

Language Access: A National Perspective

Aloha! Thank you for that kind introduction. I cannot think of a better place to hold a language access conference than in Hawaii. Hawaii has been a historic place for Asian immigration. Over 100 years ago, on January 13, 1903, the first Koreans to immigrate to the United States arrived right here in Honolulu on the SS Gaelic. As a result, it should come as no surprise that census data indicates that Asians make up 58% of the population in Hawaii – the highest proportion of Asians than any other state in the country! Compare that to the national population of Asians, which is only 5%. Such a large Asian-American population makes this a particularly fitting place to discuss an issue that is of great significance to the Asian and Pacific American community – as well as to other immigrant communities throughout this country.

As someone who comes from a family of immigrants, language access is an issue that has personal significance to me. My parents and three siblings all immigrated to New York from South Korea. English was my parents' third language – after Korean and Japanese. My oldest brother and his wife have limited proficiency in English, and my other two siblings were beneficiaries of classes teaching English as a second language in the New York City public schools when they immigrated here. And as a person who has spent months living in South Korea – notwithstanding my limited Korean proficiency, I can

appreciate the challenges and frustration of having a limited ability to communicate with others in a land far away from where you grew up.

In the time that I have this morning, I will briefly discuss the Justice Department's work across the country to help individuals with limited English proficiency. As some of you may know, the Civil Rights Division was created in 1957 in the legislative wake of the Supreme Court's landmark decision in *Brown v. Board of Education*, which required schools to integrate students of all races. Many of us remember the *Brown* decision as instrumental in opening up opportunities for African Americans to go to integrated schools with whites. But let us not forget that the *Brown* decision also opened up educational doors for Asian Americans as well by overturning a 1927 Supreme Court decision called *Gong Lum v. Rice*. In that case, the Court ruled that a Chinese girl was *too yellow* to go to a public school attended by white children. Citing cases like *Plessy v. Ferguson*, the Court stated that, "we cannot think that the question is any different, or that any different result can be reached * * * where the issue is as between white pupils and the pupils of the yellow races." And although 50 years have passed since the creation of the Civil Rights Division, we still have much work to do to ensure that those with limited English proficiency or LEP are provided the services they are entitled to in education, federally funded programs and activities, and protecting their right to vote.

In fact, one of the most significant LEP statutes that we enforce was enacted over 40 years ago – the 1964 Civil Rights Act. Title VI of that Act requires that programs and

activities that receive federal funds not discriminate on the basis of race, color, or national origin.

In 1974, the Supreme Court, in the case of *Lau v. Nichols*, interpreted Title VI and its regulations to require a San Francisco school district that had a significant number of non-English speaking students of Chinese origin to take steps to provide those students with a meaningful opportunity to participate in federally funded educational programs. The Civil Rights Division intervened in the *Lau* case and continues to ensure that the San Francisco school district is meeting its responsibilities with respect to English Language Learners. In that same year, Congress modeled a provision of the Equal Educational Opportunities Act of 1974 on the *Lau* decision to ensure that English Language Learners are provided a fair opportunity to succeed.

Today, the Educational Opportunities Section of the Civil Rights Division is working to make sure that our nation's school children are afforded equal opportunities in the classroom. Over the last 3 years, we have opened over 20 investigations to ensure that public schools are meeting their educational obligations for students with limited English proficiency. We have engaged in litigation or reached settlement agreements in states ranging from California to Illinois to Maine.

For example, in our Chicago school desegregation case, we negotiated comprehensive relief on behalf of English Language Learner, or "ELL," students. There are approximately 600 schools in this district, and the Chicago Public Schools enroll

approximately 52,000 ELL students from more than 100 language backgrounds. In reviewing the school district, we found that after a certain period of time the district was exiting students from ELL programming even if the students had not reached English proficiency. Additionally, we found that many special education students who also require ELL services were not receiving them. When reviewing services at some schools, we found that ELL classes were given in hallways and materials were lacking. We are continuing to enforce federal laws to ensure that the Chicago Public Schools meet their legal obligations to help ELL students. Just yesterday, the court granted a motion we filed based on these recent problems.

In another matter, we sought relief for ELL students in Lewiston, Maine, a town of about 35,000, which in recent years has seen a large influx of Somali refugees. By and large, these refugees shared the common values of Lewiston residents and wanted to raise their children in a safe, quiet community. The issue, of course, was that many of these refugees spoke little, if any, English. Through negotiations with the Lewiston School Department, the Lewiston School Department entered into an agreement to ensure that these English Language Learner students would receive equal educational opportunities. To accomplish this, the school district agreed to, among other things, create standardized curricula for ELL students, adequately train its teachers, and ensure that ELL students are able to participate fully in the offerings of the school district.

The goal in all of these programs is to bring students to a point where they can participate in regular English-only classes and receive an equal educational opportunity.

But the Civil Rights Division's efforts go beyond public schools. In addition to the efforts of the Educational Opportunities Section, the Coordination and Review Section coordinates enforcement of Title VI of the Civil Rights Act to ensure equal access to federally funded programs. And a major part of our work involves ensuring equal access for those who are limited English proficient.

Nearly eight years ago, Presidential Executive Order 13166 was signed. This order required every federal agency that provided financial assistance to state, local, nonprofit, and other entities – and there are nearly 30 of those federal agencies – to identify any need for services to those with limited English proficiency and to provide those services so LEP persons can have meaningful access to them. Additionally, these federal agencies are required to issue guidance to their recipients to ensure a better understanding of their legal obligations to take reasonable steps to provide meaningful access to LEP persons. Thus, the Department of Justice issued guidance for law enforcement, juvenile justice, district attorneys, and a variety of other recipients of federal funds. Our sister agencies have issued guidance to housing, social services, employment, transportation, parks and recreation, and a myriad of other types of state and local agencies to ensure that they understood their obligation to take reasonable steps to provide meaningful access to LEP persons they encounter or serve.

The Coordination and Review Section has a leading role in the government-wide implementation of Executive Order 13166. We have undertaken a *Language Access Initiative* and created a Federal Interagency Working Group on LEP to enhance coordination across all federal agencies. We have developed a new website – www.lep.gov – which I encourage you all to visit. It is a clearinghouse for legal, demographic, planning, and other tools to assist in the provision of language access. The Working Group has also developed brochures in many languages designed to help LEP persons understand their rights, and one for federal agencies and recipients of federal funds. The Coordination and Review Section provides training and technical assistance, and with the help of other agencies, has created a training video which is available in English, Spanish, and Vietnamese, and is subtitled in Chinese and Korean. In March of last year, the Coordination and Review Section took the lead in coordinating a major two-day Federal Interagency Conference on LEP. The conference provided an opportunity for over 300 representatives from federal, state and local agencies; community organizations; and interpreters and translators from around the country to share ideas about LEP programs and practices. It is my understanding that Hawaii was represented at that conference,¹ and I hope that it has proven helpful to Hawaii in its efforts to improve language access. We are hard at work preparing for another interagency conference this year.

¹Gerald Ohta (from Hawaii's DOL) and Pat MacManaman (a legal services advocate and force behind the Hawaii language access law) were present at this federal LEP conference in 2007.

The Coordination and Review Section also ensures that law enforcement agencies, corrections, courts and other entities that receive DOJ funds comply with the language access laws. Just last week, for instance, the Department entered into an agreement with the town of Mattawa, Washington. Its police department had allegedly failed to provide sufficient police protection to Hispanic victims of domestic violence due to a failure to take reasonable steps to provide meaningful access for LEP Spanish speakers. The Town has now agreed to implement a strong language access policy, which includes the hiring of interpreters and translation of vital documents and establishes an outreach program to ensure that the LEP community is included in town services and programs. Town officials have worked diligently to hire interpreters and bilingual staff, and they began implementing measures to ensure that LEP persons had access to town services even before an agreement was reached. This is the first agreement of its kind in the State of Washington, and I commend the town on its leadership in this area.

In another enforcement effort, the Coordination and Review Section worked with the State of Maine to ensure equal language access in its court system. We worked with the state courts of Maine to develop an Order providing interpreters to all LEP persons in both civil and criminal cases and to improve language access to clerks' offices and other entry points.

In another case, the Chief of Police of the town of Lake Worth, Florida, signed a settlement agreement to address the needs of a growing LEP population. He also signed a

comprehensive Language Assistance Plan for law enforcement, which covers everything from his 9_1_1 call center to training for bilingual officers.

Finally, you should know that Executive Order 13166 does not just impose requirements on state and local funding recipients– it also requires that the *federal* government meet the same access standards it sets for its funding recipients.

Approximately 85 federal agencies, including the Department of Justice, the Social Security Administration, the Centers for Medicare and Medicaid Services, federal agencies charged with immigration enforcement and services and emergency preparedness, and others, need to coordinate and implement strategies to reach out and respond to the LEP populations we serve. Each federal agency must create and implement a LEP plan. Our Federal Interagency Working Group on LEP has surveyed each federal agency and is developing recommendations for improvement and highlighting promising practices.

And, of course, since we are in an election year, I thought I would tell you about our work to ensure that all voters – including those who are limited English proficient – have equal access to the ballot box. The Civil Rights Division is charged with enforcing the Voting Rights Act of 1965, the landmark legislation that is known for protecting the right to vote for African Americans, particularly in the South. But many people may not know that the Voting Rights Act also protects the rights of language minorities by requiring certain jurisdictions to provide election materials and assistance at the polls in languages other than English.

Currently, the Civil Rights Division is in the midst of the most vigorous minority language enforcement program in its history. In this Administration, the Civil Rights Division has filed more than 2/3 of all of the cases *ever* filed under the minority language provisions of the Voting Rights Act in its 43 year history. We have filed the first case *ever* to protect the rights of Filipino voters; the first case *ever* to protect the rights of Vietnamese voters; the first case *ever* to protect the rights of Korean voters; and only the third case ever to protect the rights of Chinese-speaking voters. We have brought lawsuits on behalf of Spanish-speaking voters in Texas, Arizona, Massachusetts, Florida, Washington, California, Illinois, Pennsylvania, and New York.

We have been involved in matters in Bayou la Batre, Alabama, where some Asian voters were being singled out for discriminatory challenges, and Boston, Massachusetts, where some Asian voters were having their ballots marked out against their will. In the elections following our involvement, voters cast their ballots and elected the first Asian-American candidates ever elected to their respective city councils.

Let me also take a moment to mention the lawsuit we filed in San Diego County, California. As a result of our involvement, the registration of Vietnamese voters went up by 37% in the four months following our lawsuit. I am reminded of the Vietnamese voter who, upon seeing a Vietnamese-speaking poll worker for the first time – one of more than a 1,000 bilingual poll workers we added through our lawsuit – became excited. Upon leaving the polls, she said, “I’m going to tell everyone about this.” And she did, bringing group after

group of voters to the polls throughout that day. And I think of the Filipino voter in San Diego who wrote to the county elections office to say:

It just put a smile to my face as well as the rest of the people in our household when we got those ballots in Tagalog. I appreciate all the efforts you guys put into making sure every eligible citizen are able to understand and get informed with regards to all the candidates and all the measures by sending them tools in their native languages. America is truly the best country in the world to live in.

These are just a few of the ways in which the Civil Rights Division is working to break down barriers and ensure equal opportunities for all. While I am proud of the work that has been done by the Division, there is still more work to be done. If we can help to ensure equal access to education, federally funded programs, and our electoral system for LEP persons, we will have made great strides toward the American ideal of equal justice under law. Over the course of the next two days, I hope that you will find new ways to promote equal access here in Hawaii, for your efforts here will bring us closer to the goal of equal opportunities for all.

I appreciate your leadership in this area, and I am honored to be here in support of an effort that will help ensure that, now and in the future, the doors of opportunity will be

open to all. I have enjoyed speaking to you today, and I am looking forward to hearing more about the work that you are doing here in Hawaii.