

THE SUPERIOR COURT FOR THE COUNTY OF X

STATE OF GEORGIA

JANE DOE, :
 Petitioner, :
 : :
vs. : **Civil Action File No.**
 : :
JOHN DOE, :
 Respondent. :
 : :
 : :
 : :

BRIEF IN SUPPORT OF MOTION FOR LANGUAGE ACCESS FOR PETITIONER

SUMMARY OF ARGUMENT AND RELIEF REQUESTED

Under federal law and Georgia law, Petitioner Jane Doe is entitled to language access provided by the Court because she is limited English proficient (LEP). The term LEP refers to an individual who speaks a language other than English as her primary language and/or who has a limited ability to read, speak, write, or understand English. LEP includes individuals who are hearing impaired. Federal law states that all recipients of federal funding must provide language access to LEP parties. The Supreme Court of Georgia also requires language access for LEP parties and witnesses in all Georgia courts. Ms. Doe asks that the Court provide a certified interpreter and pay for all interpretation costs for Ms. Doe in Civil Action No. _____.

FACTS

[INSERT BRIEF SUMMATION OF FACTS HERE] Petitioner is a native [INSERT LANGUAGE] speaker and is limited English proficient.

LEGAL ARGUMENT

I. UNDER FEDERAL LAW, PETITIONER IS ENTITLED TO AN INTERPRETER PROVIDED BY THE COURT IN CIVIL PROCEEDINGS.

Federal law supports a right to an interpreter in court proceedings. Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and the Omnibus Crime Control and Safe Streets Act (O.C.C.S.S.A.) of 1968, 42 U.S.C. § 3789d(c), recipients of federal funding are not allowed to discriminate on the basis of national origin. Through Executive Order 13166 failure to provide language services constitutes a form of discrimination on the basis of national origin. (See Exhibit A) The United States Department of Justice (USDOJ) Guidance outlines the obligations of recipients of federal funding to be in compliance with the Executive Order and Title VI. The USDOJ wrote a letter on December 1, 2003 to all state courts describing the nature of the court's obligations to provide language services. (See Exhibit B) The letter states the following:

It is beyond question that America's courts discharge a wide range of important duties and offer critical services both inside and outside the courtroom. Examples range from contact with the clerk's office in a *pro se* matter to testifying at trial. They include, but are not limited to: matters involving domestic violence, restraining orders, parental rights and other family law matters; eviction actions alternative dispute resolution or mediation programs . . . Each is a critical encounter to participants in the judicial process. Where those participants are also LEP persons, the provision of reasonable and appropriate language assistance may be necessary to ensure full access to your courts, and to preserve the importance and value of the judicial process.

Id.

The USDOJ letter recognizes the cost considerations that have to be factored in the court's decision on when and how to provide language services. However, the letter distinguishes the critical judicial processes listed above from less significant activities, such as voluntary public tours of courthouses, where courts may be exempt from providing language

assistance. In his August 16, 2010, Language Access Guidance Letter to State Courts, Thomas E. Perez, Assistant Attorney General, USDOJ, stated that “when meaningful access requires interpretation, courts will provide interpreters at no cost to the persons involved.” (See Exhibit C) Additionally, in its March 8, 2012 letter to the North Carolina Administrative Office of the Courts (AOC), the USDOJ stated that

any focus only on the financial costs of providing additional interpreter services ignores the significant fiscal and other costs of *non-compliance* with the AOC’s obligation to take reasonable steps to ensure access to court operations for LEP individuals. It costs money and time to handle appeals and reversals based on the failure to ensure proper interpretation and effective communication. Similarly, delays in providing interpreters often result in multiple continuances, which needlessly waste the time and resources of court staff. And ineffective communication deprives judges and juries of the ability to make reliable decisions; renders victims, witnesses, and defendants effectively absent from proceedings that affect their rights; and causes other significant costs in terms of public safety, child welfare, and confidence in the judicial system.

U.S. DOJ Letter to NC Admin. Office of the Courts, at 3 (Mar. 8, 2012), *available at* http://www.justice.gov/crt/about/cor/TitleVI/030812_DOJ_Letter_to_NC_AOC.pdf. (See Exhibit D) Under federal law, Petitioner should be provided an interpreter for the civil proceedings.

II. UNDER GEORGIA LAW, PETITIONER IS ENTITLED TO AN INTERPRETER PROVIDED BY THE COURT IN CIVIL PROCEEDINGS.

The Supreme Court of Georgia, citing Title VI, as amended and the O.C.C.S.S.A, as amended, in addition to other authorities, held in Ling v. State, 288 Ga. 299, 300-01 (2010), that an interpreter must be appointed for those who cannot communicate effectively in English in criminal cases. The Supreme Court also stated that meaningful access to justice must be provided in **all** Georgia courts, including civil courts, for persons who are limited English proficient in order to comply with federal law. The Supreme Court cautioned that “vigilance in protecting the rights of non-English speakers is required in all of our courts.” Id. at 302.

The Court in Ramos v. Terry stated that, “[t]he use of qualified interpreters is necessary to preserve meaningful access to the legal system for person who speak and understand only languages other than English.” 279 Ga. 889, 892 (2005) (citation omitted). In Ramos, the Supreme Court of Georgia explained that the Court established a statewide plan for using interpreters in Georgia courts for the express purpose of securing the rights of non-English speaking persons. Id. at 891.

In July 2011, the Georgia Supreme Court promulgated new court rules on the use of interpreters in light of these court decisions and federal requirements under Title VI of the Civil Rights Act of 1964. (See Exhibit E) The following is the general rule:

The following rules apply to all criminal and civil proceedings in Georgia where there are non-English speaking persons in need of interpreters. See also *Ling v. State*, 288 Ga. 299 (702 SE2d 881) (2010). All other court-managed functions, including information counters, intake or filing offices, cashiers, records rooms, sheriff’s offices, probation and parole offices, alternative dispute resolution programs, *pro se* clinics, criminal diversion programs, anger management classes, detention facilities, and other similar offices, operations and programs, shall comply with Title VI of the Civil Rights Act of 1964.

Ga. Sup. Ct. Rule on the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons (hereinafter “Interpreter Rules”), Appendix A, II.

The Court made it clear that an interpreter should be provided by the court in all civil cases with the following rule:

Each non-English speaking party shall have the right to an interpreter at each critical stage of the proceedings at no cost to the non-English speaking person. Consultations with legal counsel, guardians, court psychologists, probation officers, doctors, or other individuals who are employed, paid, or supervised by the courts shall comply with Title VI of the Civil Rights Act of 1964. Advance notice of the use of an interpreter shall be provided to all parties and to the decision maker.

Interpreter Rules, Appendix A, IV (B). The Supreme Court also made it clear that the courts are to provide these interpretation services at no charge to the non-English speaking person by

stating that the local courts or appropriate governing body are to bear the expense of providing interpreters. (Interpreters Rules, Appendix A, VII (A)-(B)).

CONCLUSION

Petitioner was not and is not in a position to proceed without an interpreter. She should not be expected to rely upon family or friends to serve as untrained interpreters when their lack of proper interpretation could lead to misunderstandings and miscommunications. Furthermore, she should not be expected to reveal details about her finances or her personal life to an untrained interpreter. Petitioner requires a competent interpreter in any future negotiations and proceedings in this process to meaningfully understand her rights and is entitled to an interpreter provided by the Court under federal law and Georgia Supreme Court Rules.

Respectfully Submitted,

ATTORNEY
Attorney for Petitioner
Georgia Bar No. 12345

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ADDRESS

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EXHIBIT A: Executive Order 13166

EXHIBIT B: DOJ Letter December 1, 2003

EXHIBIT C: DOJ Letter August 16, 2010

EXHIBIT D: DOJ Letter March 8, 2012

EXHIBIT E:
**Georgia Supreme Court Rules for Use of Interpreters for Non-English
Speaking and Hearing Impaired Persons**