

2016

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Lost in Interpretation: Protecting a Right that Gives Meaning to All Other Rights
by
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Submitted in partial fulfillment of the requirements of the
King Scholar Program
Michigan State University College of Law
under the direction of
Dean David Thronson
Spring, 2016

INTRODUCTION

The somber man in an authoritative uniform opens the cage he had put her in earlier. His uniform reminds her of the police back home. Based on her experience with the police in her country she does not trust this man, not only because of the mean look on his face, but also because he reminds her of the corruption she relates to the police. She has spent her time in her cage wracking her brain, trying to figure out why she is here, where is here, what is going to happen to her. She could not understand why they had taken her clothes and given her a drab orange uniform. She longs to ask a million questions, but does not know how to in the language of her captors. Her thoughts are accompanied by a fear of the unknown and frustration from the inability to understand what the guard and others have been saying.

The guard leads her to a bare room with a table, computer, and chair. She sits down in front of the monitor only after the guard motions her to sit. The computer flickers on, and a picture of a formal room appears on the screen and a small box mirroring her face occupies the corner. She has never seen a room like this before. A woman in a black robe sits in the middle facing her through the computer. She sees the side profile of a man at a table in front of the woman in the black robe. The people in the room are talking to each other in a ritualistic way, but she has no idea what they are saying. All of a sudden one of the people in the room looks straight at her through the computer and asks in her language “what is your name?” Baffled, but relieved to finally understand someone, she answers. She hears her name repeated. A few more questions are asked of her, but after the questions nothing more is said in her language, until the end, when the person asking the questions says in her language “your bond is set at \$10,000, and your hearing is scheduled for” She’s even more confused, frustrated, and scared. The guard

motions for her to follow him again, back to her cold, lonely cage, where she will be left to her thoughts and fears unable to even ask for help because she does not know the language.

This depiction highlights the probable experiences of detainees at the removal proceedings I witnessed as an immigration clinician while in law school. Notably, during those proceedings, only the questions asked of the detainees and the detainees' answers were interpreted.¹ I left the courtroom flustered, believing I had just witnessed a huge injustice, and confused because only a couple months prior to this experience I had observed a trial where the whole proceeding was translated into Spanish for two defendants who did not speak English as their first language.

I now recognize several differences between the removal proceedings I observed in the Detroit Immigration Court and the criminal trial I observed in the city district court in Reno, Nevada. The latter was a state criminal proceeding in the Ninth Circuit, the former a federal civil proceeding in the Sixth Circuit. Although the differences are noteworthy, the similarities are substantial. The criminal defendants and detainee were jailed in between court dates. The possible outcomes of both proceedings were severe, with the criminal defendants facing restraint of liberty and the detainee facing banishment if found guilty. Both punishments resulted in huge impacts on every aspect of the defendants' and detainee's lives. The government brought the charges in both cases and was represented by a prosecutor in the criminal trial and an Immigration and Customs Enforcement trial attorney in the removal proceeding. Most significantly, both judicial proceedings involved a human being whose future rested on the outcome of the proceeding and who deserved the opportunity to understand what was happening to them. With such high stakes, the fundamental fairness of the United States justice system

¹ The fact that the detainees had to telecommute to the hearing and did not have adequate means of communicating with their lawyers, if they even had one, added to my shock. However, that is a topic for a different paper.

demands a right to full interpretation of a removal proceeding when English is not a person's first language.

The injustice of those hearings haunted me as I worked for the International Criminal Tribunal for the Former Yugoslavia. I witnessed entire proceedings interpreted for defendants charged with war crimes, crimes against humanity, and genocide.² As the land of opportunity, the United States attracts foreigners seeking the American dream and promises of a better life. However, foreign nationals who pursue that dream risk losing rights that even suspects of war crimes maintain. The right to full interpretation in a removal proceeding is fundamental to a fair judicial proceeding and is a humane courtesy that should be afforded to anyone in a judiciary proceeding against the government. Without the ability to understand judicial procedures meant to protect individual's rights, all other rights are meaningless.

The right to interpretation in removal proceedings matters for four reasons. First, the United States justice system treats removal proceedings as civil matters.³ Therefore, the justice system should treat foreign nationals with civility, not worse than criminals. Second, in practice, removal proceedings more closely reflect criminal proceedings—resulting in restriction of liberties as punishment, imprisoning individuals while awaiting hearings, defending against government charges—and should afford foreign nationals the same protections afforded criminal defendants.⁴ Third, the reputation of America's judicial system rests on foreign nationals' perceptions of how we treat them in judicial proceedings. Without interpretation, the rest of the proceedings are left to the foreign national's imagination strongly influenced by her experience with her home country's judicial system. If her country does not provide due process, she has no

² International law guarantees a criminal defendant a right to an interpreter in the International Covenant on Civil and Political Rights. International Covenant on Civil and Political Rights art. 14(3)(f), Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter ICCPR].

³ See *Fong Yue Ting v. United States*, 149 U.S. 698, 728-29 (1893) (holding deportation is civil in nature).

⁴ See *Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (finding deportation proceedings resulted in severe penalties).

reason to believe that our removal proceedings would protect her from arbitrary punishment, regardless of how much due process she is provided. Fourth, the right to interpretation is a matter of human decency because it can alleviate fear, worry, and frustration caused by the unknown. An American citizen facing judicial proceedings in another country would most likely appreciate an interpreter in order to understand the implications of the proceedings. The United States should provide the same generosity it expects from other nations.

This paper explores current laws and policies impacting the right to full interpretation in removal proceedings and provides suggestions on how to ensure that right is provided in all removal proceedings. Part I of this paper provides the background of interpretation in judicial proceedings. Part II will analyze the strengths and weaknesses of the different laws and policies impacting the full right to interpretation. Part III will suggest ways to ensure that this right is protected. Multiple laws and policies already acknowledge the need for interpreters, but no policy or law currently protects foreign nationals from the terror of sitting through a formal proceeding without knowing what is taking place.

I. BACKGROUND: INTERPRETATION IN JUDICIAL PROCEEDINGS

In 1893, the Supreme Court did not address the right to interpretation directly, but rather made a decision that would impact the rights of foreign nationals in removal proceedings for years to come.⁵ In *Fong Yue Ting*, the Court held deportation hearings are civil, not criminal, matters.⁶ The Court found the elements of a civil case were met when an executive officer brought, on behalf of the United States and before a judge, an action against a foreign national to determine whether the person has the right to stay in the United

⁵ See *Fong Yue Ting*, 149 U.S. at 728-29 (1893).

⁶ See *id.*

States.⁷ This ruling had huge implications on foreign nationals because parties in civil cases who do not speak or understand English are not afforded the same constitutional guarantees as criminal defendants.⁸ Because the Supreme Court classified immigration proceedings as civil, foreign nationals who find themselves in removal proceedings have been afforded fewer rights than those who find themselves in criminal proceedings.⁹ In 1984, the Ninth Circuit reiterated the idea that removal proceedings are civil in nature when it opined that deportation hearings offer “merely a streamlined determination” of a foreign national’s eligibility to remain in the United States and have no punitive purpose.¹⁰

Fifty years after *Fong Yue Ting*, the Supreme Court acknowledged the similarities between removal proceedings and criminal proceedings, but did not explicitly overrule *Fong Yue Ting* to change the nature of immigration law from civil to criminal.¹¹ The Court noted “though deportation is not technically a criminal proceeding [sic] it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom.”¹² In finding this, the Court acknowledged that deportation was a serious penalty and opined that “[m]eticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness.”¹³ The Court went from believing that deportation did not have penalties to recognizing that it did. Thirty-five years later, a Ninth Circuit dissenting

⁷ *Id.* (finding that no formal complaint or pleading is required and the lack either does not affect the judge’s authority or the statute’s validity and that the elements of a civil case include a complainant, a defendant, and a judge).

⁸ The Hon. Josefina M Rendon, *The Court of Babel: The Multilingual Courtroom of the Future*, 50 APR HOUS. LAW. 26, 28 (2013).

⁹ Donna Ackerman, *A Matter of Interpretation: How the Language Barrier and the Trend of Criminalizing Immigration Caused a Deprivation of Due Process Following the Agriprocessors, Inc. Raids*, 43 COLUM.J.L. & SOC. PROBS. 363, 380 (2010) (citing DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 519 (5th ed. 2005) (“[N]on-citizens have never been found to be deserving of significant protection and apparently can be disadvantaged with little or no justification.”)).

¹⁰ *El Rescate Legal Serv. v. EOIR*, 959 F.2d 742, 751 (9th Cir. 1991) (citing *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984)).

¹¹ *Bridges*, 326 U.S. at 154 (1945).

¹² *Id.*

¹³ *Id.*

judge in *Tejeda-Mata*, fully aware of the civil nature of deportation proceedings, reiterated the Court's finding that deportation proceedings resulted in criminal penalties when he argued that "it is undeniable . . . that deportation hearings are 'fraught with serious consequences to the alien.'"¹⁴ Although the Court recognized deportation proceedings and criminal proceedings could lead to the deprivation of liberty, the Court did not provide an avenue for foreign nationals to gain full rights granted to criminal defendants, but did call for procedural protection.¹⁵

In 1970, the Second Circuit finally faced the issue of interpretation in judicial proceedings in *Negron*. In that case, the court held that the integrity of the justice system forbids the prosecution of an individual who was functionally not present at his trial due to the lack of interpretation of the proceedings.¹⁶ The court opined "[c]onsiderations of fairness, the integrity of the fact-finding process, and the potency of our adversary system of justice forbid that the state should prosecute a defendant who is not present at his own trial."¹⁷ The Second Circuit recognized the defendant, a twenty-three year old indigent with a sixth grade Puerto Rican education who did not speak or understand English well, most likely experienced the trial as a "babble of voices."¹⁸ The court pointed to the Sixth Amendment guarantee of the right to be confronted with adverse witnesses and opined that it included "the right to cross-examine those witnesses as 'an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal.'"¹⁹ Most importantly, the court recognized the central issue—human decency—when it stated "but as to a matter of simple humaneness, Negron deserved

¹⁴ *Tejeda-Mata v. INS*, 626 F.2d 721, 729 (1980) (Ferguson, J. dissenting) (quoting *Castaneda-Delgado v. INS*, 525 F.2d 1295, 1301 (7th Cir. 1975)).

¹⁵ *Bridges v. Wixon*, 326 U.S. at 154.

¹⁶ Laura K. Abel, *Language Access in the Federal Courts*, 61 *DRAKE L. REV.* 593, 603 (2013).

¹⁷ *Id.* at 603.

¹⁸ *Negron v. New York*, 434 F.2d 386, 388-89 (1970).

¹⁹ *Id.* at 389 (quoting *Pointer v. Texas*, 380 U.S. 400, 405 (1965)).

more than to sit in total incomprehension as the trial proceeded.”²⁰ The court chastised “[p]articularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its criminal processes chooses to put in jeopardy.”²¹ The court recognized the ridiculous nature of expecting a foreigner with low education and little understanding of the English language and judicial system to comprehend the concept and traditions of our judicial proceedings.²² It opined

[n]or are we inclined to require that an indigent, poorly educated Puerto Rican thrown into a criminal trial as his initiation to our trial system, come to that trial with a comprehension that the nature of our adversarial processes is such that he is in peril of forfeiting even the rudiments of a fair proceeding unless he insists upon them. For all that appears, Negron, who was clearly unaccustomed to asserting “personal rights” against the judicial arm of the state, may well not have had the slightest notion that he had any “rights” or any “privilege” to assert them.²³

The court further found that the language barrier was an obvious disability, and it was “as debilitating to his ability to participate in the trial as a mental disease or defect.”²⁴ Because *Negron* was a criminal case, the Second Circuit’s findings do not carry over to civil proceedings, including removal proceedings, which are civil in nature.²⁵ However, the right to a removal proceeding has no meaning if the individual does not have a right to be present, and without the ability to comprehend the proceeding, the individual cannot be present.²⁶

²⁰ *Negron*, 434 F.2d at 390.

²¹ *Id.* at 390.

²² *Id.*

²³ *Id.* (“At the hearing before Judge Bartels, Negron testified: ‘I knew that I would have liked to know what was happening but I did not know that they were supposed to tell me.’”).

²⁴ *Negron*, 434 F.2d at 390.

²⁵ *See id.*; *Fong Yue Ting v. United States*, 149 U.S. at 728-29 (holding deportation was civil in nature).

²⁶ *See Tejada-Mata v. INS*, 626 F.2d 721, 728 (Ferguson, J. dissenting).

Seven years after *Negron*, the United States signed the International Covenant on Civil and Political Rights (ICCPR).²⁷ Article 14(3)(f) of the ICCPR guarantees the right to interpretation for criminal defendants who do not speak the language of the court.²⁸ This right falls under the right to a fair trial in this treaty.²⁹ However, the ICCPR does not provide a right to an interpreter when a criminal defendant would prefer to speak another language (like his native language) if that individual understands or speaks the court’s language.³⁰ If a court finds a need for an interpreter, the criminal defendant does not have to pay for the assistance.³¹ The ICCPR’s guarantee of an interpreter is limited to criminal defendants and does not expand to civil proceedings.³² If removal proceedings were recognized as criminal in nature, this treaty would apply to them.³³ But because removal proceedings are treated like civil proceedings, the ICCPR’s guarantees do not apply.³⁴

In 1978, Congress responded to *Negron* and the issue of interpretation in judicial proceedings by enacting the Court Interpreters Act.³⁵ The statute requires the Director of the Administrative Office of the United States Courts to establish a program that facilitates the use of “qualified interpreters in judicial proceedings instituted by the United States.”³⁶ A judge is required to use a qualified interpreter in such proceedings “if the presiding judicial officer determines . . . that [a] party . . . speaks only or primarily a language other than the English

²⁷ Office of the High Commissioner, *Status of Ratification Interactive Dashboard*, UNITED NATIONS HUMAN RIGHTS (2014) <http://indicators.ohchr.org>. The United States did not ratify this treaty until June 8, 1992. *Id.*

²⁸ ICCPR, *supra* note 2, at art. 14(3)(f).

²⁹ *Id.*

³⁰ See comments of United Nations Human Rights Committee in *Bihan v. France* [communication 221/1987, UN document CCPR/C/41/D/221/1987 at 43 (1991)] and *Barzhig v. France* [communication 327/1988, UN document CCPR/C/41/D/327/1988 at 92 (1991)].

³¹ ICCPR, *supra* note 2, at art. 14(3)(f).

³² *Id.*

³³ See *Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (recognizing that removal proceedings shared similarities with criminal proceedings).

³⁴ See *Fong Yue Ting v. United States*, 149 U.S. 698, 728-29 (1893) (holding that deportation was a civil matter).

³⁵ *Abel*, *supra* note 16, at 603.

³⁶ 28 U.S.C. § 1827(a) (2015).

language . . . so as to inhibit such party’s comprehension of the proceedings or communication with counsel or the presiding judicial officer.”³⁷ Unfortunately, the Eleventh and Seventh Circuits found that the Court Interpreter Act was not meant “to create new constitutional rights for defendants or expand existing constitutional safeguards,” but rather “to mandate the appointment of interpreters under certain conditions and to establish statutory guidance for the use of translators in order to ensure that the quality of the translation does not fall below a constitutionally permissible threshold.”³⁸

Furthermore, district judges are given wide discretion in whether an interpreter is needed because defendants do not possess an automatic right to an interpreter under the statute.³⁹ In order to determine whether a defendant has a statutory entitlement to an appointed interpreter, the district court must evaluate the defendant’s knowledge of English and the complexity of the proceedings and testimony along with a variety of other factors after being put on notice that the defendant only speaks or primarily speaks a language other than English.⁴⁰ The First, Fifth, Eighth, Tenth, and Eleventh Circuits found that the Act places a mandatory duty on the trial court to “*inquire as to the need for an interpreter when a defendant has difficulty with English.*”⁴¹ After evaluating the necessary factors, the court determines (1) whether the defendant “speaks

³⁷ 28 U.S.C. § 1827(d)(1)(A) (2015).

³⁸ *United States v. Joshi*, 896 F. 2d 1303, 1309 (11th Cir. 1990), (finding no error when defendants could only communicate with their attorneys through the one court-appointed interpreter during requested breaks in testimony, but had the benefit of simultaneous interpretation to ensure the defendants could comprehend the proceeding), certiorari denied, 498 U.S. 986; *United States v. Johnson*, 248 F.3d 655, 661 (7th Cir. 2001).

³⁹ *See United States v. Johnson*, 248 F.3d 655, 661 (7th Cir. 2001).

⁴⁰ *Id.* at 661 (7th Cir. 2001) (citing *United States v. Febus*, 218 F. 3d 784, 791 (7th Cir. 2000)).

⁴¹ *Valladares v. United States*, 871 F.2d 1564, 1565-66 (11th Cir. 1989) (citing *United States v. Tapia*, 631 F.2d 1207, 1209 (5th Cir. 1980)) (emphasis added); *United States v. Osuna*, 189 F.3d 1289, 1292 (10th Cir. 1999); *Luna v. Black*, 772 F.2d 448, 451 (8th Cir. 1985) (stating that a trial court should determine whether an interpreter is needed when put on notice that there may be some significant language difficulties); *United States v. Carrion*, 488 F.2d 12, 15 (1st Cir. 1973) (holding that “whenever put on notice that there may be some significant language difficulty, the court should make such a determination of need [for an interpreter]”). (1337-1338).

only or primarily a language other than the English language[.]" and (2) whether "this fact inhibits [the defendant's] comprehension of the proceedings or communication with counsel."⁴²

In determining whether the defendant "speaks only or primarily a language other than the English language[.]" simply asking whether the defendant's native language is a language other than English is not sufficient, neither is basing the decision on the language the defendant speaks most frequently.⁴³ The Tenth Circuit has found that the statute "seeks to measure the defendant's comparative ability to speak English."⁴⁴ Evidence of this ability includes the individual responding consistently and clearly in English to questions asked in English, regardless of whether the answers are brief and somewhat inarticulate.⁴⁵ Furthermore, a defendant's ability to converse with a judge during a hearing and long statements made under oath to agents can support the finding that a defendant understands and speaks English.⁴⁶ However, if a defendant is arraigned through an interpreter or testifies through an interpreter, the court should, through its own motion, inquire into whether failure to provide an interpreter inhibited the defendant's "comprehension of proceedings and communications with counsel."⁴⁷ Furthermore, the court can be put on notice of the defendant's difficulty with English if the court reporter notes the defendant's testimony is unintelligible or evidence exists that clearly shows that communication between the court and the defendant, or counsel and the defendant, is inhibited by language.⁴⁸

⁴² *Johnson*, 248 F.3d at 661.

⁴³ *United States v. Hasan*, 526 F.3d 653, 666 (10th Cir. 2008).

⁴⁴ *Id.*

⁴⁵ *United States v. Black*, 369 F.3d 1171, 1174 (10th Cir. 2004) (holding that even though witness would have been more comfortable testifying in the Navajo language, her lengthy testimony showed she did not have difficulty with the English language and her clear and responsive answers demonstrated her fluency in English); *Gonzales v. United States*, 33 F.3d 1047, 1051 (9th Cir. 1994) (holding that the defendant was not entitled to an interpreter because his answers were responsive and he never indicated to the court that he was experiencing major difficulty).

⁴⁶ *United States v. Birdinground*, 107 Fed.Appx. 806, 807 2004 WL 1894986 (finding that defendant's comprehension of the proceedings was not inhibited by language issues because his colloquy with the judge and his lengthy statement to United States Attorney's office agents under oath evidenced defendant understood and spoke English).

⁴⁷ *Tapia*, 631 F.2d at 1209.

⁴⁸ *Black*, 369 F.3d at 1175.

The statute also requires that interpretation provided by a certified interpreter must be in the simultaneous mode for any party in a judicial proceeding instituted by the United States.⁴⁹ In *U.S. v. Joshi*, the Eleventh Court found that the Court Interpreters Act’s general standard required word-for-word translation of everything relating to trial that an English speaking individual would be privy to hear to satisfy the adequate translation of trial proceedings.⁵⁰ However, the court also found that occasional lapses, particularly those that the defendant does not object to, do not render the trial fundamentally unfair.⁵¹

A “judicial proceeding instituted by the United States” refers to all criminal or civil proceedings, including pretrial and grand jury proceedings, “conducted in, *or* pursuant to the lawful authority and jurisdiction of a United States district court.”⁵² Therefore, the Court Interpreters Act does not require interpretation of transcripts of conversations outside the judicial proceedings, of meeting of creditors and discharge hearings in bankruptcy court, nor post-plea-debriefings interpreted by informal interpreters.⁵³ The Court Interpreters Act does not govern interpretation matters in removal proceedings, because the Act does not refer to immigration courts nor has a court decided that the Act applies to immigration courts.⁵⁴

⁴⁹ 28 U.S.C. § 1827 (k) (2015).

⁵⁰ 896 F.2d 1303, 1309 (11th Cir. 1990).

⁵¹ *Id.*

⁵² 28 U.S.C. § 1827(j) (2015) (“The term “United States district court” as used in this subsection includes any court which is created by an Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title.”).

⁵³ *United States v. Lira-Arredondo*, 38 F.3d 531, 533 (10th Cir. 1994) (finding that the CIA was not applicable to instances transcripts prepared outside of the judicial proceeding); *In re Morrison*, 22 B.R. 969 (U.S. Bankr. Ct. N.D. Ohio 1982) (finding interpreters were not required in creditors’ meeting and discharge hearings in bankruptcy court); *United States v. Acuna-Navarro*, 90 Fed. Appx. 308, 312-14 (finding that a court appointed interpreter was not required under the CIA in a debriefing where an informal translator was used).

⁵⁴ *See* 28 U.S.C. § 1827(j) (2015) (“The term “United States district court” as used in this subsection includes any court which is created by an Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title.”); *United States v. Lira-Arredondo*, 38 F.3d 531, 533 (10th Cir. 1994) (finding that the CIA was not applicable to instances transcripts prepared outside of the judicial proceeding); *In re Morrison*, 22 B.R. 969 (U.S. Bankr. Ct. N.D. Ohio 1982) (finding interpreters were not required in creditors’ meeting and discharge hearings in bankruptcy court); *United States v. Acuna-Navarro*, 90 Fed. Appx. 308, 312-14 (finding that a court appointed interpreter was not required under the CIA in a debriefing where an informal translator was used).

In determining whether a court violated the Court Interpreters Act, the reviewing court ultimately determines whether failure to provide an interpreter or any inadequacy in interpretation made the trial fundamentally unfair.⁵⁵ The court focuses on whether the purposes of the Court Interpreters Act were adequately met, and as long as the purposes were met, appropriate use of interpreters in a courtroom falls within the discretion of the district court.⁵⁶ Being in the best position to evaluate the need for interpreters due to the direct contact the judge has with the defendant, the district courts are afforded wide discretion when implementing the Court Interpreters Act and deciding the extent and nature of interpretation services needed.⁵⁷

Since 1980, the Circuit Courts have wrestled with determining the role of the right to interpretation of judicial proceedings. In 1980, the Second Circuit found a substantive entitlement to due process protection in asylum cases—a type of removal proceeding.⁵⁸ It held that “the statute authorizing aliens to petition for relief from deportation or return to a country in which their life or freedom would be jeopardized, creates a substantive entitlement to which due process protections apply.”⁵⁹ The court also found that “[a]t a minimum, . . . [limited English proficient] petitioners must be afforded a hearing at which interpretation is provided, sufficient to enable them to understand the proceedings and present their claims.”⁶⁰ Although this case provides substance to argue limited English proficient individuals in removal proceedings should have a right to interpretation, the case seems to speak only to asylum seekers, and not all individuals in removal proceedings are asylum seekers.

⁵⁵ *United States v. Sanchez*, 928 F.2d 1450, 1455 (6th Cir. 1991); *Valladares v. United States*, 871 F.2d 1564, 1566 (11th Cir. 1989).

⁵⁶ *United States v. Mosquera*, 816 F.Supp. 168, 174 (E.D.N.Y. 1993); *Sanchez*, 928 F.2d at 1455.

⁵⁷ *Mosquera*, 816 F.Supp. at 174; *Valladares*, 871 F.2d at 1566; *United States v. Sandoval*, 347 F.3d 627, 632 (Ill. 2003).

⁵⁸ *Augustin v. Sava*, 735 F.2d 32, 38 (2d Cir. 1984).

⁵⁹ *Id.*

⁶⁰ *Id.*

The Circuit Courts have also found interpretation is essential to issues of due process, equal protection, court access, right to a fair trial, right to be present at trial, right to confront witnesses, and right to effective assistance of counsel.⁶¹ Many courts have held that the right to an interpreter implicates these issues, but only in criminal proceedings.⁶² Specifically, the Eleventh and Fifth Circuits have found that the right to an interpreter implicates due process.⁶³ In *Edouard*, the court stated “[a]s a constitutional matter, in determining whether an interpreter is needed, the trial court must balance the defendant’s rights to due process, confrontation of witnesses, effective assistance of counsel, and to be present at his trial ‘against the public’s interest in the economical administration of criminal law.’”⁶⁴ The Ninth Circuit has expanded the application of the Fifth Amendment due process clause to removal proceedings, requiring the granting of a full and fair hearing to a foreign national facing removal.⁶⁵

In another case, the Ninth Circuit spoke to the right of interpretation when it held competent translation is fundamental to a full and fair hearing, and deportation proceedings must be translated into a language the foreign national understands if he or she does not speak English.⁶⁶ The court further explained that an incorrect or incomplete translation is functionally equivalent to no translation at all.⁶⁷ Immigration proceedings rely heavily on oral testimony of the respondent because evidence and witnesses can be hard to obtain due to the likelihood they

⁶¹ See Abel, *supra* note 16, at 603.

⁶² See *Id.* (citing *United States v. Mayans*, 17 F.3d 1174, 1180-81 (9th Cir. 1994) (collecting cases holding that an interpreter may be necessary to allow a defendant to confront witnesses); *United States v. Carrion*, 488 F.2d 12, 14 (1st Cir. 1973) (stating that the denial of an interpreter can interfere with the right to the effective assistance of counsel).”

⁶³ *United States v. Edouard*, 485 F.3d 1324, 1338 (11th Cir. 2007); *United States v. Martinez*, 616 F.2d 185, 188 (5th Cir. 1980) (discussing the right to an interpreter when due process is implicated).

⁶⁴ *Edouard*, 485 F.3d at 1338 (quoting *Valladares*, 871 F.2d at 1566 (citing *Martinez*, 616 F.2d at 188)).

⁶⁵ *Hartooni v. INS*, 21 F.3d 336, 339–40 (9th Cir.1994) (citing *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950)); *Ramirez v. INS*, 550 F.2d 560, 563 (9th Cir. 1977).

⁶⁶ *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000).

⁶⁷ *Id.*

can only be found outside the country. Therefore, the need for a foreign national to understand the questions and to communicate clear answers is that much more important.⁶⁸

In 1983, the Attorney General created a separate agency within the United States Department of Justice called the Executive Office of Immigration Review (EOIR) to adjudicate cases arising under the Immigration and Nationality Act and its regulations.⁶⁹ The Office of the Chief Immigration Judge (OCIJ) comprises one of the three administrative tribunals of the EOIR and maintains about 59 immigration courts whose primary purpose is to adjudicate cases involving the removal of aliens from the United States.⁷⁰ A second administrative tribunal in the EOIR, the Board of Immigration Appeals (BIA) reviews appeals from the immigration courts.⁷¹ Following BIA ruling, an appeal may be heard by circuit courts with jurisdictional authority where the initial removal proceeding took place.⁷² Therefore, the EOIR manages the operations of immigration courts and each court is bound by the Circuit Court that governs their geographical location.

In 1991, a legal services organization brought a class action lawsuit against EOIR for failing to provide full and competent interpretation for non-English speakers at immigration court proceedings.⁷³ El Rescate Legal Services argued that this failure deprived foreign nationals of their statutory rights to present evidence, to cross-examine witnesses, and to be represented

⁶⁸ See *Hartooni*, 21 F.3d at 340 (finding a hearing is not “full and fair” unless the proceedings are “*competently* translated into a language [the foreign national] can understand.”) (emphasis added); *Augustin*, 735 F.2d at 37 (“[T]ranslation services must be sufficient to enable the applicant to place his claim before the judge. A hearing is of no value when the alien and the judge are not understood.”); *Gonzales v. Zurbrick*, 45 F.2d 934, 937 (6th Cir.1930) (“The right to a hearing is a vain thing if the alien is not understood.”).

⁶⁹ Exec. Office for Immigration Review, *Plan for Ensuring Limited English Proficient Persons Have Meaningful Access to EOIR Services 1* (2012), available at [http:// www.justice.gov/eoir/statpub/EOIRLanguageAccessPlan.pdf](http://www.justice.gov/eoir/statpub/EOIRLanguageAccessPlan.pdf) [hereinafter EOIR LEP Plan].

⁷⁰ *Id.*

⁷¹ Exec. Office for Immigration Review, *Board of Immigration Appeals*, DEPT. OF JUSTICE (2016), available at <https://www.justice.gov/eoir/board-of-immigration-appeals>.

⁷² 8 U.S.C. § 1252(b)(2), (b)(7)(C) (2015).

⁷³ *El Rescate Legal Serv. v. EOIR*, 941 F.2d 950, 952 (9th Cir. 1991).

and effectively assisted by retained counsel.⁷⁴ The Ninth Circuit found the statutory provisions only required a foreign national have a reasonable opportunity to be present, present evidence, and to cross-examine witnesses, and the EOIR's refusal to provide full interpretation did not deny a reasonable opportunity to exercise those statutory rights.⁷⁵ The Ninth Circuit reiterated that the Constitution affords foreign nationals inside the United States in deportation hearings (now referred to as removal hearings) to procedural due process, which is satisfied through a full and fair hearing.⁷⁶ The court found that neither the Immigration and Nationality Act, nor the Attorney General's regulatory scheme, required full interpretation of the entire deportation proceedings.⁷⁷ However, since the *El Rescate* case, the provision in the Immigration and Nationality Act that provided the statutory rights has been amended to no longer afford such rights.

In 1995, the Judicial Conference of the United States warned “[a]s the number of non-English speakers and the number of languages spoken in the U.S. population increase, the courts will be challenged as they seek to ensure the integrity of the truth-finding process.”⁷⁸ Several federal circuit committees emphasized the importance of interpreters in civil courts.⁷⁹ The task force for the Second Circuit warned “[w]ithout interpretation, non-English speakers sit in federal court as an incomprehensible storm of events swirl around them.”⁸⁰ The National Center for State Courts also insists that courts appoint interpreters when the “services of an interpreter are required to secure the rights of non-English speaking persons or for the administration of

⁷⁴ *Id.*

⁷⁵ *Id.* at 955-56.

⁷⁶ *El Rescate Legal Serv. v. EOIR (El Rescate II)*, 959 F.2d 742, 751 (9th Cir. 1991).

⁷⁷ *Id.* at 752.

⁷⁸ Judicial Conference of the U.S., Long Range Plan for the Federal Courts 116 (1995), available at <http://www.uscourts.gov/uscourts/FederalCourts/Publications/FederalCourtsLongRangePlan.pdf>.

⁷⁹ Abel, *supra* note 16, at 601.

⁸⁰ *Id.* (quoting *Report of the Working Committees to the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts*, 1997 ANN. SURV. AM. L. 117, 289-90).

justice.”⁸¹ The National Center for State Courts commented that even though many individuals have enough proficiency in a second language to communicate at a very basic level, a much higher level of communicative capability is required for participation in court proceedings.⁸²

On August 11, 2000, President Clinton issued Executive Order No. 13,166 (Order), which addresses the issue of English proficiency.⁸³ The purpose of the Order was “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.”⁸⁴ Limited English proficient (LEP) persons are “[i]ndividuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.”⁸⁵ Although some LEP persons might be competent in certain types of communication (i.e. listening, speaking, reading, or writing), they may still be LEP due to other reasons (i.e. listening, speaking, reading, or writing).⁸⁶ The Order required each federal agency to examine its provided services, develop a system that allows LEP persons to meaningfully access its services, and implement it.⁸⁷ The Order recognizes that these new systems should not unduly burden the fundamental mission of the agency.⁸⁸ The Order’s intention was to improve internal management of the executive branch and does not create a substantive or procedural right enforceable by law.⁸⁹

In 2010, the Department of Justice started pressuring state courts to use interpreters in civil proceedings, warning that Title VI of the Civil Rights Act requires them to provide an interpreter when an individual lacks sufficient English proficiency to meaningfully participate in

⁸¹ Nat’l Ctr. for State Courts, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* 226 (1995), available at <http://ncsc.contentdm.oclc.org/cdm/singleitem/collection/accessfair/id/162/rec/19>.

⁸² *Id.* at 125.

⁸³ Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000).

⁸⁴ *Id.*

⁸⁵ Civil Rights Division Guidance for Executive Order No. 13,166, 67 Fed. REg. 41,455, 41,459 (June 18, 2002).

⁸⁶ EOIR LEP Plan, *supra* note 69, at 10.

⁸⁷ Exec. Order No. 13,166, *supra* note 83.

⁸⁸ *Id.*

⁸⁹ *Id.*

a judicial proceeding.⁹⁰ State courts that receive federal funds are required to provide interpreters in all civil cases under Title VI of the Civil Rights Act of 1964.⁹¹ The Supreme Court has found violations of the Civil Rights Act in educational situations that had to do with matters similar to the right of interpretation.⁹² For example, recognizing that the discrimination fostered by the San Francisco’s public schools’ failure to provide instructions in Chinese to Chinese-speaking students who did not speak any English, the Supreme Court held that these schools violated Title VI of the Civil Rights Act of 1964.⁹³ The Court opined “[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents’ school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the regulations.”⁹⁴ The Court also acknowledged “[s]imple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”⁹⁵

In 2011, in an attempt to recommit to the implementation of Executive Order 13,166, the Attorney General issued a memorandum explaining it.⁹⁶ The Attorney General reiterated that agencies must develop and implement a system that provides meaningful access to the services of the federal agencies to limited English proficient persons.⁹⁷ Meaningful access for LEP persons in immigration proceedings would include language assistance resulting in accurate,

⁹⁰ Letter from Thomas E. Perez, Assistant Att’y Gen. to Chief Justices & State Court Adm’rs (Aug. 16, 2010), available at http://www.lep.gov/final_courts_itr_081610.pdf [hereinafter AG Perez Letter 2010].

⁹¹ 42 U.S.C. §2000d (2006); Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455, 41,470-71 (June 18, 2002).

⁹² See generally *Lau v. Nichols*, 414 U.S. 563, 566-69 (1974).

⁹³ *Id.* at 566-69.

⁹⁴ *Id.* at 568.

⁹⁵ *Id.* at 569 (quoting Senator Humphrey, 110 Cong. Rec. 6543) (internal quotation marks omitted). Senator Humphrey was quoting President Kennedy. *Id.* at 569 n.4.

⁹⁶ Memorandum from the Attorney General on Federal Government’s Renewed Commitment to Language Access Obligations Under Executive Order 13,166 (Feb. 17, 2011) [hereinafter AG Memo Language Access Obligations].

⁹⁷ *Id.*

timely, and effective communication at no cost to the LEP person and access that is not restricted, delayed, or inferior to programs or activities afforded English proficient individuals.⁹⁸ The Attorney General requested agencies to ensure that staff is able to competently identify LEP contact situations and take steps necessary to provide meaningful access.⁹⁹ The memorandum further directed agencies to evaluate and update their current response to LEP needs and suggested, among other things, that agencies conduct an inventory of most frequently encountered languages, identify primary channels used to contact LEP community members, and review language accessibility of programs and activities.¹⁰⁰ Another request was that the agencies use mechanisms to reach the LEP communities they serve to notify the public of the agencies' policies, plans, procedures, and access-related developments for LEP individuals.¹⁰¹

In response to the Attorney General's memorandum and the Executive Order's request, the Executive Office of Immigration Review (EOIR) created *The Executive Office for Immigration Review's Plan for Ensuring Limited Proficient Persons have Meaningful Access to EOIR Services*.¹⁰² In its plan, the EOIR acknowledged that the nature of its mission has created a long history of interacting with LEP persons.¹⁰³ The EOIR's mission is to "strive[] to provide fair, impartial, and timely adjudication of immigration proceeding" as a neutral arbiter.¹⁰⁴ The EOIR expressed that ensuring meaningful access to immigration proceedings to LEP persons is fundamental to its goals.¹⁰⁵ In an effort to provide meaningful access to its services, the EOIR

⁹⁸ EOIR LEP Plan, *supra* note 69, at 10.

⁹⁹ AG Memo Language Access Obligations, *supra* note 96.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² EOIR LEP Plan, *supra* note 69.

¹⁰³ *Id.* at 2.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

reported budgeting twenty-four million dollars toward providing language access for LEP persons.¹⁰⁶

The EOIR also acknowledged that many foreign nationals in removal proceedings are limited in English proficiency and need an interpreter to understand and participate in the proceedings.¹⁰⁷ To ensure meaningful access to its most critical service, the EOIR has the following policy in place: “[i]nterpreters are provided at government expense to individuals whose command of the English language is inadequate to fully understand and participate in removal proceedings. In general, the Immigration Court endeavors to accommodate the language needs of all respondents.”¹⁰⁸ The EOIR also promises “EOIR staff will take reasonable steps to effectively inform the public of the availability of EOIR’s language assistance resources.”¹⁰⁹ Through its policy directive, the EOIR intends to eliminate or reduce the barrier of limited English proficiency to its services by establishing guidelines consistent with Title VI of the Civil Rights Act of 1964, implementing regulations, guidance documents, and Executive Order 13,166.¹¹⁰

According to the EOIR, the immigration courts already arrange interpreters for master calendar hearings and individual hearings.¹¹¹ Although the EOIR encourages parties to request interpreters orally or through written motions, immigration judges will determine the need for an interpreter regardless of whether the foreign national requests one.¹¹² Along with training on how to ascertain the best language a foreign national understands, immigration judges are provided scripted questions in the *Immigration Judge Bench Book* to determine whether a foreign national

¹⁰⁶ *Id.* (constituting over 8% of EOIR’s overall budget).

¹⁰⁷ *Id.*

¹⁰⁸ *Immigration Court Practice Manual*, Chapter 4.11, 4.12(f) (April 1, 2008).

¹⁰⁹ EOIR LEP Plan, *supra* note 69, at 9.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 2.

¹¹² *Id.*

needs an interpreter and the language the foreign national best speaks, and immigration judges usually ask these questions at every hearing.¹¹³ The EOIR provides staff with the following guidelines to assist in identifying LEP individuals: (1) asking what the person’s primary language is, (2) having the person self-identify or a companion identify the person as LEP, (3) requesting a multi-lingual employee or qualified interpreter to verify the primary language of the person, and (4) using an “I speak” language identification card.¹¹⁴

In 2012, the EOIR employed 90 staff interpreters and contracted with a private company to provide interpreters in whatever language the immigration courts need.¹¹⁵ For immediate needs, EOIR also contracted with two telephonic interpreter services.¹¹⁶ Under the language access plan, the EOIR promises to continue furnishing interpreters at all immigration proceedings where a party is an LEP person.¹¹⁷ Furthermore, the EOIR has promised that within one year of adoption of the language access plan, interpreters—when present at an immigration proceeding—will provide a *full and complete* interpretation of the proceeding.¹¹⁸

Although the EOIR’s directive recognizes that adequate interpretation is fundamental to meaningful access to the immigration courts, it directly says in its plan that the “directive is intended only to improve the internal management of EOIR’s language access program, and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.”¹¹⁹ In order to

¹¹³ *Id.* at 3.

¹¹⁴ *Id.* at 13.

¹¹⁵ *Id.* at 3.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 12.

¹¹⁸ *Id.* (emphasis added).

¹¹⁹ *Id.* at 11.

raise any concern about the implementation of the EOIR's policy, an individual must submit relevant information to the language access coordinator of the EOIR.¹²⁰

Around the same time as the EOIR issued its plan, the American Bar Association delivered new standards for Language Access in Courts.¹²¹ This ABA standard is intended to apply to all adjudicatory tribunals and urges tribunals to “ensure that persons with limited English proficiency have meaningful access to all the services . . . provided by the court.”¹²² The ABA standards encourage courts to provide interpreters in all types of cases, including civil ones.¹²³ These standards recognize that without competent interpreters, LEP persons are forced to proceed in court without the ability to participate effectively in their own proceedings.¹²⁴ Lack of competent interpreters in all judicial proceedings can result in crucial laws going unenforced, vulnerable immigrants being exploited, court inefficiency due to inability to communicate, and members of the community losing faith in the ability of the courts to administer justice.¹²⁵

The ABA's movement toward expanding the right to an interpreter in civil proceedings is supported by some strong arguments. For example, when the governing law or likely evidence in civil cases are too complicated for laypeople to understand, courts may need to provide appropriate assistance, including “a form identifying the critical issues, a mental health professional to explain expert testimony, or an ‘institutional attorney’ to help prisoners file habeas corpus petitions.”¹²⁶ Furthermore, courts might need to provide accommodations to allow

¹²⁰ *Id.*

¹²¹ Am. Bar Ass'n, Standards for Language Access in Courts std. 1 cmt. (2012), available at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf.

¹²² *Id.* at std. 2.

¹²³ *Id.*

¹²⁴ Abel, *supra* note 16, at 599.

¹²⁵ *Id.* at 599.

¹²⁶ See Abel, *supra* note 16, at 602; Turner v. Rogers, 131 S. Ct. 2507, 2520 (2011) (noting that a father facing civil contempt charges should have been provided with: (1) notice that his ability to pay child support was a critical issue; (2) a form enabling him to provide information about his ability to pay; and (3) a hearing at which he could answer

people with disabilities to access the court, regardless of whether the matter is civil or criminal.¹²⁷ Federal LEP prison inmates have been afforded interpreters for disciplinary hearings when federal district courts held due process requires it.¹²⁸ Limited English proficient people who find themselves in immigration proceedings are like individuals with a disability or the laypeople who need psychological evaluations explained to them and deserve professional assistance—an interpreter—in understanding the judicial proceeding.¹²⁹ Like the LEP prison inmate who has a right to an interpreter even at disciplinary proceedings, foreign nationals in removal proceedings have a right to interpretation of the entire judicial process.¹³⁰ Without a full and complete interpretation of immigration proceedings, the foreign national is denied access to justice, which the ABA tries to remedy.

The ABA standards also specified that a court must provide an interpreter when an individual’s English language capabilities are insufficient to allow meaningful communication and comprehension within a “fast-pace, potentially jargon-laden, and emotionally taxing legal proceeding.”¹³¹ Directly asking whether a litigant speaks and understands English will likely elicit a “yes” from people too embarrassed, nervous, or scared to admit difficulty with the national language, or the litigant might not know what level of English is required to

questions about his ability to pay); *Murray v. Giarrantano*, 492 U.S. 1, 14-15 (1989) (Kennedy, J., concurring) (noting that due process rights of prisoners on death row seeking state post-conviction review were satisfied because “no prisoner on death row in Virginia has been unable to obtain counsel to represent him in postconviction [sic] proceedings, and Virginia’s prison system is staffed with institutional lawyers to assist in preparing petitions for postconviction [sic] relief”); *Vitek v. Jones*, 445 U.S. 480, 498 (1980) (Powell, J., concurring) (opining that a person facing involuntary commitment has at least a right to the assistance of a mental health professional who could help him or her “understand and analyze expert psychiatric testimony that is often expressed in language relatively incomprehensible to laymen”).

¹²⁷ Abel, *supra* note 16, at 602 (citing *Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004)).

¹²⁸ See *Sandoval*, 2009 WL 499110 at *3; *Powell*, 487 F. Supp. at 932; see also *Franklin*, 163 F.3d at 634-35 (D.C. Cir. 1998).

¹²⁹ See Abel, *supra* note 16, at 602 (citing *Lane*, 541 U.S. at 533-34 (2004)); *Sandoval*, 2009 WL 499110 at *3; *Powell*, 487 F. Supp. at 932; see also *Franklin*, 163 F.3d at 634-35 (D.C. Cir. 1998).

¹³⁰ See *Sandoval*, 2009 WL 499110 at *3; *Powell*, 487 F. Supp. at 932; see also *Franklin*, 163 F.3d at 634-35 (D.C. Cir. 1998).

¹³¹ Am. Bar Ass’n, Standards for Language Access in Courts, *supra* note 131, at std. 3.3 cmt.

meaningfully communicate in a courtroom setting, especially if the litigant is unfamiliar with courtroom culture.¹³²

In 2016, the possibility of foreign nationals finding themselves in removal proceedings even though they are not actually subject to removal is high enough that due process requires protection of these individuals. The Department of Homeland Security announced that U.S. Immigration and Customs Enforcement (ICE) initiated a total of 462,463 removals/returns in the 2015 fiscal year.¹³³ In a year, hundreds of thousands of people find themselves in removal proceedings and detained while waiting for these proceedings to occur.¹³⁴ Of the 462,463 removals initiated, ICE removed/returned 235,413 individuals.¹³⁵ That seems to indicate that 227,050 individuals who have gone through removal proceedings were not actually removed or returned. If that is the case, immigration proceedings affect many individuals who were found to have a right to stay. Similar to how individuals in the criminal justice system may be wrongfully accused, foreign nationals or lawful residents might find themselves wrongfully in removal proceedings.¹³⁶ Therefore, safeguards are needed to protect the rights of those who have been wrongfully put into removal proceedings, and the most fundamental safe guard is full interpretation of removal proceedings.

¹³² Abel, *supra* note 16, at 623.

¹³³ DHS Press Office, *DHS Releases End of Fiscal Year 2015 Statistics*, DEPARTMENT OF HOMELAND SECURITY (2015), <https://www.dhs.gov/news/2015/12/22/dhs-releases-end-fiscal-year-2015-statistics>. ICE is the agency responsible for initiating removal proceedings by apprehending immigrants suspected of being in or trying to enter the United States illegally. ICE, *Enforcement and Removal Operations*, WHO ARE WE: IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/ero> (last visited March 25, 2016).

¹³⁴ ACLU, *Immigrants' Rights and Detention*, AMERICAN CIVIL LIBERTIES UNION (2016), <https://www.aclu.org/issues/immigrants-rights/immigrants-rights-and-detention>; 8 U.S.C. § 1226 (2015) (stating that “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States”).

¹³⁵ DHS Press Office, *supra* note 133.

¹³⁶ Esha Bhandari, *Yes, the U.S. Wrongfully Deports its Own Citizens*, AMERICAN CIVIL LIBERTIES UNION (April 25, 2013) <https://www.aclu.org/blog/speakeasy/yes-us-wrongfully-deports-its-own-citizens>.

Furthermore, ICE continually declares a commitment to focus on the removal of convicted criminals and those posing a threat to public safety within the United States.¹³⁷ The agency's focus on criminals means the consequences from the immigration proceedings are significant. If removal proceedings are focused on removal of criminal foreign nationals, the stakes are high and the likelihood for abuse is possible, requiring that rights found applicable to criminal hearings should be applicable to removal proceedings. The fact that some non-criminal foreign nationals find themselves in removal proceedings does not require less rights, but rather more because stakes are still high, and the likelihood of wrongfully removing an individual for illegal presence is also high.

II. STRENGTHS & WEAKNESSES OF LAWS GOVERNING THE RIGHT TO INTERPRETATION

The background evidenced a variety of legal sources—ranging from statutes to executive policies—that acknowledge the need and implications of a competent interpreter for limited English proficient individuals.¹³⁸ However, adequate protection for the right to interpretation in removal proceedings does not exist.¹³⁹ Each area of law discussed falls short in one way or another.¹⁴⁰ Starting with the strongest enforceable law, this section will analyze the strengths and weaknesses of various laws affecting the right to interpretation.¹⁴¹ Interestingly, the laws or policies with the weakest enforcement offer the most rights and protections in regards to an interpreter in judicial proceedings.¹⁴²

¹³⁷ DHS Press Office, *supra* note 133.

¹³⁸ *See supra* Part I.

¹³⁹ *See supra* Part I.

¹⁴⁰ *See supra* Part II.A.-D.

¹⁴¹ *See infra* Part II.A.-D.

¹⁴² *See infra* Part II.A.-D.

A. Statutory Law: Court Interpreters Act

Ideally, Congress would have created guidelines and provided a right to an interpreter for immigration proceedings in the Immigration and Nationality Act. Second best, Congress could clearly guarantee a right to interpretation for limited English proficient individuals in legislation that guided all federal courts, including immigration courts. The closest reality to this second best ideal is the Court Interpreters Act enacted in response to the Second Circuit case, *Negron*.¹⁴³

As a statute, the Court Interpreters Act is the strongest source of law available pertaining to interpretation of judicial proceedings. However, it possesses multiple weaknesses. First, it does not speak directly to the issue of full interpretation of removal proceedings because it does not seem to govern immigration courts.¹⁴⁴ The Act refers to U.S. District Courts, and immigration courts do not fall into this category.¹⁴⁵ However, because the Court Interpreters Act was meant to alleviate problems that arise when limited English proficient individuals find themselves as defendants in federal courts,¹⁴⁶ it should include immigration courts, which the federal government is responsible for. Even if immigration courts were considered district courts under the meaning of the statute, the Act would not require the appointment of an interpreter in immigration proceedings due to their civil nature because the statute does not “mandate the appointment of interpreters in civil cases, but simply . . . require[s] that they be licensed once the court chooses to appoint them.”¹⁴⁷

¹⁴³ See Abel, *supra* note 16, at 603.

¹⁴⁴ See *supra* text accompanying notes 52-53.

¹⁴⁵ 28 U.S.C. § 1827(j) (2015).

¹⁴⁶ Mollie M. Pawlosky, *When Justice is Lost in the “Translation”*: Gonzalez v. United States, and “Interpretation” of the Court Interpreters Act of 1978, 45 DEPAUL L. REV. 435, 436 (1996).

¹⁴⁷ Rendon, *supra* note 8 at 28.

Second, even if the immigration courts did fall under the Court Interpreters Act, the Act does not create necessary constitutional protections nor does it expand on the current constitutional safeguards.¹⁴⁸ Rather, it just provides guidance for the use of interpreters to ensure that the quality of the interpretation remains above the constitutionally permissible threshold.¹⁴⁹ Third, it does not afford an automatic right to an interpreter under the statute, but rather gives the district judge too much discretion and not enough guidance on how to determine whether an individual needs an interpreter.¹⁵⁰ District court judges are afforded wide discretion based on the belief that they know best because they have had the most contact with the defendant.¹⁵¹ However, more contact with a defendant does not make a judge a linguistic expert able to determine the extent and nature of the interpretation needed. If district court judges are going to have vast discretion, they need to be properly trained on the specific necessities of an interpreter. For example, the EOIR provides guidance to its Immigration Judges on how to determine if an individual needs an interpreter through training and the *Immigration Judge Bench Book*.¹⁵²

Fourth, the Act focuses on whether an individual speaks only or primarily a language other than English when determining whether an interpreter is required.¹⁵³ This standard is insufficient when determining whether an individual needs an interpreter, especially when the standard can be met with consistent and clear responses that are brief and somewhat

¹⁴⁸ *United States v. Joshi*, 896 F. 2d 1303, 1309 (11th Cir. 1990), (finding no error when defendants could only communicate with their attorneys through the one court-appointed interpreter during requested breaks in testimony, but had the benefit of simultaneous interpretation to ensure the defendants could comprehend the proceeding), certiorari denied, 498 U.S. 986; *United States v. Johnson*, 248 F.3d 655, 661 (7th Cir. 2001).

¹⁴⁹ *Joshi*, 896 F. 2d at 1309, (finding no error when defendants could only communicate with their attorneys through the one court-appointed interpreter during requested breaks in testimony, but had the benefit of simultaneous interpretation to ensure the defendants could comprehend the proceeding), certiorari denied, 498 U.S. 986; *Johnson*, 248 F.3d at 661.

¹⁵⁰ See *supra* text accompanying notes 39-42.

¹⁵¹ *United States v. Mosquera*, 816 F.Supp. 168, 174 (E.D.N.Y. 1993); *Valladares v. United States*, 871 F.2d 1564, 1566 (11th Cir. 1989); *United States v. Sandoval*, 347 F.3d 627, 632 (Ill. 2003).

¹⁵² EOIR LEP Plan, *supra* note 69, at 3.

¹⁵³ 28 U.S.C. § 1827(d)(1)(A) (2015).

inarticulate.¹⁵⁴ If the judge is asking “yes” or “no” questions, or simple every day questions like “what is your name,” an individual with very limited knowledge of the English language can be mistaken as understanding enough to not need an interpreter.¹⁵⁵ Perhaps the defendant is too shy or proud to admit she does not understand English, or maybe she does not know that she has a right to an interpreter.¹⁵⁶ Many people who studied Spanish in school might claim to understand Spanish and could answer simple questions, but they probably would not want to sit through a foreign judicial proceeding conducted solely in Spanish.¹⁵⁷ The EOIR standard of limited English proficiency is much more acceptable because it is more likely to detect individuals who might have a slight understanding of English, but not enough to understand the judicial proceedings.¹⁵⁸ These same individuals might slip through the cracks in a case where a judge is following the Court Interpreters Act to determine whether an individual needs an interpreter.¹⁵⁹

The Court Interpreter Act possesses some positive aspects. At the very least, the Court Interpretation Act can be used as a minimum guideline for immigration courts. The Act’s purpose to ensure a party’s comprehension of proceedings and ability to communicate with the court is admirable and worth following.¹⁶⁰ Another strength is the Court Interpreters Act requires simultaneous interpretation.¹⁶¹ It requires a word-for-word interpretation of everything relating to a trial in order to provide equal access to everything an English speaking individual would be

¹⁵⁴ *United States v. Black*, 369 F.3d 1171, 1174 (10th Cir. 2004) (holding that even though witness would have been more comfortable testifying in the Navajo language, her lengthy testimony showed she did not have difficulty with the English language and her clear and responsive answers demonstrated her fluency in English); *Gonzales v. United States*, 33 F.3d 1047, 1051 (9th Cir. 1994) (holding that the defendant was not entitled to an interpreter because his answers were responsive, and he never indicated to the court that he was experiencing major difficulty).

¹⁵⁵ *Abel*, *supra* note 16, at 623.

¹⁵⁶ *See Negron v. New York*, 434 F.2d 386, 390 (1970).

¹⁵⁷ *Nat’l Ctr. for State Courts*, *supra* note 81, at 125.

¹⁵⁸ *EOIR LEP Plan*, *supra* note 69, at 10.

¹⁵⁹ *See supra* text accompanying note 42-48.

¹⁶⁰ *See supra* text accompanying note 37.

¹⁶¹ 28 U.S.C. § 1827 (k) (2015).

privity to.¹⁶² This could provide protection of the right to interpretation for the foreign nationals in removal proceedings if the Court Interpreters Act included immigration courts. Word-for-word interpretation ensures equality between non-English speaking and English speaking individuals and also provides an equal playing field for the foreign national to respond to the government's case.¹⁶³ A judicial proceeding where a skilled English speaking government official goes up against a non-English speaking layperson is unfair especially when the non-English speaking individual is not privy to the interpretation of the whole proceeding. If the Court Interpreters Act applied to immigration courts, it would be more enforceable than the EOIR policies, but unfortunately it does not apply.¹⁶⁴ Even if it were enforceable, the rights afforded do not compare to those promised by the EOIR policy.¹⁶⁵

B. Common Law: Supreme Court Silence

A Supreme Court decision on full interpretation of removal proceedings would create a strong avenue for enforcing the right to an interpreter because it would be the law of the land and bind all lower courts, including immigration courts. This benefit would also unify all immigration courts across the country, which is essential because an individual's rights should not be based on whether she finds herself in immigration proceedings in the Sixth Circuit versus the Ninth Circuit. However, the Supreme Court has not spoken directly to the issue of the right to interpretation of immigration proceedings, but has only found that removal proceedings are

¹⁶² *United States v. Joshi*, 896 F.2d 1303, 1309 (11th Cir. 1990).

¹⁶³ *See Lau v. Nichols*, 414 U.S. 563, 568 (1974) (finding "that the Chinese-speaking minority receive fewer benefits than the English-speaking majority . . . which denies them a meaningful opportunity to participate in the educational program" when school district refused to provide lesson in LEP students' native language).

¹⁶⁴ *See supra* Part II.A.

¹⁶⁵ *See supra* Parts II.A., II.C.

similar to criminal proceedings.¹⁶⁶ Unfortunately, this finding was merely dicta, and the court did not overturn the case that held deportation was civil in nature.¹⁶⁷ Without the Supreme Court's decision on the right to interpretation, Circuit Courts can differ on their understanding of this right, weakening enforcement.

Another strength of common law is Circuit Courts have found a need for the right to interpretation using other rights, but this strength is accompanied by the general weakness that none of the Circuit Courts decisions are binding on all immigration courts.¹⁶⁸ For example, the Ninth Circuit has expressed that the due process clause, as it applies to removal proceedings, requires a full and fair hearing for foreign nationals and that a complete interpretation is fundamental to a full and fair hearing.¹⁶⁹ Therefore, the individuals I saw in the Detroit Immigration Court who did not get a full interpretation of their removal proceedings did not get a full and fair hearing guaranteed by the Fifth Amendment. However, because the Detroit Immigration Court is located in the Sixth Circuit and not the Ninth Circuit, it is not bound by the Ninth Circuit's findings.

Furthermore, the Second Circuit found a need for interpretation by using the right to be present and cross-examine witnesses.¹⁷⁰ The court provided strong arguments for the right to interpretation by acknowledging the implications a lack of an interpreter has on the fairness and integrity of our judicial system.¹⁷¹ Limited English proficient individuals will not know the

¹⁶⁶ *Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (finding similarities between deportation and criminal proceedings).

¹⁶⁷ *See supra* text accompanying notes 11-13.

¹⁶⁸ *See Abel, supra* note 16, at 603 (citing *United States v. Mayans*, 17 F.3d 1174, 1180-81 (9th Cir. 1994) (collecting cases holding that an interpreter may be necessary to allow a defendant to confront witnesses)); *United States v. Carrion*, 488 F.2d 12, 14 (1st Cir. 1973) (stating that the denial of an interpreter can interfere with the right to the effective assistance of counsel)."

¹⁶⁹ *Hartooni v. INS*, 21 F.3d 336, 339-40 (9th Cir. 1994) (finding that a full and fair hearing is required in deportation proceedings to uphold due process). *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000) (finding that a complete interpretation is required for a full and fair hearing).

¹⁷⁰ *Negron v. New York*, 434 F.2d 386, 388-89 (1970).

¹⁷¹ *Id.* at 389-90 (1970).

difference between a criminal proceeding and a civil proceeding and will likely see their experience as one that is more like a criminal proceeding.¹⁷² Not only can the outcome lead to the punishment of removal, limited English proficient individuals might believe the possible outcome includes death or imprisonment. Therefore, to uphold the fairness and integrity of our judicial system, we must provide full interpretation of removal proceedings to limited English proficient individuals, especially if their experiences with their governments' judicial arms lacked due process.¹⁷³ Providing clarity will help build trust and separate the United States from other governments that do not value due process. Even if we give foreign nationals all the rights and due process available, they may still think our system is as corrupt as another countries' system that does not provide due process if we do not provide a right to interpretation. The Second Circuit findings are limited because they do not apply to all immigration courts due to jurisdictional restraints, and they focus on criminal proceedings.¹⁷⁴

However, the Second Circuit moved the focus from criminal proceedings to removal proceedings when it found asylum seekers are entitled to due process protections.¹⁷⁵ Nevertheless, the holding did not explicitly require full interpretation of a hearing, but only interpretation sufficient enough to enable the foreign nationals to understand the proceedings and present their claims.¹⁷⁶ Furthermore, this holding does not carry over to all immigration courts, it only binds those in the Second Circuit.

The major weakness in common law is the Circuit Courts limit their focus to criminal proceedings.¹⁷⁷ Even though the courts mainly refer to the rights afforded criminal defendants,

¹⁷² See *supra* text accompanying note 4.

¹⁷³ *Negron*, 434 F.2d at 390 (1970).

¹⁷⁴ See *supra* text accompanying note 16-26.

¹⁷⁵ *Augustin v. Sava*, 735 F.2d 32, 38 (2d Cir. 1984).

¹⁷⁶ *Id.* at 37.

¹⁷⁷ See *supra* text accompanying note 16-26, 61-64.

these rights should apply to foreign nationals in removal proceedings because the nature of these proceedings more closely reflects criminal proceedings than civil proceedings.¹⁷⁸ The Supreme Court has acknowledged this fact.¹⁷⁹ Ideally, the Supreme Court should overrule the holding in *Fong Yue Ting* that recognized deportations as civil matters.¹⁸⁰ This could expand the rights afforded criminal defendants to respondents in removal proceedings. The common law recognizes the importance of interpretation, but does not clearly grant the right to interpretation nor provide enough protection for it.¹⁸¹

C. EOIR's Meaningful Access Plan

The Executive Branch has been the most progressive of the three branches when it comes to the issue of a right to interpretation. It provides a right to full interpretation in removal proceedings along with related perks, but no protection.¹⁸² The number one strength of the EOIR policy is that it explicitly promises the right of a full and complete interpretation of removal proceedings.¹⁸³ Another strength is that the EOIR provides multiple perks that go along with the right to interpretation, including promises of (1) effective communication at no cost to the LEP foreign national, (2) meaningful access equal to what is afforded English speaking individuals, (3) arrangements for interpreters at all hearings without requiring a prior request, and (4) fair, impartial, and timely adjudication of immigration proceedings.¹⁸⁴ The EOIR also provides guidelines to identify limited English proficient individuals, which prevents individuals with low

¹⁷⁸ *Bridges v. Wixon*, 326 U.S. 135, 154 (1945).

¹⁷⁹ *Id.*

¹⁸⁰ *See supra* text accompanying note 5-10.

¹⁸¹ *See supra* Part II.B.

¹⁸² EOIR Plan, *supra* note 69, at 12.

¹⁸³ *Id.*

¹⁸⁴ *See supra* text accompanying notes 111-118.

proficiency from having to experience removal proceeding without an interpreter.¹⁸⁵ The EOIR's plan provides a right to a full and complete interpretation in removal proceedings and guidelines to make sure that those who need an interpreter get one.¹⁸⁶

Unfortunately, the document explicitly states that there is no legal recourse for the failure to follow this plan.¹⁸⁷ Without legal recourse, the right to full interpretation remains unprotected, and the Sixth Circuit is able to continue removal proceedings without interpreting the whole proceeding. This expands the gap in the access to justice for limited English proficient individuals that the Executive Branch has tried to eliminate for the past twenty years.¹⁸⁸

D. DOJ Pressure, ABA Standards, and International Human Rights Treaty

The three branches of government acknowledge the need for interpreters, but the Legislative and Judicial Branches do not explicitly provide a right; whereas, the Executive Branch does explicitly provide a right, but does not adequately protect it.¹⁸⁹ The Department of Justice and American Bar Association's campaigns to expand use of interpreters to civil proceedings along with the International Human Rights treaty's guarantee of a right to interpretation can provide ammunition in the fight to ensure full interpretation for removal proceedings.¹⁹⁰ The American Bar Association's Standards for Language Access in Courts encourages the expansion of interpretation to all tribunal proceedings.¹⁹¹ That means, unlike the

¹⁸⁵ See *supra* text accompanying note 113.

¹⁸⁶ See *supra* text accompanying note 111-118.

¹⁸⁷ EOIR LEP Plan, *supra* note 69, at 11.

¹⁸⁸ See *supra* text accompanying note 83-89, 96-118.

¹⁸⁹ See *supra* Part II.A-B.

¹⁹⁰ See *supra* text accompanying notes 27-34 (providing information regarding the ICCPR), 90-95 (providing information about Department of Justice actions), 121-132 (providing information about American Bar Association Standards for Language Access in Courts).

¹⁹¹ Am. Bar Ass'n, Standards for Language Access in Courts, *supra* note 131, at std. 1 cmt.

Court Interpreters Act, the ABA standards apply to immigration courts, which are tribunals. Furthermore, the ABA standards encourage civil courts to provide interpreters to ensure access to justice for all individuals.¹⁹² The ABA's standards might influence Circuit Courts, or even the Supreme Court, to find a right to an interpreter in civil proceedings, which would include removal proceedings.¹⁹³

The Department of Justice has pressured state courts to expand their policies regarding interpreters to civil proceedings in order to provide more access to LEP individuals.¹⁹⁴ This movement toward expanding the right to interpreters in civil cases can provide support for a Supreme Court decision or Circuit Court decision expanding the right to civil cases.¹⁹⁵ The decision could provide enforcement of the right to interpretation in immigration courts, which are considered civil in nature. Perhaps the Department of Justice could apply similar pressure to the EOIR to ensure that the agency enforces its own policy to provide full interpretation in removal proceedings. However, the DOJ probably overlooked enforcement in immigration courts, believing the issue has been taken care of through the EOIR policy that promises to provide full interpretation of all proceedings where an interpreter is present.¹⁹⁶

The Department of Justice's efforts to enforce compliance of state courts with Title VI of the Civil Rights Act of 1964 may provide a roadmap on how to enforce the right to full interpretation of removal proceedings.¹⁹⁷ Title VI of the Civil Rights Act of 1964 requires state courts that receive federal funds must provide interpreters in all civil cases, and the Supreme Court has found that public funds generated by taxpayers of all races cannot contribute to

¹⁹² Abel, *supra* note 16, at 599.

¹⁹³ See *supra* text accompanying notes 121-132.

¹⁹⁴ AG Perez Letter 2010, *supra* note 90.

¹⁹⁵ See *supra* text accompanying notes 90-95.

¹⁹⁶ See *supra* text accompanying notes 121-132.

¹⁹⁷ See *supra* text accompanying notes 90-95.

anything that encourages, entrenches, subsidizes, or results in discrimination.¹⁹⁸ The EOIR is a federally funded and federally operated agency that cannot participate in discrimination by providing fewer benefits to those who do not speak English.¹⁹⁹ Foreign nationals who reside in the United States legally or illegally contribute to taxes regardless of their ability to speak English, and when they find themselves in immigration proceedings, they are entitled to the same rights afforded English speakers.²⁰⁰ Limited English proficient foreign nationals who find themselves in the Sixth Circuit are disadvantaged due to their nationality compared to those who are in another circuit where the full proceeding is interpreted and to those who have an understanding of the English language.²⁰¹ This discrimination cannot be tolerated.

International Human Rights can support the fight for the right to interpretation in two ways. First, the courts can look to International Human rights to determine what other civilized countries do in similar situations. Second, Congress can look to the ICCPR for guidance on how to explicitly grant a right to interpretation in a statute.²⁰² If removal proceedings were recognized as criminal proceedings, the right to an interpreter might be recognized in removal proceedings under International Human Rights law as well as domestic law.

Using International law to enforce this right has two flaws. First, International Human Rights law only explicitly guarantees the right to an interpreter to criminal defendants, not civil parties.²⁰³ Furthermore, it does not provide a right to an interpreter to a criminal defendant who

¹⁹⁸ 42 U.S.C. §2000d (2006); Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455, 41,470-71 (June 18, 2002); *Lau v. Nichols*, 414 U.S. 563, 569 (1974) (quoting Senator Humphrey, 110 Cong. Rec. 6543) (internal quotation marks omitted). Senator Humphrey was quoting President Kennedy. *Id.* at 569 n.4.

¹⁹⁹ *See supra* text accompanying notes 90-95.

²⁰⁰ *See supra* text accompanying notes 90-95.

²⁰¹ *See supra* text accompanying notes 90-95.

²⁰² ICCPR, *supra* note 2, at art. 14(3)(f).

²⁰³ *Id.*

understands or speaks the language of the court but prefers to speak another language.²⁰⁴ Perhaps criminal defendants do not deserve the comfort of speaking their first language when faced with heinous criminal charges. However, individuals in removal proceedings who have not committed a crime, but find themselves in this civil proceeding, should have an ounce of comfort afforded them if they prefer to speak their first language, especially if they have been subjected to the discomfort and undue punishment of detainment in the general population of a prison.²⁰⁵ This right might be asking too much, but if the United States insists on treating immigration proceedings as civil matters, then the foreign nationals in these proceedings should be treated civilly, not like criminals.²⁰⁶ Second, although the United States is a party to the ICCPR, the enforcement of International Human Rights law is weak. Therefore, asserting a right under International law will take longer and will be harder than asserting the right under domestic laws.

Human decency alone should persuade the argument that a right to full interpretation of removal proceedings should exist because without one, an individual can find herself in an “incomprehensible storm of events” that swirl around her.²⁰⁷ This unknown adds to the frustration, fear, and helplessness an individual with limited English proficiency may feel when facing a removal proceeding. Furthermore, foreign nationals might not trust the judicial system based on their experiences with their governments’ judicial systems. How the United States treats foreign nationals in removal proceedings is a reflection of our foreign relations and can impact how other nations treat our citizens who find themselves in their judicial or immigration system. The United States should set the precedent on how to treat immigrants humanely when they come in contact with judicial proceedings.

²⁰⁴ *Id.*

²⁰⁵ *See Fong Yue Ting v. United States*, 149 U.S. 698, 728-29 (1893).

²⁰⁶ *See id.*

²⁰⁷ Abel, *supra* note 16, at 601 (quoting *Report of the Working Committees to the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts*, 1997 ANN. SURV. AM. L. 117, 289-90).

III. SUGGESTIONS TO ENSURE THE RIGHT TO FULL INTERPRETATION OF REMOVAL PROCEEDINGS

The need for a right to interpretation is apparent, as each branch of government has recognized.²⁰⁸ Although protection of this right is lacking, multiple solutions exist to ensure and protect the right of interpretation.²⁰⁹ First, Congress could expressly grant the right to interpretation in the Immigration and Nationality Act (INA), using guidance from the International Covenant of Civil and Political Rights and EOIR's Meaningful Access Plan.²¹⁰ Amending the INA would ensure that the immigration courts were bound by this statute. Furthermore, Congress could clarify any misunderstanding to what the right entails if it clearly affords the right to a full interpretation of all immigration hearings that need an interpreter.²¹¹ This would be the strongest and most effective solution. However, Congress does not move quickly and amending the INA to provide this right could take too long.

Another slow option that could provide adequate protection is a Supreme Court decision specifically regarding the right to an interpreter in judicial proceedings.²¹² Someone with standing could litigate whether the failure to provide a full interpretation of a removal proceeding violates the right to a full and fair hearing.²¹³ An alternative approach could include litigating whether removal proceedings are more like criminal proceedings than civil proceedings, deserving equal rights granted criminal defendants.²¹⁴ Another case could be brought alleging that the failure to provide full interpretation of removal proceedings results in a violation of the Civil Rights Act of 1964.²¹⁵ Unfortunately, litigation is slow, costly, and risky. If the Supreme Court finds a right to interpretation, it would apply to all courts, including immigration courts,

²⁰⁸ See *supra* Part II.A.-C.

²⁰⁹ See *supra* Part II.A.-D.

²¹⁰ See *supra* Part II.C.-D.

²¹¹ See *supra* Part II.A.

²¹² See *supra* Part II.B.

²¹³ See *supra* text accompanying notes 65-68.

²¹⁴ See *supra* text accompanying notes 5-15.

²¹⁵ See *supra* text accompanying notes 90-95.

and would unify the country. However, the Supreme Court might not find the right exists at all, or might not speak directly to whether a right exists in removal proceedings.

Finally, the fastest, but least enforceable, solution is the EOIR could take control of its agency and enforces its policies on all the immigration courts. It has the budget to provide interpreters. The interpreters are already present in the courtroom. No excuse exists to support the failure to provide a full interpretation of the proceeding. Perhaps the EOIR just needs to become aware of the problem in order to fix it.

CONCLUSION

The nature of removal proceedings is similar enough to criminal proceedings where the foreign nationals in removal proceedings should get the same rights as criminal defendants in United States and International criminal proceedings.²¹⁶ The current statute regarding interpretation provides the most strength when it comes to enforcement, but affords the least rights and does not apply to removal proceedings.²¹⁷ The court cases with the potential to create enforcement of the right to interpretation were mostly focused on criminal proceedings, were not decided by the Supreme Court, and did not speak directly to the issue of complete interpretation of removal proceedings.²¹⁸ The EOIR Meaningful Access Plan speaks more directly to the right of complete interpretation of removal proceedings, but is merely aspirational and has no enforcement measures.²¹⁹ Current laws and policies acknowledge the need for the right to interpretation, but do not provide adequate protection.²²⁰ Due process is fundamental to justice, and the right of a foreign national to understand the judicial process she is experiencing is

²¹⁶ *See supra* text accompanying notes 11-15.

²¹⁷ *See supra* Part II.A.

²¹⁸ *See supra* Part II.B.

²¹⁹ *See supra* Part II.C.-D.

²²⁰ *See supra* Part II.A-D.

fundamental to due process.²²¹ Therefore, the right to full interpretation of removal proceedings is fundamental to justice.²²² Justice requires the Detroit Immigration Court to stop its practice of interpreting only questions and answers and provide a full interpretation of the proceedings instead.

²²¹ *See supra* text accompanying notes 66-73.

²²² *See supra* text accompanying notes 66-73, 105.