

COMMENT

NOT FREE TO SPEAK: NORTH CAROLINA'S LANGUAGE ACCESS PAST AND PROGRESSION

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Imagine this. You are living abroad, and you get into an argument with your significant other. The argument turns violent, and you have to seek immediate help from the police. There is someone at the police station that speaks your native language, and she tells you that in order to protect yourself, you need to go to the courthouse and get an order from a judge. When you get there, a person at the main desk helps you fill out the necessary paperwork. The court date arrives. You are afraid to see your ex and nervous the judge will not believe your story. You step into the courtroom, and the judge says something to you, but you do not speak the language he is speaking. You say one of the phrases the police officer told you, “I need an interpreter.”

Yet, you are not given an interpreter. The judge acts as if he did not hear you, and the court proceeds with your case without your involvement. The judge gestures that you are supposed to do something, but you do not know what he means. He keeps saying it over and over, but you do not speak the language. You do not know what to do. When it is over, you do not know what or how the court has decided. You are still waiting and hoping for an interpreter.¹

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1. This situation was entirely fictionalized but based upon examples contained in the U.S. Department of Justice (“DOJ”) report on North Carolina’s Administrative Office of the Courts (“AOC”). See generally Letter and Report of Findings from Thomas E. Perez, Assistant Att’y Gen., U.S. Dep’t of Justice to John W. Smith, Dir., N.C. Admin. Office of the Courts, Investigation of the North Carolina Administrative Office of the Courts Complaint

For many, this situation sounds like an unlikely nightmare. But, for a group of individuals classified as limited English proficient (“LEP”) by the U.S. Department of Justice (“DOJ”), this scenario is an unfortunate reality they may face while interacting with the justice system.²

While language barriers can be a daily reality for LEP individuals across the country, some state court systems are particularly difficult and unwelcoming. For instance, the DOJ formally investigated Alabama, California, Colorado, North Carolina, and Rhode Island after complaints were filed against them under Title VI of the Civil Rights Act of 1964 (“Title VI”).³

This Comment will focus exclusively on the DOJ’s 2012 investigation of North Carolina’s language access policies, the results of the investigation, what North Carolina has done in the five years since this investigation, and what North Carolina still needs to do to improve its language access programs. Part I will define and explain language access, who LEP individuals are in the United States, and the legal landscape of language access. Part II will discuss and analyze the results of the DOJ’s 2012 investigation of North Carolina’s language access policies. Part III will discuss North Carolina’s 2015 and 2017 Standards for Language Access and determine if these standards address the problems identified by the DOJ in the 2012 report. Part IV will discuss the policies North Carolina should continue to follow and identify policies North Carolina should adopt in order to ensure language access.

I. WHAT IS LANGUAGE ACCESS, WHO DOES IT AFFECT, AND WHY DOES IT MATTER?

Before exploring North Carolina’s past and current language access policies, it is first important to understand what language access actually is. Language access means “providing [LEP] people with reasonable access to the same services as

No. 171-54M-8 (Mar. 8, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2012/03/08/030812_DOJ_Letter_to_NC_AOC.pdf.

2. See generally *id.*

3. Laura K. Abel & Matthew Longobardi, *Improvements in Language Access in the Courts, 2009 to 2012*, 46 J. POVERTY L. & POL’Y 334, 334 (2012).

English-speaking individuals.”⁴ LEP individuals cannot speak, understand, read, or write English fluently.⁵ Language access services are found in all areas of government, but this Comment will focus exclusively on language access services in the court system.

As of 2011, LEP individuals constituted roughly nine percent of the U.S. population.⁶ Between 1990 and 2010, North Carolina experienced the second highest growth rate of all states in LEP population, growing from 87,000 LEP individuals in 1990 to 430,000 LEP individuals in 2010.⁷ The LEP population in the United States is primarily composed of Spanish speakers, but there are significant LEP populations who speak Chinese, Vietnamese, and Korean.⁸ Fifty-one percent of LEP individuals are female, and LEP individuals are more likely to live in poverty than English-proficient individuals.⁹ Additionally, while the majority of LEP individuals were born outside of the United States, nineteen percent of LEP individuals were born in the United States.¹⁰

Any agency that receives funding from the U.S. government must comply with the federal language access policies established in Title VI, the Omnibus Crime Control and Safe Streets Act of 1968 (“Crime Control and Safe Streets Act”), and President Clinton’s Executive Order 13,166.¹¹ Title VI prohibits discrimination on the basis of national origin by any agency

4. *Frequently Asked Questions on Legal Requirements to Provide Language Access Services*, MIGRATION POL’Y INST., <http://www.migrationpolicy.org/programs/language%2%A0access-translation-and-interpretation-policies-and-practices/frequently-asked> (last visited Mar. 27, 2017).

5. *What Are Language Access Services?*, MIGRATION POL’Y INST., <http://www.migrationpolicy.org/programs/language-access-translation-and-interpretation-policies-and-practices/what-are-language> (last visited Mar. 27, 2017).

6. MIGRATION POLICY INST., LEP DATA BRIEF, LIMITED ENGLISH PROFICIENT INDIVIDUALS IN THE UNITED STATES: NUMBER, SHARE, GROWTH, AND LINGUISTIC DIVERSITY 1 (Dec. 2011).

7. *Id.* at 5.

8. *Id.* at 6.

9. Monica Whatley & Jeanne Batalova, *Limited English Proficient Population of the United States*, MIGRATION POL’Y INST. (July 25, 2013), <http://www.migrationpolicy.org/article/limited-english-proficient-population-united-states-1>.

10. *Id.*

11. Letter and Report of Findings from Thomas E. Perez, *supra* note 1, at 1–2; *What Are Language Access Services?*, *supra* note 5.

receiving federal funding.¹² The Crime Control and Safe Streets Act provides that no person in any state shall be discriminated against on the basis of national origin by any program connected with or funded by the federal government.¹³ Additionally, Executive Order 13,166, entitled *Improving Access to Services for Persons With Limited English Proficiency*, requires that “each Federal Agency shall also work to ensure that recipients of Federal financial assistance . . . provide meaningful access to their LEP applicants and beneficiaries.”¹⁴ North Carolina’s Administrative Office of the Courts (“AOC”) receives funding from the DOJ, and, therefore, it must comply with federal language access policies.¹⁵

Even if North Carolina courts were not required to comply with the federal mandate to provide meaningful access to LEP individuals, language access is also an important element of due process, particularly in the criminal context.¹⁶ In *Language Access in Federal Courts*, Laura Abel notes that a central aspect of due process is the ability of court users to participate and understand their case, and individuals cannot do this if they cannot understand the language used by the court.¹⁷ Courts have recognized the due process implications of language access. For example, in *U.S. ex. rel. Negron v. New York*, the Court of Appeals for the Second Circuit determined that the government must provide an interpreter to an LEP criminal defendant because, otherwise, the defendant “is not present at his own trial.”¹⁸

Given the importance of language access, national legal organizations, such as the American Bar Association (“ABA”) and the National Center for State Courts, have issued model standards for language access.¹⁹ Due to the length and comprehensiveness of these model standards, it is beyond the scope of this Comment to

12. 42 U.S.C. §§ 2000d–2000d-7 (2012); see also *Overview of Title VI of the Civil Rights Act*, U.S. DEP’T JUST., <https://www.justice.gov/crt/fcs/TitleVI-Overview> (last updated Jan. 22, 2016).

13. 42 U.S.C. § 3789d; see also Letter and Report of Findings from Thomas E. Perez, *supra* note 1, at 2.

14. Exec. Order No. 13,166, 65 Fed. Reg. 50,121, 50,121 (Aug. 16, 2000).

15. Letter and Report of Findings from Thomas E. Perez, *supra* note 1, at 2.

16. Laura K. Abel, *Language Access in the Federal Courts*, 61 DRAKE L. REV. 593, 602 (2013).

17. *Id.*

18. United States *ex rel. Negron v. New York*, 434 F.2d 386, 389 (2d Cir. 1970); see also Abel, *supra* note 16.

19. Abel, *supra* note 16, at 598.

fully discuss the recommendations of both models. However, these standards will be briefly referenced in Part IV of this Comment in discussing how North Carolina can continue to improve its language access program.

II. THE DEPARTMENT OF JUSTICE'S NATIONAL ORIGIN DISCRIMINATION INVESTIGATION OF NORTH CAROLINA

On March 8, 2012, both the Chief Justice of the North Carolina Supreme Court and the Director of the AOC received a letter from the Civil Rights Division of the DOJ.²⁰ The letter formally released the findings of an almost year-long investigation into claims that North Carolina's language access policies impermissibly discriminated on the basis of national origin.²¹ The letter said what many North Carolinians already knew—that North Carolina's policies *did* discriminate on the basis of national origin “by failing to provide limited English proficient individuals with meaningful access to state court proceedings and operations.”²²

This report was not the first sign that North Carolina's language access policies were not up to par. The DOJ received its first Title VI complaint against North Carolina in 2006 from an attorney in private practice who alleged that courts told Spanish speakers in eviction proceedings to bring someone to interpret for them.²³ The DOJ inspected courts throughout the state in February 2008 but did not release a findings report.²⁴ Then, in May 2011, the Latin American Coalition, the Muslim American Society of Charlotte, and the Vietnamese Association of Charlotte filed another Title VI complaint alleging that state courts claimed that state judiciary policy prohibited them from providing interpreters to non-indigent defendants in criminal cases and most civil cases.²⁵ Furthermore, the complaint stated that judges often allowed family members or other people waiting for their own case to be heard to act as interpreters.²⁶ The DOJ conducted

20. Letter and Report of Findings from Thomas E. Perez, *supra* note 1, at 1.

21. *Id.*

22. *Id.*

23. Abel & Longobardi, *supra* note 3, at 338.

24. *Id.*

25. *Id.*

26. *Id.* at 339.

onsite visits and over eighty interviews, and the results were released in the March 8, 2012, letter and report findings.²⁷

The letter and attached report identified six major problems with the AOC's language access policies: (1) the AOC impermissibly restricted the types of proceedings in which it provided an interpreter to an LEP individual; (2) the AOC did not ensure that the requirements of the then-current AOC policies were met across the state; (3) AOC policies and practices resulted in several types of court proceedings progressing without any language assistance for LEP individuals who, therefore, were unable to meaningfully participate in their case, causing harmful delays and outcomes; (4) the AOC did not adequately notify LEP individuals of their right to an interpreter, ensure effective scheduling of interpreters, or translate all vital documents; (5) budget constraints did not excuse the AOC's failures; and (6) despite its knowledge of the adverse impact of its policy on LEP individuals, the AOC did not remedy these harms.²⁸ In order to fully understand North Carolina's violations, it is important to consider each major violation in turn.

A. The AOC Impermissibly Restricted the Types of Proceedings in Which the AOC Provided an Interpreter to an LEP Individual

The DOJ reported that it was the AOC's policy to only provide interpreters in limited settings.²⁹ For example, under North Carolina law and AOC policies, the AOC was required to provide interpreters in "all instances where the state bears the cost of representation," but there were numerous instances where even though the state bore the cost of representation, the AOC did not provide an interpreter.³⁰ Additionally, there were several instances where it was the policy of the AOC *not* to provide an interpreter, such as child custody hearings, civil no-contact orders, foreclosure proceedings, and all small claims court matters.³¹ During the investigation, the AOC contended that North Carolina law controlled interpreter coverage, and, therefore, it lacked authority

27. *Id.*

28. Letter and Report of Findings from Thomas E. Perez, *supra* note 1, at 2.

29. *Id.* at 7.

30. *Id.*

31. *Id.* at 7–8.

to expand the program.³² The DOJ firmly rejected this position in the report, noting that in similar contexts the AOC had always acknowledged that federal laws, like Title VI, preempt inconsistent state law obligations.³³ Therefore, Title VI preempted the state laws the AOC claimed to be bound by.³⁴

B. The AOC Did Not Ensure That the Requirements of the Then-Current AOC Policy Were Met Across the State

The DOJ noted that North Carolina courts did not consistently apply their policies even in instances covered by the AOC's limited language access policies.³⁵ The report provided five specific examples of situations where interpreters were not appointed in a timely manner; where friends, family members, and even attorneys were used as interpreters without having their competency assessed; and where defendants were not allowed to show indigency so that they were eligible for an interpreter.³⁶ One particularly striking example came from eastern North Carolina where the assistant district attorney oftentimes interpreted for defendants he was simultaneously prosecuting.³⁷

C. AOC Policy and Practices Resulted in Several Types of Court Proceedings Progressing Without Any Language Assistance for LEP Individuals Who Were Therefore Unable to Meaningfully Participate in Their Case—Causing Harmful Delays and Outcomes

The report highlighted seven instances where failure to provide an interpreter resulted in harmful consequences.³⁸ For example, in a Chatham County case, the judge used the husband of a woman fighting an annulment as an interpreter even though he was her opposing party.³⁹ Furthermore, the husband was asked to translate the evidence the woman presented to the court and all

32. *Id.* at 8.

33. *Id.* at 9.

34. *Id.*

35. *Id.*

36. *Id.* at 9–10.

37. *Id.* at 10.

38. *Id.* at 11–13.

39. *Id.* at 12.

of the judge's remarks.⁴⁰ The husband succeeded on his annulment claim.⁴¹

D. The AOC Did Not Adequately Notify LEP Individuals of Their Right to an Interpreter, Ensure Effective Scheduling of Interpreters, or Translate All Vital Documents

The DOJ found that the AOC failed to provide LEP individuals with notice of their right to language services.⁴² Furthermore, there was no official statewide policy in place to identify individuals who needed language access services.⁴³ Instead, each county developed its own methods, which varied from scanning a list of the last names of defendants to having an interpreter waiting in a courtroom to see if anyone responds to a question in Spanish.⁴⁴ Finally, the AOC failed to provide LEP individuals access to basic court forms.⁴⁵ The AOC had only translated a limited number of its forms into Spanish, and it did not have translated forms available in any other languages commonly spoken by LEP individuals.⁴⁶ Furthermore, the DOJ was unable to determine how an LEP individual could learn of forms available in other languages, as there was no information about these translated documents on the AOC website, nor was it possible to search for forms online in any language other than English.⁴⁷

E. Budget Constraints Did Not Excuse AOC's Failures

During the DOJ's investigation, the AOC argued that it could not expand interpreter services because of financial constraints.⁴⁸ However, after reviewing the AOC's budget from fiscal year 2011, the DOJ determined that the \$1.4 million estimated cost to expand interpreter services would constitute only

40. *Id.*

41. *Id.*

42. *Id.* at 13.

43. *Id.* at 14.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 3.

0.3% of the AOC's \$463.8 million budget.⁴⁹ Despite this relatively small cost, the DOJ provided the AOC with a list of fiscally friendly ways to improve language access services.⁵⁰

F. Despite Their Knowledge of the Adverse Impact of Its Policy on LEP Individuals, the AOC Did Not Remedy These Harms

Finally, the DOJ noted that even though the AOC was aware of the requirements under federal law to ensure nondiscrimination against national origin minorities, it still continued to use and implement discriminatory policies and practices.⁵¹

After this extensive list of violations, North Carolina was given a task: improve its language access policies or lose federal funding.⁵² North Carolina chose the former.

III. FIVE YEARS LATER: WHAT HAS CHANGED?

On April 29, 2015, North Carolina released its new set of Standards for Language Access ("2015 Standards").⁵³ These standards included several sections designed to fix the problems identified by the DOJ.⁵⁴ The AOC released updated standards on January 1, 2017 ("2017 Standards").⁵⁵ Since the 2015 Standards were the first released after the DOJ's 2012 report, my analysis will focus on the AOC's first attempt to remedy the problems identified in the 2015 Standards. However, I will also note updates and changes made in the 2017 Standards.

49. *Id.*

50. *Id.* at 15–16.

51. *Id.* at 17.

52. *Id.* at 18.

53. Memorandum from N.C. Admin. Office of the Courts to N.C. Judicial Branch, Adoption of Standards for Language Access: North Carolina Standards for Language Access Services in the North Carolina Court System (Apr. 29, 2015) [hereinafter AOC Standards Memo 2015].

54. *See generally id.*

55. N.C. ADMIN. OFFICE OF THE COURTS, STANDARDS FOR LANGUAGE ACCESS SERVICES IN THE NORTH CAROLINA COURT SYSTEM (Jan. 1, 2017) [hereinafter AOC STANDARDS 2017].

A. Were Restrictions on Which Proceedings Allowed the Use of an Interpreter Removed?

The DOJ's 2012 report identified that North Carolina law and AOC policies specified that the AOC was to provide interpreters in all cases where the state bore the burden of the costs of representation, but it failed to do so in many cases.⁵⁶ Furthermore, it was the policy of the AOC not to provide interpreters in certain cases, such as child custody hearings, civil no-contact orders, foreclosure proceedings, and all small claims court matters.⁵⁷

The 2015 Standards did remove some of the restrictions on which proceedings allowed the use of an interpreter, and the 2017 Standards removed all remaining restrictions. The 2015 Standards provided that the state would pay for an interpreter for specified case types as set forth in a schedule determined by the director, which included most types of proceedings.⁵⁸ The 2015 Standards also identified five groups that were entitled to an interpreter in a court proceeding even if the state did not bear the cost: (1) parties; (2) victims; (3) a testifying witness; (4) the parent, legal guardian, or custodian of a minor who is a party, victim, or a testifying witness in a court proceeding; and (5) the legal guardian or custodian of an adult who is a party, victim, or testifying witness in a court proceeding.⁵⁹ The 2017 Standards widely broadened the groups entitled to an interpreter to include all proceedings before magistrates, all proceedings before the clerk of the superior court, all proceedings in district court, all superior court criminal proceedings, superior court proceedings involving housing and eminent domain proceedings, and appeals from district court or the clerk of superior court.⁶⁰

The 2015 and 2017 Standards are much more expansive than the previous policies sanctioned by the DOJ in 2012. The AOC took a good first step towards increasing access in 2015 by

56. Letter and Report of Findings from Thomas E. Perez, *supra* note 1, at 7.

57. *Id.* at 2.

58. AOC Standards Memo 2015, *supra* note 53, § 5.2. The covered proceedings included (1) domestic matters not currently being covered in conjunction with custody or child support cases, including divorce, equitable distribution, post-separation support, and alimony; (2) property and money disputes; (3) special proceedings; and (4) estates. *Id.* at app. A.

59. *Id.* § 5.3.

60. AOC STANDARDS 2017, *supra* note 55, § 5.2.

expanding the categories where the state pays for interpretation, and the 2017 Standards completed this positive progression by effectively providing no-cost access to interpreters for anyone involved in a district or superior court proceeding.⁶¹

B. Does the AOC Now Have Policies in Place to Ensure that Language Access Is Implemented Consistently Across the State?

Although the AOC has some policies in both the 2015 and 2017 Standards that seem designed to ensure language access standards are met across the state, it is highly likely these policies are not stringent enough to ensure the policies are enforced. While both standards do state “[t]he court *shall* provide an interpreter . . . to facilitate participation in covered proceedings,” the standards do not outline any penalties or consequences if a court fails to provide an interpreter.⁶² The 2015 Standards also specify that the AOC provide trainings for judicial officials and court personnel that cover the requirements of the 2015 Standards and how to provide services that meet the language access standards, but it is unclear if these trainings are *required* for judges and court officials or simply available.⁶³ The 2017 Standards clarified this confusion slightly by specifying that all newly elected or appointed judges, magistrates, district attorneys, and clerks should receive at least one hour of training regarding language access.⁶⁴

Furthermore, neither the 2015 Standards nor the 2017 Standards have provisions that allow LEP individuals who are denied interpreters to appeal the judicial official’s decision.⁶⁵ While both standards allow the judicial officer to deny a request for an interpreter as long as he notes in the record the reasons for the denial, neither set of standards provide a method for the individual to appeal the judicial officer’s decision.⁶⁶ The individual

61. *Id.*

62. *Id.* § 5.1 (emphasis added); AOC Standards Memo 2015, *supra* note 53, § 5.1 (emphasis added).

63. AOC Standards Memo 2015, *supra* note 53, § 19.1.

64. AOC STANDARDS 2017, *supra* note 55, § 19.2.

65. *See generally id.*; AOC Standards Memo 2015, *supra* note 53.

66. AOC STANDARDS 2017, *supra* note 55, § 4.6; AOC Standards Memo 2015, *supra* note 53, § 4.6.

may file a complaint with the Language Access Officer, but it is unclear if the Language Access Officer has the authority to require the provision of an interpreter in a case where an individual's original request was denied.⁶⁷

C. Has the AOC Developed Policies Designed to Prevent Harmful Delays and Outcomes Because of the Lack of Language Access Services?

The DOJ's 2012 report highlighted seven instances where failure to provide an interpreter resulted in distressing consequences, such as in cases where parties were not provided with an attorney even when they requested one and should have been eligible to receive one, and in cases where opposing parties interpreted for a plaintiff or criminal defendant.⁶⁸

The 2015 Standards include policies clearly designed to prevent these situations from occurring. As mentioned in Subsection A, the standards clearly delineate that the majority of participants in court proceedings are entitled to an interpreter.⁶⁹ Furthermore, the 2015 Standards include specific prohibitions that seem targeted towards the instances cited as violations in the DOJ's 2012 report. For example, the 2012 report mentioned that in some eastern North Carolina counties, bilingual district attorneys were interpreting for criminal defendants and entering pleas on their behalf. The 2015 Standards include one provision that explicitly states that "a court interpreter who is an attorney shall not serve in both capacities in the same matter in a court proceeding," and another provision states that bilingual staff may not provide interpreting services unless employed as a staff interpreter.⁷⁰ Similarly, the 2015 Standards state that bilingual staff may conduct court business in a non-English language as long as the court business is the same assistance that would be provided to an English speaker.⁷¹ Finally, the 2015 Standards also extend the prohibition to all members of the courtroom through a provision that states that the presiding judicial officer shall not allow judicial

67. AOC STANDARDS 2017, *supra* note 55, § 3.4; AOC Standards Memo 2015, *supra* note 53, § 3.4.

68. Letter and Report of Findings from Thomas E. Perez, *supra* note 1, at 11–13.

69. AOC Standards Memo 2015, *supra* note 53, §§ 5.2–5.5.

70. *Id.* §§ 11.4.e, 20.1.b.

71. *Id.* § 20.1(b).

officials (judges, magistrates, and clerks) or court personnel (employees of the North Carolina Judicial Branch) to provide language assistance.⁷² The 2017 Standards maintain these policies.⁷³

The DOJ's 2012 report also highlighted instances where a family member translated for a party or witness in court proceedings. The 2015 Standards specifically provide that family members shall not act as interpreters in court proceedings.⁷⁴ However, in exigent circumstances, family members are allowed to provide limited language assistance for routine matters, which the standards suggest could be "providing general information in the clerk's office or paying court-ordered costs."⁷⁵ The 2017 Standards maintain these policies.⁷⁶

D. Does the AOC Now Notify LEP Individuals of Their Right to an Interpreter, Ensure Effective Scheduling of Interpreters, and Translate All Vital Documents?

The DOJ's 2012 report found that the AOC failed to notify LEP individuals of their right to an attorney, had no statewide policy for identifying LEP individuals, ineffectively scheduled interpreters, and failed to provide translated vital documents.⁷⁷ The 2015 Standards include numerous provisions designed to address these issues.

First, the 2015 Standards clearly delineate statewide standards for the responsibility of each judicial officer and attorney to identify LEP individuals. Private attorneys, district attorneys, and public defenders are responsible, in both civil and criminal cases, for identifying if their client is LEP, and, if the individual is LEP, the attorney must submit a "Request for Spoken Foreign Language Court Interpreter" to the Language Access Coordinator at least ten business days before the client's court proceeding.⁷⁸ If an individual is pro se in a civil matter, judicial officials and court personnel should assist these individuals by

72. *Id.* § 6.6.a.

73. AOC STANDARDS 2017, *supra* note 55, §§ 6.6.a, 11.4.e, 20.1.

74. AOC Standards Memo 2015, *supra* note 53, § 6.6.

75. *Id.*

76. AOC STANDARDS 2017, *supra* note 55, § 6.6.

77. Letter and Report of Findings from Thomas E. Perez, *supra* note 1, at 12–14.

78. AOC Standards Memo 2015, *supra* note 53, §§ 7.1.a, 7.2.b–d.

preparing and submitting the “Request for Spoken Foreign Language Court Interpreter,” and court personnel should provide a translated notice to the individual about court interpreting.⁷⁹ If an individual is pro se in a criminal matter or if the individual is calling a witness in a criminal matter who is LEP, the individual must submit a “Request for Spoken Foreign Language Court Interpreter” online at least ten days before the scheduled proceeding.⁸⁰ These policies are maintained in the 2017 Standards.⁸¹

What is unclear from these standards is if pro se criminal defendants are aware of their ability to request an interpreter. Neither the 2015 nor 2017 Standards include a mandatory notice provision, such as a requirement of bilingual signs in a county clerk’s office.⁸² Furthermore, for civil cases, the standards rely upon the ability of judicial officials to identify an LEP individual rather than requiring a specific notice be given to each pro se party. It is easy to see how racial profiling could occur in these situations if judicial officials try to identify LEP individuals based on appearance or last name.

Second, the 2015 Standards include clear requirements for how interpreters should be scheduled. The Language Access Coordinator schedules all Spanish interpreters, and the court calendars generated reflect if an interpreter will be used in a proceeding.⁸³ Whoever is the judicial official responsible for scheduling cases is supposed to work with the Language Access Coordinator to schedule all cases requiring an interpreter together so that an interpreter can be scheduled for a large block of time and can work efficiently during that time.⁸⁴ Typically, only one interpreter is scheduled per proceeding regardless of the amount of LEP individuals, but in cases that are expected to last two or more hours or in cases that are particularly complex, the Language Access Coordinator should schedule a team of two interpreters.⁸⁵ Finally, if only one interpreter is available, the judicial official should “suspend court proceedings for 10–15

79. *Id.* § 7.1.b.

80. *Id.* § 7.2.e.

81. AOC STANDARDS 2017, *supra* note 55, § 7.2.

82. *See id.*; AOC Standards Memo 2015, *supra* note 53.

83. AOC Standards Memo 2015, *supra* note 53, §§ 8.1, 8.2.f.

84. *Id.* §§ 8.4, 8.5.

85. *Id.* §§ 8.7, 8.7.a.

minutes approximately every 20–30 minutes to prevent interpreter fatigue and to allow the interpreter to rest as necessary in order to ensure the highest accuracy.”⁸⁶ These policies are maintained in the 2017 Standards.⁸⁷

Third, both the 2015 and 2017 Standards include a provision requiring the translation of vital documents.⁸⁸ However, both standards also specify that all official forms filed with the clerk must be completed in English.⁸⁹ Neither the 2015 nor 2017 Standards explain if an individual will be notified that official forms must be completed in English, nor does it explain if an individual is eligible for assistance from a judicial official or interpreter in filling out the English forms.⁹⁰

E. Does the AOC Still Use Budgetary Constraints as an Explanation for Failure to Provide Services?

The AOC does not specifically mention budgetary constraints as a reason to deny services in its 2015 or 2017 Standards. The only mention of budgetary constraints occurs in the opening letter from then-Director of the AOC, John W. Smith, who noted: “[A]s the recession loomed and our courts faced significant budget cuts to almost every service, we focused on an intentional plan to protect and expand language access services.”⁹¹

IV. WHAT REMAINS: HOW NORTH CAROLINA CAN MOVE FORWARD

The final major finding of the DOJ’s 2012 report was that the AOC failed to remedy the adverse impacts its policies had on individuals even though it knew these adverse impacts were occurring.⁹² The 2015 Standards make clear that the AOC has since considered the adverse impacts its previous policies had on LEP individuals and has made significant changes to improve its

86. *Id.* § 8.7.b.

87. AOC STANDARDS 2017, *supra* note 55, §§ 8.2, 8.4, 8.5, 8.7.

88. *Id.* § 18.8; AOC Standards Memo 2015, *supra* note 53, § 18.8.

89. AOC STANDARDS 2017, *supra* note 55, § 18.9; AOC Standards Memo 2015, *supra* note 53, § 18.9.

90. *See* AOC STANDARDS 2017, *supra* note 55; AOC Standards Memo 2015, *supra* note 53.

91. AOC Standards Memo 2015, *supra* note 53, at 1.

92. Letter and Report of Findings from Thomas E. Perez, *supra* note 1, at 17.

policies and prevent adverse impacts. Most notable is the provision that prohibits family members, attorneys, and judicial officials from acting as interpreters because many of the most extreme stories of adverse consequences highlighted in the DOJ's 2012 report were a direct result of these untrained, partial interpreters.⁹³ The continuation of these policies in the 2017 Standards shows the AOC's continuing commitment to eliminating the problems identified in 2012 and expanding language access in North Carolina courts.

Despite this good progress, policies still remain that should be implemented to make Language Access truly meaningful for LEP individuals. The largest and most impactful area that should be improved further is notice. As mentioned in Part III, notice of the availability of interpreters to LEP individuals who are pro se largely depends on the judicial official's ability to identify and inform LEP individuals of their right to an interpreter.⁹⁴ Not only is this an ineffective and error-prone method, but it also requires judicial officials to make snap judgments based on limited interactions.

Rather than requiring judicial officials to try and inform every pro se LEP individual of their ability to access an interpreter, the ABA model standards recommend a "comprehensive notification system."⁹⁵ This comprehensive notification system uses court websites, posted notices on counters, notices in all brochures, and outreach measures targeted specifically at LEP communities to inform LEP individuals of their ability to request an interpreter.⁹⁶ This system eliminates the burden on judicial officials to identify LEP individuals and casts a broader net of notice that should reach and inform more individuals of interpretation services.

There are several reasonable steps North Carolina could take to begin a comprehensive notice system. First, the AOC could improve the accessibility of the North Carolina Court System website for LEP individuals. The website already has an "En

93. *Id.* at 10–12.

94. *See supra* text accompanying notes 77–81.

95. AM. BAR ASS'N, STANDARDS FOR LANGUAGE ACCESS IN COURTS § 2.2 (Aug. 2011), http://www.americanbar.org/content/dam/aba/uncategorized/20110511_ls_sclaid_aba_standards_language_access_in_courts.authcheckdam.pdf (outlining the ABA's proposed draft model for language access).

96. *Id.*

Español” section,⁹⁷ but it is small and mixed in with all of the other English navigation options on the homepage. Moving this link into its own area of the homepage and increasing the font size would make it more visible and is an easy way to increase accessibility for users who only read Spanish. Additionally, the link to the form entitled “Request an Interpreter” is available on the “En Español” page, but the link is written in English, and the linked form is in English.⁹⁸ Given that pro se litigants in criminal matters are responsible for submitting their own request for an interpreter form, it is important that this form be easily accessible to these LEP individuals.⁹⁹ A simple way to increase the accessibility of this form is to provide the name of the form in Spanish and have a Spanish version of the form linked. Finally, although a link to the Language Access Complaint Form is available from the “En Español” page, the link is written in English, and the linked form is in English.¹⁰⁰ Adding a Spanish title to the link and providing the linked form in Spanish is another simple way to improve accessibility for LEP individuals, and it allows Spanish-speaking individuals to contribute to the accessibility policies of the AOC by making complaints based off their own experiences.

Second, the AOC could require that each county courthouse post signs in public areas of the courthouse in Spanish and any other languages commonly spoken by LEP individuals (such as Vietnamese), informing individuals that interpreters are available and directing them to an area of the courthouse where a staff person is available to answer questions about the process. Although it is likely some counties have already taken the initiative and installed signs of their own volition, requiring the posting of signs would ensure that each county is making an effort to notify

97. See *Bienvenidos Ciudadanos*, N.C. CT. SYS., <http://www.nccourts.org/Citizens/Spanish/Default.asp> (last visited Mar. 27, 2017); N.C. CT. SYS., <http://www.nccourts.org> (last visited Mar. 27, 2017).

98. See *Language Access Services*, N.C. CT. SYS., <http://www.nccourts.org/LanguageAccess/Default.asp> (last visited Mar. 27, 2017); *Request for Spoken Foreign Language Court Interpreter*, N.C. CT. SYS., <http://www.nccourts.org/LanguageAccess/Documents/InterpreterRequestForm.pdf> (last visited Mar. 27, 2017).

99. AOC STANDARDS 2017, *supra* note 55, § 7.2.e.

100. See *Bienvenidos Ciudadanos*, *supra* note 97 (noting that the main text is in Spanish, but the links to language access information and forms are in English); *Language Access Complaint Form*, N.C. CT. SYS., http://www.nccourts.org/_Surveys/LA/languageaccess.htm (last visited Mar. 27, 2017) (appearing in English only).

individuals who may not otherwise think to ask a judicial official about their right to an interpreter. A simple paper sign posted in a few areas of a courthouse is a very low-cost way to promote notice and awareness among LEP individuals.

Third, the AOC should require a mandatory training for judicial officials regarding interpreter access. Although the 2017 Standards improve on the 2015 Standards by specifically requiring at least one hour of training for newly elected or appointed judicial officials,¹⁰¹ gaps still remain. There is no indication in the standards that experienced judicial officials have received this training, and, given its importance, it is reasonable to require *all* judicial officials to attend trainings that explain the rights of LEP individuals and how language access functions in North Carolina courts.

Finally, the AOC should consider adopting a formal procedure for a denial of an interpreter. Both the 2015 and 2017 Standards state that a judicial officer may deny an interpreter to an LEP individual as long as the officer notes in the record the reasons for denial.¹⁰² In order to assure the due process rights of LEP individuals, these individuals should have the right to appeal a denial of an interpreter before their court proceeding begins. It is possible such a procedure is in place in some areas, but such a procedure should be clearly enumerated in the statewide language access policies to ensure fairness and accessibility statewide.

The AOC has made important improvements to its language access policies since 2012, but many reasonable accommodations still exist that would further improve the accessibility and access for LEP individuals. As North Carolina moves forward and continues to update its policies, it should consider adopting provisions such as those discussed above to ensure that all North Carolinians are free to speak.

101. AOC STANDARDS 2017, *supra* note 55, § 19.2.

102. *Id.* § 4.6; AOC Standards Memo 2015, *supra* note 53, § 4.6.