PREPARED REMARKS OF
ACTING ASSISTANT ATTORNEY GENERAL LORETTA KING

At the April 20th, 2009 Meeting of
The Federal Interagency Working Group on Limited English Proficiency

Office of Justice Programs Main Conference Room
810 7th Street, NW
2:00 - 4:30 pm

Hello Interagency Working Group on LEP!!!

You know me – those of you who have been part of this group or participated in its conferences . . . . I have spoken to you many times since your inception in 2002.

You know my commitment to language access and to effective enforcement of Title VI.

You know that I am a champion of ensuring that the federal government provides meaningful access to limited English proficient (LEP) individuals consistent with Executive Order 13166.

You may even THINK you know what I am about to say.

But, though I am familiar, some things have changed around here . . .

. . . I have never before spoken to you as the Acting Assistant Attorney General/

. . . I have never before spoken to you at such a unique time of both *extraordinary* national and international challenge . . . but also of extraordinary opportunity.

. . . And, for the first time, I am speaking to you with the benefit of nearly nine years of implementation of Executive Order 13166, and with the coordinated federal-wide enforcement of language access requirements of Title VI under our belts – and under the coordination efforts of Merrily Friedlander and her staff.

And, of course, we have a new President; a new Administration; and a new Attorney General.

. . . Finally, and most important, I have never before spoken to you with such confidence in the absolute priority placed on civil rights at the highest level of this Department, and of the Administration.

I am humbled; I am excited; I am having fun; and I am definitely feeling the intensity and heat of pent- up expectations, as I try to meet the challenges of this extraordinary call to duty.

I hope you are, too!

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Something else is a bit different here today, also.

We have outside guests! Lots of them.

LEP advocates have joined us. From as close as a few blocks away; and from as far away as California.

Many are part of the National Language Access Advocates' Network – a group co-founded by one of the Coordination and Review Section's newest attorneys – Paul Uyehara –in 2006, before he came to the Division

It has been several years since we had an advocates' panel for this Working Group, though advocates have frequented our conference panels and audiences.

We also have some "Fed-Exers" in our midst – people who were very instrumental in creating or leading this group but are no longer in federal government. Raise your hands if you are here, Fed-Exers!

And, as always, welcome to all of you who are here from the Association of Federal External

Civil Rights Specialists.

I want to welcome you all back to DOJ!

Many thanks to Merrily and all of her fine staff for bringing this amazing group together in one room.

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As you all know, the Working Group is made up of federal employees, so as to allow for frank and open discussion.

We have also had to limit membership to *Federal employees* to avoid running afoul of federal rules regarding the creation of working groups and advisory committees.

Nevertheless, we started our efforts under EO 13166 by holding a Stakeholders' Meeting, soliciting comments, and having strong communications with groups that represent LEP individuals and other stakeholders.

Some of you were around in the fall of 2000, just after Executive Order 13166 was signed by President Clinton. You may remember going to the Great Hall at DOJ and hearing from several panels of language access advocates who informed our efforts to meet very tight deadlines to draft LEP Guidance and Federally Conducted Plans.

You may recall meetings of this Working Group and of its committees in which local and national advocates came to give us some real grounding in the day- to- day challenges of breaking down language access barriers.

You may also have experienced, as did we, hundreds of meetings, calls, or written communications with advocacy groups regarding language access.

We know that advocates and those they represent bring real life stories, important concerns,

practical solutions, analysis, and passion to our work. They know, sometimes better than we do, where we need to focus our efforts within our agencies and with our recipients.

We need to return to the mode in which we began. We need to build upon our connections to the advocacy community in a thoughtful and paradigm-shifting way. We need to ensure true collaborations to strengthen our enforcement and outreach efforts. I want us to see building strong working relationships with community groups as essential to getting the job done.

Much of our focus today is on turning *outward* to improve our enforcement and outreach; to make us more effective and more "in touch" with the world beyond our walls; and to build — in some cases, *rebuild* — stronger ties to the communities we serve.

Let's face it – we Feds in Washington may have a decent handle on the legal requirements, the policymaking, and procedural aspects of language access. . . But it is those of you working every day with LEP communities who can really inform us as to the practical challenges, barriers, resources, applications, and opportunities on the ground.

To that end — and speaking of "beyond our walls" — we have also set up a telephonic call-in line. People have called in from federal regional civil rights offices and from advocacy organizations across the country.

> All of the HHS OCR field offices and many DOT field offices are on the line, as are advocates from across the nation, friends from the interpreting and translating professions, and others.
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> Thanks to all of you for joining us via conference call!
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> The line is muted, so we cannot accept questions orally, but the callers have been informed of an e-mail address to which they can send questions. We hope the callers will take advantage of this during the appropriate time.

If this technology is satisfactory, we hope to be able to keep the call-in feature available for our federal family in the field.

And although federal law and the structure of the Working Group prevent us from including our advocate partners in every future Working Group meeting, we most certainly hope that this event is not unique.

We also hope that it inspires each of you in your agencies to consider inviting advocates and language access experts to talk with you about civil rights concerns specific to your agencies and recipients. We recognize that the resources that they bring to the table to help identify and resolve those concerns. I encourage all of you to make an effort to build lasting relationships with advocates and community-based organizations. They are uniquely situated to help us achieve compliance in both federally conducted and federally financed programs.

In terms of what else is new, I want to highlight a renewed energy to face the hard enforcement issues with strategies for ensuring compliance. For example:

You all know that billions of dollars are going to thousands more recipients under the Recovery Act. Last month, I sent each Civil Rights and Recovery Act point of contact, in every agency distributing Recovery Act funds, a memorandum on civil rights and the Recovery Act funds that did the following:

1. Asked that they post a notice on their Recovery Act website(s) highlighting the civil rights obligations applicable to the distribution of funds under the Act.

2. Included notice of the obligations of the federal agencies as well as their recipients and subrecipients

3. And sent what I believe to be a very clear message that civil rights issues will not take a back seat to economic stimulus measures; that instead, they must go hand in hand to

ensure a recovery in which everyone benefits, free from discrimination.

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Turning specifically to enforcement of language access requirements under Title VI, I know you already know that those long-standing requirements have been advertised widely and with a great deal of guidance since at least 2002, when the final DOJ guidance was issued. And of course, these requirements have been clearly described in the context of education for decades.

Yet compliance remains elusive in many areas.

You will hear about some of the efforts going on in some of the agencies today to remedy this.

For instance, we in the Civil Rights Division, we have a huge array of priorities for enforcement. For example, we are reinvigorating traditional Title VI enforcement.

Indeed, COR staff have been working hard to plan a one day Title VI conference for July 20th in Arlington which is designed to jump start our efforts in traditional Title VI work. I hope to see representatives from all federal funding agencies at our conference and also strong participation from the civil rights community. Thanks to all of those in COR working so hard and to make this important and historic event a reality.

Our priorities go well beyond language access, and we focus on all of those priorities without taking anything away from our commitment to enforce the language access requirements of Title VI. In fact, we believe that smarter and stronger enforcement efforts will result in better and more comprehensive language access compliance. We believe these efforts go hand-in-hand with increased and smarter attention to traditional race, color, national origin discrimination claims.

We have put this belief into action. Our action is multi-pronged: We use technical assistance letters, telephonic interventions, more aggressive pursuit of resolutions to investigations, including active community involvement, training, and outreach.

I want to share just two examples of technical-assistance letters we have recently issued:.

First is a letter addressing English-only and Official-English laws.

It will be posted on lep.gov after our meeting.

I sent this to the Attorney General of Oklahoma just last week, and this is my first public mention of it.

You may know that the Oklahoma legislature is considering a proposed constitutional amendment that would make English the official language of the State.

Although that proposal recognizes that federal law may require use of other languages in certain circumstances, it also defines federal law to exclude what it calls "nonbinding . . . pronouncements by Federal Executive Orders, including Executive Order 13166."

In our letter to the Oklahoma Attorney General, we make clear that the state's legal duty to provide meaningful access to the LEP individuals is a longstanding requirement under Title VI and the Title VI regulations; and that the Executive Order did not create a new obligation for recipients,

We also refer the State to the language in *all* LEP Guidance documents, noting that even in places with English-only statutes or ordinances, covered recipients "continue to be subject to Federal nondiscrimination requirements," including those that support LEP individuals.

We hope to use this approach in similar letters as a vehicle to alert jurisdictions throughout the country of their continued legal obligations to provide language assistance despite any local decisions to create "English-only" or official English laws.

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The second issue is one that N-LAAN leaders, including Laura Abel from the Brennan Center and others advocates from across the country – many of whom are participating today – have raised with us and worked with us to pursue – Language access and Title VI compliance in state courts.

On February 4, we sent a technical assistance letter to the Indiana Court Administrator in response to that State Supreme Court's ruling that LEP criminal defendants are not entitled to receive interpreters at the court's expense unless they are indigent.

The letter advised the court system that in order to comply with Title VI's prohibition against national origin discrimination, courts receiving federal financial assistance must take reasonable steps to provide meaningful access for LEP individuals.

This principle, which applies in both civil and criminal proceedings, means that oral language services must generally be offered free of cost.

I want to point out two key areas of guidance in this courts letter that applies across all agencies and recipients.

First, as time goes on, the bar of reasonableness is being raised. The need to show progress in providing all LEP persons with meaningful access increases over time. This is not a new concept. We cannot reward past non-compliance with lenient enforcement today

The second cross-cutting point is that, even in tough economic times, assertions of lack of resources will not provide carte blanche for failure to provide language access. Language access is essential and is not to be treated as a "frill" when determining what to cut in a budget. We need to be asking hard questions and holding the line when resources are used as a defense to compliance with any civil rights obligations.

Both of the letters I just mentioned have been made available to you as handouts and will be

available on the web at lep.gov.

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I also mentioned training and telephonic interventions. COR has taken these options to the "next level" recently, and I know that some of you out there are doing a lot of this, too. .

As an example of telephonic intervention, COR staff recently intervened telephonically when an LEP caller indicated that a court was refusing to provide him an interpreter for an upcoming hearing. As a result of our call to the court system, the person was assigned an interpreter. But we didn't stop there. COR then participated in a technical assistance effort to the entire Ohio Court system, including a series of webinars, given by COR staff to judges, court administrators, clerks, marshals and interpreters throughout the state of Ohio.

We are finding that these telephonic interventions are a win-win for everyone. They avoid the damage that may be done and the resources expended if we wait until we receive a complaint alleging a violation. We have recently conducted other successful telephonic interventions regarding the provisions of Title VI in Alaska and Texas.

I know that we regularly refer calls we receive on our hotline for interventions in medical settings to HHS OCR (both headquarters and regional offices), as well. We value this collaboration.

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And though I cannot discuss pending investigations, I will only say that our efforts are redoubled to bring those investigations to resolution. We have recently opened a number of new investigations, as well. One of the most notable is a joint investigation by COR and the Special Litigation Section of the Maricopa County Sheriff's Office regarding allegations of racial profiling and failure to provide language access, including an English-only requirement in the jails.

We also continue to focus on emergency preparedness and response, together with federal counterparts at DHS and HHS, and with several providers and advocates. We expect to have something new to share with you on that effort by our next meeting.

Our Equal Opportunities and Voting Sections continue to focus on language access in schools and at the polls. Our Appellate Section recently delivered another court victory in defense of HHS' LEP Guidance – this time in the 9th Circuit.

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I also want to call out our continued and strengthening partnership with the Office of Justice Programs Office for Civil Rights – our partner in ensuring that DOJ recipients comply with civil rights laws. We have recently begun to engage in even more coordination of our enforcement efforts and want to thank Michael Alston and his staff for leading an effort to take that partnership to the next level, as well.

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Though there is much to say regarding enforcement, I will say just one more thing:

> In keeping with our efforts to be smarter and stronger in our enforcement of language access requirements, we have asked Paul Uyehara, from Merrily's staff, to reassemble an enforcement subcommittee of this Working Group.
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> Paul will share more on this later today and I encourage federal civil rights enforcement staff to join this effort..

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So that is what is new in the Division.

Now, what is the same?

Well, Executive Order 13166, of course, and Title VI and its regulations. As you can surely tell,

the Obama Administration supports EO 13166 and Title VI language access work as a high priority.

Also not new – the need to clean our own houses and make sure that our we federal agencies are providing meaningful access to the LEP individuals we serve or encounter. As you know, the Executive Order requires it. So does good government.

> In looking back at past speeches by Assistant Attorneys General or Acting AAGs to this group, I see that this issue of federally conducted compliance has consistently been brought to your attention.
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> I call upon all of you to reinvigorate efforts within your agencies to ensure compliance with EO 13166. Let's make ourselves model providers.
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> Please contact COR if we can help.
> Please collaborate with the advocates to "keep it real."
> Please let your leadership know that this is a priority.

And the commitment to language access certainly has not changed. Rather, we want to make it clear, to recipients and federal agencies alike, that language access is not a fly-by-night measure, but an essential component of what it takes to do business and meet civil rights requirements.

I will leave you with the message that Attorney General Holder gave during his recent visits to Civil Rights Division Sections.. . . I suspect he would want all of you who are charged with civil rights enforcement, in any capacity, to hear this message as well:

> When it comes to ensuring compliance with our nation's most core values, as set forth in civil rights laws: Timidity is the one thing that is not acceptable.

Do not be timid.

To that end, we want you to raise your concerns and your questions; your ideas and your solutions; we want you to work with us to ensure that we are *all* doing everything we can to make the promise of civil rights compliance a reality.

Thank you for coming or calling in today and thank you, most of all, for all of your good work.