



## LANGUAGE JUSTICE IN LEGAL SERVICES

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Legal aid practitioners in the United States are all too familiar with the challenges that clients who do not use English as their dominant language face when



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seeking government-funded services, programs, benefits, and activities. Many legal aid organizations zealously advocate for their clients to enforce the legal obligations of federal- and state-funded government entities, such as the courts or benefits agencies, to provide language services. Some may find it uncomfortable, however, to turn the lens inward and review their own organization's language services and practices around serving clients who speak languages other than English. Yet, sometimes our boldest and most important advocacy begins at home.

This article positions language justice as a critical part of effective and inclusive legal services. We will introduce legal aid providers to a framework for assessing and strengthening current practices for serving individuals who do not communicate in English as their dominant language by:

- laying out key concepts and terminology;
- reviewing demographic data about people who use

non-dominant languages;

- reviewing language access laws and mandates that apply to many legal aid organizations and other government-funded entities; and finally,
- offering concrete steps you can begin employing today to promote language justice in order to increase inclusion and ensure that you are not inadvertently promoting an “English only” service model.

As a starting point, consider if any of the following statements resonate with your experience or that of your agency:

- We know there are people here who speak X, but they are afraid to come in / don't trust us / don't have legal issues / are not low-income / must be getting served elsewhere / also speak English pretty well.
- We are overwhelmed with the clients we already serve — why should we try to bring in more clients from different communities?
- My non-English speaking clients always bring someone who speaks English with them, so it isn't really a problem. In fact, these clients prefer having someone they know interpret for them.
- We don't have any grant funding for interpreters or translators. We have bilingual staff and volunteers, and they do a great job!
- With technology like Google Translate, we can take care of our language needs for low or no cost.
- Most of our staff speak Spanish, so we are already doing a good job.

If so, know that you are not alone! These articles will give you tools to challenge some of these assumptions. Chances are, you have already encountered many people in your service area whose dominant language is one other than English. Many organizations lack the capacity to adequately meet the needs of these populations. To explore the impact of underdeveloped

## KEY TERMS

- **Audism:** The belief that people with hearing, and people who have the ability to behave like a hearing person, are superior to those who are Deaf or hard of hearing.
- **Deaf:** A capital Deaf denotes a cultural distinction, defining a group of people who are deaf and identify themselves members of a linguistic and cultural group. In the U.S., American Sign Language (ASL) is the primary and preferred language in the Deaf community, and many learn written English as a second language. ASL has geographic variations akin to accents in spoken languages, as well as slang. ASL is not universal; there are distinct signed languages in other countries, including but not limited to Spanish Sign Language and Chinese Sign Language. As a result, language rights issues often overlap and intersect with those facing Deaf communities.<sup>2</sup>
- **Hard of Hearing:** Having some degree of hearing loss ranging from mild to profound. People who are hard of hearing may benefit from the use of hearing aids or other assistive listening devices. In the U.S. context, they depend primarily upon spoken English in communicating with others.<sup>3</sup>
- **Interpreting:** The transmission of a message from one language into another using spoken or sign language without adding, deleting, or changing the content of the message.
- **Language Access:** The use of language assistance that incorporates different tools and strategies (*e.g.*, bilingual staff, interpreting, translation, signage, outreach, and evaluation) to ensure that non-dominant language users have access to critical services, programs, and civic participation.
- **Language Justice:** The systematic fair treatment of people of all language communities and respect for everyone's fundamental language rights.
- **Language Rights:** The human and civil rights of linguistic groups, such as the right to preserve non-dominant languages, access critical services without language barriers, and to live free from linguistic discrimination in education, workplaces, civic participation, and all other contexts.
- **Limited English Proficient (LEP):** Individuals who do not use spoken English as their primary language and who have a limited ability to read, speak, write, or understand English can be considered limited English proficient, or "LEP." These individuals may be entitled to language assistance with respect to a particular type or service, benefit, or encounter. This is the legal and official government term for this group of individuals, and very commonly used in legal services contexts. This term has been critiqued for reinforcing a deficit view of non-dominant language speakers. Alternatives to LEP are terms such as "non-dominant language users" and "linguistically marginalized communities."<sup>4</sup>
- **Linguicism:** A system of oppression based on language that results in structural advantages for dominant language speakers and disadvantages for non-dominant language users. Although English is not an official language at the federal level, it is clearly the dominant language in the U.S., and all other languages are non-dominant.
- **Meaningful Access:** The U.S. Department of Justice defines meaningful access as, "Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed or inferior as compared to programs or activities provided to English proficient individuals."<sup>5</sup>
- **Translation:** The conversion of written text from one language into another.

language practices, consider the common scenarios below, based on a composite of actual client stories:

### **Saran's Story**

*Saran is a 38 year-old Mongolian woman. She speaks conversational English but does not always understand everything, and she prefers Mongolian. She was working as a janitor in an office park when a coworker physically assaulted her during a disagreement. While relaying the incident to her legal aid attorney, she does her best to describe the incident in English, though she struggles with some of the terminology about body parts and the medical treatment she received. Saran's attorney is pleased that Saran speaks some English and proceeds with the interview in English. Several times during the interview, the attorney is confused by Saran's phrasing and seeks to clarify by suggesting a word that Saran might have been looking for. Saran hesitantly agrees with each word suggested to her, even when she does not know the meaning of the word. In subsequent conversations, Saran's story appears to change because the words the attorney suggested are inaccurate, leading the attorney to think that Saran is giving an inconsistent account. Eventually, the attorney closes Saran's case because she believes that Saran was changing her story and making up information. Saran's story has not changed. The attorney does not recognize her own role in suggesting words that created an inconsistent narrative.*

Saran's story demonstrates how a language barrier can create the appearance of an inconsistent narrative and undermine the client's credibility through no fault of her own. Ultimately, Saran was denied services based on these language barriers. How could Saran's story have turned out differently if Saran had been provided with a qualified Mongolian interpreter during her interview with the attorney? What is Saran going to tell other people in her community about her experience? If the legal aid organization is not currently doing any outreach to the Mongolian community, will Saran's experience be the only information the Mongolian community has about the organization?

### **Maria's Story**

*Maria is a 28 year-old Indigenous woman from a Mixteco community in the Mexican state of Oaxaca. She lives in California and is a single mother of two, working harvesting grapes in the*

*fields. Maria rents a small converted garage and recently received eviction paperwork. Maria's friend tells her to visit her local legal aid. When Maria finds the local legal aid office, she is greeted by a receptionist who is clearly rushed and busy. Without looking up, the receptionist informs Maria in rapid Spanish that she must fill out an application to determine if she is eligible for services. Because Maria speaks limited Spanish and no English, she misunderstands the question. She replies no, she has never been here before. The phone is ringing, and the receptionist is distracted and exasperated by Maria's confusion. Answering the phone, she hands the Spanish intake form to Maria and tells her to fill it out and bring it back when she's done. Maria reads very little Spanish but does the best she can with the questions she understands. When she brings back the form, she leaves blank the portion asking about citizenship or legal status in the country. The receptionist asks if she is a citizen or has her "mica" card. Maria is a lawful permanent resident (LPR) but is unfamiliar with the term "mica" for her LPR or green card. She says no and the receptionist informs her that she is ineligible for services. At no point does the receptionist ask Maria if there is a language she prefers or if she needs an interpreter. Maria is eligible for services but is turned away because of a miscommunication due to language barrier. Maria leaves feeling embarrassed and angry that she took a day off from work to visit the office and received no help. She is evicted and struggles to find new housing.*

Maria's story is particularly troublesome because it is possible that the receptionist will never realize that Maria was not a Spanish speaker and that she did not understand the intake questions. Maria was essentially denied services because she was not able to speak English or Spanish. This is a common occurrence for Indigenous Latin Americans, since many service providers are unaware that there are sizeable communities of people within Latin America who do not speak Spanish. Is Maria likely to return to legal aid for assistance in the future? When she leaves, what is her understanding of why she was denied services?

### **Why Language? The Significance of Linguistic Diversity in the United States**

Even if you are not getting many applicants whose dominant language is other than English through the

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doors, it is very likely they are in your service area. In the United States, more than 66 million people speak one or more of over 350 languages other than English.<sup>6</sup> Of those, over 25 million people self-report speaking English less than “very well,” whom the Census classifies as limited English proficient (LEP), and most (81%) are immigrants.<sup>7</sup> Linguistically marginalized communities have historically faced challenges in seeking access to basic amenities, legal remedies, and supportive services. Reports have found that limited English proficiency has impacted the “ability to access fundamental necessities such as employment, police protection, and health care.”<sup>8</sup> Unsurprisingly, access to justice has proven difficult for individuals who speak a language other than English at home, who have higher rates of poverty than the general population nationally.<sup>9</sup> In fact, 55% of foreign-born female heads of households, who are not naturalized U.S. citizens, with children under 18 years old, live below the federal poverty line.<sup>10</sup> In general, people who are not fully proficient in English are twice as likely to experience poverty and only half as likely to finish high school than proficient English speakers.<sup>11</sup> Language barriers are harmful to health, with research showing that immigrants with limited English are more likely to report poor health than English speaking immigrants.<sup>12</sup> Furthermore, non-dominant language speakers often struggle to actively participate in local decision-making and in the education of their children in public schools.

Despite the challenges faced by individuals who use non-dominant languages, communicating in a language or languages other than English should be seen as an asset, not a deficit. Treating it as such can shift the way you view the clients seeking services who speak different languages. Just because a group is marginalized due to a characteristic does not make the characteristic inherently deficient. It is important to remember that it is the oppression against non-dominant language users that is the “problem,” not their lack of English skills. The role of language should be valued and respected in the context of community cohesion, cultural continuity, and intergenerational relationships.

Linguistically marginalized communities have a long history of demanding respect for their language rights. These include the rights to use non-dominant languages, to pass them on to future generations, and to be free from linguistic discrimination.<sup>13</sup> Language rights include the right to language access, which refers to language assistance that enables non-dominant language users to access public services and civic engagement. Language access can be defined as, “The use of language services or language assistance to enable or help an individual who does not speak, read, write or understand the language of service to obtain meaningful access to that service.”<sup>14</sup> As described in more detail below, in the U.S., language access is regulated by laws that require non-dominant language speakers to have meaningful access to community services and public institutions, such as healthcare, social services, and courts.<sup>15</sup>



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## Legal Mandates

Title VI of the Civil Rights Act of 1964 (Title VI) requires that equal access be provided to individuals with limited English proficiency.<sup>16</sup> Under Title VI and its implementing regulations, recipients of federal funds, which includes most if not all legal services organizations, must provide “meaningful access” to their services for LEP individuals.<sup>17</sup> Many states also have similar statutes that prohibit discrimination based on national origin or ethnic group identification by state agencies or state funded entities.<sup>18</sup> Language access is therefore not a matter of the organizations’ largesse or discretion. Rather, federal and many state laws compel us to provide meaningful language access services. Providing language access is a necessary core function that we must treat as a “basic and essential operating expense, not as an ancillary cost.”<sup>19</sup>

The Legal Services Corporation, which funds many legal aid organizations across the country, also issued guidance in 2004 for grantees to comply with language access obligations.<sup>20</sup> As a result, many legal services organizations have become more aware of these mandates and created language access plans and protocols for their staff. It is important to remember that these mandates and obligations are a floor and not a ceiling. There are many creative strategies that organizations can pursue to ensure that they are not inadvertently perpetuating injustices against people who use languages other than English.

## The Case for Language Justice: Beyond Legal Mandates and Access

Language access is one component of the broader concept of language justice. While there is a long and rich history of language rights advocacy in diverse communities throughout the country, an explicit language justice approach emerged from immigrant rights organizing in the U.S. Southeast in the mid-2000s. Language justice includes the systematic fair treatment of people of all linguistic backgrounds and respect for everyone’s fundamental language rights. During the last two decades, grassroots groups, nonprofits, labor unions, and public schools have explored what linguistic equity means to them and developed innovative approaches to language justice.<sup>21</sup>

A language justice approach promotes cross-language collaboration, equitable communication, and language rights. First, language justice fuels collaboration by enabling organizations to engage diverse groups, communities, and stakeholders in innovative partnerships. Such cross-language

relationship-building is made possible by using interpreting, translation, and other strategies for equitable communication between people who use different languages. A language justice approach also recognizes that language rights are human rights and seeks to promote these rights through diverse means, from providing people with opportunities to choose and participate in their preferred languages to proactively preventing linguistic discrimination. In a legal services context, language justice is relevant to the core missions of many of our organizations, which frequently include concepts of achieving equal justice for all. Part of that *justice* should include ensuring equal access to justice by effectively communicating with litigants and clients, as well as advocating for their language rights.



*Addressing language diversity can be viewed on a continuum with language exclusion on one extreme, moving then to language tolerance, then language access, and finally language justice. Where would you place your organization on this scale?*

Today, many legal services programs across the country are incorporating language justice concepts and tools into their services and advocacy. By embracing language justice, these organizations recognize that language is an essential component of equity for marginalized communities. Consider the practical steps laid out [see page 8] to weave language justice principles into your organization’s services and advocacy. We forge the path to language justice by walking together, asking questions (or “caminando, preguntamos,” a Zapatista maxim), and there are not always clear answers. Together, we must continually seek to understand and address the complexities of the linguistic and cultural barriers our clients face to ensure justice for all communities.

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## PRACTICAL STEPS TO MOVE FROM LANGUAGE ACCESS TO LANGUAGE JUSTICE

### Develop a practical written plan

- Create a written plan of how you intend to serve individuals whose dominant language is not English in your service area.
- Use local data to inform your plan and reach out to multiple sources to understand language needs in your service area. Local data could include information from local government benefits agencies, and other community-based organizations.
- Plan to make hiring bilingual staff a priority. While bilingual staff should not be used as interpreters or translators unless they have specific training, they are key to connecting with and providing services to individuals whose dominant language is not English.
- Establish relationships with local organizations who have experience working with diverse communities and collaborate with trained interpreters and translators.
- Determine specific strategies about how to respond to and ensure meaningful access at all points of contact (e.g., telephone calls, walk-ins, self-help clinics, website, written communications, etc.).
- Appoint a language coordinator or working group. Ensure the coordinator has their other responsibilities reorganized so they have time and capacity to do the role justice.
- Update your plan on a yearly basis. Some questions you might want to consider include:
  - » How have demographics changed during the last year?
  - » How has your plan affected your services?
  - » How did you respond to language needs as they arose?
  - » How did you address unexpected languages?
  - » What should you adapt or change for next year?
  - » How are you assessing and measuring client satisfaction?
  - » How are you building capacity in the long-term, e.g., fundraising, staff hiring, and training, etc.?

### Set your plan up for success

- Integrate language inclusion into your outreach strategy. Inform the community in your service area about their rights to receive language support, that they are welcome in your organization, and about the inclusive services you provide.
- Conduct regular trainings and activities to ensure that all staff are familiar with protocols for serving clients whose dominant languages are not English.
- All staff should be empowered and should have the necessary information to use contracted remote (telephonic or

video-based) services during emergencies and to communicate with walk-ins and callers. Staff should be properly trained to use a combination of on-site and remote interpreters, as appropriate, for ongoing cases and day-to-day work.

- Invest in quality multi-channel interpreting equipment. Make sure staff are properly trained on how to use the equipment.
- Have a budget for hiring experienced and qualified interpreters and translators.
- Gather internal data and keep track of language needs. This will help you when developing a new budget for the following fiscal year.

### Commit to industry best practices

- Remember the order of preference for ensuring accuracy and quality during interpreted sessions, from best to acceptable: 1) On-site (all parties are present in-person); 2) Video-Remote Interpreting (VRI) with a strong internet connection; 3) Over-the-Phone Interpreting (OPI) .
- Make it a goal to only hire qualified, trained interpreters with professional experience. Do not use ad hoc interpreters or translators. This means, do not use a bilingual person who has not received formal training as an interpreter or translator. Interpreting and translation are specialized skills and bilingual people cannot just “pick it up.”
- Do not use a minor or family member to interpret unless it is for the limited purpose of ascertaining the name of the language.
- Compensate interpreters fairly for their time and expertise. Do not ask partner organizations to volunteer their time to interpret or translate. Do not expect that bilingual staff can interpret without training, with no additional stipend or bonus, and on-top of their regular duties.
- Make the investments to send staff, volunteers, and community partners, who are called upon to interpret, to receive quality training on interpreting skills on a regular basis.
- Provide quality translation of vital documents under a translation protocol. Coordinate a pool of translators and reviewers who are familiar with your work who can translate and update documents, as needed. Consider having a team of trained community members or focus group review the documents for accuracy, cultural appropriateness, and readability.

## What does language justice in legal services look like?

### ✓ INTERNAL WORK: Integrating Language Justice Best Practices into Agency Leadership

A legal aid organization has several community members on their Board of Directors who do not speak English as their dominant language. Two of them speak Spanish, one speaks Korean, and one speaks Punjabi. All of the board materials are translated and provided to the community members ahead of each meeting. At each board meeting, a team of two interpreters are present for each language combination and extra time is allocated to set up multi-channel equipment and distribute headsets to allow for simultaneous interpreting. The English-speaking members also receive headsets so that the community board members' contributions can be simultaneously interpreted into English, allowing everyone to meaningfully participate in the meeting.

### ✓ EXTERNAL ADVOCACY: Fighting to Enforce Language Rights

A legal aid organization has a designated language justice manager, who coordinates internal language services and works with all practice areas to incorporate language rights into their advocacy work. Recently, several Hmong-speaking clients have had difficulty accessing the local government benefits agency to obtain critical benefits, such as health care and food stamps. After careful consideration, the clients decide they would like to advocate for their language rights and demand meaningful language services. The language justice manager and government benefits staff attorneys make attempts to meet with the local benefits agency to improve their language services. There is little response from the local benefits agency. The next step is to file an administrative complaint against the local benefits agency. After an investigation, the local benefits agency voluntarily agrees to improve their policies and procedures, with input from advocates and community stakeholders, and hold quarterly meetings to discuss and monitor implementation.

conducted extensive advocacy around state and federal civil rights requirements to obtain meaningful language services for clients. Joann served on the California Judicial Council Language Access Plan Implementation Task Force from 2015–2019. She has also served on the boards of the Korean American Bar Association, Korean Resource Center, and the Center for the Pacific Asian Family, a domestic violence/sexual assault shelter serving the API community. She is a graduate of Northwestern University and George Washington University Law School. Joann may be reached at [jlee@lafla.org](mailto:jlee@lafla.org).

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Ana Paula Noguez Mercado joined the Asian Pacific Institute on Gender-Based Violence (API-GBV) in February 2018. She is a national trainer and technical assistance provider on language access and equitable communication, as well as on interpreting skills, mainly focused on serving domestic violence and sexual assault survivors. Prior to joining API-GBV, Ana Paula worked to advance gender justice at the National Women's Institute (Mexico City) and the Mexican American Legal Defense and Educational Fund- MALDEF (Los Angeles), among other organizations. As co-founder and member of Antena Los Angeles, Ana Paula has extensive experience as community interpreter and translator, as co-coordinator of a network of pro bono interpreters and translators in diverse social justice settings, and as a consultant, trainer and advocate for a language justice framework in nonprofit and public agencies. Ana Paula received her law degree from Universidad Iberoamericana (Mexico City), a master's degree in Gender and the Law from Universidad Autónoma de Barcelona/CIESAS, and received her LL.M. (Master of Laws) in Critical Legal Studies and International Human Rights Law from UCLA School of Law in Los Angeles, CA. Ana Paula may be reached at [anoguez@api-gbv.org](mailto:anoguez@api-gbv.org).

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- degree in Community Development from the University of California, Davis, where she conducted community-based participatory research about Indigenous language justice in collaboration with the Mixteco/Indígena Community Organizing Project (MICOP) and CRLA. Alena is a student in the San Francisco State University Court Interpreting Certificate Program. She has sixteen years of experience as a facilitator and community organizer focused on dismantling oppression and promoting equity and inclusion. Alena is a co-founder of Just Communities' Language Justice Initiative on the California Central Coast, where she also co-led educational equity and sexual violence prevention efforts. Alena may be reached at [auliasz@crla.org](mailto:auliasz@crla.org).
- 2 See generally Vera Institute, *Translating Justice Project* (Retrieved from: <https://www.vera.org/projects/translating-justice/overview>); Culture, Language, and Access, *Key Considerations for Serving Deaf Survivors of Domestic and Sexual Violence*, (Retrieved from: <https://www.vera.org/publications/culture-language-and-access-key-considerations-for-serving-deaf-survivors-of-domestic-and-sexual-violence>).
  - 3 *Id.*
  - 4 *Id.*
  - 5 U.S. Department of Justice Language Access Plan (March 2012). Retrieved from: <https://www.justice.gov/sites/default/files/open/legacy/2012/05/07/language-access-plan.pdf>.
  - 6 U.S. Census Bureau, 2015; see also [https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17\\_1YR/B16001](https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_1YR/B16001).
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  - 9 U.S. Census Bureau (2017). American Community Survey 1-Year Estimates. Retrieved from: [https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17\\_1YR/S1603](https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_1YR/S1603)
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  - 12 Ding, H., & Hargraves, L. (2009). Stress-associated poor health among adult immigrants with a language barrier in the United States. *Journal of immigrant and minority health*, 11(6), 446.
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  - 15 *Id.*
  - 16 See 42 U.S.C. § 2000d; Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (2002).
  - 17 See *id.* Other federal statutes with language rights obligations include, but are not limited to the Omnibus Crime Control and Safe Streets Act of 1968, Section 504 of the 1973 Rehabilitation Act, and the Americans with Disabilities Act (ADA).
  - 18 See e.g., California Government Code section 11135 and implementing regulations.
  - 19 *Id.*
  - 20 Legal Services Corporation, Language Access and Cultural Sensitivity. Retrieved from: <https://www.lsc.gov/grants-grantee-resources/resources-topic-type/language-access-cultural-sensitivity>
  - 21 Organizations in the U.S. that explicitly promote language justice today include Antena Houston (TX); Antena Los Angeles (CA); Asian Pacific Institute on Gender-Based Violence (US); Austin Language Justice Collective (TX); Boston Interpreters Collective (MA); California Rural Legal Assistance, Inc. (CA); Caracol Language Cooperative (NY); Center for Participatory Change (NC), Centro Binacional para el Desarrollo Indígena Oaxaqueño (CA); Cenzontle Language Justice Cooperative (NC), DeafHope (CA), Frente Indígena de Organizaciones Binacionales (CA and TX); Just Communities (CA); Legal Aid Foundation of Los Angeles (CA); Mixteco/Indígena Community Organizing Project (CA); tilde Language Justice Cooperative (NC); and Wayside Center (VA). Reach out to them to learn more!