

The logo for Legal Services NYC, featuring two overlapping squares: a dark blue square in the foreground and a lighter blue square behind it. The text "Legal Services NYC" is written in white, with "Legal Services" on the top line and "NYC" on the bottom line.

Legal
Services NYC

INTERPRETING JUSTICE:

LANGUAGE ACCESS IN THE NEW YORK COURTS

**LEGAL SERVICES NYC
CIVIL RIGHTS JUSTICE INITIATIVE**

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I took my landlord to housing court for repairs, and had to go six different times. Only two of those times, a sign language interpreter was available. At the fourth court date, there was no interpreter and they said "go ahead and the judge will give you a new appointment date." I was so frustrated because I'd been there so often and hadn't gotten interpreters, so I just decided to go ahead. But I felt like I was forced to do it.

Then, when I was called, I stood there in front of the judge and watched as the landlord's lawyer and the judge were talking back and forth having a conversation. I couldn't understand what was happening. It made me cry, because I couldn't communicate properly or stand up for myself. And I was already frustrated because, throughout the whole process, I wasn't getting interpretation.

To people who have never experienced this, I want to say that it's really oppressive. I felt like I was just forced to just follow through with whatever is going on. I couldn't stand up and speak for myself.

I'm still trying to resolve the problem with my landlord. But trying to deal with my landlord and getting interpreters at court, it's just completely a part of my life now. It's very overwhelming. And I'm angry. I'm always smiling on the surface, but I've had enough of this.

There are not enough interpreters at court. Because of this shortage, the deaf have less access to justice than other people. I believe we all should receive the same treatment by the system.

Christina Bueno

LEP litigant

THANK YOU

I am honored to introduce this much needed report concerning access to justice for people with limited English proficiency. Now, more than ever, we must fight to ensure that our justice system remains open and responsive to everyone in this great City, regardless of where they were born or what language they speak.

We at Legal Services NYC fight throughout the City for the rights of low-income New Yorkers each and every day. We know the importance of meaningful access to our courts, without which low income individuals—particularly those without legal representation—can find themselves up against virtually insurmountable obstacles. As you will read in this report, without language access, justice is all too frequently denied.

Many thanks to our staff who prepared this report, as well as to our community partners who provided advice and assistance along the way. A special thanks to our clients, who courageously agreed to share their stories in the hopes of advancing the rights of all people to equal access to justice.

Raun Rasmussen

Executive Director, Legal Services NYC

This report came about as a result of innumerable conversations over the years, in hallways and meeting rooms throughout our offices, concerning the difficulty our advocates face in obtaining timely, accurate interpretation for their clients in court. Very special thanks go to the advocates who made this report possible:

- The authors of this report, Christine Clarke and Veronica Cook, for their leadership in Legal Services NYC's Civil Rights Justice Initiative and for bringing this important report to fruition
- Legal Services NYC's dedicated, tireless advocates and their passionate commitment to justice for all low-income New Yorkers
- Our community partners and advocates throughout the city who have fought, and continue to fight, for the rights of immigrants and people who are deaf or hard of hearing to obtain equal access to all of our governmental services
- The advocates and organizations that made up this report's Advisory Committee - Amy Taylor, Make the Road New York; Su Young Jung, New York Asian Women's Center; and Linda R. Hassberg, Empire Justice Center
- Our wonderful interns Kate MacMullen, now in her second year at Harvard Law School, and Nina Josephson, in her second year at Oberlin College, who contributed to this report

This report is dedicated to the limited English proficient people who live in and contribute so much to the heart and soul of New York City.

Andrea Zigman

Deputy Director, Legal Services NYC

EXECUTIVE SUMMARY

Half of NYC residents speak a language other than English at home. A sixth of all NYC households do not contain anyone over the age of 14 who speaks English well. People with limited English proficiency (LEP) are twice as likely as the general population to live in poverty. A fair, equal justice system must take this reality into account. A justice system which is accessible only to fluent English speakers systematically excludes and underserves vast swaths of our population, including many of those who need it most.

We rely on our legal system to protect us from injustice and to enforce our legal rights; to protect us from unlawfully losing our homes or our jobs; to prevent us from being unjustly imprisoned; to offer us legal protection from violent partners; and to make us whole when someone has wronged us. When people are excluded from this system—or wronged or humiliated by it—they are left in a shadow City, one where the law has little meaning because it cannot be enforced.

While the New York court system guarantees free court interpretation to all LEP litigants, substantial problems plague the provision of language services. The small number of court interpreters creates systemic delays—requiring LEP parties in cases to make two, five, sometimes ten separate trips to court, where a fluent English speaker would have needed only one. Our courthouses and procedures can be confusing even to fluent English speakers, but often are entirely incomprehensible to people who cannot read signs or ask a court officer for help. Minor legal issues can balloon into years-long processes simply because people cannot communicate with an adversary or a lawyer. Inaccurate or insufficient interpretation leaves people in a Kafkaesque maze, plowing through proceedings they do not understand, but which have legally binding outcomes. When people believe, from experience, that the court system was not built for them and does not consider them equal, they lose faith in the legal system entirely.

While the New York court system has made substantial progress in the past few years, the legal system still does not, at the moment, provide equal, meaningful access to justice for all New Yorkers.

Legal Services NYC fights poverty and seeks racial, social and economic justice for low income New Yorkers. For almost 50 years, LSNYC has challenged systemic injustice and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC's Civil Rights Justice Initiative uses civil rights litigation, training, and advocacy to fight the discrimination that contributes to, reinforces, and exacerbates poverty and inequality.

KEY RECOMMENDATIONS

- 1. Tracking Languages:** The court system must track and publish annual data on the primary languages spoken by litigants in the different courts. This will allow the courts to better assess the need for language services and allocate resources accordingly. Courts also need to ask litigants what language they speak at the beginning of a case and then consistently track the litigant's primary language from start to finish in a that case in a clear and uniform way so that clerks, court officers, court attorneys and judges are aware of the litigant's language to ensure that the need for an interpreter is known in advance of a court appearance and will be consistently and reliably provided.
- 2. Court Interpreter Availability:** The court system needs more interpreters, particularly in Urdu, Bengali, and Arabic, but also in more common languages—a single Spanish speaking interpreter for a high-volume court is insufficient. More interpreters would lead to dramatically fewer delays and would help alleviate the problem of interpreters being over-scheduled, causing them to leave early, arrive late, or rush through proceedings.
- 3. Informing People of Their Rights:** The courts must make a concerted effort to inform people of their right to interpretation and how to obtain it. This information should be available to people before they arrive at court, preferably by attaching such information to all documents the courts mail or otherwise serve to litigants. The courts should also make a concerted effort to inform members of the public, in the major non-English language(s) spoken in a jurisdiction, about how to make complaints about language access issues to the court system.
- 4. Interpreter Scheduling:** A centralized mechanism should exist where litigants and/or their lawyers can schedule an interpreter in advance of a court appearance, both online and by telephone. Where interpreters are only available on certain days, courts need to publicly post interpreter schedules in the relevant languages, both in courthouses and online. Courts must ensure that interpreters are scheduled for every court date involving an LEP litigant.
- 5. Interpretation for Negotiations and Settlements:** People need access to interpreters in the hallways and conference rooms of courthouses, not just in courtrooms. Without access to these services, LEP litigants cannot engage in negotiations or converse with their adversaries to try to resolve their cases, as other litigants do routinely.
- 6. Quality Control:** All court interpreters should be certified through an oral exam in the target language, testing both language proficiency and interpretation ability. Interpreters should also be re-certified periodically and have access to court-provided continuing education trainings to help interpreters expand their legal vocabulary and understanding of the legal system. Judges should also be encouraged to check in with LEP litigants to ensure that they are effectively communicating with an interpreter and to further ensure that interpreters are speaking the correct dialect.

INTRODUCTION

In the United States, our legal system is one of our government's most fundamental institutions. We rely on the courts to protect us from unlawful evictions and foreclosures, to obtain divorces or child support, to help make us whole when we are wronged, and to enforce our most basic civil rights—including our right to be free from discrimination. However, when we cannot communicate with the court system—to testify competently, to cross-examine witnesses, to understand the evidence and arguments made against us—then we lose meaningful access to our legal system.

Half of the 8.5 million people living in New York City speak a language other than English at home.ⁱ Almost a full quarter of NYC residents over the age of five have limited English proficiency (LEP).ⁱⁱ Almost one sixth of NYC households contain *no* English-proficient adults over the age of 14.ⁱⁱⁱ LEP individuals are twice as likely as the general population to live in poverty.^{iv} As a result, an enormous swath of our community cannot interact with the legal system without language services, but lack the means to hire private interpreters or translators.

The New York court system—unlike the federal court system^v—intends to provide interpreters to LEP litigants in all cases, civil and criminal. However, due to a shortage of court interpreters, as well as substantial scheduling and coordination problems, many LEP people simply do not have meaningful access to our legal system. Many LEP litigants face pervasive delays—sometimes so severe that they are discouraged entirely from interacting with our justice system. Low-income LEP litigants face special challenges, as each new court appearance requires asking for another day off from work, arranging for childcare, and paying for transportation. People with health or mobility impairments, for whom each trip to the courthouse is a challenge, also cannot endure multiple delays and adjournments.

As a result of these problems, many LEP litigants' rights are compromised, and they can feel humiliated, disempowered and unprotected by the legal system.

When people appear in a formal proceeding with a judge—an often intimidating authority figure—without the ability to properly communicate, they can feel humiliated and dehumanized. For example, one unrepresented LEP litigant had to stand before the bench for her case to be rescheduled for another day because no interpreter was available. She was forced to stand in front of the judge and watch helplessly as he and her landlord's lawyer conversed back and forth about the case, unable to understand what they were discussing. The experience left her feeling so disempowered that she left the courtroom in tears.

Other LEP litigants, particularly those who cannot afford a lawyer, find themselves completely overpowered by the legal system—unable to understand the nature of proceedings that have been brought against them, often unaware that they have the right to an interpreter, unable to navigate the complex court procedures that can be opaque even to some native English speakers, and unable to communicate properly with their adversaries to engage in negotiations.

Finally, when court interpreters are not available, LEP litigants may feel pressured to simply forge ahead with what limited English they have or to rely on friends or family to function as *ad hoc* interpreters. But our legal system relies on precise language. Where broken English or unprofessional interpretation leads to miscommunications, people can face dire consequences. Did you hear “some noises” or did you hear “a gunshot?”^{vi} Did you “stop” someone or did you “push” them?^{vii} A bilingual friend is simply no substitute for a professionally trained interpreter.

This report will discuss six major issues facing LEP litigants in the courts: difficulty navigating the courthouse and understanding legal procedures, the insufficient number of court interpreters, systematic delays and adjournments, the inability to engage in negotiations and attorney-client communications, and the importance of obtaining accurate and professional interpretation.

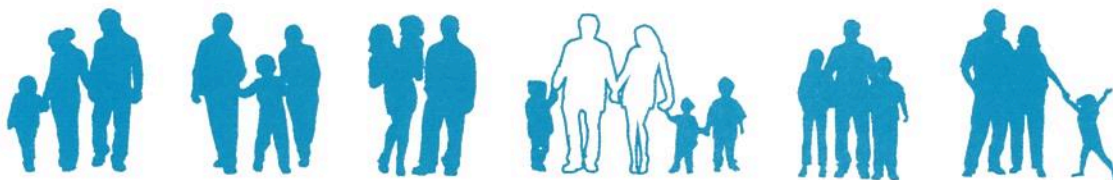
The New York court system has made great strides in providing more access to the courts for LEP litigants over the past decade, but the problems that remain are severe and disproportionately impact low-income litigants. To provide access to justice for all New Yorkers, we must ensure that our courts make themselves meaningfully accessible to all litigants, whatever language they speak.



HALF OF THE 8.5 MILLION PEOPLE LIVING IN NEW YORK CITY SPEAK A LANGUAGE OTHER THAN ENGLISH AT HOME.



ALMOST A FULL QUARTER OF NYC RESIDENTS OVER THE AGE OF FIVE HAVE LIMITED ENGLISH PROFICIENCY (LEP).



ALMOST ONE SIXTH OF NYC HOUSEHOLDS CONTAIN NO ENGLISH-PROFICIENT ADULTS OVER THE AGE OF 14.

LAW AND POLICY OF THE NEW YORK COURTS

THE UNIFORM RULES FOR N.Y.S. TRIAL COURTS STATES:

§217.1 Obligation to appoint interpreter in court proceedings in the trial courts.

(a) In all civil and criminal cases, when a court determines that a party or witness, or an interested parent or guardian of a minor party in a Family Court proceeding, is unable to understand and communicate in English to the extent that he or she cannot meaningfully participate in the court proceedings, the clerk of the court or another designated administrative officer shall schedule an interpreter at no expense from an approved list maintained by the Office of Court Administration. The court may permit an interpreter to interpret by telephone or live audiovisual means. If no pre-approved interpreter is available, the clerk of the court or another designated administrative officer shall schedule an interpreter at no expense as justice requires. This rule shall not alter or diminish the court's authority and duty to assure justness in proceedings before it.

§ 217.2 Provision of interpreting services in clerk's office.

A court clerk shall provide interpreting services at no expense to a person with limited English proficiency seeking assistance at the court clerk's office in accordance with the needs of the person seeking assistance and the availability of court interpreting services. Such services may be provided by telephone or live audiovisual means.

New York court rules require that interpreters be provided for LEP litigants in all cases, civil and criminal. New York law also requires that all litigants and witnesses who are deaf or hard of hearing be provided with a qualified, certified interpreter.^{viii}

Moreover, court clerk's offices and petition rooms—which are often the first line of contact between a litigant who does not have a lawyer and the court system—are required by New York court rules to provide interpretation to any LEP individual seeking assistance.

These requirements make the New York court system more accessible to LEP litigants than the federal court system, which does not provide interpretation in *any* case that was not begun by the government. New York also provides more access than certain other states, ten of which do not require an interpreter even in criminal cases, where a defendant who does not understand a proceeding may find herself imprisoned.^{ix} New York State joins 33 other states in requiring that court interpreters be certified to provide interpretation.^x

Saafi (not her real name), a mother of two, was trapped for years in an extremely abusive marriage. When she sought a divorce from her abuser, though, the court's failure to provide her with an interpreter resulted in three years of unnecessary delay.

Saafi speaks only Urdu and needed an Urdu interpreter. While the New York court system intends to provide free court interpreters to all litigants, the interpreters are not always available, as Saafi was about to learn.

Several times, Saafi had the same experience. She arrived at court—traveling 45 minutes by bus from a different borough—only to be told “the interpreter is not available, nothing can be done.” The court appearance would be rescheduled to a later date and Saafi would have to go home and wait. At the next court date, the same thing would happen. Again and again, Saafi went to court and was told to go home and come back another day.

“I had to go again and again. I had such difficulty navigating all the busses, as the courthouse is hard to reach from my house. Having to keep going back to court and not getting anything out of it made me very, very stressed.”

Saafi had to go to court more than 10 times over the course of three years to secure a simple divorce. “I wasn’t asking for anything. There was no issue. Absolutely no complication at all. I didn’t demand anything. This is why I was so tense, because I wasn’t asking for anything, and still the process was so long. But my ex-husband was very abusive and I needed a divorce.”

Once Saafi retained a lawyer from Legal Services NYC, she was able to successfully schedule an interpreter for her court date, at which point her case was resolved almost immediately.

ISSUES FACING LEP LITIGANTS

A. Trouble Navigating the Courthouse & Procedures

The minute an LEP person walks into a courthouse, he or she is at a disadvantage. Many of the most important signs are in English, including signs telling people where the petition room or clerk's office is, or how to find the court attorney. Moreover, the court interpreter's office is often difficult to locate in an overwhelming and crowded court house, and the multi-lingual signs telling people the location of the court interpreter's office can be difficult to read. Having to go to court is already a confusing, intimidating experience for people. When the process *starts* by wandering lost through a courthouse, looking for help, people are disempowered before they have even begun.

In early 2015, New York City Comptroller Scott Stringer conducted a tour of the NYC housing courts to determine how accessible they are to LEP litigants. Later, in writing about the experience, he wrote, "it isn't enough to provide interpretation services inside the courtroom," emphasizing that "[w]e have to design our entire courthouses—from the security line to the judge's bench—to help people navigate the process from the moment they step in the door."^{xi}

Providing **clear, noticeable signs** in multiple languages is key to ensuring that LEP litigants aren't immediately at a disadvantage. The New York court system is currently in the process of designing new, clearer signs to direct people to the court interpreter's office, which LSNYC applauds and which cannot be completed soon enough.

Such an effort should also be undertaken for other important signs—including signs directing people to the court clerk's office and signs informing people of important court procedures. For example, in many courthouses, people must "check in" for a court appearance—either by walking to the front of the courtroom or court part and talking to the judge's clerk or court officer, or by signing a sign-in sheet. Most people who have never been to court would never think to walk up to the front of the courtroom—right next to the presiding judge—and talk to someone sitting at a desk by the wall. Others might be too intimidated to approach a uniformed court officer. Similarly, it often does not occur to people that a court appearance that is scheduled for 9:30 a.m. will not actually begin until people sign their names on a sheet of paper. People who read English learn this by reading signs around the courtroom. LEP litigants, however, may never know. LSNYC attorneys have reported repeatedly seeing someone sitting quietly in the back of the courtroom for hours on end, only to discover that the person does not speak English, did not know they needed to check in, did not understand the directions posted or announced in English and missed their court appearance.

"I just learned that there are only five sign language interpreters for the five boroughs. We need more interpreters in the courts for each borough. There were all these times where I went to court and there were no interpreters. And they say 'Oh, you can go to Queens and get an interpreter' or 'The interpreter for Queens will come down here at 1pm.' But that would mean I would be in court all day. That is very frustrating."

—Christina Bueno
LEP litigant

B. Insufficient Court Interpreters

The court system simply does not have enough court interpreters to meet the language needs of this diverse city. As a result, many court interpreters will travel between different courts and boroughs in a given day. This kind of over-scheduling creates substantial problems for the courts, the litigants and the interpreters. For example, court interpreters who are scheduled for multiple court appearances in a single day may be forced to leave in the middle of a court proceeding or may try to rush through a proceeding to get to another appearance in a different part of the City. Similarly, court interpreters are often late or do not appear at all because a previous appearance ran longer than expected.

A shortage of certified interpreters also means that some courts simply schedule an interpreter in a certain language to come only a few days a month. For example, a Korean interpreter is only available in Queens Housing Court

once per week, despite Queens's substantial Korean-speaking population. Similarly, a Bengali interpreter is only available in Brooklyn housing court twice per month.

As a result, LEP litigants face substantial scheduling hurdles—if you can't make it to court the one day a month that an interpreter is available, you have to wait another month. Moreover, when the volume of cases requiring a certain interpreter is greater than the court can handle in a single day, people end up waiting all day, only to be told they have to come back later.

Furthermore, if a court only has access to interpreters for certain languages a few days per month, it is *crucial* that the courts properly track the languages of litigants to ensure that court appearances are properly scheduled for days when an interpreter is available. In LSNYC's survey of our lawyers, multiple people explicitly commented that court appearances appear to be scheduled without regard to the court's schedule of interpreters.

"The problem is that for some languages, interpreters are only available one day a week, or only one or two days a month. When a case is adjourned, there doesn't seem to be a lot of coordination to make sure that an LEP client is being adjourned to a day when an interpreter who speaks their language is available. More than once, I've had a case with an LEP client adjourned to a date when there was no interpreter available, and so we just had to adjourn it again."

—**Nisha D. Vora**
Attorney, Brooklyn

When court interpreters are scarce, court staff may feel pressure to encourage people to proceed in a language they do not speak well. For example, an LSNYC client was scheduled to go to trial in a domestic violence case. Her lawyer contacted the court and requested an interpreter in the client's relatively common Chinese dialect. At the trial, the court interpreter's office simply informed them that no interpreter was scheduled, but that an interpreter was available who spoke Mandarin. When the court staff was informed that the client did not speak that dialect of Chinese, they nonetheless insisted that the client be "tested" by having the Mandarin interpreter try engaging her in conversation. Not only did the client fail the "test," but at the next trial date, when she had *again* prepared to give emotionally traumatizing testimony at trial, the exact same scenario played out again. Even though she had already clearly indicated—and *proven*—that she did not speak or understand Mandarin, the court staff insisted that she be tested *again*.

"The court interpreter often isn't just interpreting for one case, which means they can be on a tight schedule. Sometimes, they're really impatient, because they have to leave for another appearance in another court. Often times, this means parties feel pressured to resolve things quickly, because the interpreter has to leave. There's already a lot of pressure in housing court, this is another unnecessary source of pressure."

—**Amy Hammersmith**
Attorney, Queens

Given these facts, one must wonder what would have happened if the client had spoken just enough rudimentary Mandarin to pass this *ad hoc* "test." Would the court have insisted that she use a Mandarin interpreter at a trial, despite her stated inability to communicate properly in Mandarin?

Another LSNYC lawyer discovered the answer when she met a potential client who had been through an entire trial in housing court—and lost. Because the client, who does not speak Mandarin, was assigned a Mandarin interpreter, he had virtually no idea what was happening at his own trial. In fact, the communication barriers were so great that he was entirely unaware that he had lost the trial and had been evicted from his apartment with only 30 days to move out.

The court interpreter shortage is one of the most serious problems facing LEP litigants. In a survey of 87 LSNYC lawyers, 20% of lawyers attending court

"I met a prospective client who speaks Chaozhou as his primary Chinese dialect. He showed me a court decision evicting him after he'd lost a trial and giving him 30 days to move out. At the time, it was already two weeks later. He clearly had no idea that he had lost the trial or that he was being evicted. I asked him whether he got an interpreter for the trial. He said he did but that the interpreter spoke only Mandarin and his Mandarin simply wasn't good enough to understand what was happening."

—**Cynthia Weaver**
Attorney, Manhattan

appearances over a 60 day period faced serious problems because court interpreters were unavailable, despite having been requested in advance. As a result, cases were substantially delayed (by two or more hours) and/or adjourned. In many of these cases, adjournments created quite serious problems for our clients: some were preparing to give emotionally traumatic testimony and others were waiting desperately to be let back into their apartments after being illegally evicted.

C. Delays and Adjournments

People in court who do not speak English well are likely to face substantially more serious delays and adjournments than their English-speaking counterparts. Where LEP litigants experience repeated, serial delays, they do not have equal access to justice.

Low-income New Yorkers are particularly burdened by long delays or having to travel repeatedly to court. Every court date requires people to pay for transportation, to take days off from work, and to arrange childcare. Elderly and disabled litigants with mobility issues are particularly burdened by repeated adjournments. An overburdened court system also means that people can wait *months* between adjournments.

"If an interpreter isn't available, and you have to adjourn, in Queens family court right now, the next adjourn date can be three months later. So this combination of heavy dockets, leading to these long adjournment times, and an insufficient number of interpreters, can create serious problems for people.

—**Sofia Khan**
Attorney, Queens

"My client speaks Punjabi. He was illegally evicted from his apartment in August 2015 and kept out for months. The court knew that our client needed an interpreter, but throughout the case the court would often provide a Bangladeshi interpreter who, I believe, spoke Urdu, but did not speak Punjabi. My client does not speak or understand Urdu and could not understand this interpreter.

Despite these difficulties, we managed to prevail at trial. But when we finally had a court date where my client would regain possession of his apartment and be allowed to move home, the court once again failed to provide a Punjabi interpreter, and, in fact, scheduled the appearance for a day when even the Bangladeshi interpreter was unavailable.

This was a crucial court date for my client, who had been locked out of his home illegally for months. Having been fully vindicated, our client deserved to have his day in court, which he could not have without a proper interpreter."

—**Chantal V. Johnson**
Attorney, Brooklyn

When people are in court for emergency matters—such as getting necessary housing repairs, or navigating child custody issues—serious delays and adjournments can have dire consequences. Moreover, when people are preparing themselves for emotionally traumatic testimony—particularly in domestic violence cases—repeated adjournments can re-traumatize people, requiring them to relive the experience each and every time they prepare for trial, only to be told to go home and come back later.

In the Spring of 2016, LSNYC surveyed its lawyers concerning their experiences with court interpretation. Over the preceding 60 day period, 51 lawyers who had represented at least one LEP client in court reported the following:

- 14% had to adjourn at least one case because no interpreter was available at the scheduled court date;
- In one case, a trial was adjourned mid-way through because the interpreter needed to leave at lunch for another court appearance;
- 14% had to wait two hours or more for a court interpreter; and
- Brooklyn Housing Court was over-represented in the courts where interpreter-related adjournments occurred.

LSNYC's 2016 survey also asked lawyers about their general experiences with obtaining interpretation at court. The survey found:



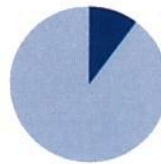
74% reported experiencing interpreter-related adjournments;



13% reported that court interpreters were *virtually never* available without a 2 hour wait or adjournment;



28% reported that *more than half* of all appearances with an LEP client are delayed 2+ hours for an interpreter;



10% reported that *more than half* of all court appearances with LEP clients are adjourned, while 8% reported this happening more than three-quarters of the time;

Those respondents who reported severe problems (where interpreters were unavailable more than half the time) tended to work in Brooklyn and the Bronx.

D. Negotiations, Settlements and Attorney-Client Communications

Much of what happens in a courthouse happens in the hallways and conference areas, outside the presence of a judge. This is where people speak with their lawyers and discuss settlements and legal strategy; where litigants and/or their lawyers negotiate with each other to try and settle a case. However, when LEP litigants do not have access to interpretation, they cannot engage in these crucial interactions.

At the moment, court interpreters have been giving advocates conflicting answers as to whether or not they are even *permitted* to interpret between parties outside the presence of a judge. Even where interpreters believe they are allowed to perform these services, they are frequently constrained by their busy schedule. Yet, without this service, people are forced before a judge to discuss matters that could easily be resolved independently. Providing interpretation for these interactions would not only help LEP litigants have access to the same negotiating tools as other litigants, but would save time for our over-burdened judges.

These out-of-court communications are also crucial where a court has appointed a lawyer for an LEP litigant. Often these court-appointed lawyers do not have the funds to pay for professional in-person interpreters, without which they are severely constrained in their ability to communicate with their own clients.

While the responsibility to provide zealous and ethical representation—which, by definition, includes communicating with clients no matter their primary language—is ultimately the responsibility of the lawyer, the courts could help by either providing court interpreters for attorney-client communications or reimbursing court-appointed counsel for the cost of obtaining interpretation and translation.

"I am not fluent in Spanish, but I understand enough to recognize when I hear interpreters giving clients or pro se respondents advice on their legal issues. Fortunately, the advice I have overheard has not been damaging, but that's not the role of an interpreter. It's problematic. There should be some training for interpreters that explicitly clarifies their role in a given conversation. Interpreters need to always tell people when they aren't acting as interpreters, because people do get confused. And when interpreters do give advice—particularly to pro se individuals—they should clarify that they are a professional interpreter, but not a lawyer or court personnel."

—**Amy Hammersmith**
Attorney, Queens

"I do see people, especially those without attorneys, bringing friends or family members to court to act as their interpreters. The problem with that is some legal terminology doesn't translate well into another language. If the friend or family member is not familiar with the law and what certain legal terms mean, then it's difficult to interpret or explain those terms to someone else. If you say "reinstatement" or "rescission," for example, there may or may not be a precise translation in a given language. But those terms have special meaning in a legal context. An interpreter needs to have some familiarity with the law and legal jargon in both languages in order to interpret well. Your average bilingual person, who isn't a trained legal interpreter, may not do this as well as legal proceedings require."

—**Ayana Robertson**
Attorney, Brooklyn

Once two parties have settled, it is *crucial* that LEP litigants fully understand a stipulation of settlement prior to signing it. Without this critical step—interpreting the contents of legal documents—LEP litigants simply *cannot* give informed consent to a legally binding agreement.

Moreover, when court interpreters are explaining a potential stipulation to LEP litigants, it is important they then ensure that the litigant understands not only the content of the document, but the fact that it is a *settlement* agreement, one that the litigant is signing voluntarily. Lawyers at LSNYC and elsewhere have reported, on numerous occasions, seeing court interpreters simply instructing clients to sign settlement agreements, rather than actually explaining the contents of the document. Not only does this rob the litigant of the opportunity to fully understand the terms to which they are agreeing, but LEP litigants can be misled into believing that a court is *instructing* them to sign something.

Court interpreters may appear to LEP litigants—particularly those without lawyers—to be formal officers of the court. Some LEP litigants can confuse court interpreters for lawyers or other judicial officers. Similarly, LEP litigants may get confused as to whether a court interpreter is offering legal advice, personal advice, or

simply ordering someone to do something. The courts should ensure that (a) interpreters always identify themselves as such when speaking to members of the public and (b) interpreters indicate what role they are playing at a given moment—whether acting as an interpreter (i.e., conduit), providing non-legal advice as an individual familiar with the courts, or simply answering basic questions.

E. Getting Accurate Interpretation

The job of an interpreter is a highly-skilled one, requiring proficiency not only in English and the target language, but also in legal jargon and procedures. When an interpreter makes a mistake, serious consequences follow. For example, PBS recently reported about a defendant who had been accused of running a red light. However, "his interpreter told him he was accused of a "violación," which in Spanish does not mean "violation," but "rape."^{xii} Understandably, the LEP litigant was outraged.

It is precisely for this reason that LEP litigants should *never* have to rely on non-professional interpreters. A bilingual person without proper training or a legal background is simply not equipped to provide the kind of precise interpretation that a legal setting requires. Moreover, friends and family familiar with a case can often find themselves advocating—telling a judge or a lawyer what happened—rather than interpreting—acting as a *conduit* between the LEP litigant and a judge or lawyer. This excludes the LEP litigant from the court proceeding, depriving them of a true opportunity to be heard by our court system.

"One sign language interpreter I had for a case doesn't sign appropriately. For example, the word 'landlord,' she signed as 'land' and 'lord,' meaning 'lord' in a religious context at church. And when I saw that, I understood what she did, but most deaf people would be very confused. So the interpreter didn't know the word, they had never seen that sign before. That's why you need certified interpreters.

When I would sign something, the interpreter would change it. She wasn't using my wording. So I needed to correct her, using my voice, loudly so the judge could hear. The judge then told the interpreter that she was doing it wrong, but most people wouldn't be aware. The position of an interpreter and what they do is really important. The court needs to be aware of this."

—**Christina Bueno**
LEP litigant

On settlement talks, a non-professional interpreter may truly be depriving the LEP litigant of the ability to give informed consent. For example, people may find themselves inadvertently waiving their rights or agreeing to a legal obligation they cannot fulfill.

This issue also arises with the court system's own certified interpreters. The court system currently tests all interpreters in their written English ability, but can only test people orally—both for proficiency and for actual interpretation ability—in some foreign languages.^{xiii} In other languages, however, the court system simply does not have the capacity to test people. As a result, it is unclear whether all court interpreters are being tested on their foreign language proficiency and oral interpretation ability prior to certification, or whether some might be certified based solely on professional references and resumes. With respect to American Sign Language interpreters, the New York court system relies on the Registry of Interpreters for the Deaf, Inc., a membership organization, as a credentialing service. However, The Registry for Interpreters of the Deaf currently has a moratorium on certifying interpreters that specialize in legal matters, and it is unclear how this might affect the New York court system.

The courts need to test everyone in their language and interpretation proficiency before they are certified as court interpreters. Given the impracticality of having in-house testing ability in every language, the court system should consider using a third party vendor, to ensure that *all* interpreters certified by the court system have been properly tested in their language and interpretation abilities.

When a court interpreter does not provide accurate interpretation, or acts unprofessionally, the court system has been extremely responsive to advocate complaints (which advocates are encouraged to make at interpretercomplaints@nycourts.gov). However, *pro se* LEP litigants may not know how to make a complaint, may not have access to email, or may not feel safe doing so. The courts should ensure that all litigants know where complaints may be made, that complaints may be made through methods other than email and, further, that neither the court system nor individual court interpreters can retaliate against a litigant who makes complaints. A complaint box in the courthouse, where people can provide written paper complaints, as well as a multilingual phone number or voicemail box may also facilitate complaints and help the court system monitor the quality and professionalism of its interpreters.

"It's hard for litigants to complain about this. Our clients, for example, generally aren't in a place where they feel like they can demand anything from the court. They're poor and don't speak English and it's all really overwhelming. They don't feel entitled to a smooth court process to begin with, and they don't necessarily feel entitled to even be able to understand what's going on."

—**Sofia Khan**
—Attorney, Queens

PROMISING LANGUAGE ACCESS INITIATIVES IN THE NEW YORK COURTS

In the past few years, the New York court system has instituted a series of initiatives which aim to improve the delivery of translation and interpretation services to litigants in the New York courts. Moreover, the New York court system has made improved access for LEP litigants a priority issue.

Former Chief Administrative Judge Prudenti was a particularly strong advocate for the needs of limited English proficient litigants. In a 2014 open letter to advocates, Chief Judge Prudenti wrote that “ensuring that persons with limited English proficiency can fully participate in court proceedings” was a matter “of fundamental importance,” and she provided information to help lawyers better help our clients (*see Resources, infra*).

The Unified Court System has also provided judges with a “benchcard” on best practices for judges when interacting with LEP litigants, which includes helpful advice on (1) how to determine when a litigant is LEP and in need of an interpreter; (2) ensuring that court interpreters are qualified (including sample questions a judge may ask a court interpreter to determine their qualifications); (3) explaining the role of a court interpreter to litigants during proceedings; and (4) how to determine, during a proceeding, that interpretation is going well. This is an extremely useful document and provides a wonderful resource to the Bench.

Many courthouses in New York offer a wealth of information for *pro se* litigants, providing manuals and pamphlets telling people how to bring or defend a lawsuit on their own. Recently, the court system has been translating many of these materials into NYC’s most common languages and making them available on the court system’s website. This is a tremendous resource for LEP litigants, and the court system should be applauded for its work in this area.

The New York courts website currently offers, for example, a glossary of legal terms for housing court (something which would likely prove useful even for law students) which is now available in simplified Chinese.^{xiv} Similarly, the court system has installed televisions in many borough housing courts which show a silent video on loop, explaining in Spanish some basic terminology and procedures for housing court, which litigants may watch as they wait for their case to be called. The court system also provides free guides for *pro se* litigants in Spanish at the court interpreter’s office in certain courthouses.

We are hopeful that the process of translating court information, as well as self-help information for *pro se* litigants, has only just begun and that we and our clients will continue to see more resources available in more languages in the coming months. We also hope to see more of these resources physically available in courthouses, as many low-income LEP New Yorkers do not have access to a computer or to the internet.

The New York courts have also begun to wade into the important arena of translated court documents. For example, the New York courts have begun to issue orders of protection in Spanish, as well as English, so that Spanish-speaking individuals who either receive or are bound by orders of protection—the violation of which can include severe penalties—are fully aware of their rights and obligations. The court system is in the process of expanding this program throughout New York City, as well as to the Ninth and Seventh Judicial Districts, and further expanding the bilingual orders of protection to other languages, including Chinese and Russian.

Moreover, the New York court system remains in close contact with advocates, holding regular meetings with an advisory committee of advocates explicitly focused on language access. These regular meetings provide a direct line of communication between advocates and the court system, allowing for collaborative brainstorming and real-time feedback on new policies.

Recently, New York State Assembly Woman Latoya Joyner, a committed advocate for LEP litigants, has proposed a bill in the State Assembly (A07968) which will substantially advance the ability of LEP litigants in New York City housing court to defend themselves against eviction and non-payment lawsuits. The bill includes, *inter alia*, provisions requiring the distribution of notices in the City's top six languages informing litigants of their right to have court proceedings and settlement conferences interpreted by a court interpreter. Moreover, the bill requires that, in actions for non-payment or evictions, LEP defendants receive a copy of the Notice of Petition in Spanish and English, as well as a multi-lingual notice directing LEP litigants to the court's multi-lingual web-based materials, as well as to a court telephone number where litigants may receive information in their native language on eviction procedures more generally.

We hope that, through continued collaboration and feedback, advocates and the New York court system can continue to improve language access for LEP litigants throughout New York.

RECOMMENDATIONS

INFORMATION FOR LEP LITIGANTS

(1) **Signs:** These are the first thing anyone sees when walking into a courthouse. It is therefore key that all courthouses have **noticeable, clear signs** telling people (a) that they have the right to a court interpreter; (b) how to get one; (c) where the clerk's office is; (d) where to go with questions/for more information/to make complaints; and (e) informing people of *vital court procedures*, such as how to check in for a court appearance.

(2) **Translated legal documents:** Certain vital documents *must* be translated for LEP litigants. This includes documents telling someone that they are being sued in court and why, as well as any and all documents affecting someone's legal rights or obligations, including settlement documents, orders of protection, and legal decisions. The court system has begun to provide bilingual orders of protection, and we hope that it will expand this program to include translations in more languages, as well as the other vital documents mentioned above.

(3) **Multi-lingual court and legal information for *pro se* litigants:** Many people simply cannot afford a lawyer and rely on help manuals and instructions telling people how to fill out court forms and what the court's procedures are for certain cases. The court system has made great strides in making information for *pro se* litigants available in English and in other languages. We hope that this continues, with more documents translated into more languages, and also recommend that paper copies of these documents be available in the courthouse, as many low-income New Yorkers do not have access to computers or the internet.

IMPROVING ACCESS TO COURT INTERPRETERS

(4) **Tracking Languages:** The court system must track and publish annual data on the primary languages spoken by litigants in the different courts. This will allow the courts to better assess the need for language services and allocate resources accordingly. Courts also need to ask litigants what language they speak at the beginning of a case and then consistently track the litigant's primary language from start to finish in that case in a clear and uniform way so that clerks, court officers, court attorneys and judges are aware of the litigant's language to ensure that the need for an interpreter is known in advance of a court appearance and will be consistently and reliably provided.

(5) **Interpreter Scheduling:** A centralized mechanism should exist where litigants and/or their lawyers can schedule an interpreter in advance of a court appearance, both online and by telephone. Where interpreters are only available on certain days, courts need to publicly post interpreter schedules in the relevant languages, both in courthouses and online. Courts must ensure that interpreters are scheduled for every court date involving an LEP litigant.

(6) **Court Interpreter Availability:** The court system needs more interpreters, particularly in Urdu, Bengali, and Arabic, but also in more common languages—a single Spanish speaking interpreter for a high-volume court is insufficient. More interpreters would lead to dramatically fewer delays and would help alleviate the problem of interpreters being over-scheduled, causing them to leave early, arrive late, or rush through proceedings.

(7) **Remote Interpreting:** Create clearer guidelines on when a judge can or should use telephonic or video interpretation to ensure that important, time-sensitive issues that do not require testimony or other complex litigation matters—such as *imple adjournments*—can be communicated to litigants when interpreters are not available.

(8) **Interpretation for Negotiations and Settlements:** The courts must provide access to interpreters in the hallways and conference rooms of courthouses, not just in courtrooms. Without access to these services, LEP litigants cannot engage in negotiations or converse with their adversaries to try to resolve their cases, as other litigants do routinely.

Language Line could also be provided in the courthouse halls or conference areas, so that LEP litigants may better communicate with their adversaries or their counsel. For example, many court houses have defunct payphones which are no longer in use; these could be attached to dual headsets and set up to contact Language Line directly, so that two individuals may have a private conversation together through a telephonic interpreter.

(9) **Court-Appointed Counsel:** Ensure that court-appointed counsel are reimbursed for the cost of hiring interpreters for non-court related lawyer-client communications, to ensure that such counsel are providing adequate representation to LEP clients.

(10) **Training Court Personnel:** All court staff should receive training on the courts' language access policies and practices, as well as logistics and best practices when using an interpreter. Court personnel should also be trained on cultural competency and communicating across language and cultural barriers.

QUALITY CONTROL

(11) All court interpreters should be certified through an oral exam in the target language—whether conducted in-house or by a third party certification service. Interpreters should also be re-certified periodically.

(12) The courts should provide continuing education and training for court interpreters concerning the role of an interpreter and an interpreter's ethical obligations; legal jargon and legal procedures; and cultural competency and sensitivity.

(13) Court interpreters should be re-tested on a periodic basis.

(14) Judges should be encouraged to check in with LEP litigants to ensure that they are effectively communicating with an interpreter, ensuring in particular that the litigant and interpreter speak the same language (and same *dialect*), that they can hear each other well, and that the interpreter is not speaking too quickly.

RESOURCES

FEDERAL COURTS IN NEW YORK

To obtain a sign language interpreter or other communications assistance at the Southern District for a litigant or witness who is deaf or hard of hearing, contact the Interpreters Office at (212) 805-0084 or by email at interpreters@nysd.uscourts.gov.

According to the Southern District of New York's Interpreter's Office, "the interpreters office can help with referrals if you need them." To contact the Southern District's Interpreter's Office, visit sdnyinterpreters.org or call (212) 805-0084. The office also posts a list of certified Spanish language court interpreters and their phone numbers: <https://sdnyinterpreters.org/spanish-interpreter-list>.

In the Eastern District, to obtain interpretation and/or communications assistance for a deaf or hard of hearing individual, contact chambers for the judge in question^{xv} or contact the Interpreter Coordinator at (718) 613-2390 for Brooklyn or (631) 712-6057 for Central Islip.

NEW YORK STATE COURTS

If you need an interpreter for a court appearance, contact the Office of Language Access at 646-386-5670. If you need to make a complaint about an interpreter, the unavailability of an interpreter, or a delay in receiving interpretation, contact interpretercomplaints@uscourts.state.ny.us.

GENERAL INFORMATION

The United States Department of Justice has provided substantial technical and legal resources on the issue of language access in state courts, which can be found at <https://www.lep.gov/resources/resources.html#SC>. In 2014, the Department also published a Language Access Planning and Technical Assistance Tool for Courts, available at https://www.lep.gov/resources/courts/022814_Planning_Tool/February_2014_Language_Access_Planning_and_Technical_Assistance_Tool_for_Courts_508_Version.pdf.

In September of 2016, the USDOJ's Civil Rights Division also published a booklet called Language Access in State Courts, which offers an overview of legal requirements concerning language access, as well as tools and resources. It can be accessed at <https://www.justice.gov/crt/file/892036/download>.

ENDNOTES

ⁱ New York City Department of City Planning, “New York City Population,” <http://www1.nyc.gov/site/planning/data-maps/nyc-population/population-facts.page> (last retrieved August 27, 2016).

ⁱⁱ New York City Department of City Planning, <http://www1.nyc.gov/site/planning/about/language-access.page> (last accessed August 31, 2016).

ⁱⁱⁱ New York City Department of Housing Preservation and Development, Language Access Plan <https://www1.nyc.gov/assets/hpd/downloads/pdf/HPD-Language-AccessPlan.pdf> (last accessed August 31, 2016).

^{iv} Migration Policy Institute, “The Limited English Proficient Population in the United States,” <http://www.migrationpolicy.org/article/limited-english-proficient-population-united-states> (last accessed August 27, 2016).

^v Federal courts are only required to provide interpreters in cases where the United States government initiated a case—such as federal criminal cases or immigration removal proceedings. The Southern District of New York’s website, for example, explicitly encourages litigants to “have a trusted family member or friend assist you by interpreting for you.” While this report focuses on the state courts of New York, it is worth noting that the New York courts provide *substantially* more access to LEP litigants than the federal system. Not only are LEP litigants all but excluded from federal civil cases, but some may be put in the rather awkward position of attempting to enforce their rights to interpretation at other governmental agencies, under Title VI of the Civil Rights Act, in a judicial forum where they are not provided with interpretation at all.

^{vi} During the Oscar Pistorius trial, “lawyers immediately questioned [an interpreter’s] accuracy after she interpreted ‘noises’ as ‘gunshots.’” <http://www.medialocate.com/2016/05/no-room-for-mistakes-in-legal-medical-interpreting/>.

^{vii} “According to The Age, the dispute involved several Indonesian words—a suspected Indonesian smuggler was testifying in court. In one example, the words “did you stop anyone moving” were allegedly turned into “did you push anyone.” <https://www.legallanguage.com/legal-articles/court-interpreter-mistrial/>.

^{viii} New York Judiciary Law § 390 (“Whenever any deaf person is a party to a legal proceeding of any nature, or a witness therein, the court in all instances shall appoint a qualified interpreter who is certified by a recognized national or New York state credentialing authority as approved by the chief administrator of the courts to interpret the proceeding to, and the testimony of, such deaf person.”). Crime victims and their immediate family members who are deaf or hard of hearing are also entitled to free interpretation in the criminal court matter for which they or their relative was a victim. *Id.*

^{ix} Justice Moves Slowly for Those Who Need Interpreters, Wendy N. Davis, ABA Journal, March 8, 2016 (“As of 2014, 10 states—Alaska, California, Illinois, Nevada, New Hampshire, North Carolina, Oklahoma, South Dakota, Vermont and Wyoming—don’t require interpreters in all criminal and civil cases, according to the National Center for Access to Justice at the Benjamin N. Cardozo School of Law at Yeshiva University.”).

^x Justice Index 2016, National Center for Access to Justice, Cardozo Law, <http://justiceindex.org/2016-findings/language-access/> (last accessed August 16, 2016).

^{xi} February 20, 2015 open letter from Comptroller Scott Stringer to Hon. A. Gail Prudenti. <http://comptroller.nyc.gov/wp-content/uploads/2015/02/Prudenti-Housing-Court-Letter.pdf> (last accessed September 1, 2016)

^{xii} PBS Newshour, *How Bad Translation by Court Interpreters Can Turn Misunderstanding into Injustice*, August 17, 2016, <http://www.pbs.org/newshour/rundown/bad-translation-by-court-interpreters-injustice/> (last accessed September 1, 2016).

^{xiii} Those languages are: Albanian, Arabic, Bosnian/Croatian/Serbian, Bengali, Cantonese, French, Greek, Haitian Creole, Hebrew, Hindi, Italian, Japanese, Korean, Mandarin, Polish, Portuguese, Punjabi, Russian, Spanish, Urdu, Vietnamese, and Wolof.

^{xiv} The glossary can be found here: <http://www.nycourts.gov/courts/nyc/housing/chinese/definitions.shtml> (last accessed August 16, 2016).

^{xv} Contact information for chambers of judges in the Eastern District of New York can be found at <https://www.nyed.uscourts.gov/judges-info>.



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LSNYC's Disability Advocacy Project assists New Yorkers whose federal disability benefits have been denied or discontinued. We work with individuals who have been denied either Disability Insurance (Title II) benefits or Supplemental Security Income (SSI) benefits. We provide assistance at all stages of appeals or federal court proceedings for clients seeking Title II or SSI benefits based on disability. The LSNYC DAP Neighborhood Network operates multiple offices serving a wide range of disabled clients in every borough, as well as a citywide program to identify and address systemic barriers to the administration of disability benefits. We also conduct extensive outreach, education and intake through our more than 80 community partners, most of whom serve our target population of low-income, disabled individuals.

Our Legal Assistance Hotline is open Monday through Friday from 10am to 4pm. Call [917-661-4500](tel:917-661-4500) to speak to an intake officer in any language.



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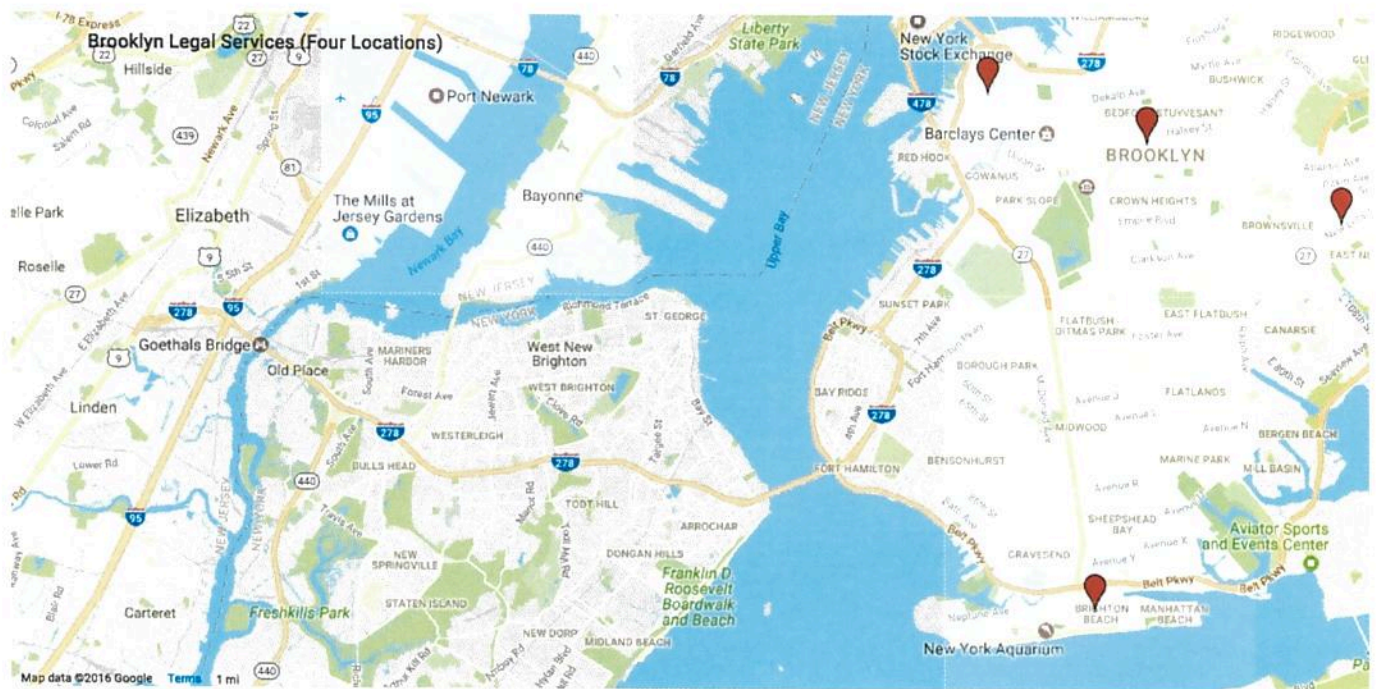
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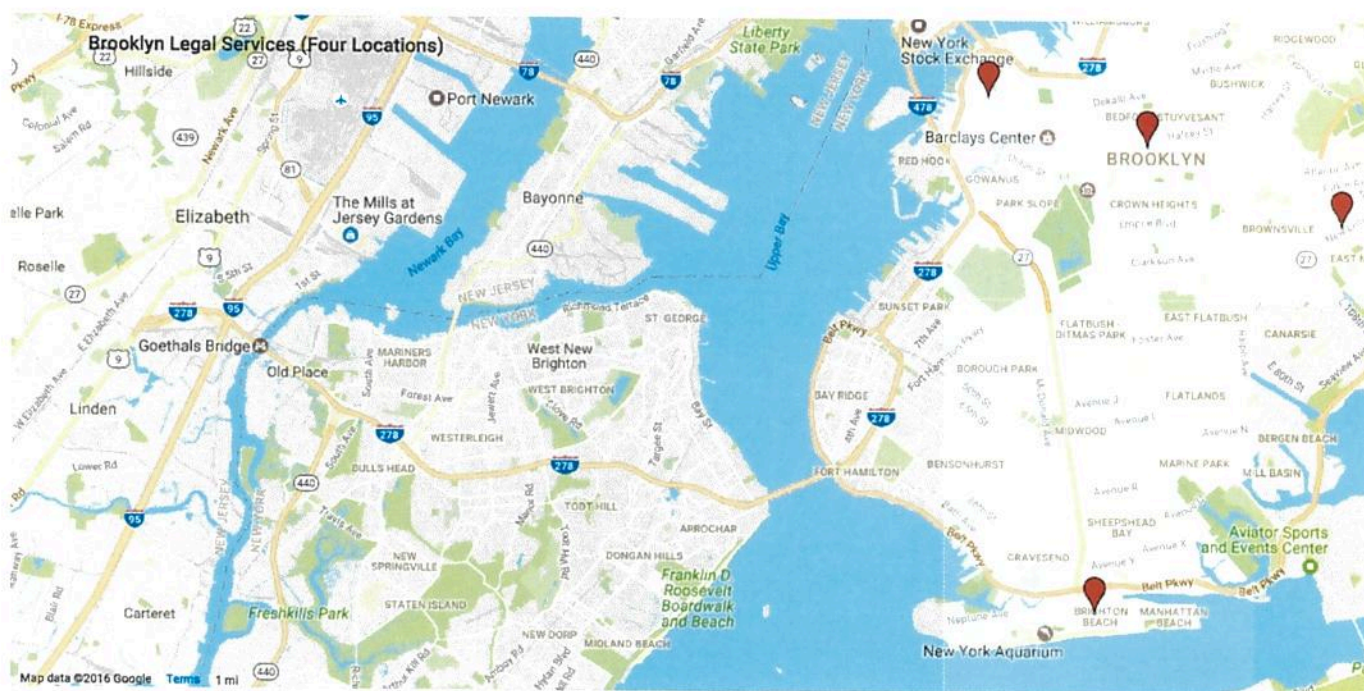
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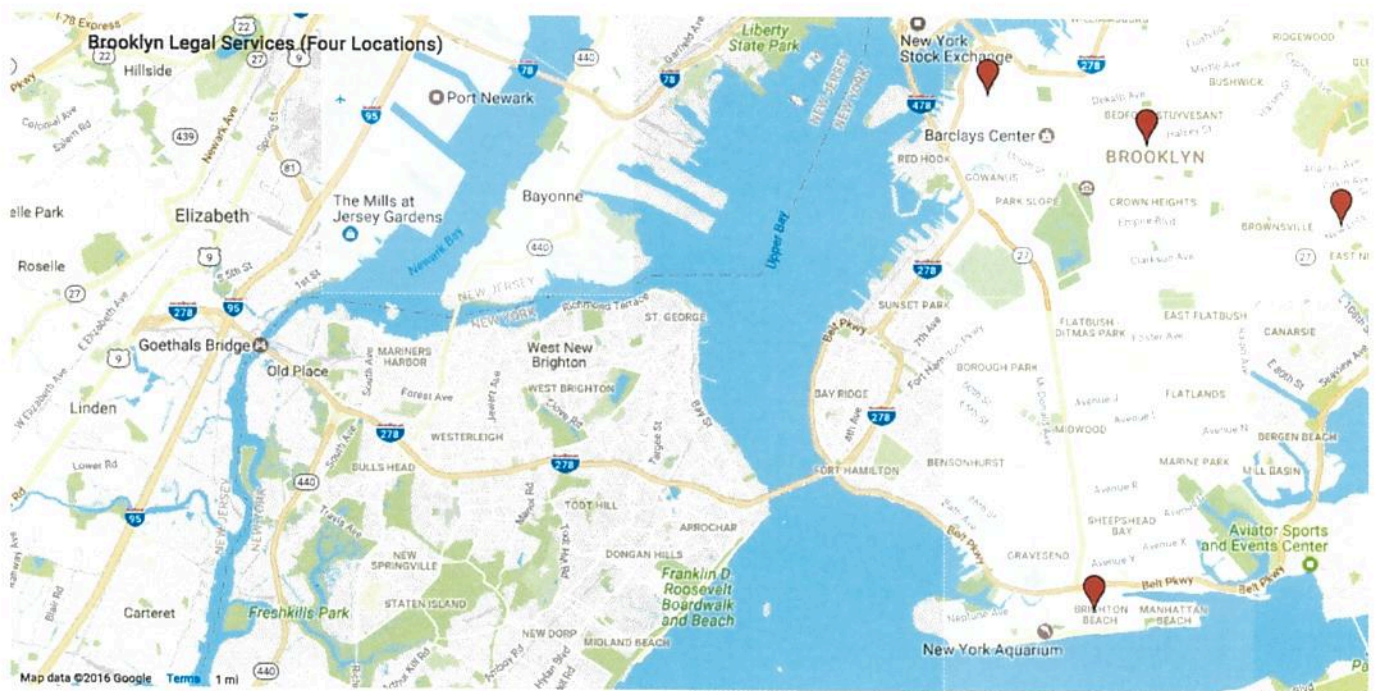
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