members' willingness to trust the police depends on whether they believe that police actions reflect community values and incorporate the principles of procedural justice and legitimacy.

should be required to use trained, professional interpreters when speaking to LEP individuals.¹⁷⁸

Lastly, the United States Department of Justice balances the number of LEP individuals likely to benefit from the service and the importance of the service with the “resources available to the recipient and the related costs.”¹⁷⁹ During the year of 2005, when the Department of Justice conducted the compliance review of the Chicago Police Department and their interactions with LEP individuals, the Chicago Police Department’s total operational budget was \$1,065,145,663.00.¹⁸⁰ Of their total budget, the Chicago Police Department spent approximately \$507,957 on language line services for emergency phone calls.¹⁸¹ In addition to this, the Chicago Police Department utilized bilingual officers to serve as the principal resource for the department’s communications with LEP individuals.¹⁸² Officers also freely engage with community members, neighbors, and relatives to translate when a bilingual officer cannot be dispatched to assist in translation in emergency situations, rather than employing the use of a language line.¹⁸³ The Chicago Police Department also utilizes community groups, such as the Chinese Mutual Aid Society, the Chinatown Chamber of Commerce, the Polish-American Congress, and the Korean-American Chamber of Commerce to assist with interpretation and translation needs.¹⁸⁴ Thus, in order to ensure that the LEP individual is receiving meaningful assistance by police forces, the Department of Justice recommended that the officers that employ translation assistance be certified and trained in the language by the police department.¹⁸⁵ The Department of Justice additionally noted that there was no uniform training of Chicago Police Reporters to obtain proper translators and interpreters while in the field or conducting home visits and recommended police officers be trained in responding appropriately to LEP persons.¹⁸⁶

Id.

178. *See* 28 U.S.C. § 1827 (2012).

179. DANA V. STARKS, CHICAGO POLICE DEPARTMENT COMPLIANCE REVIEW, Dep’t of J. 05 OCR 0040, 6 (2007). [<https://perma.cc/G66V-7TG4>]. *See also* Guidance to Federal Financial Assistance Recipients Regarding Title IV Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002).

180. U.S. Department of Justice. *See also* Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000).

181. *Id.*

182. *Id.*

183. Chicago Police Department, Limited English Proficiency, Special Order S02-01-05 (2012).

184. DANA V. STARKS, CHICAGO POLICE DEPARTMENT COMPLIANCE REVIEW, Dep’t of J. 05 OCR 0040, 6 (2007) [<https://perma.cc/G66V-7TG4>].

185. *Id.*

186. *Id.*

IV. SOLUTION

The extent to which law enforcement agencies in the United States are obligated to provide LEP services to individuals is driven by three overarching considerations including: (1) the constitutional due process and equal protection requirements under the Fourteenth Amendment; (2) federal statutory and regulatory requirements, primarily stemming from the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968; and (3) the individual state statutory and specific agency requirements.¹⁸⁷ Moreover, the enforcement for language access rights among the criminal justice system is primarily imposed by the United States Department of Justice.¹⁸⁸

In order to accommodate individuals that can communicate and comprehend a small amount of English, the Department of Justice should create a Federal Interagency specifically for limited English proficiency persons.¹⁸⁹ However, the Department of Justice does not require recipients of federal funding to submit written language access plans.¹⁹⁰ Moreover, the Department of Justice only requires that agencies receiving federal funding, such as police departments, to ensure meaningful access to their programs with little to no enforcement as to how that standard is met.¹⁹¹ In 2012, the Department of Justice required some law enforcement agencies to turn in language access plans, however, these plans were not enforced and no measurements to ensure compliance were put in place by the Department of Justice before federal funding was released to the required agencies.¹⁹²

In addition to the lack of enforcement by the Department of Justice to ensure police departments are complying with the law regarding language access rights, the number of cases addressing LEP services is extremely limited. However, the caselaw in the concerning language access rights for LEP individuals in the realm of health care and education is tremendously

187. Chicago Police Department, Limited English Proficiency, Special Order S02-01-05 (2012).

188. Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (2000).

189. DEPARTMENT OF JUSTICE, FEDERAL COORDINATION AND COMPLIANCE SECTION LIMITED ENGLISH PROFICIENCY (2011).

190. *Id.*

191. *Id.*

192. Chicago Police Department, Limited English Proficiency, Special Order S02-01-05 (2012). *See also* New York Police Department, *NYPD Language Access Plan for Limited English Proficient (LEP) Persons* (2012), http://www.nyc.gov/html/nypd/downloads/pdf/public_information/lap_June_2012.pdf [<https://perma.cc/8SFA-ZV8C>]; San Jose Police Department, *Language Access Plan* (2014), https://www.sjpd.org/records/language_access_plan-public.pdf [<https://perma.cc/K5TS-VATW>]; Tucson Police Department, *Limited English Proficiency Plan* (2013), <https://www.tucsonaz.gov/police/news/info-tpds-limited-english-proficiency-plan-lep> [<https://perma.cc/J6PF-YXV8>].

ample.¹⁹³ Specifically, the Department of Justice takes a very broad view of the language access services that need to be provided in the criminal justice system, leaving much of the decision to provide services to the individual court or law enforcement agency.¹⁹⁴

The need for uniform legislation and jurisprudence requiring law enforcement agencies to provide adequate access to persons who speak limited English is essential to maintain a fair and just criminal justice system. LEP individuals that cannot comprehend or communicate the English language are not being assisted by law enforcement agencies when police officers are called to use family members, friends, neighbors, and bilingual police officers when responding to homes.¹⁹⁵ For example, the Department of Justice and the Office on Violence Against Women reported that LEP victims face unique challenges when reporting domestic violence.¹⁹⁶ The Office for the Prevention of Domestic Violence stated that:

Due to language barriers, LEP victims of domestic violence are unable to communicate their needs and concerns, and often don't understand their rights or options to get needed support. As a result, these individuals, and the professionals who assist them, often rely on the abuser to serve as an interpreter. Likewise, children or other witnesses may be asked to interpret on behalf of the victim – which puts both children and victim at risk while impacting the credibility of the information provided.¹⁹⁷

The need for real legislation and jurisprudence providing language rights to persons before the court system is involved and is increasingly essential.¹⁹⁸ Our emergency responders and law enforcement officials work

193. See *Nichols*, 414 U.S. 536 (1974); *Rios v. Read*, 480 F. Supp. 14 (E.D.N.Y. 1978); *Castaneda v. Pickard*, 648 F.2d 989 (5th Cir. 1981); *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268 (2d Cir. 2009) (the appellate court used precedence set from LEP healthcare cases to determine that interpreters are also necessary for sign language purposes in hospital settings). See also *Colo. Cross-Disability Coal. v. Women's Health Care Assocs., P.C.*, Civil Action No. 10-cv-01568-RPM, 2010 U.S. Dist. LEXIS 119955 (D. Colo. Oct. 25, 2010).

194. DEPARTMENT OF JUSTICE, FEDERAL COORDINATION AND COMPLIANCE SECTION LIMITED ENGLISH PROFICIENCY (2011).

195. Chicago Police Department, Limited English Proficiency, Special Order S02-01-05 (2012).

196. See Department of Justice Language Access Plan (2012).

197. Suzanne duMond-Perez, *Eliminating Language Barriers in Domestic Violence Cases*, NY State Office for the Prevention of Domestic Violence (Summer 2014).

198. See *Lau v. Nichols*, 414 U.S. 563 (1974); *Rios v. Read*, 480 F. Supp. 14 (E.D.N.Y. 1978); *Castaneda v. Pickard*, 648 F.2d 989 (5th Cir. 1981); *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, (2d Cir. 2009) (the appellate court used precedence set from LEP healthcare cases to determine that interpreters are also necessary for sign language purposes in hospital settings). See also *Colo. Cross-Disability Coalition v. Women's Health Care Assocs., P.C.*, Civil Action No. 10-cv-01568-RPM, 2010 U.S. Dist. LEXIS 119955 (D. Colo. Oct. 25, 2010); DEPARTMENT OF JUSTICE, FEDERAL COORDINATION AND COMPLIANCE SECTION LIMITED ENGLISH PROFICIENCY (2011); Chicago Police Department, Limited English

to serve increasingly diverse neighborhoods and communities.¹⁹⁹ Many individuals in need of emergency services do not speak English and are consistently done a disservice when law enforcement agencies try to rely on their own linguistic abilities rather than employing the use of a language line or a certified interpreter.²⁰⁰ Further, there is relatively little judicial and legislative authority implemented to question the current standards of policing and language access plans implemented by overseeing governmental agencies. True due process and justice call for the legislature and judicial proceedings to develop clear, systematic standards to ensure that LEP individuals are heard and provided impartiality and equal access within our communities.

Proficiency, Special Order S02-01-05 (2012); Department of Justice Language Access Plan (2012).

199. Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (2000).; *Global Diversity and Heritage, DATAUSA ILLINOIS*, [<https://perma.cc/6HEC-JH6C>]; (hereinafter UNITED STATES CENSUS BUREAU, [<https://perma.cc/G84G-EXRY>]).

200. See *State v. Santiago*, 556 N.W.2d 687, 696 (Wis. 1996); *DANA V. STARKS, CHICAGO POLICE DEPARTMENT COMPLIANCE REVIEW*, Dep't of J. 05 OCR 0040, 6 (2007) [<https://perma.cc/G66V-7TG4>]; *People v. Marrero*, 381 N.Y.S.2d 687 (App. Div. 1976) (where the police used a son to interpret for his father during the arrest and later at the police station). See also *People v. Jordan*, 488 N.Y.S.2d 89 (App. Div. 1985) (where in a murder case the police used the defendant's brother to translate the Miranda warnings to him); *Bauta v. State*, 698 So.2d 860 (Fla. Dist. Ct. App. 3d Dist. 1997) (where a child was sexually assaulted and the mother was used to translate integral information of the assault to the police officer).