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INTERPRETING JUSTICIA PARA TODES: THE NEED FOR A BILINGUAL JUSTICE SYSTEM IN THE UNITED STATES

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ABSTRACT

The United States' rich history has created a country with countless distinct cultures and value systems. As a result of this, though, the United States faces unique challenges in ensuring equal justice for all. Though the United States has processes in place so that non-English speakers can access the court system in their native language, this Note will argue that the current protections are simply not enough and that the United States must mobilize to create a fully bilingual English-Spanish justice system. Part I will provide data on language use and resources in the United States. Part II will analyze the complexities and shortfalls of relying on interpretation to engage with speakers of other languages in the justice system. Part II will also demonstrate the oftentimes dire consequences of such an adherence to interpretation as a valid means of putting non-English speakers on equal footing with English speakers. Part III will demonstrate that such an admittedly herculean goal is not actually out of reach; other countries have made strides to evolve the linguistic capacity of their courts and, even in the United States, such a change is already occurring in some places.

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INTRODUCTION

The United States of America has long been called "a melting pot," a term coined after the popularity of its namesake 1908 play by Israel Zangwill.[1] The label suggests that "immigrants will shed their differences and meld together to become Americans," much like "cheese in a fondue."[2] The expectation has become that all those living in America will "combine[] so as to lose their discrete identities and yield a final product of uniform consistency."[3] This adopted American value of assimilation has had drastic cultural effects. One of those effects is seen clearly in the American court system, in which language services for non-English speakers and multilingual individuals are sorely lacking. This Note will seek to elucidate the need for the United States to replace the melting pot with a salad bowl[4] and move toward a fully bilingual English-Spanish court system.

I. LANGUAGE DATA IN THE UNITED STATES

The American Community Survey ("ACS"), a tool used by the United States Census Bureau, found that in 2012, there were 40.8 million foreign-born individuals living in the country, a steep increase from the documented 14.1 million in 1980.[5] Eighty-five percent of those 40.8

1. *See* LeAna B. Gloor, *From the Melting Pot to the Tossed Salad Metaphor: Why Coercive Assimilation Lacks the Flavors Americans Crave*, 4 HOHONU 29, 29 (2006).

2. BackStory, *The Melting Pot: Americans & Assimilation*, VA. HUMANS. (July 5, 2019), https://www.backstoryradio.org/shows/the-melting-pot/.

3. Gloor, *supra* note 1, at 29.

4. Unlike the melting pot analogy, the more modern evolution of the salad bowl analogy encourages the retention of people's individual cultural identities, recognizing that they contribute to the "flavor" of the overall culture. *See id.*

5. CHRISTINE P. GAMBINO ET AL., ENGLISH-SPEAKING ABILITY OF THE FOREIGN-BORN POPULATION IN THE UNITED STATES: 2012, at 1–2 (2014).

million individuals self-reported that a language other than English was spoken in the home.[6] Foreign-born individuals from Mexico, China, El Salvador, Cuba, Haiti, Guatemala, Colombia, Honduras, Vietnam, Korea, and the Dominican Republic were more likely to have low English-speaking ability.[7] Foreign-born individuals from Western European countries and countries with English as one of its official languages were far more likely to have high English-speaking ability.[8] This juxtaposition reveals that non-white foreign-born populations are more likely to speak English at a lower level than white immigrants. The report dove even deeper, revealing that approximately 61% of foreign-born individuals from Latin America and the Caribbean reported that they spoke English less than "very well."[9] Moreover, those same groups were also the most likely of the various "region-of-birth groups" the report used to report speaking English "not at all."[10]

It is important to note, too, that it is possible that these surveys, which occur more frequently than the decennary census, undercount minority populations, potentially resulting in an underestimate in the data.[11] The census, too, is often criticized for its consistent undercounts of non-white populations. In 2010, the Census Bureau boasted what some critics considered to be a "remarkably accurate" census with a net overcount of .01%.[12] However, under the surface of that overcount lay the truth: "the bureau estimated an undercount of 2.1% among the Black population, 1.5% among the Hispanic or Latinx population and 4.9% among American Indians living on reservations."[13] The source of the overcount was derived from white non-Hispanic individuals.[14] A non-census source stated that "43 million people [in the United States] speak

6. *Id.* at 2.
7. *Id.* at 7–9.
8. *See id.* at 7.
9. *Id.* at 6–7.
10. *Id.* at 7.
11. For example, in 2017, the United States Indigenous Data Sovereignty Network published a newsletter asserting that the 2016 ACS undercounted the population of people who identify as American Indian or Alaska Native by more than 500,000 individuals. *See* Norm DeWeaver, *Tribes and the Census: ACS Again Undercounts a Half Million People Who Identify AI/AN as Their Only Race*, U.S. INDIGENOUS DATA SOVEREIGNTY NETWORK (Sept. 20, 2017), https://static1.squarespace.com/static/5d2633cb0ef5e4000134fa02/t/5d7a0185c0ac791c0be0f3ab/1568276880743/census_newsletter_9-20-2017_re_acs_undercount.pdf.
12. *See* Rebecca Tippett, *Census Undercounts Are Normal, but Demographers Worry This Year Could Be Worse*, CONVERSATION (Apr. 3, 2020, 8:41 AM), https://theconversation.com/census-undercounts-are-normal-but-demographers-worry-this-year-could-be-worse-133140.
13. *Id.*
14. *See id.*

Spanish as a first language[,]" which is about 13% of the total population.[15] Given the potential for an undercount, that number could be even higher. That number makes the United States the country with the world's largest Spanish-speaking population in a country where the official language is not Spanish.[16] Given the undercount, the United States may have a larger Spanish-speaking population than some countries where Spanish is the country's official language.[17] One study predicts that by 2060, the United States will have the world's second largest Spanish-speaking population behind Mexico.[18] If the need for broader access to resources in Spanish was high in 2014 (when the ACS survey results were published), it is critical now in 2022.

The troubling undercount of non-white populations in the census is not a problem of the past either. The Urban Institute, a nonpartisan think tank, projected in 2019 that the 2020 census could undercount approximately 4 million Black and Latinx people, which, if accurate, would have been the worst undercount of these populations since the 1990s.[19] In its projections, the Institute broke these numbers down: 1.7 million Black people and 2.2 million Latinx people were at risk of not being counted in the 2020 census.[20] The undercount trend was not limited to Black and Latinx populations either; the Institute also predicted that Asians and Pacific Islanders may experience an undercount of approximately 306,000 people, while American Indians and Alaska Natives may have been undercounted by 102,000 people.[21] Conversely, white people were the only population projected to be overcounted.[22] Attempts to politicize the census by adding a citizenship question, though barred by the Supreme Court for now,[23] may be partially responsible for the projected undercount, as it created a culture of fear around the census in households with non-citizen members.[24] Looking at the 2012 ACS

15. Dylan Lyons, *How Many People Speak Spanish, and Where Is it Spoken?*, BABBEL MAG. (Mar. 9, 2020), https://www.babbel.com/en/magazine/how-many-people-speak-spanish-and-where-is-it-spoken#:~:text=In%20the%20United%20States%2C%20more,12%20million%20bilingual%20Spanish%20speakers.

16. *See* DAVID FERNÁNDEZ VÍTORES, INSTITUTO CERVANTES, EL ESPAÑOL: UNA LENGUA VIVA [SPANISH: A LIVING LANGUAGE] 9 (2020).

17. *See id.*

18. *Id.* at 5.

19. *See* Hansi Lo Wang, *2020 Census Could Lead to Worst Undercount of Black, Latinx People in 30 Years*, NPR (June 4, 2019, 3:26 AM), https://www.npr.org/2019/06/04/728034176/2020-census-could-lead-to-worst-undercount-of-black-latinx-people-in-30-years.

20. *See id.*

21. *See id.*

22. *Id.*

23. *See* Tippett, *supra* note 12.

24. *See* Wang, *supra* note 19.

findings and the projected census undercounts together, one can deduce that non-English-speaking minorities are much more likely not to be counted in official censuses.

A. The Effects of Census-Based Resource Allocation on Language Resources

It is crucial to recognize these undercounts because the census is what the federal government utilizes to allocate resources and funding.[25] An inaccurate depiction of the population will lead to an inaccurate distribution of resources. In 2000, the Department of Justice ("DOJ") issued policy guidance clarifying Title VI of the Civil Rights Act of 1964 as it pertained to non-English speakers.[26] The document explained that a federally funded organization's "failure to assure that people who are not proficient in English can effectively participate in and benefit from programs and activities may constitute national origin discrimination prohibited by Title VI."[27] The aforementioned federal funds are divvied up pursuant to census data (among other things), meaning that an accurate census is one of the tools that can ensure that organizations are able to comply with the Civil Rights Act. But with massive undercounts of non-English-speaking populations, access to language services is not a guarantee.

These language issues culminate in a lack of equal access to not only the courts but also adequate medical, governmental, educational, and social services in this country. That may seem like a sweeping statement, but there is a dearth of interpreters in the various spheres of society in the United States. For example, "thousands of hospitals and other medical facilities continue to fall short, leaving patients—if they are lucky—relying on family members and friends to be ad hoc interpreters."[28] This heavy burden, that should not rest on the shoulders of family members and should instead be carried by trained professionals, has dramatic effects. The director of language services at the Children's Hospital of Philadelphia (known to locals as "CHOP") recalled having to tell a woman who was eight months pregnant that her

25. *See id.*

26. Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency; Policy Guidance, 65 Fed. Reg. 50123–25 (U.S. Dep't of Just. Aug. 16, 2000) [hereinafter Enforcement of Title VI].

27. *Id.*

28. Sheila Mulrooney Eldred, *With Scarce Access to Interpreters, Immigrants Struggle to Understand Doctors' Orders*, NPR (Aug. 15, 2018, 2:41 PM), https://www.npr.org/sections/health-shots/2018/08/15/638913165/with-scarce-access-to-medical-interpreters-immigrant-patients-struggle-to-unders.

baby would not survive.[29] The previous health clinic the woman had attended allowed her sister-in-law to interpret, and the relative had not informed the mother-to-be that the fetus had serious heart problems.[30] Technological aids, though becoming more readily available, are imperfect too; staffers at CHOP reported that a translation app "translates the phrase 'Please come to CHOP' as 'Please come to be cut into pieces.'"[31] These are just some examples of the difficulties non-English speakers encounter when attempting to access medical care.

II. INTERPRETATION AS AN INHERENTLY IMPERFECT TOOL

The lack of interpreters is not the only problem in a society that relies on it as opposed to direct communication in a person's native tongue. Interpretation, by nature, poses certain risks; at best it is an imperfect science. Language is not stagnant; it is greatly affected by current trends and interests. Words take on new meaning as a result of popular usage, and new words are created entirely. For example, in the United States, a young person may use invented words such as "meme,"[32] "stan,"[33] "yeet,"[34] and "legit"[35] all in the same sentence. Words like "groovy" and "nifty" have fallen out of popular usage[36] and are callbacks to a generation of Americans who are likely baffled by the trendy terms *du*

29. *See id.*

30. *Id.*

31. *Id.*

32. Merriam-Webster offers two definitions of "meme": (1) "an idea, behavior, style, or usage that spreads from person to person within a culture" and (2) "an amusing or interesting item (such as a captioned picture or video) or genre of items that is spread widely online especially through social media." *Meme*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/meme (last visited Apr. 26, 2022).

33. "Stan" can be used as both a noun and a verb. *Stan*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/stan (last visited Apr. 26, 2022). As a verb, Merriam Webster defines it as "to exhibit fandom to an extreme or excessive degree" or "to be an extremely devoted and enthusiastic fan of someone or something." *Id.*

34. According to Dictionary.com, "yeet" is "an exclamation of excitement, approval, surprise, or all-around energy, often as issued when doing a dance move or throwing something." *Yeet*, DICTIONARY.COM, https://www.dictionary.com/e/slang/yeet/#:~:text=Yeet%20is%20an%20exclamation%20of,dance%20move%20or%20throwing%20something (last visited Apr. 26, 2022).

35. "Legit" is a shortened form of "legitimate." *Legit*, URB. DICTIONARY, https://www.urbandictionary.com/define.php?term=legit (last visited Apr. 26, 2022). But, as the Urban Dictionary correctly notes, the abbreviation is not used to mean legitimate; rather, it is "commonly used to describe things as cool or extremely awesome." *Id.*

36. For a list of other English words and phrases that are used less frequently now, see Bob Larkin, *100 Slang Terms from the 20th Century No One Uses Anymore*, BESTLIFE (Oct. 6, 2020), https://bestlifeonline.com/20th-century-slang-terms/.

jour. Ask any interpreter to find correlating terms in Spanish and they will likely struggle.

Likewise, there are words in Spanish that do not have perfect English translations. Even traditional words and phrases present difficulties. *Soler* is a popular Spanish verb that best translates to the adverb "usually" in English, but there is no direct equivalent.[37] Likewise, *sobremesa* literally means "over the table," but it is used as a noun referring to "the time spent socializing" at the table after a meal has finished.[38] And, just as slang emerges in English, so does it evolve in Spanish. In Puerto Rico, the word *chavos* does not mean "young people" as it does in Mexico; instead, it is a term for money.[39] Puerto Ricans use *mamey* to describe something really easy, similar to Americans' use of "easy peasy."[40] In Cuba, *botella* is another word for a ride (in a vehicle),[41] very different from its dictionary definition of "bottle."[42] *Burra*, which is a female donkey in most Spanish-speaking places, is used by Guatemalans to mean "bus."[43] Even in situations in which a competent interpreter can be procured for a Spanish speaker, that interpreter is expected to understand the cultural and linguistic nuances of over twenty different countries.[44] The interpreter may not be aware of the background of the client for whom they are interpreting, and yet in their interpretation they must account for that unknown information. How can an interpreter expect to be expertly familiar with so many distinct cultures and the impact those cultures have on the language? And, even if such a superhuman interpreter did exist, how could they manage to keep up with the totally new phrases that crop up seemingly constantly? Those are the questions that can never be answered within a system of

37. *Popular Spanish Words with No English Equivalents*, SPANISHDICT, https://www.spanishdict.com/guide/popular-spanish-words-with-no-english-equivalents (last visited Apr. 26, 2022).

38. *Id.*

39. Niall Quinn, *30 Puerto Rican Slang Terms That Only Make Sense in the Caribbean*, BASELANG, https://baselang.com/blog/vocabulary/puerto-rican-slang/ (last visited Apr. 26, 2022).

40. *Id.*

41. Niall Quinn, *Cuban Slang: Spanish from the Streets of Havana*, BASELANG, https://baselang.com/blog/vocabulary/cuban-slang/ (last visited Apr. 26, 2022).

42. *Botella*, SPANISHDICT, https://www.spanishdict.com/translate/botella (last visited Apr. 26, 2022).

43. Niall Quinn, *Guatemalan Slang: 22 Most Used Terms You Will Hear from a Local*, BASELANG, https://baselang.com/blog/vocabulary/guatemalan-slang/ (last visited Apr. 26, 2022).

44. *See The Challenge of Interpreting*, LINGOSTAR LANGUAGE SERVS. (Mar. 26, 2019), https://lingo-star.com/the-challenge-of-interpreting/?v=4326ce96e26c; *Spanish Language*, ENCYC. BRITANNICA, https://www.britannica.com/topic/Spanish-language (last visited Apr. 26, 2022).

interpretation. Such discrepancies are inherent in interpretation; they can never be rooted out. Any attempt to do so would result in bland, singular versions of Spanish and English that do not reflect the myriad of cultures that speak them. The only solution to the issues that exist with interpretation would be to not need interpretation and to provide services to Spanish speakers totally *in Spanish*. Providing interpretation services serves the melting pot vision. Providing services in one's native language contributes to the delicious salad bowl.

A. The Dangerous Consequences of Reliance on Interpretation

As discussed previously, inadequate interpretation in medical scenarios can result in risk to a person's life. Issues in courtroom interpretation risk someone's freedom *and* have the power to do irreparable damage to the legitimacy of our justice system. The discrepancies in the two languages that are being used by an interpreter can have disastrous results in the courtroom. Patricia Michelsen-King, a professor of interpretation, remembers sitting in a courtroom, observing a proceeding in preparation to become a courtroom interpreter herself, when she witnessed a man shout, "I didn't rape anybody!"[45] The man's interpreter had conveyed his traffic "violation" to him as a "*violación*."[46] *Violación*, despite its being an obvious cognate, does not mean violation—it means rape.[47] Based on his interpreter's trusted word, the man thought he was being accused of a rape instead of a much less serious traffic *infracción*.[48] For that man, the situation was resolved in the moment, but many, many others are not so lucky.[49] Clearly, despite the federal government's insistence that not providing services in an individual's native language is discriminatory,[50] Spanish speakers are still being done a disservice.

The incident illustrated above shows that quality, not just quantity, of courtroom interpreters is a major problem. As of 2016, eight states do not certify their courtroom interpreters, and even in states that do, bureaucratic issues abound.[51] Only thirty-two of the forty-two states that do certify their interpreters require that certified interpreters are given

45. Rebecca Beitsch, *In Many Courtrooms, Bad Interpreters Can Mean Justice Denied*, PEW CHARITABLE TRS.: STATELINE (Aug. 17, 2016), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/08/17/in-many-courtrooms-bad-interpreters-can-mean-justice-denied.

46. *Id.*

47. *See id.*

48. *See id.*

49. *See id.*

50. *See* Enforcement of Title VI, *supra* note 26.

51. *See* Beitsch, *supra* note 45.

preference over non-certified ones, and interpreters in those places say that adherence to that standard is inconsistent.[52] Those in positions of power sometimes seem to disregard interpreting guidelines altogether. Deborah Weissman, a law professor, penned a report on North Carolina's courtroom interpretation services and recounted that "[o]ne judge asked if there was 'someone in an orange jumpsuit' who could translate, under the assumption that there might be a Latino defendant that could interpret."[53] Such a casual display of racism from what is supposed to be an impartial judge is not limited to North Carolina. Similar incidents have occurred in New York City too, despite the city's boasting a highly multicultural and multiracial population.[54] Several judges based in the Queens borough of the city reprimanded "potential jurors with limited English skills" on numerous different occasions, "telling them they have to take language lessons or return to court to prove their proficiency."[55] The scary messages undoubtedly intimidated the citizens, who may not have known that such demands hold no legal weight.[56]

Inherent issues with interpretation, when coupled with individuals' personal prejudices in the courtroom, create a Molotov cocktail ready to be aimed at justice. Translation and interpretation issues do not only do a disservice to plaintiffs and defendants or petitioners and respondents, but they also chip away at the efficiency of our court system and the pillars of equality and justice on which it stands. Creating a fully bilingual English-Spanish court system serves the best interests of everyone who values the principle of equal justice, not just bilingual plaintiffs, defendants, and jurors.

B. Interpretation Issues in the Courtroom

There are countless examples illustrating the need to reach the admittedly gargantuan goal expressed throughout this Note. In 2010, the Colusa County, California, judge presiding over the seemingly slam-dunk

52. *See id.*

53. *Id.*

54. *See* Stephen Rex Brown, *Exclusive: Queens Judges Threaten Jurors for Bad English and Order Them to Take Language Lessons*, N.Y. DAILY NEWS (Mar. 20, 2017, 4:00 AM), https://www.nydailynews.com/new-york/queens/queens-judges-threaten-jurors-bad-english-article-1.3002840. As of the Census Bureau's July 1, 2021, estimate, approximately 72.7% of New York City residents self-identified as non-white or multiracial. *See QuickFacts: New York City, New York*, U.S. CENSUS BUREAU (July 1, 2021), https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork/PST120221#PST120221.

55. *See* Brown, *supra* note 54.

56. *See id.*

criminal case of Cathy Mendoza declared a mistrial.[57] Mendoza, who was accused of shooting and killing the victim with a sawed-off shotgun, was spared when the judge determined that errors in interpretation that had been brought to his attention were "too serious to correct or to allow the trial to continue."[58] In that case, the lack of quality interpretation helped the defendant, but, consequently, the victim's family was robbed of justice.[59]

Similarly, a Minnesota case was drawn out as a result of disagreements over the quality of the two court-appointed interpreters.[60] Borjas-Vazquez was on trial for the sexual assault of his young niece.[61] The jury found him guilty, and motions were filed shortly thereafter, prior to sentencing.[62] The defendant's new counsel—Borjas-Vazquez retained a new lawyer after the guilty verdict—argued that the interpretation at Borjas-Vazquez's trial was flawed.[63] In the affidavit submitted with the motions for a continuance of the sentencing hearing and access to the transcript of the hearing, Borjas-Vazquez's wife claimed that she did not understand the interpreters and therefore was left doubting the responses she gave.[64] She "described the interpreters as having confusion among themselves[.]"[65] Borjas-Vazquez's counsel reviewed the transcript and, presumably still doubting the accuracy, requested a second continuance and a copy of the audio of the trial.[66] Because of court rules, the district court declined to release the audio.[67] Moreover, the district court, in reviewing the trial, came to an altogether different conclusion than did Borjas-Vazquez's wife.[68] In the court's opinion, the "two interpreters . . . frequently helped each other, checked with each other, [and] consulted when they felt they needed to to [sic] make sure they were providing consistent interpretation."[69] The court viewed the interpretation not as confusing but rather as thorough and

57. *See* Susan Meeker, *Mistrial Declared in Colusa County Murder Case*, APPEAL DEMOCRAT (Nov. 1, 2013), https://www.appeal-democrat.com/mistrial-declared-in-colusa-county-murder-case/article_a6edf1a9-882f-556e-9622-c5acecf1a2b6.html.

58. *Id.*

59. This author attempted to acquire records from Colusa County several times but was unsuccessful.

60. *See* State v. Borjas-Vazquez, No. 27-CR-18-29643, 2020 WL 7689721, at *1–2 (Minn. Ct. App. Dec. 28, 2020).

61. *Id.* at *1.

62. *See id.*

63. *See id.*

64. *See id.*

65. *Id.*

66. *See id.*

67. *See id.*

68. *See id.* at *2.

69. *Id.* at *1.

meticulous. Additionally, the court was unconvinced that Borjas-Vazquez and his wife had difficulty understanding the interpreters, as neither of them raised the issue during trial, nor did their attorneys.[70] The district court consequently denied the petition for a second continuance.[71] That, combined with the denial of access to the audio recordings of the initial trial, led to Borjas-Vazquez's appeal.[72] His conviction was upheld by the appellate court, though, which was equally unconvinced by his arguments.[73] Recognizing that Borjas-Vazquez had the burden to show that the allegedly inadequate interpretation precluded him from his right to a fair trial, the court of appeals determined that he did not fulfill that requirement.[74] The court of appeals agreed with the findings of the district court and additionally relied upon the fact that during his presentence investigation, Borjas-Vazquez said, "[t]he jury heard my version. They heard what I had to say and they already found me guilty and I said what I had to say."[75] Such a statement did not allude to any confusion in the interpretation or unfairness as a result thereof, according to the court of appeals.[76]

The *Borjas-Vazquez* case illuminates the fact that even a state that properly uses its interpreters—and even provides two!—is not fully protected from language-based appeals. Borjas-Vazquez had the benefit of bilingual lawyers but not the benefit of a bilingual jury and judge. A fully bilingual framework would have enabled the trial to proceed entirely in Spanish, eliminating any doubt over Borjas-Vazquez's understanding or that of his wife. Such a system would have contributed to the efficiency of the courts and would have cleared doubts as to the fairness of the interpretation and, more broadly, the trial itself.

Interpretation issues have presented themselves in even more complicated ways in criminal trials. In Nebraska, a court was forced to reckon with an argument that a translator's English translation of out-of-court statements made by the defendant in Spanish were inadmissible hearsay (the court did not agree with the argument).[77] In another case, which occurred in Washington, an interpreter was stopped before interpreting to the jury the witness's testimony that was being given in Spanish, as it was discovered that the witness was using terms that

70. *See id.* at *2.
71. *Id.* at *4.
72. *See id.* at *1–2.
73. *See id.* at *2–4.
74. *See id.* at *3.
75. *See id.*
76. *See id.*
77. *See* State v. Martinez, 946 N.W.2d 445, 452 (Neb. 2010).

differed from the topic being discussed.[78] The Washington Court of Appeals was asked to determine whether this action, in combination with other factors not relevant to this Note, deprived Irias Sanchez of his right to a fair trial.[79] The court upheld the conviction, holding that the various issues on appeal, including the interpretation one, "did not prejudice Irias such that he was denied a fair trial."[80]

The negative consequences of not having a bilingual English-Spanish court system extend to civil litigation as well. In a New York City landlord-tenant dispute, interpretation issues exacerbated by the coronavirus pandemic were at the heart of a motion for an indefinite stay of the proceeding.[81] A pretrial conference was conducted virtually because of the pandemic, and one of the respondents claimed she had difficulty hearing the interpreter over the other voices on the conference.[82] The court suggested that, at trial, perhaps the interpreter could remain muted on the conference and separately call that respondent and interpret over the telephone, but the respondent's counsel apparently expressed worry about the interpreter's overall competence off the record.[83] In reviewing the motion, the court was unpersuaded by the respondent's arguments.[84] The court once again asserted that both parties' agreeing to direct phone interpretation for the respondent in question could be an adequate remedy.[85] The court offered another option too, saying that concerns over quality could be assuaged by requesting sequential interpretation on the record instead, acknowledging that while such a method would surely lengthen trial time, "a trial['s] tak[ing] longer does not mean that a trial should not be had."[86] The coronavirus pandemic has only exacerbated the language-based issues that already existed in our monolingual justice system.

In creating a bilingual system, clarity will emerge as to what to do with bilingual police officers, lawyers, and jurors—not just the parties of a civil or criminal proceeding or their interpreters. The crux of issues that arise as a result of the monolingual system does not have to simply be whether a competent interpreter exists or not; the problem is much more

78. State v. Irias Sanchez, No. 78858-2-I, 2020 WL 1157212, at *5 (Wash. Ct. App. Mar. 9, 2020).
79. *See id.*
80. *Id.* at *5–6.
81. *See* Wyona Apartments LLC v. Ramirez, 137 N.Y.S.3d 653, 655 (N.Y. Civ. Ct. 2020).
82. *Id.* at 655–56.
83. *See id.* at 655, 658.
84. *Id.* at 658–59.
85. *Id.* at 658.
86. *Id.*

complex and far-reaching. In the famous *Batson*[87] case, the Supreme Court determined that jurors' competence cannot be challenged during voir dire if the basis is their race or national origin.[88] However, crafty attorneys quickly adjusted their arguments in voir dire in order to strike multilingual jurors.[89] Instead of focusing on a juror's language abilities, a lawyer would ask if the juror foresees being able to focus solely on the interpreter's English version of what is being said in Spanish, as opposed to making her own determinations of the best interpretation.[90] This gray area poses new difficulties for everyone involved in a hearing. Jurors who understand the native language of a party may be the most likely to fully comprehend what the person is saying, complete with the emotion and nuance that is often sacrificed in interpretation. That juror may technically be absorbing the clearest record of events by being able to understand both languages in the courtroom. If a Spanish-speaking individual were able to access a jury of their peers that spoke their language, there would be no doubt around what they are attempting to convey or, conversely, around what the interpreter is understanding.

Because of the lack of a bilingual framework, courts are left with two choices: (1) to painstakingly analyze the validity of interpretation and translation services at the onset in their initial decisions or (2) to proceed without thorough investigation into the impact the language may have on the trial and risk a language-based appeal. Oftentimes, even taking the former approach is not sufficient, and a clever attorney will be able to bring a language-based appeal anyway.

C. Interpretation Issues Outside the Courtroom

Bilingual police officers are often at the root of appeals since the lack of a bilingual justice system framework devalues their bilingualism instead of effectively utilizing it. In *Ipina-Garcia v. Commonwealth*, the defendant entered a conditional guilty plea to murder, among other charges, after his motion to suppress the statements he made during a police interrogation was denied.[91] The State was forced to litigate Ipina-Garcia's appeal of the denial. Ipina-Garcia argued that the waiver of his

87. Batson v. Kentucky, 476 U.S. 79 (1986).

88. *See* A. Lee Valentine II, Note, *My Ears Hear More than English: Granting Multilingual Jurors Accommodations and Treating Multilingualism as a Common Type of Juror Expertise*, 56 B.C. L. REV. 1249, 1254–55 (2015) (citing *Batson*, 476 U.S. at 88, 100).

89. *See id.* at 1256 (discussing the United States Supreme Court holding that use of peremptory challenges on prospective multilingual jurors does not violate *Batson* or the Equal Protection Clause).

90. *Id.*

91. Ipina-Garcia v. Commonwealth, No. 2019-SC-000189-MR, 2020 WL 2091822, at *2–3 (Ky. Apr. 30, 2020).

Miranda rights was invalid, as the police officer who advised him of them in Spanish provided an inadequate translation of the warnings.[92] He cited the fact that the officer was not using a pre-translated version of his *Miranda* rights and was instead interpreting them on the spot.[93] He also claimed that he only nodded in response to the officer's words, which "can mean something different than 'yes' in Hispanic culture."[94] The court acknowledged that the Spanish-speaking officer's interpretation of the *Miranda* warnings "may have differed slightly" from the recitation given by his colleague in English but concluded that such minute differences "did not materially alter the substance of the *Miranda* warnings."[95] This case is a prime example of the inefficacy of the current monolingual framework of the entire justice system.[96] Once a commitment to enacting a bilingual English-Spanish justice system is made, actions such as those taken by Officer Bueno in *Ipina-Garcia* will not lie at the heart of appeals because the effects of a bilingual framework will spread to every aspect of the system.

The loopholes inherent in the monolingual framework allow for valid language-based appeals—even if they are extremely weak. For example, prior to moving on to other bases for appeal, the defendant in *Commonwealth v. Velasco* attempted to suppress his written consent to giving a DNA sample, claiming that he did not have adequate skill in understanding and speaking Spanish, as his first language was arguably Mixteco.[97] The officer who provided the consent form—in Spanish—to Velasco contended that he and the defendant had carried on a conversation in Spanish years prior to collecting the DNA sample and again communicated in the language during the consent and collection process.[98] Witnesses for both sides contested the defendant's language ability, but the court was ultimately persuaded by the testimony of the officer who provided the consent form to the defendant.[99] The officer testified that Velasco was able to read and understand the form and even asked questions about it.[100] Ultimately, the case went to trial after the

92. *See id.* at *3–6.
93. *Id.* at *5.
94. *Id.*
95. *See id.* at *6.
96. Interpretation of *Miranda* rights from English to Spanish by police officers is a common issue to raise on appeal for Spanish-speaking defendants. For another example of this, see People v. Garcia, 120 N.Y.S.3d 721 (N.Y. Sup. Ct. 2020).
97. *See* Commonwealth v. Velasco, No. 423 MDA 2019, 2019 WL 6358998, at *1–2 (Pa. Super. Ct. Nov. 27, 2019).
98. *See id.* at *2.
99. *See id.* at *2–3.
100. *See id.* at *3–4.

court determined that the language comprehension was not a genuine issue.[101]

A Kansas court dealt with a somewhat similar argument in *State v. Garcia-Barron*, but Garcia-Barron and his counsel proffered a craftier argument in dealing with the Spanish-speaking police officer in the case.[102] Garcia-Barron argued that his *Miranda* waiver was invalid because the State had not appointed him an interpreter prior to questioning.[103] However, similar to the officer in *Velasco*, the officer in this case presented Garcia-Barron with a written waiver form.[104] The officer then went through the contents of the form with Garcia-Barron, in Spanish, at which point Garcia-Barron signed the form.[105] The interrogation then continued in Spanish.[106] Garcia-Barron and his legal team not only cleverly argued that the waiver was invalid because he was not appointed an interpreter, as previously mentioned, but they also argued that the officer could not himself be considered an interpreter.[107] Surprisingly, the court actually agreed with some of Garcia-Barron's arguments—but the ruling was still not in his favor. The court recognized that it is a right for someone to have an interpreter appointed to them if one is needed but were also quick to clarify that the absence of such an interpreter does not "necessarily render a confession involuntary."[108] Likewise, the court agreed with Garcia-Barron that the officer could not possibly have been an interpreter; however, for the court, this was of little to no importance.[109] The court reasoned that the interrogation between an officer competent in the Spanish language, such as the one in this case, and an individual also competent in that language was nothing out of the ordinary—it was comparable to myriad interrogations of the same caliber that occur across the country.[110] In this regard, the Kansas Court of Appeals was taking for granted aspects of a bilingual justice system despite the lack of one concretely in play. Perhaps in the not-so-distant future, the logic employed by the Kansas Court of Appeals will be supported by an institutional bilingual framework.

101. *See id.* at *3.
102. State v. Garcia-Barron, 329 P.3d 1247 (Kan. Ct. App. 2014).
103. *Id.* at 1250.
104. *See id.* at 1249.
105. *Id.*
106. *See id.* at 1249–50.
107. *See id.* at 1250.
108. *Id.*
109. *See id.* at 1251.
110. *See id.*

Yet another example of a language-based appeal rooted in police behavior was seen in *United States v. Cruz-Zamora*.[111] This case revolved around a motion to suppress evidence acquired during a search of a car.[112] After being stopped by a state trooper, Cruz-Zamora asked the officer if he spoke Spanish, which the officer did not.[113] The officer then proceeded to use Google Translate to converse with Cruz-Zamora, attempting to verify his identity, as he was driving a car with a suspended registration that Cruz-Zamora identified as belonging to his girlfriend.[114] Cruz-Zamora was about to be let off with a warning when the officer decided to change course, asking if he could ask some more questions.[115] Continuing to use Google Translate to facilitate the impromptu questioning, the officer was able to comprehend that Cruz-Zamora was carrying a large amount of cash in the car, which Cruz-Zamora stated was to be used to purchase a car for himself.[116] His interest presumably piqued, the officer then used a combination of Google Translate and gestures to ask the defendant for permission to search his car.[117] Per the officer's testimony, Cruz-Zamora consented to the search, which yielded 14 pounds of illegal drugs.[118]

In court, Cruz-Zamora contended that he did not understand the officer's questions and certainly did not comprehend that he was being asked for consent to have his vehicle searched.[119] In support of his motion to suppress, two interpreters testified as to the unreliability of Google Translate as a means to interpret a full conversation.[120] In agreement with what has been previously discussed in this Note, one of the interpreters acknowledged that Google Translate may be an effective tool for some literal translations but is often useless in terms of conveying colloquial language or slang.[121] Both experts determined that there were multiple occasions where the defendant did not understand the question being posed to him and therefore had to assume what he was being asked by the officer.[122]

111. United States v. Cruz-Zamora, 318 F.Supp.3d 1264 (D. Kan. 2018), *appeal dismissed*, No. 18-3122, 2018 WL 6718613 (10th Cir. Oct. 23, 2018).
112. *See id.* 1268–69.
113. *See id.* at 1266.
114. *See id.*
115. *See id.*
116. *See id.* at 1266–67.
117. *See id.* at 1267.
118. *Id.*
119. *Id.*
120. *See id.*
121. *Id.*
122. *Id.* at 1268.

As a result of the confusion of the search, Cruz-Zamora presented a Fourth Amendment argument for why the evidence should be suppressed: the search of his vehicle was unreasonable because he did not and "*could not* knowingly consent to the search" given the language barrier.[123] A warrantless search is permitted by the Fourth Amendment, provided that consent was "freely and voluntarily given."[124] The court recognized that language ability must factor into an analysis of whether consent was freely and voluntarily given.[125]

The court relied on two cases for its analysis: *United States v. Hernandez*[126] and *United States v. Zhang*.[127] Both cases involved police questioning of individuals with low levels of English comprehension.[128] The court, however, distinguished Cruz-Zamora's interaction from those in the other two cases.

The court in *Hernandez* determined that the eponymous defendant had enough grasp of the English language to qualify his consent as freely and voluntarily given, as he properly answered each of the officer's questions, he was able to communicate his profession and current whereabouts to the officer, and he answered in the affirmative when the officer asked, in English, to search his car.[129] Likely more decisive was the additional written request to search that the defendant was able to read—in Spanish—after it was presented to him by the officer.[130]

Like Cruz-Zamora, Zhang tried to get evidence seized from the search of her vehicle suppressed as well.[131] Despite Zhang's arguments that she did not speak English well enough to understand the officer's questioning, "the court put more weight on the defendant's conduct in response to the officer's questions."[132] The court also relied on a phone call Zhang made from jail in which she conveyed that she felt she had made a mistake in giving the officer permission to search her vehicle—meaning that she knew all along that her consent was being requested.[133]

123. *Id.* at 1268–69 (emphasis added).
124. *Id.* at 1268 (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973)).
125. *Id.* (citing United States v. Hernandez, 893 F. Supp. 952, 961 (D. Kan. 1995)).
126. *Hernandez*, 893 F. Supp. 952.
127. United States v. Zhang, No. 04-40084-01-JAR, 2005 WL 627978 (D. Kan. March 10, 2005).
128. *See Hernandez*, 893 F. Supp. at 961; *Zhang*, 2005 WL 627978, at *4–5.
129. *See Hernandez*, 893 F. Supp. at 961.
130. *See id.*
131. *See Zhang*, 2005 WL 627978, at *1.
132. *See* United States v. Cruz-Zamora, 318 F. Supp. 3d 1264, 1268–69 (2018) (citing *Zhang*, 2005 WL 627978, at *4–5).
133. *See Zhang*, 2005 WL 627978, at *5.

Unlike the other two defendants, Cruz-Zamora succeeded in his motion.[134] The combination of the inaccuracy of Google Translate and the confusion that Cruz-Zamora displayed in the recording of the traffic stop convinced the court that there was sincere doubt as to whether he knew he was consenting to a search of his vehicle.[135] Of course, based on the other cases previously discussed in this Note, one is left to ponder if the outcome would have differed had the officer in question been bilingual.

For some, the monolingual system and its limitations on bilingual police officers and other parties have had extraordinarily dire consequences. Angel Gonzalez, for example, suffered greatly as a result of his low level of English.[136] He was released from prison after serving twenty years for a crime he did not commit.[137] Despite the fact that the detectives interrogating him spoke Spanish, the officers switched back and forth between English and Spanish, resulting in Gonzalez's writing a statement in Spanish.[138] Detective Marquez typed a transcription of the statement in English and it was later found out that the resulting two documents were "completely different."[139] DNA testing exonerated Gonzalez midway through his forty-year sentence.[140] Though one can only speculate, the outcome may have been much different had the officers been enabled by a bilingual system to carry out their actions entirely in Spanish instead of changing between English and Spanish, which they did, presumably as a result of needing records and reports in English.

III. MOVING TOWARD A BILINGUAL SYSTEM

The United States would not be unique in its quest to create a more accessible, bilingual justice system. In Tibet, where the population is only approximately 1% of that of the United States,[141] "[t]he number of judges

134. *See Cruz-Zamora*, 318 F. Supp. 3d at 1272; *Hernandez*, 893 F. Supp. at 963; *Zhang*, 2005 WL 627978, at *7.

135. *See Cruz-Zamora*, 318 F. Supp. 3d at 1269–70.

136. *See* Angel Gonzalez, *Time Served: 20 Years*, INNOCENCE PROJECT, https://innocenceproject.org/cases/angel-gonzalez/ (last visited Apr. 26, 2022).

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *See* Palden Nyima & Daqiong, *Majority Tibetan Population Continues to Grow*, CHINADAILY.COM.CN (July 17, 2020, 4:16 PM), https://www.chinadaily.com.cn/a/202007/17/WS5f115e48a31083481725a55e.html; *U.S. and World Population Clock*, U.S. CENSUS BUREAU, https://www.census.gov/popclock/ (last visited Apr. 26, 2022). The 2010 National Population Census estimated Tibet's population to be around three million people. Nyima

and their backups that can speak Chinese and Tibetan has reached 537."[142] Despite its small population, Tibet has adapted to the needs of its people. The number of legal cases in the region has been climbing as a result of the growing legal awareness of Tibetan farmers and herdsmen.[143] Recognizing that these individuals often possess lower levels of Mandarin, the Higher People's Court has taken the initiative to train more bilingual judges and staffers.[144] According to the court's chief judge, a whopping 487 training sessions were provided in 2018 alone.[145] Though Tibet is, of course, a much smaller area compared to the United States and therefore the process may have been simpler for Tibet, the United States has ample resources to begin to mobilize a plan for a bilingual justice system.

Ireland, too, has been grappling with language issues in its court system. Historically, "[i]t has long been accepted that . . . people have a constitutional right [found in Article 8 of the Irish Constitution] to present or defend their case before the Courts in Irish."[146] Prior to 2017, however, the determination of what that constitutional right really meant was unclear.[147] Until that time, it was an unstated but widely-held expectation that this constitutional guarantee meant that a person had the right to interpretation and translation services so that their case could be dealt with in Irish.[148]

In November of 2017, an Irish citizen named Diarmaid Ó Cadhla turned that assumption on its head when he requested that the case against him be conducted entirely in Irish and that the judge, too, be proficient in both Irish and English.[149] The district court held that Ó Cadhla could present his case in Irish and be appointed a translator, "but that he did not have an entitlement to be assigned a bilingual judge."[150] On appeal, he asserted that the content and impact of his defense would be diminished "*through the prism of translation*."[151] He relied on Article

& Daqiong, *supra* note 141. As of 2018, it had grown by approximately 430,000 individuals. *Id.*

142. *Tibet Has 537 Bilingual Judges and Backups*, TIBET.CN (Jan. 15, 2019, 9:15 AM), http://eng.tibet.cn/eng/news/tibetan/201901/t20190115_6480639.html.

143. *Id.*

144. *See id.*

145. *Id.*

146. Zoe Richardson, *Is There a Constitutional Entitlement to a Bilingual Judge?*, FIELDFISHER (July 29, 2019), https://www.fieldfisher.com/en-ie/locations/ireland/ireland-blog/is-there-a-constitutional-entitlement-to-a-bilingual-judge.

147. *See id.*

148. *See id.*

149. *See id.*

150. *Id.*

151. *Id.*

8, but the State pushed back by resting on the aforementioned assumption that an interpreter or translator could resolve the issue.[152]

Justice Ní Raifeartaigh, the presiding judge, was forced to settle the Article 8 debate and clarify the provision once and for all.[153] She disagreed with the State's interpretation of the constitution, which it rooted in the 2003 Official Languages Act, stating that the State's reliance on such an Act to interpret the constitution was incorrect.[154] She held that "[t]o refuse the application for a bilingual District Court Judge simply because the applicant speaks English w[ould be] contrary to the whole spirit of Article 8."[155] Therefore, Justice Ní Raifeartaigh continued, the State has a duty to "*at least [make] some effort to assign a bilingual judge*."[156] This case and the decision of Justice Ní Raifeartaigh recognize the need for a legal system to evolve as the needs of the people subject to it or accessing it evolve too.

During 2017, while Ireland was working on clarifying its stance on the bilingualism of its courts, another country was beginning a similar process. Canada, though, embarked on this journey more intentionally through the legislature. The House of Commons Standing Committee on Official Languages conducted a study in the spring of that year to measure access to justice in both official languages, which are English and French.[157] The stated goal of the study was to "review this issue of major importance to Canadians . . . and, based on the evidence and briefs presented, prepare recommendations to help the Government of Canada achieve truly equal access to justice in both official languages."[158] Similar to what the United States would likely have to do prior to establishing a fully bilingual court system, the Committee relied on scholars to determine several viable options for requiring bilingualism of judges in the country.[159] One scholar opined that a constitutional amendment would be needed;[160] others suggested "that Parliament has the jurisdiction to unilaterally make bilingualism necessary for appointment to the Supreme Court . . . by amending an existing statute or passing new legislation."[161] After listening to the various experts, the Committee

152. *See id.*
153. *See id.*
154. *See id.*
155. *Id.*
156. *Id.*
157. *See* DENIS PARADIS, STANDING COMM. ON OFF. LANGUAGES, 42D PARLIAMENT, ENSURING JUSTICE IS DONE IN BOTH OFFICIAL LANGUAGES 5, 12 (1st Sess. 2017) (Can.).
158. *Id.* at 5.
159. *See id.* at 6–11.
160. *See id.* at 10.
161. *See id.* at 6–8.

made two recommendations: (1) that the government put forth a bill during the 42nd Parliament that would guarantee the appointment of bilingual judges to the Canadian Supreme Court and (2) that the government amend the Official Languages Act so that the existing requirement of understanding both official languages is also binding on the supreme court judges.[162] In addition to those recommendations, the Committee sketched out some means of evaluating superior court and supreme court judges' language abilities and the issues that may arise in utilizing those methods, resulting in several recommendations regarding defining, measuring, and increasing bilingualism.[163] The sweeping report offered countless other suggestions with respect to federal funding of language initiatives—including translation, standardization, and training—and community groups.[164] The report also included a detailed addendum of proposed spending from 2018 through 2023 to work towards the stated goal of increasing the bilingualism of the justice system in Canada.[165] The total recommended investments added up to 76.5 million Canadian dollars.[166] Making good on its word, the Canadian Parliament introduced Bill C-381 in October 2017, which sought to amend the Judges Act in several ways regarding bilingualism.[167]

The United States' neighbor to the north has made great strides in attempting to linguistically modernize their justice system. Their goal is similar to the goal proposed in this Note: to envision and enact a fully bilingual justice system. Their government has taken the lead on this initiative. Despite the lack of action on the part of the federal government, progress is being made in the United States, even if the progress is only evident in ideological shifts. For example, Jodi Morales, a public defender in the New York City neighborhood of the Bronx, has been advocating for trials in Spanish since at least 2018.[168] In the Bronx, less than half of the residents speak English.[169] But, because of the local court laws, jurors must be proficient in English.[170] Such a stark contrast between the law and the reality of the community it supposedly serves has hilariously preposterous results: one Bronx juror said that at a trial

162. *See id.* at 13.
163. *See id.* at 16–23.
164. *See id.* at 2438.
165. *Id.* at 47–48.
166. *Id.* at 48.
167. *See generally* Bill C-381, 42d Parliament (1st Sess. 2017) (Can.).
168. *See* Terena Bell, *The Case for Spanish-Speaking Courts in Places like the Bronx—and All Over the US*, QUARTZ (Feb. 16, 2018), https://qz.com/1202841/the-case-for-spanish-speaking-courts-in-places-like-the-bronx-and-all-over-the-us/.
169. *Id.*
170. *Id.*

in which he participated, everyone involved, including every juror, spoke Spanish, and yet the State paid an interpreter for the duration of the proceedings.[171] However, as has already been discussed ad nauseam in this Note, the consequences of such a ridiculously out-of-touch law present real dangers. Morales, astutely reiterating the fact that the United States *does not* have an official language, recognized that "[i]f we're trying to have a fair justice system, then we need to make the justice system accessible to the constituents and make it reflect the community."[172] If equal justice is not reason enough for a bilingual court system to be implemented, perhaps money will talk—places like New York with large populations of non-English speakers spend millions per year on translators and interpreters.[173] Valuing bilingualism and beginning the process of incorporating it into the justice system could cut that number down sizably.

CONCLUSION

Despite its history as a country built upon immigration from countless countries and the fact that the nation has no codified official language, the United States has gained a reputation for being firmly monolingual. The numbers, however, tell a different story, and the concept that speaking English somehow makes one "more American" is quickly becoming a belief of the past. As more and more individuals in America grow accustomed to the linguistic evolution that is occurring, the need for a bilingual justice system will only become more obvious. A nation that claims to value justice for all must not become complacent in the expectation that such a promise is being fulfilled. The myriad stories that have been discussed throughout this Note of individuals affected by the justice system's monolingual state, when combined with the difficulties and flaws inherent in interpretation, provide more than ample evidence that the system, as it stands, is falling short of ensuring equal justice for all. The United States has the means to start the process of placing all residents on equal footing in the eyes of the law. The time to recognize that Spanish speakers deserve equal access to justice *es ahora*.

171. *See id.*
172. *See id.*
173. *See id.*