

# Language Rights: An Integration Agenda for Immigrant Communities

*A proactive agenda to assist newcomers and English Language Learners*

## BRIEFING BOOK

*Includes Legal Background, Suggested Talking Points, and Legislative  
Summaries*

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**This briefing book is a joint project of the Mexican American Legal Defense & Educational Fund (MALDEF) & the Asian American Justice Center (AAJC).**

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## I. INTRODUCTION

The ability to communicate with government and private sector providers, schools, businesses, emergency personnel and many others in the United States depends greatly on language proficiency. According to the 2000 Census, 92% of Americans aged 5 and over speak English. At the same time, the United States is home to millions of citizens and legal permanent residents with limited English proficiency (LEP), such that these individuals cannot speak, read, write or understand the English language at a level that permits them to interact effectively with housing providers, medical institutions, immigration officials, or social service agencies.

Lack of translated information and oral assistance means that Americans with limited English proficiency are less likely to understand and exercise their rights and obligations, less able to access government services, and less able to achieve economic stability. The obligations to provide meaningful access to language minorities have been affirmed by Congress, the Supreme Court, and the Executive Branch through the Civil Rights Act of 1964, *Lau v. Nichols*, and Executive Order 13166. It is critical that Members of Congress continue to ensure LEPs have equal access and equal treatment under the law.

This briefing book intends to educate staff on (1) the demographics of the LEP community; (2) the law supporting the rights of this minority community; (3) the sectors where language access most impacts language minorities; (4) recent English Only legislation in Congress; and (5) a proactive approach to ensuring the civil rights of the LEP community, while enhancing their language acquisition.

## II. DEMOGRAPHICS

Among the 279 million people in the United States aged 5 and over, over 19% (54.8 million) spoke a language other than English at home.<sup>1</sup> This figure is up from 14% (31.8 million) in 1990 and 11% (23.1 million) in 1980.<sup>2</sup> In the 1980's, the number of individuals who spoke a language other than English at home grew by 38 percent; in 1990's, this growth was at 47%. According to the 2006 American Community Survey, 91.3% of the population over the age of 5 speaks English "very well," while 8.7% speak English "less than very well." Estimates of the number of people with limited English proficiency (LEP) range from a low of about 11 million, or 4.2% of the U.S. population – who speak English "not well" or "not at all" – to over 21 million people– if one includes those who speak English less than "very well."

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<sup>1</sup> *Language Spoken at Home*, 2006 American Community Survey, U.S. Census Bureau.

<sup>2</sup> *Language Use and English-Speaking Ability: 2000*, Census 2000 Brief, U.S. Census Bureau.

| <b>Citizenship Status</b>       | <b>% of Total Population</b> | <b>% Who Speak Only English</b> | <b>% Who Speak Language Other Than English at Home</b> |
|---------------------------------|------------------------------|---------------------------------|--|
| <b>Native-born- over 5</b>      | 86.7%                        | 97.4%                           | 42.7%  |
| <b>Foreign-born- over 5</b>     | 13.3%                        | 2.6%                            | 57.3%  |
| <b>Naturalized U.S. citizen</b> | 5.6%                         | 1.5%                            | 22.4%  |
| <b>Not a U.S. citizen</b>       | 7.7%                         | 1.1%                            | 34.9%  |

## A. LANGUAGE GROUPS

The Census found there to be four main language groups: (1) Spanish; (2) Other Indo-European languages, which includes most languages of Europe (Germanic, Scandinavian, Romance, Slavic, Celtic, Baltic languages) and the Indic language of India; (3) Asian and Pacific Island languages; and (4) other languages, which includes the Semitic languages, languages of Africa, Native American languages and some indigenous languages of Central and South America.<sup>3</sup>

### 1. SPANISH

Spanish is the largest of these language groups with 34 million Spanish speakers.<sup>4</sup> Of this group, just over half spoke English “very well.” Between 1990 and 2000 the number of Spanish speakers grew by roughly 60%. Nearly 70% of those in the Spanish language group are between the ages of 18 and 64. A majority of the individuals in the 18 to 64 age range speak English less than “very well.”

In 2007, the Latino population was estimated at 44.3 million, or 14.8% of the total population.<sup>5</sup> Since 2000, the Latino population has grown by 12 million. The US Census Bureau estimates the Latino population will reach 61 by 2025. In 2006, 47.3% of Latinos spoke English less than “very well.” An analysis by the Pew Hispanic Center found that fewer than one-in-four (23%) Latino immigrants reports being able to speak English “very well.” However, fully 88% of their U.S.-born adult children report that they speak English “very well.” Among later generations of Hispanic adults, the figure rises to 94%. Reading ability in English shows a similar trend. The analysis also finds that English is spoken more commonly at work than at home.<sup>6</sup>

<sup>3</sup> *Id.*

<sup>4</sup> *Language Spoken at Home*, 2006 American Community Survey, U.S. Census Bureau.

<sup>5</sup> US Census: <http://www.census.gov/population/www/socdemo/hispanic/ho06.html>.

<sup>6</sup> Pew Hispanic Center, *Hispanic Attitudes Toward Learning English*, (June 7, 2006), factsheet available at <http://pewhispanic.org/files/factsheets/20.pdf>.

## **2. OTHER INDO-EUROPEAN LANGUAGES**

Other Indo-European language speakers compose the second largest group with 10 million speakers.<sup>7</sup> Nearly two-thirds of these individuals speak English “very well.” Reflecting recent immigration patterns, the number of Italian, German and Polish speakers decreased between the 1990 and 2000. As measured by the 2000 Census, the largest proportional increase by any one language was Russian, which nearly tripled from 242,000 to 706,000.

## **3. ASIAN AND PACIFIC ISLAND LANGUAGES**

Asian and Pacific Island language speakers account for 8.2 million individuals nation-wide.<sup>8</sup> Slightly less than half of these individuals (3.4 million) speak English “very well.” 75% of the members of this language group are between the ages of 18 and 64. After English and Spanish, Chinese is the language most commonly spoken at home with 2.0 million speakers (up from 1.2 million in 1990). The second highest spoken language in this group is Tagalog with just over 1 million speakers.

There are 14 million Asian Americans and nearly 1 million Pacific Islanders in the United States.<sup>9</sup> 4 million Asian Americans experience difficulty in speaking English. One in three Asian Americans is limited English proficient. 61% of Vietnamese, 46% of Koreans, and 45% of Chinese experience some difficulty speaking English. A majority of 6 AAPI groups are LEP: Vietnamese, Hmong, Cambodian, Laotian, Bangladeshi, and Taiwanese.

## **4. OTHER LANGUAGES**

This last language group accounts for 2.2 million individuals.<sup>10</sup> Over 70% of this group speaks English “very well.” Given the diversity of this language group, these languages are spoken throughout the United States and do not have a central concentration.

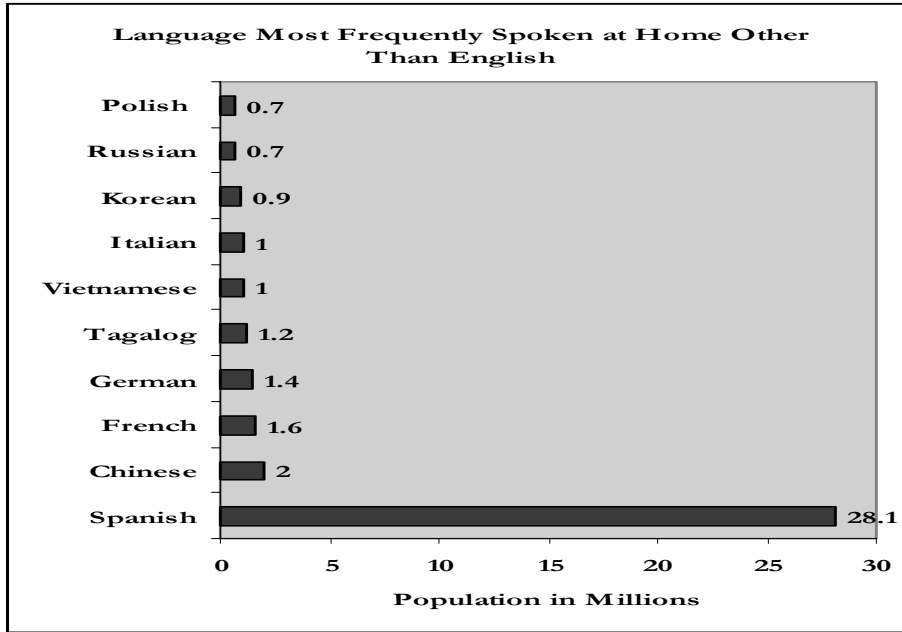
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<sup>7</sup> *Language Spoken at Home*, 2006 American Community Survey, U.S. Census Bureau.

<sup>8</sup> *Id.*

<sup>9</sup> *Race*, 2006 American Community Survey, U.S. Census Bureau.

<sup>10</sup> *Id.*



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## B. GEOGRAPHIC DISTRIBUTION OF LEPS

Although it hosts a little more than one-fifth of the U.S. population, more than one-third (37 percent) of all individuals that speak a language other than English live in the West<sup>12</sup>. Western states have 17.2 million individuals that speak a language other than English at home. In California alone, over 12 million individuals (39.5% of the state's population) speak a language other than English at home. The state with the second-highest percentage of its population consisting of non-English speakers (36.5%), New Mexico, is also in the West.

In the South<sup>13</sup>, 15% of the population speaks a language other than English at home. The South has the second highest number of total LEPS with over 14 million. Texas with 6 million and 31% of its population leads the South. Florida is not far behind as over 3 million residents (23% of its population) speak a language other than English at home. In the Northeast<sup>14</sup>, 20% of residents are non-English speakers at home with a high of 4.9 million in New York. The Midwest<sup>15</sup> has only 9% of its population speak a language other than English at home. Illinois has the largest Midwestern non-English language population at over 2.2 million.

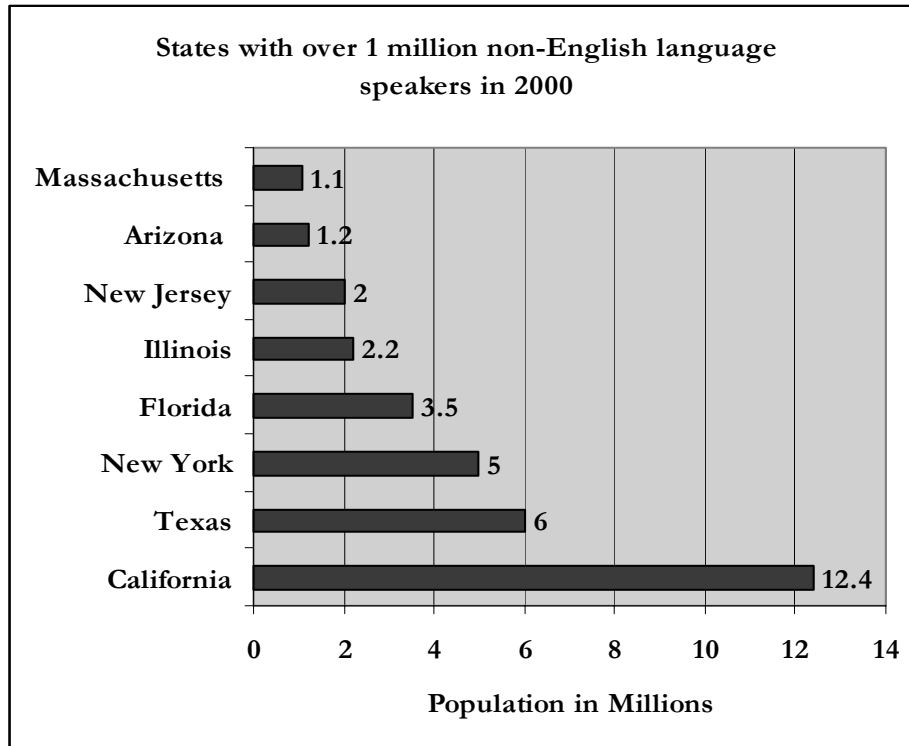
<sup>11</sup> All data is retrieved from the 2000 U.S. Census.

<sup>12</sup> West- Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming

<sup>13</sup> South- Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia

<sup>14</sup> Northeast- Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont

<sup>15</sup> Midwest- Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, South Dakota and Wisconsin



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Though LEPs are not distributed equally across or within regions, there has been significant growth in many regions not traditionally associated with this community. Between 1990 and 2000, fifteen states experienced more than 100 percent growth in their LEP populations – Arkansas, Colorado, Georgia, Idaho, Kansas, Kentucky, Minnesota, Nebraska, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Utah and Washington.

With regards to the specific distribution of the four language groups across the various regions, Spanish is spoken more than any other language group. In the Northeast and Midwest Spanish speakers compose slightly less than half of all non-English language speakers, while in the South and West, they represented nearly two-thirds (71% and 64%, respectively). Other Indo-European languages are the second most spoken languages in the Northeast, Midwest and South. In the West, the second largest group is Asian and Pacific Islander languages.

### III. LANGUAGE RIGHTS AND THE LAW

The rights of LEPs are recognized under core civil rights law. Language is not only a barrier to communication, but also an identifying characteristic of an individual's ethnicity and national origin. Congress passed the Civil Rights Act of 1964, which prohibits discrimination based on race, ancestry, national origin or ethnicity. The Supreme Court in *Lau v. Nichols* affirmed a connection between discrimination based on national origin and language rights. In support of this concept of language rights, numerous pieces of federal legislation also address the needs of LEPs. In addition, Executive Order 13166, issued at the

<sup>16</sup> All data retrieved from the 2000 U.S. Census.

end of the Clinton Administration, affirmed the link between language and national origin. The Boyd Memorandum issued by the Bush Administration affirmed its commitment to the EO. Below is a chart describing some key pieces of federal legislation protecting the LEP community.

| <b>Federal Legislation</b>                                      | <b>Description</b>  |
|---|---|
| <b>Voting Rights Act<sup>17</sup></b>                           | Prohibits English Only elections and requires bilingual voting materials such as ballots and voting notices to be provided in jurisdictions where a language minority group constitutes more than 5% of the population or numbers more than 10,000 and has below average rates of literacy. |
| <b>Food Stamp of 1977<sup>18</sup></b>                          | Requires states to provide written and oral language assistance to LEPs under certain circumstances   |
| <b>Court Interpreters Act<sup>19</sup></b>                      | Calls for the provision of interpreters in federal civil and criminal trials that involve parties or witnesses who are not proficient in English  |
| <b>Equal Educational Opportunities Act of 1974<sup>20</sup></b> | Calls for educational agencies to take “appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.”  |
| <b>Public Health Service Act<sup>21</sup></b>                   | States that health centers, substance abuse services, and other health programs serving a significant number of LEPs must provide competent personnel fluent in their language  |
| <b>Immigration and Nationality Act<sup>22</sup></b>             | Requires interpreters to be provided during the physical and mental examination of arriving aliens  |

## **A. CIVIL RIGHTS ACT OF 1964**

The Civil Rights Act of 1964 was landmark legislation that outlawed discrimination based on national origin in any program receiving federal funds and in an employment setting. Since language is often used as a proxy for national origin discrimination, the provisions of Title VI and Title VII are critical for the preservation of the rights of LEPs.

### **1. TITLE VI**

Section 601 of Title VI of the Civil Rights Act of 1964 bans discrimination based "on the ground of race, color, or national origin," in "any program or activity receiving Federal financial assistance." This section also authorizes and directs federal agencies that are

<sup>17</sup> Voting Rights Act, 42 U.S.C. § 1973aa-1a.

<sup>18</sup> Food Stamps Act, U.S.C. § 2020.

<sup>19</sup> Court Interpreters Act, 28 U.S.C. §1827.

<sup>20</sup> Equal Educational Opportunities Act, 20 U.S.C. § 1793f.

<sup>21</sup> Public Health Service Act, 42 U.S.C. § 254b(b)(1)(A)(i)(III)(iv).

<sup>22</sup> Immigration and Nationality Act, 8 U.S.C. § 1222b.

empowered to extend federal financial assistance to also issue guidance, regulations, and orders to effectuate Section 601. Title VI regulations forbid funding recipients from “restrict(ing) an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program” or from “utiliz(ing) criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.” All of the aforementioned language provides the foundation for ensuring nondiscrimination in all federal programs and services, including those provided to language minorities.

## 2. TITLE VII

Title VII of the Civil Rights Act of 1964 (Title VII), prohibits employment discrimination based on race, color, religion, sex, or national origin. Under Title VII it is illegal to discriminate in any aspect of employment, including: hiring and firing; compensation, assignment, or classification of employees; transfer, promotion, layoff, or recall; job advertisements; recruitment; or other terms and conditions of employment. Discriminatory practices under these laws also include: harassment on the basis of race, color, religion, sex, national origin, disability, or age; retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices; employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities; and denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability.

Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex. It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.

A rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business. The reason for this is because language is often used as a proxy for discrimination based on national origin. If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule.

The Immigration Reform and Control Act (IRCA) of 1986 requires employers to assure that employees hired are legally authorized to work in the U.S. However, an employer who requests employment verification only for individuals of a particular national origin, or individuals who appear to be or sound foreign, may violate both Title VII and IRCA; verification must be obtained from all applicants and employees. Employers who impose

citizenship requirements or give preferences to U.S. citizens in hiring or employment opportunities also may violate IRCA.<sup>23</sup>

## B. *LAU V. NICHOLS* AND THE COURTS

The Civil Rights Act of 1964 and its protections against discrimination based on national origin have been upheld by the Supreme Court in *Lau v. Nichols* and the court still recognizes the relationship between language and national origin. In 1965, the Supreme Court determined that language is incorporated in national origin.<sup>24</sup> In the case, the *Lau* plaintiffs claimed that the school district denied them the opportunity to obtain the education received by other students in the school district by failing to provide adequate English language assistance. The plaintiffs asserted that this failure violated Title VI of the Civil Rights Act of 1964, which bans discrimination based on the ground of race, color or national origin in any program or activity receiving federal assistance.

The Supreme Court ruled unanimously that because the state did not consider the effect of LEP status on public education, the state had discriminated based on national origin. The opinion stated, “there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers and curriculum; for students who do not understand English are effectively foreclosed any meaningful education.”<sup>25</sup> The court in *Lau* held that, under Section 5 of the 14<sup>th</sup> Amendment, Congress could enforce a norm of racial equality by recognizing claims of disparate impact. As such, the court found Congress exercised these powers when enacting Title VII of the Civil Rights Act, which pertained to both intentional discrimination, as well as adverse effects.

Over a series of decisions following *Lau*, the Supreme Court expressed doubt over the scope of congressional power and discretion accorded to federal agencies under Title VI.<sup>26</sup> In 2001, justices eliminated private rights of action for disparate impact claims under the statute in *Alexander v. Sandoval*.<sup>27</sup> In *Sandoval*, the court held that plaintiffs could only sue for intentional discrimination under Title VI. The majority noted that if federal agencies interpreted Title VI as extending to actions with adverse effects, it was up to those agencies to file legal actions. The court’s removal of the private right of action left enforcement against Title VI disparate impact entirely in the hands of executive branch officials.

Though the decision in *Sandoval* weakens the ability to sue based on language discrimination, it did not overrule the link between language and national origin. The law still recognizes this important link, though as noted by the Stevens dissent in *Sandoval*, there must be a sustained effort by legislators to prohibit the adoption of English Only policies in order to best preserve the rights of language minorities.

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<sup>23</sup> Title VII summary from the Equal Employment Opportunity Commission website: <http://www.eeoc.gov/facts/qanda.html>.

<sup>24</sup> *Lau v. Nichols*, 414 U.S. 563 (1974).

<sup>25</sup> *Id.*

<sup>26</sup> See *Guardians Association v. Civil Service Commission*, 463 U.S. 582 (1983); See also *Alexander v. Choate*, 469 U.S. 287 (1985).

<sup>27</sup> *Alexander v. Sandoval*, 532 U.S. 275 (2001).

### C. EXECUTIVE ORDER NO. 13166

Executive Order No. 13166 was issued by President Clinton in 2000 to clarify the scope of the government's responsibilities with respect to Title VI. The Executive Order's purpose is "to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency..."<sup>28</sup> Each federal agency was required to examine the services it provides and develop and implement a system by which LEPs can meaningfully access those services consistent with and without unduly burdening the fundamental mission of the agency. Under the Order, federal agencies were given two instructions: (1) provide guidance to all recipients of federal funds administered by the agency; and (2) create an internal guidance and policy such that the agency would comply with the Executive Order and ultimately to the mandates of the Civil Rights Act of 1964.

To assist agencies in compliance, the Order incorporated a general policy guidance issued by the Department of Justice (DOJ). The DOJ General Policy Guidance sets forth general principles for agencies to apply in developing services for LEPs on January 16, 2001 with a final version published on June 18, 2002.<sup>29</sup> In the face of legislative attacks on the Order and guidance, the Bush administration pledged to support and implement the Order through a memorandum issued by Assistant Attorney General for Civil Rights Ralph Boyd. The Boyd memorandum stated the administration's and DOJ's intention to implement the Order and affirmed the obligation of federal agencies to publish final agency specific guidelines. Since DOJ's issuance of its policy guidance and pursuant to the Order, many more federal agencies have followed suit and issued their own guidance, including the Departments of Commerce, Education, Health & Human Services, Housing & Urban Development, Labor, State, and Transportation.<sup>30</sup>

The basis for the Order's mandate for language access services is Title VI's prohibition against national origin discrimination. As explained in the DOJ Guidance, there is a link between national origin and language, such that an individual who is discriminated against because of his or her inability to speak English might actually be discriminated against because of the individual's national origin or race. According to the DOJ General Policy Guidance:

"In some cases...the failure to address language barriers may not be simply an oversight, but rather may be attributable, at least in part, to invidious discrimination on the basis of national origin and race. While there is not always a direct relationship between an individual's language and national origin, often language does serve as an identifier of national origin."<sup>31</sup>

The Order represents the recognition by the federal government of the difficulties faced by LEPs. It not only clarifies the government's obligations under Title VI, but also sets agencies on the path toward preserving rights protected under the Civil Rights Act.

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<sup>28</sup> See Executive Order No. 13166, 65 Fed. Reg. 50121 (Aug. 11, 2000).

<sup>29</sup> 67 Fed. Reg. 41455 (June 18, 2002).

<sup>30</sup> See <http://www.lep.gov>.

<sup>31</sup> 65 Fed. Reg. 50123, 50124.

### **III. KEY ISSUES IMPACTED BY LANGUAGE ACCESS**

Language rights transcend in to various issues that strike at the core civil rights of many Americans. In these and other issues, language access is a critical determinant of whether can exercise his or her rights, as well as benefit from public and private services.

#### **A. VOTING**

Section 203 is the main provision of the Voting Rights Act that applies to language minorities. Section 203 was enacted in 1975 and reauthorized in 1982 and 1992 because Congress found that discrimination against language minorities limited the ability of limited-English proficient (LEP) members of those communities to participate effectively in the electoral process. Section 203 applies statewide to five states (Alaska for Alaska Natives, and Arizona, California, New Mexico, and Texas for Spanish Heritage) and portions of 26 other states.

The total number of counties or political subdivisions specifically identified for Section 203 coverage include: (1) 27 jurisdictions covered for Alaska Natives; (2) 81 for American Indians; (3) 425 for Spanish Heritage; and (4) 16 for Asian Americans. A community with one of these language groups will qualify for language assistance under Section 203 of the Act if more than 5% or 10,000 of the voting-age citizens in a jurisdiction belong to a single language minority community and have limited English proficiency; and the illiteracy rate of voting-age citizens in the language minority group is higher than the national illiteracy rate.

Certain Section 203-covered jurisdictions that had English Only literacy tests also are covered by Section 5. Under Section 203 covered jurisdictions must provide written materials or oral assistance based upon the actual needs of the language-minority groups through targeted assistance. No written materials have to be provided in Alaska Native and American Indian languages that are historically unwritten.<sup>32</sup>

#### **B. HEALTHCARE**

Research documents how the lack of language services creates a barrier to and diminishes the quality of health care for limited English proficient individuals. Over one quarter of LEP patients who needed, but did not get, an interpreter reported they did not understand their medication instructions, compared with only 2% of those who did not need an interpreter and those who needed and received one. Language barriers also impact access to care – non-English speaking patients are less likely to use primary and preventive care and public health services and are more likely to use emergency rooms. Once at the emergency room, they receive far fewer services than do English speaking patients.

Language access is one aspect of cultural competence that is essential to quality care for LEP populations. Health care providers from across the country have reported language difficulties and inadequate funding of language services to be major barriers to LEP individuals' access to health care and a serious threat to the quality of the care they receive. The increasing diversity of the country only amplifies the challenge for health care providers,

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<sup>32</sup> Information provided by the American Civil Liberties Union

who must determine which language services are most appropriate based on their setting, type and size; the frequency of contact with LEP patients; and the variety of languages encountered.<sup>33</sup>

### C. WORKPLACE DISCRIMINATION

Title VII protects workers from employment discrimination based on their race, color or national origin. In enacting Title VII's prohibitions, Congress recognized that whether an individual's ancestry is Mexican, Ukrainian, Filipino, Arab, American Indian, or any other nationality, he or she is entitled to the same employment opportunities as anyone else.

Title VII's protections extend to all workers in the United States, whether born in the United States or abroad and regardless of citizenship status. Title VII articulates the national policy against national origin discrimination in the workplace, while also preserving an employer's freedom of choice to make sound business decisions.

Employment discrimination against a national origin group includes discrimination based on:

- Ethnicity: Employment discrimination against members of an ethnic group, for example, discrimination against someone because he is Arab. National origin discrimination also includes discrimination against anyone who does *not* belong to a particular ethnic group, for example, less favorable treatment of anyone who is not Hispanic.
- Physical, linguistic, or cultural traits: Employment discrimination against an individual because she has physical, linguistic, and/or cultural characteristics closely associated with a national origin group, for example, discrimination against someone based on her traditional African style of dress.
- Perception: Employment discrimination against an individual based on the employer's belief that he is a member of a particular national origin group, for example, discrimination against someone perceived as being Arab based on his speech, mannerisms, and appearance, regardless of how he identifies himself or whether he is, in fact, of Arab ethnicity.<sup>34</sup>

### D. ACCESS TO JUSTICE

America's legal system is inaccessible to millions of individuals, including immigrants and limited-English proficient (LEP) individuals. In 1993, the American Bar Association (ABA) conducted a comprehensive legal needs study to learn about the legal needs of Americans. The study's findings were surprising. While nearly one-half of low- and moderate-income households faced at least one legal situation per year that could be resolved by our country's justice system, legal assistance was not sought. In fact, nearly three-fourths (71 percent) of

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<sup>33</sup> Information provided by the National Health Law Program

<sup>34</sup> Information provided by the Empire Justice Center

situations faced by low-income households and two-thirds (61 percent) of situations faced by moderate-income households were not brought to the attention of attorneys.

Several subsequent state reports have confirmed that access to justice continues to be limited for the poor and for immigrants. The California Commission on Access to Justice released a report in 2002 that presented the achievements of the statewide initiatives to increase legal access since 1996. The report reveals that the “access gap” between poor Californians and legal services, while diminishing, remains high. According to the report, “just 28 percent of the legal needs of the state’s poor and lower-income residents are being addressed.” Similarly, in Washington State, a 2002 legal needs survey revealed that low-income residents try to handle over 85 percent of their civil legal needs without help from attorneys because they did not know that there were laws that could protect them or where to turn for help.

The need to comprehensively address the legal needs of immigrants continues. The combination of two sets of circumstances – the barriers that prevent LEP individuals from seeking legal assistance; and the lack of comprehensive linguistically and culturally accessible services being provided by the courts and legal system – result in a situation where immigrants and the legal system are becoming more disengaged from one another. If policymakers, the legal system, community-based organizations working with immigrants, governmental agencies, and philanthropic institutions do not comprehensively address these dual sets of circumstances, we could soon face a situation where immigrants become completely disconnected from one of America’s lasting institutions, which could impact civic engagement by immigrants and LEPs.<sup>35</sup>

## **E. ECONOMIC DEVELOPMENT AND HOUSING**

From the immigrant worker to low-income resident and owner operating a business in an economically distressed neighborhood, language barriers have a significant effect on their abilities to improve their economic situation. Language barriers keep immigrants from moving into higher paying jobs and learning about wage and hour and occupational health and safety laws. Similarly, low-income residents who are forced to live in overcrowded or substandard housing often are unaware of their legal rights as tenants. And finally, business owners are susceptible to closing in debt or failing to expand their businesses because they are unable to access mainstream economic opportunities, such as contracting, loan and other business development assistance programs.

Federal agencies should provide translated written materials and interpreter services that assist LEP persons to learn about their legal rights in employment and housing and the available public benefits that assist them to procure job training and placement and find affordable and adequate housing. Additionally, they should fund language assistance efforts to facilitate the loan application process, contract procurement and business development for LEP business owners. Regardless of the small size of the LEP language group, at minimum, LEP persons should be given notice in her primary language of the right to oral translation of written materials. Federal entities should also collaborate with community-

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<sup>35</sup> Information provided by the Asian American Justice Center

based organizations to carry out education and outreach, particularly on issues related to fair housing and Temporary Assistance for Needy Families.<sup>36</sup>

#### **IV. RECENT ENGLISH ONLY EFFORTS IN THE 110<sup>TH</sup> CONGRESS**

In the 110<sup>th</sup> Congress, English Only debates have been taken to a new level as a result of hostility following the debate over comprehensive immigration reform. Though language rights are distinct from debates over reform of the current system of immigration, some in Congress have sought to tie the two distinct issues. As shown in recent debates over English Only provisions in the Commerce, Science, Justice and Related Agencies (CJS) appropriation bill, it will likely be the case that language issues will remain a hotly contested issue in the lead up to the 2008 election.

##### **A. INHOFE AMENDMENT TO CIR**

Sen. Inhofe introduced an English Only amendment as a part of the Comprehensive Immigration Reform Act of 2007 in the Senate.

##### **1. SUMMARY**

This amendment sought to make English the official language of the government and preclude agencies from using documents in any other languages. The amendment precludes any government entities from acting, communicating, performing or providing services, or providing materials in any language other than English. The practical legal consequences of this amendment have been explored in several legal memorandums and studies. In summary, the amendment is dangerous because while it provides an exception for current federal statutes, no law, not even the Civil Rights Act or Executive Order 13166, specifically provides for language discrimination. Legislative history shows that Senator Inhofe intended this effect, arguing on the floor that there was no legal basis for the EO 13166--- a completely incorrect conclusion.

Furthermore, any English Only legislation could fundamentally abridge civic engagement and educational opportunities in the immigrant community, undermining many federal laws such as Section 203 of the Voting Rights Act and Title VI of the Civil Rights Act of 1964 and the Supreme Court decision in *Lau v. Nichols*. The most immediate impact that this amendment would have would be public health situations and disasters and emergencies. Many of us saw after Hurricane Katrina, the disastrous effects on the Asian American community because FEMA, SBA, and other officials could not communicate with the evacuees.

English is already the language of government. GAO studies<sup>37</sup> have consistently shown that the overwhelming majority of U.S. Government documents are printed only in English. In

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<sup>36</sup> Information provided by the National Coalition for Asian Pacific American Community Development.

<sup>37</sup> See U.S. General Accounting Office, *Letter to Honorable Richard Shelby, Honorable William F. Clinger, Jr., and Honorable Bill Emerson, September 20, 1995, GAO/GGD-95-243R, Federal Foreign Language Documents*; and U.S.

fact, only about 200 – or less than 1% – of U.S. Government documents are published in a language other than English.

## **B. ALEXANDER AMENDMENT TO CIR**

Sen. Alexander introduced an amendment (S.1162) seeking a cost analysis of translation services in the Comprehensive Immigration Reform Act of 2007 in the Senate this past summer.

### **1. SUMMARY**

This amendment would ask for a cost analysis of Executive Order 13166, specifically an accounting for costs of translating documents by federal, state, and local entities, costs of interpreters, costs of employers who hire individuals who do not speak English well, and even examine the costs of translating for voter-eligible citizens. This amendment is burdensome, repetitive, and costly. Past studies have already concluded that the costs are intangible. In addition, past report language in other legislation has incorporated cost accountability.

## **C. STEARNS AND ALEXANDER AMENDMENTS**

This past summer both Rep. Stearns and Sen. Alexander introduced amendments to the Commerce, Justice, and Science Appropriations Bill of 2007 that targeted the ability of the Equal Employment Opportunity Commission (EEOC) from conducting language discrimination suits.

### **1. SUMMARY**

These amendments would preclude the EEOC from using its appropriations funding to bring actions or suits against employers who have English Only policies or require their employees to speak English. Another version of this amendment also may require the EEOC to give notice to Congress prior or after initiating a suit against an employer in these cases. Both types of amendments could severely impair the agency's ability to pursue true cases of workplace discrimination. Most of the cases in which civil actions were pursued to reconciliation involved employers who were wielding speaking English policies in an unconscionable manner.

When Sen. Alexander and Sen. Mikulski sent inquiries to EEOC regarding the type and number of cases found, responses from the EEOC demonstrated that the number of charge receipts, charge resolutions, and cause resolutions with the English Only issue decreased from 2001 to 2006. **In the year 2001, there were 59 cause resolutions with English Only issues, and in the year 2006, there were 25 cause resolutions with the English Only issues. Furthermore, the amount of resources expended on these types of cases decreased drastically from 2001 to 2006.**

## V. A PROACTIVE LANGUAGE AGENDA

The role of the 110<sup>th</sup> Congress in addressing the needs of the LEP community cannot be understated. As noted earlier, Congress must work to defeat English Only laws and attempts to curb protections provided by the Civil Rights Act of 1964 and judicial precedent. At the same time, it also has a duty to pass proactive English acquisition and immigrant integration legislation and work to ensure that current law provides the necessary protections and addresses the needs of the LEP community in areas such as voting, housing, health care and education.

The following provides a brief outline of some the ways the 110<sup>th</sup> Congress can lead with a proactive Congressional agenda. These suggestions are not inclusive and are intended to mark the commencement of a conversation between advocates, staff and members of Congress on how we can all work together to best serve the LEP community.

### A. ENSURING LANGUAGE ACQUISITION AND IMMIGRANT INTEGRATION

The immigrant community embraces English because it recognizes that learning English is essential for participation and success in American society. Providing real opportunities to learn English, not allowing for discrimination, is the most effective means of fostering English proficiency. It is critical that Congress improve academic services to the nation's 5.5 million K-12 English language learner students, nearly 80% of whom are U.S. citizens. Further, adults who seek to enroll in ESL classes often face an acute shortage of high-quality English-acquisition programs, which are too few and too often oversubscribed.

As the chart below indicates, funding levels have fluctuated in recent years. The native-born LEP population nearly doubled between 2000 and 2005 and is increasing at a higher rate than is the immigrant population. Given the growth of the LEP community, such funding has proved insufficient. Addressing the root cause of limited English proficiency, poor educational services, is critical.

#### Federal Funding for English Acquisition and Literacy Development

| Program  | FY04<br>Appr. | FY05<br>Appr. | FY06<br>Pres.<br>Request | FY06<br>Appr. | FY07<br>Pres.<br>Request | FY07<br>Appr.       | FY08<br>House | FY08<br>Senate | FY08<br>Pres.<br>Request | FY08<br>Conf.<br>Bill |
|--|---------------|---------------|--------------------------|---------------|--------------------------|---------------------|---------------|----------------|--------------------------|-----------------------|
| English Language Acquisition (Title III, ESEA)     | \$681M        | \$675.7M      | \$675.7M                 | \$669M        | \$669M                   | \$670.8M            | \$774.6M      | \$670.8M       | \$670M                   | \$772.7M              |
| Even Start (Title I, Part B-3, ESEA)               | \$246.9M      | \$225.1M      | 0                        | \$99M         | 0                        | \$99M <sup>38</sup> | \$99M         | 0              | 0                        | \$62.6M               |
| Adult Basic Education State Grants (Title II, WIA) | \$574.4M      | \$569.7M      | \$200M                   | \$563.9M      | \$563.9M                 | \$563.9M            | \$588.9M      | \$564.1M       | \$564.1M                 | \$576.5M              |

## **1. ACADEMIC SERVICES FOR K-12 ENGLISH LANGUAGE LEARNERS**

Over the past 15 years, English Language Learner (ELL) student enrollment has nearly doubled and experts predict that one-quarter of the total U.S. public school population will be made up of ELLs by 2025.<sup>39</sup> Despite common assumptions to the contrary, native-born U.S. citizens predominate in the ELL K-12 population: 76% of elementary school and 56% of secondary school ELLs are citizens and over one-half of the ELLs in public secondary schools are second- or third-generation citizens.<sup>40</sup> The stereotype of ELLs as foreign-born immigrants is inaccurate: the majority is, in fact, long-term ELLs whose academic and linguistic needs are not being met by our public school system.

The nation's 5.5 million ELL students significantly under-perform on nearly every measure of academic performance. In the 2005 National Assessment of Educational Progress, for example, only 29% of ELLs scored at or above the basic level in reading, compared with 75% of non-ELLs.<sup>41</sup> ELLs also drop out of school at very high rates: Latino ELLs, aged 16-19, for example, have a 59% drop out rate. The academic success of the ELL student population is critical for the success and cultural integration of communities across the country.

The current reauthorization of the No Child Left Behind Act (NCLB) presents an historic opportunity to build upon the achievements of the 2002 reauthorization while remedying the defects that have limited the law's effectiveness in eliminating educational inequalities. The NCLB has focused increased attention upon the academic and linguistic concerns of the LEP community. The poor academic levels of ELLs were generally a well-kept secret prior to NCLB. NCLB has increased the pressure at every level of our education system to improve results for underperforming students. It is a step in the right direction for a student population that has historically existed in the shadows of the U.S. public education system. As Congress continues to consider reauthorization of NCLB, officials at all levels of government must ensure that they fully consider the interests of ELLs.

## **2. ESL OPPORTUNITIES FOR ADULTS**

As of 2005, one in five working-age adults between the ages of 18 and 65 in the United States spoke a language other than English at home, and more than 17 million adults in this age group spoke English less than "very well" (LEP). Though it is in the economic interest of this community to learn English and polling has shown support for language acquisition<sup>42</sup>, these adults are faced with limited opportunities.

Adults who seek ESL classes face an acute shortage of high-quality English-acquisition programs, which are too few and too often oversubscribed. A June 2006 study by Dr. James Tucker for the NALEO Educational Fund surveyed the demand for and availability of adult ESL programs nationwide, and found tremendous unmet need.<sup>43</sup> In Phoenix, Arizona, for example, a large ESL provider reported an 18-month long waiting period for in-demand evening classes. In Boston, Massachusetts, there are at least 16,725 adults on waiting lists for ESL classes, and waiting times for some programs approach three years. In New York City, courses are so oversubscribed that last year, only 41,347 adults – out of an estimated one

million adult English Language Learners – were able to enroll. New York City programs can require waits of several years for adult learners.

Congress must find ways to fund and promote successful adult ESL practices. Increased funding is an essential component of any effort to help adults learn English. In addition, in areas where the LEP population is experiencing rapid growth, Congress must work closely with state leaders and advocates to develop an infrastructure for providing high quality services. Furthermore, though there is currently a limited understanding of effective instructional methodologies for specific adult LEP practices, Congress must promote promising practices and coordinate efforts to expand the scope of such practices. Research suggests that successful programs (1) provide high levels of classroom instruction time; (2) utilize managed enrollment systems that discourage erratic program participation; (3) schedule classes at times and locations that accommodate LEP adults; (4) utilize well-trained teachers who are capable of developing high-quality ESL programs and overseeing volunteers; and (5) collaborate with other service providers that serve LEP families.<sup>44</sup>

Providing real opportunities to learn English is the most efficient and effective means of fostering English proficiency. Legislation being promoted by Rep. Hinojosa (“Adults Achieving the American Dream Act”) goes to the root of this problem by seeking to ensure that adult LEPs have the opportunity to learn. In particular, the legislation (1) increases funding for programs under the Adult and Family Act to \$1.2 billion by fiscal year 2013; (2) authorizes set-asides for integrated English literacy and civics programs; (3) increases the authorization for Even Start Family Literacy programs to \$500 million; and (4) offers tax incentives to employers who offer adult education and ESL programs to their employees.<sup>45</sup>

## **B. ENSURING ACCESS TO THE COURTS**

Expanding on current law under the Court Interpreter Act that provides language services in federal courts, the State Court Interpreter Grant Program Act has been introduced to address the needs of LEPs in state justice systems.

### **1. STATE COURT INTERPRETER GRANT PROGRAM ACT (S.702)<sup>46</sup>**

Approval of this legislation would allow states to access federal funds to support state court interpretation in areas such as certification, training, or general support. It was reintroduced by Sen. Kohl on February 28, 2007. Cosponsors include Sen. Kennedy (D-MA) and Sen. Durbin (D-IL). This legislation would authorize a grant program to support court interpreter efforts in the states and would provide \$15M in each of the fiscal years 2008-2012.

The highest state court of each state would be eligible to apply for the grant. States applying for the grant would receive a base amount of \$100,000. The remainder of the funds in the appropriated pool would be distributed to the states applying for funds based on the percentage of individuals (age five or older) who speak other than English at home. Grants may be used by state courts to assess regional language demands; develop a court interpreter program for the state courts; develop, institute, and administer language certification examinations; recruit, train, and certify qualified court interpreters; pay for salaries, transportation, and technology necessary to implement the (above-described) court

interpreter program; and engage in other related activities as prescribed by the Attorney General.

In addition to Sen. Kohl's reintroduction of S. 702, this court interpreter provision was included in the base Immigration Reform bill introduced by Sen. Kennedy this spring. HR 1645, the companion House Immigration Reform measure introduced by Rep. Gutierrez (D-IL) on March 22, 2007 contains the Court Interpreter Assistance provision as it appeared in S.2611 during the last Congress.

### **C. ENSURING LINGUISTIC AND CULTURAL COMPETENCY**

As noted earlier, the ability to receive quality health care services is closely related to language rights. The following legislation attempts to provide more resources for improving language access and ensuring that services are culturally and linguistically competent.

#### **1. HEALTH EQUITY AND ACCOUNTABILITY ACT OF 2007 (H.R. 3014)<sup>47</sup>**

The Health Equity and Accountability Act directly addresses the current need for culturally and linguistically appropriate health care for LEPs. This legislation requires federal agencies and recipients of federal financial aid to improve access for LEPs and authorizes grants for research and language access. In addition, the legislation requires federal agencies that carry out health-related activities to adopt a guidance model on language services. To address the need for linguistic services under Medicare, Medicaid and the State Children's Health Insurance Program, H.R. 3014 requires a Medicare demonstration project in no less than 30 states or territories examining access to care, costs, and health outcomes for LEP beneficiaries.

#### **2. LINGUISTICALLY APPROPRIATE HEALTHCARE ACT (LAHA)<sup>48</sup>**

Members of a broad coalition focusing on language access and healthcare drafted a bill focusing on areas of consensus for advancing language access services in the healthcare arena. While the bill has not yet been introduced in Congress, it offers a positive framework for improving language access in healthcare. Portions of the bill have been adapted and introduced. For example, the House CHAMP bill (Children's Health and Medicare Protection Act, H.R. 3162) included provisions adapted from this bill addressing Medicaid and SCHIP funding for language services and would have established a demonstration program in Medicare to explore payments for language services.

The purpose of the bill is to ensure that LEP individuals receive access to the same quality healthcare received by others in the community by assisting providers of health care and health care-related services to improve, through effective communication, the quality of health care they provide for limited English proficient individuals. The bill focuses on language access issues requiring federal attention. Funding for these services is critical and the bill establishes new grant programs to improve language access as well as increased Medicaid, SCHIP and Medicare reimbursement to help healthcare providers pay for language services for their patients. In addition, the bill outlines a heightened role for the

Department of Health and Human Services as a conduit of information and technical assistance regarding language access for recipients of its funding.

## Footnotes 39 through 51

<sup>39</sup>Capps, R., Fix, M., Murray, J., Ost, J., Passel, J., & Herwanto, S., *The New Demography of America's Schools: Immigration and the No Child Left Behind Act*, Washington, D.C.: The Urban Institute (2005), p18.

<sup>40</sup>National Center for Education Statistics, *National Assessment of Educational Progress (NAEP): Reading and Mathematics*, Washington, DC (available at [http://nces.ed.gov/nationsreportcard/nrc/reading\\_math\\_2005/](http://nces.ed.gov/nationsreportcard/nrc/reading_math_2005/)).

<sup>41</sup>Pew Hispanic Center, Hispanic Attitudes Toward Learning English, (June 7, 2006), factsheet available at <http://pewhispanic.org/files/factsheets/20.pdf>.

<sup>42</sup>Dr. James Thomas Tucker, The ESL Logjam: Waiting Times for Adult ESL Classes and the Impact on English Learners, NALEO Educational Fund September 2006.

<sup>43</sup>“Adult Literacy Education in Immigrant Communities: Identifying Policy and Program Priorities for Helping Newcomers Learn English,” Asian American Justice Center 2007.

<sup>44</sup>For more information, please contact Moira Lenehan, Office of Rep. Hinojosa, at [moira.lenehan@mail.house.gov](mailto:moira.lenehan@mail.house.gov).

<sup>45</sup>For more information, please contact Les Jin, National Asian Pacific American Bar Association (NAPABA), at [lesjin@napaba.org](mailto:lesjin@napaba.org).

<sup>46</sup>For more information on this legislation, Dinah Wiley, National Immigration Law Center, at [wiley@nilc-dc.org](mailto:wiley@nilc-dc.org).

<sup>47</sup>For more information on this legislation, please contact Mara Youdelman, National Health Law Program, at [youdelman@healthlaw.org](mailto:youdelman@healthlaw.org).

<sup>48</sup>National Council of La Raza

<sup>49</sup>See U.S. General Accounting Office, *Letter to Honorable Richard Shelby, Honorable William F. Clinger, Jr., and Honorable Bill Emerson, September 20, 1995, GAO/GGD-95-243R, Federal Foreign Language Documents*; and U.S. General Accounting Office, *Letter to Honorable Richard Shelby, June 5, 1998, GAO/GGD-98-99 Federal Non-English-Language Documents 1995-1997*.

<sup>50</sup>See Ruiz-de-Velasco, Jorge and Michael Fix, *Overlooked and Underserved: Immigrant Students in U.S. Secondary Schools*, The Urban Institute, December 2000.

<sup>51</sup>Asian American Justice Center

## APPENDIX A

### TALKING POINTS GUIDE

The following are talking points against recent English Only legislation and in favor of some of the aspects of the previously discussed proactive agenda.

#### **SUGGESTED TALKING POINTS FOR INTEGRATION PACKAGES<sup>49</sup>**

- **U.S. citizenship is an important part of achieving the American Dream and full participation in civic society.** Over the past year, the number of naturalization applications has increased as more long-term lawful-permanent residents take the last step toward U.S. citizenship. In addition, some eight million lawful-permanent residents are eligible for citizenship but have yet to apply. Now is the time to invest in immigrants so that they are well-prepared to fulfill their roles as new Americans.
- **Today's immigrants learn English as quickly as previous groups.** According to the 2000 Census, of the people who report speaking Spanish at home, 72% report speaking English "well" or "very well." Research on the second and third generations consistently shows adherence to the three-generation pattern that immigrants have followed for more than a century. For example, a report on language assimilation by the Lewis Mumford Center for Comparative Urban and Regional Research at Albany found that the second generation is largely bilingual; 92% of the Hispanics speak English "well" as do 96% of the Asians, though most also speak another language at home. By the third generation, the pattern is English monolingualism. The study also finds that recent immigration levels have not changed the pattern.
- **Limited-English-proficient (LEP) adults want to learn English, but have few opportunities to do so.** A study by the National Association of Latino Elected and Appointed Officials (NALEO) Education Fund showed that 57.4% of the ESL providers they surveyed had waiting lists of LEP persons seeking ESL services. Other providers were at capacity but did not keep waiting lists. There should be no question of the desire LEP persons have to learn English.
- **Immigrants learn English despite receiving little support from members of Congress who are advocating for English only policies.** Since fiscal year (FY) 2004, funding for adult education programs has decreased by more than \$10 million, funding for Title III of the No Child Left Behind Act (NCLB) has decreased by more than \$12 million, and the Even Start family literacy program has been decimated, with funding cuts of nearly \$148 million. And Congress not approved proposals which would support immigrant integration. It is fair to expect immigrants to integrate into American society, and English language acquisition is a large part of that, but we should adopt policies that will make that happen. Congress has not done enough to aid English language acquisition.

- **Congress must do better, and it has the power to do so.** Rather than pursue policies to isolate LEP persons, many of whom are U.S. citizens, Congress should take affirmative steps to support an English language acquisition and immigrant integration agenda. This includes the following:
  - Supporting legislation to help adults learn English, including the “Adults Achieving the American Dream Act,” H.R. 2214, and the “Families Learning and Understanding English Together Act of 2007,” H.R. 1794
  - Supporting legislation to increase naturalization and civic engagement, including the “Citizenship Promotion Act of 2007,” H.R. 1379 and S. 795
  - Increasing funding for English Language Acquisition State Grants, Adult Basic Education State Grants, and Even Start
  - Passing Workforce Investment Act legislation which includes integrated job training/ESL programs for LEP and low-income workers

## **SUGGESTED TALKING POINTS AGAINST ENGLISH ONLY AMENDMENTS**

- **Current civil rights laws and policies are being misconstrued.** Proponents state that the Inhofe amendment gets rid of “entitlements.” A presidential order clarifies government agency obligations as outlined by Title VI of the Civil Rights Act of 1964. Subsequent government documents provide guidance to government agencies on how to provide meaningful access to limited English proficient individuals. This guidance provides a reasonable framework for compliance with examples on how to implement programs with meaningful access, but does not force any entity or individual to provide translated documents.
- **Countries around the world have multiple official and national languages.** Making English the sole national language goes against global trends. While many countries have made English their national language, this is usually done in tandem with making other languages that are spoken in their country the national language and acknowledging that the country is comprised of people speaking several primary languages.
- **The Inhofe Amendment would not help any immigrant learn the English language.** Limited-English-proficient adults want to learn English, but have few opportunities to do so. For example, according to the Massachusetts Department of Education, only 23,000 out of a total 887,000 people in Massachusetts who still need Adult Basic Education (ABE) are enrolled in the appropriate courses. The Inhofe Amendment would not create a single ABE slot and would not help a single person learn English. Proponents of this amendment also do not understand that it takes immigrants years to gain a working knowledge of the English language. This amendment does not provide for more resources for the millions of immigrants waiting in line for English Language Learner courses and for citizenship courses.
- **English is already the language of government.** GAO studies<sup>50</sup> have consistently shown that the overwhelming majority of U.S. Government documents are printed in English only. In fact, only about 200 – or less than 1% – of U.S. Government documents are published in a language other than English.
- **Immigrants in the U.S. learn English.** Nearly four in ten (39.5%) first-generation immigrant children are limited-English-proficient, compared with two in ten (20.9%) second-generation children and less than one in ten (0.5%) third-generation children. The decline in the percentage of immigrant students who are LEP is even sharper for Latinos. For example, among Mexican immigrant children, 55.3% of the first generation, 35.7% of the second generation, and only 4.9% of the third generation are LEP.<sup>51</sup>
- **The Inhofe Amendment endangers the right to vote.** This amendment has several negative implications for U.S. citizens who are currently able to receive language assistance, undermining a key principle of one of our most hallowed civil rights laws, the Voting Rights Act, which requires language assistance to help certain voters in certain countries. This law assists immigrants in participating in our

democracy in a way that fosters integration and a desire to be engaged in our government.

- **The Inhofe Amendment would weaken the government's ability to respond to natural or man-made disasters.** The Amendment would make it more difficult for agencies like FEMA and CDC to respond to a pandemic flu, another Katrina disaster, or another terrorist attack.

## **SUGGESTED TALKING POINTS AGAINST EEOC AMENDMENT<sup>52</sup>**

- EEOC lawsuits regarding English Only policies are few and address policies that go beyond business necessity. In actuality, the numbers of lawsuits pursued regarding English Only policies in the workplace have been very few. The few cases that have been filed by the EEOC attack English-language policies which have been used in a discriminatory manner, beyond what is needed for business necessity.

### **Beyond Business Necessity**

- In the case *EEOC v. Salvation Army*, the English-language policies were used arbitrarily against two women who had been working within the Salvation Army for at least five years “commendably and without incident.” The English Only policy of Salvation Army had never been previously enforced.
- In the case *EEOC v. Anchor Coin d/b/a Colorado Central Station Casino*, a Human Resources Director instructed other housekeeping supervisors to implement a blanket English Only language policy in the housekeeping department and to discipline any housekeeping employee, some of whom only spoke Spanish, who violated the policy. Managers chastised employees for speaking Spanish at any time and would shout “English-English-English” or “English Only” at them in the halls. One witness testified that the language policy arose out of the Director’s “insecurity, anger, and hurt feelings” stemming from her perception that housekeeping employees were speaking about her in Spanish.
- **Allowing EEOC to bring such cases does not have a chilling effect on business practice. These cases demonstrate that EEOC is pursuing a few cases in which more fundamental employee rights are being violated, such as when an English Only policy is used as a pretense to wrongfully terminate employees who have otherwise exemplary performance.**

### **Language Discrimination is Discrimination Against National Origin**

- There is clearly established law and guidelines, *Lau v. Nichols* and Executive Order 13166, which make a clear link between language and national origin. Equal access to programs and healthcare and equal opportunity to employment is often denied based on the fact that an individual cannot speak English. Language is not only a barrier to communication, it is also an identifying characteristic of an individual’s ethnicity and origin. The Bilingual Education Act and the Voting Rights Act have recognized that language discrimination can seriously hinder an individual’s most fundamental right to participation and inclusion in our country.

### **This amendment would open the doors for comparable amendments.**

- Allowing this provision to pass would send the message to other lawmakers that it is okay to diminish the right of the United States government to bring other actions against entities violating an individual’s civil and human rights. This would only open

the door for other lawmakers who oppose other types of civil actions to introduce comparable amendments. This precedent must be avoided at all costs in order to prevent an unstoppable erosion of civil rights enforcement.

- Because language ability closely tracks national origin, however, EEOC acts to protect U.S. workers when there is no legitimate, nondiscriminatory business reason for an English Only rule in the workplace. English Only policies that do not relate to job performance are inherently discriminatory. In this limited set of circumstances, the EEOC properly steps in to protect the rights of U.S. workers under Title VII of the Civil Rights Act and reaches out-of-court agreements with employers in the vast majority of such instances.

## **SUGGESTED TALKING POINTS AGAINST COST AMENDMENTS<sup>63</sup>**

- **Background:** Cost amendments attempt to frame the issue of language services as a cost to agencies or organizations, rather than as a required means to protect an individual's civil rights. These amendments require the GAO or other government agencies to conduct a cost-benefit analysis to weigh the utility of various services.
- **Cost amendments are wasteful and would merely duplicate a recent identical study.** A March 2002 OMB study already performed a comprehensive assessment of the benefits and costs of implementing Executive Order 13166, which improves access to services for persons with limited-English proficiency. That study surveyed all federal and state agencies, solicited public comment through a *Federal Register* notice, estimated national costs and qualitative assessments of benefits, and performed case studies in four sectors of American society: healthcare, welfare, transportation, and immigration. **The Report concluded that language-assistance services for particular LEP individuals can be significant though difficult to quantify.** LEP individuals may experience the intangible but important benefit connected with the fulfillment of a legal right. There is no need to reinvent the wheel through a duplicate study that wastes taxpayer money.
- The Report also suggests that the costs associated with implementing EO 13166 can be mitigated by (1) creating uniformity among the federally-conducted programs and activities with regard to providing LEP services, while recognizing local circumstances, and (2) making telephonic interpretation services and access to these services available.
- **Cost amendments would require a costly duplication of data already gathered by the Census Bureau through the American Community Survey.** The Alexander Amendment would require a costly survey of every U.S. citizen aged 18 and over to determine who is able to “read English well enough to read a ballot in English.” The Census Bureau already gathers that data through its annual American Community Survey (ACS). Federal courts have found that the Census data is unassailable in determining language needs for reading and understanding ballots. The Amendment asks you to ignore reliable Census data by conducting a new nationwide study that will cost millions and add nothing.
- **Model English language acquisition programs have already been identified.** The Amendment purports to seek the identification of model programs to help adults learn English. The Department of Education and researchers already have identified the components of successful adult English as a Second Language (ESL) programs, including: availability of professional ESL instructors; small class sizes of no more than 20 students; classroom conditions that provide an effective learning environment; regular classes that measure performance and encourage adult learners to complete the full ESL curriculum, not just the most basic levels of English; interactive instruction that encourages individual class participation; and transportation and childcare for those who need it.

- **Spend money on more adult ESL services that will help adults gain English language and literacy proficiency instead of yet another useless government report.** If the Senate is serious about increasing English language proficiency among adults, then deal with the problem: provide more money for the vastly underfunded and overwhelmed adult ESL classes. Last September, the National Association of Latino Elected and Appointed Officials (NALEO) released a report on ESL waiting times in 22 cities in 16 states, finding that waiting times for the most basic classes can be several years. Fully fund adult ESL classes. Don't waste money on another useless study that merely delays addressing the real problem.
- **Government and American society may also benefit from implementation of the EO** because increased access means cheaper, more targeted, and earlier intervention and a decrease in the amount of time that an LEP individual must interact with the benefit agency.

**SUGGESTED TALKING POINTS FOR LANGUAGE SERVICES PAYMENTS IN HEALTHCARE<sup>64</sup>**

- The IOM estimates that some 90 million persons, including native English speakers, have difficulty understanding and using health information, costing the U.S. as much as \$69 billion in avoidable expenditures.
- Almost half of those who are LEP are U.S. citizens (including native-born citizens and those who naturalized, were born in U.S. territories or to U.S. citizens abroad) and need language assistance in the healthcare arena.
- Almost every major health provider association (including the AMA, AHA, ANA, AAP, AAFP, ACP, ANA, APHA, APA, NACHC, NAPH, NASW, NMA and NHMA), supports government payments for language services as necessary to ensuring quality healthcare. Over 75 organizations have endorsed the Language Services in Healthcare Statement of Principles which supports funding mechanisms to ensure language services are available where and when they are needed.
- Health care providers from across the country have reported inadequate funding of language services to be a major barrier to LEP individuals' access to health care and a serious threat to the quality of the care they receive.
- The lack of language services diminishes the quality of health care for LEP individuals, including many U.S. citizen English-speaking children whose parents cannot understand the care the children need.
- Undocumented immigrants are ineligible for Medicare, full-scope Medicaid and SCHIP and thus would not benefit from the language services provided.

## APPENDIX B

### MODEL LEGISLATION

The following are two bills where Congress addressed language rights that may be helpful for staff seeking model language for future efforts to ensure the civil rights of LEPs are protected.

#### **I. FEMA MANDATED TO PROVIDE DISASTER RELATED INFORMATION MULTIPLE LANGUAGES AND FORMATS (42 USCS § 5196F)**

Sec. 616. Disaster Related Information Services (42 U.S.C. 5196f)\*

(a) In General - Consistent with section 308(a), the Director of the Federal Emergency Management Agency shall –

(1) identify, in coordination with State and local governments, population groups with limited English proficiency and take into account such groups in planning for an emergency or major disaster;

(2) ensure that information made available to individuals affected by a major disaster or emergency is made available in formats that can be understood by -

(A) population groups identified under paragraph (1); and

(B) individuals with disabilities or other special needs; and

(3) develop and maintain an informational clearinghouse of model language assistance programs and best practices for State and local governments in providing services related to a major disaster or emergency.

(b) Group Size - For purposes of subsection (a), the Director of the Federal Emergency Management Agency shall define the size of a population group.

#### **II. HUD MANDATED TO PROVIDE CLEARINGHOUSE OF VITAL DOCUMENTS IN MULTIPLE LANGUAGES (HR 1851, SECTION 8 VOUCHER REFORM ACT OF 2007)**

Sec. 18. Access to HUD Programs for Persons with Limited English Proficiency

(a) HUD Responsibilities- To allow the Department of Housing and Urban Development to better serve persons with limited proficiency in the English language by providing technical assistance to recipients of Federal funds, the Secretary of Housing and Urban Development shall take the following actions:

(1) TASK FORCE- Within 90 days after the enactment of this Act, convene a task force comprised of appropriate industry groups, recipients of funds from the Department of Housing and Urban Development (in this section

referred to as the `Department'), community-based organizations that serve individuals with limited English proficiency, civil rights groups, and stakeholders, which shall identify a list of vital documents, including Department and certain property and other documents, to be competently translated to improve access to federally conducted and federally assisted programs and activities for individuals with limited English proficiency. The task force shall meet not less frequently than twice per year.

(2) TRANSLATIONS- Within 6 months after identification of documents pursuant to paragraph (1), produce translations of the documents identified in all necessary languages and make such translations available as part of the library of forms available on the website of the Department and as part of the clearinghouse developed pursuant to paragraph (4).

(3) PLAN- Develop and carry out a plan that includes providing resources of the Department to assist recipients of Federal funds to improve access to programs and activities for individuals with limited English proficiency, which plan shall include the elements described in paragraph (4).

(4) HOUSING INFORMATION RESOURCE CENTER- Develop and maintain a housing information resource center to facilitate the provision of language services by providers of housing services to individuals with limited English proficiency. Information provided by such center shall be made available in printed form and through the Internet. The resources provided by the center shall include the following:

(A) TRANSLATION OF WRITTEN MATERIALS- The center may provide, directly or through contract, vital documents from competent translation services for providers of housing services.

(B) TOLL-FREE CUSTOMER SERVICE TELEPHONE NUMBER- The center shall provide a 24-hour toll-free interpretation service telephone line, by which recipients of funds of the Department and individuals with limited English proficiency may--

(i) obtain information about federally conducted or federally assisted housing programs of the Department;

(ii) obtain assistance with applying for or accessing such housing programs and understanding Federal notices written in English; and

(iii) communicate with housing providers and learn how to access additional language services.

The toll-free telephone service provided pursuant to this subparagraph shall supplement resources in the community identified by the plan developed pursuant to paragraph (3).

(C) DOCUMENT CLEARINGHOUSE- The center shall collect and evaluate for accuracy or develop, and make available, templates and documents that are necessary for consumers, relevant industry representatives, and other stakeholders of the Department, to access, make educated decisions, and communicate effectively about their housing, including--

- (i) administrative and property documents;
- (ii) legally binding documents;
- (iii) consumer education and outreach materials;
- (iv) documents regarding rights and responsibilities of any party; and
- (v) remedies available to consumers.

(D) STUDY OF LANGUAGE ASSISTANCE PROGRAMS- The center shall conduct a study that evaluates best-practices models for all programs of the Department that promote language assistance and strategies to improve language services for individuals with limited English proficiency. Not later than 18 months after the date of the enactment of this Act, the center shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, which shall provide recommendations for implementation, specific to programs of the Department, and information and templates that could be made available to all recipients of grants from the Department.

(E) CULTURAL AND LINGUISTIC COMPETENCE MATERIALS- The center shall provide information relating to culturally and linguistically competent housing services for populations with limited English proficiency.

(b) Authorization of Appropriations- There are authorized to be appropriated such sums as may be necessary to carry out subsection (a).

(c) Report- Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, and annually thereafter, the Secretary of Housing and Urban Development shall submit a report regarding its compliance with the requirements under subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.