
NOTE

LINGUISTIC LEGAL DESERTS: ADDRESSING LANGUAGE ACCESS IN THE UNITED STATES LEGAL SYSTEM FOR LIMITED ENGLISH PROFICIENT ASIAN AMERICANS AND PACIFIC ISLANDERS

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ABSTRACT

Language access remains a significant access to justice issue in the United States. While many rural Americans face “legal deserts” due to the physical distance between themselves and accessible legal assistance, this Note establishes the term “linguistic legal desert” to describe how limited English proficient (“LEP”) individuals face a “linguistic distance” between themselves and linguistically adequate legal assistance. Specifically, for LEP Asian Americans and Pacific Islanders (“A APIs”), cultural considerations and the vast linguistic diversity of the A API population in the United States pose unique challenges to addressing linguistic legal deserts. While language access has generally been acknowledged as an issue within the legal field, many language access measures are reactive to the existence of linguistic legal deserts, focusing on linguistic assistance in the courtroom. While these efforts are important, they do not address the lack of access to linguistically adequate legal assistance that lies at the root of linguistic legal deserts.

This Note highlights the way that especially vulnerable LEP A APIs and their needs have been largely overlooked by the United States legal system. It explores the existence of linguistic legal deserts for LEP A APIs and emphasizes the importance of inclusive, substantive, and proactive efforts to increase access to linguistically adequate legal assistance. This Note ultimately advocates for a multipronged approach utilizing law school efforts, non-attorney legal assistance, and collaborations with A API community organizations to address linguistic legal deserts for LEP A APIs.

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INTRODUCTION

“The law is a profession of words,”¹ and language plays a significant role in the law. Language creates laws and regulations and forms judicial opinions and jury instructions.² Indeed, the outcome of a case can turn on the meaning of a single word.³ As such, understanding language used in the legal system is crucial.⁴ The goal of communication is at the heart of language, and legal language is no exception. Indeed, “[t]o be of any use, the language of the law . . . must not only express but convey thought.”⁵ People should be able to understand the laws they are expected to follow, the contracts they bind themselves to, and the legal system they live under. However, legal language is often complex and convoluted, utilizing specialized vocabulary and unusual syntax that can cause great difficulty in understanding for those that are unaccustomed, especially litigants and criminal defendants.⁶

In recognition of the importance of both understanding legal language and the difficulties of doing so, the “plain English” movement aims to utilize simplified wording to enable broader public understanding of legal documents and legal language.⁷ While a positive step, these efforts largely only benefit the *English-proficient* public.⁸ To ensure inclusive, equitable, and meaningful participation in the legal system, it is necessary to consider limited English proficient (“LEP”) individuals and the difficulties they face when interacting with the legal system.⁹

¹ DAVID MELLINKOFF, *THE LANGUAGE OF THE LAW* vii (Resource Publ’ns, 2004) (1963).

² SANFORD SCHANE, *LANGUAGE AND THE LAW* 1 (2006).

³ *See, e.g.*, *Frigalment Importing Co. v. B.N.S. Int’l Sales Corp.*, 190 F. Supp. 116, 117 (S.D.N.Y. 1960) (deciding contracts case based on meaning of “chicken”); Debra Cassens Weiss, *Did Suspect Ask for a ‘Lawyer Dog’ or a ‘Lawyer, Dawg’? Request Was Ambiguous, Justice Says*, A.B.A. J. (Nov. 1, 2017, 10:57 AM), https://www.abajournal.com/news/article/did_suspect_ask_for_a_lawyer_dog_or_a_lawyer_dawg_request_was_ambiguous_jus [<https://perma.cc/8M9M-JGMD>] (describing Louisiana Supreme Court’s refusal to hear appeal from suspect who claims police should not have questioned him after lower court found his request for a “lawyer, dawg” ambiguous).

⁴ SCHANE, *supra* note 2, at 1 (“The legal implications of language continue to extend far beyond the courtroom A little reflection suffices to reveal just how essential language is to the legal enterprise.”).

⁵ MELLINKOFF, *supra* note 1, at vii.

⁶ *See* SCHANE, *supra* note 2, at 3. While limited English proficiency affects parties to legal transactions as well, the scope of this Note will only cover the issue as it surrounds litigation.

⁷ *Id.* at 3 (describing plain-English movement as “an endeavour to counteract the negative effects of legalese”).

⁸ *See infra* Section I.B (discussing members of the limited English proficient population in the United States and challenges they face navigating the legal system even when it uses “plain English,” as a result of limited English proficiency).

⁹ Joann Lee, Marisa Christensen Lundin, Ana Paula Noguez Mercado & Alena Uliasz, *Language Justice in Legal Services*, MGMT. INFO. EXCH. J., Winter 2019, at 3, 3-6 (noting that limited English proficient populations have “historically faced challenges in seeking access to . . . legal remedies” and asserting that language justice, “[t]he systematic fair treatment of

LEP individuals are “[i]ndividuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.”¹⁰ Language access refers to the ability of LEP individuals to utilize the same services and participate in the same programs as the English proficient population, which is critical to ensure access to justice for this group.¹¹ With limited English abilities compounding the general difficulties of understanding legal language, LEP individuals face steep obstacles in attempting to navigate the U.S. legal system. Providing language access in the legal system necessitates a move beyond simply providing legal documents and legal assistance in plain English; such documents and assistance should be provided in an LEP individual’s primary language to ensure they are able to participate in the justice system.¹²

In recognition of the challenges that LEP individuals face within the legal system, government and non-governmental entities and organizations have taken steps to provide greater language access to LEP individuals.¹³ For example, on the federal level, Executive Order 13,166 directs federal agencies to take steps to ensure LEP individuals have “meaningful access” to their services.¹⁴ On the state and municipal levels, many states and localities have language access laws and regulations.¹⁵ The American Bar Association (“ABA”) has also issued its “Standards on Language Access in Courts” as

people of all language communities and respect for everyone’s fundamental language rights,” is “a critical part of effective and inclusive legal services”).

¹⁰ *Commonly Asked Questions and Answers Regarding Limited English Proficient (LEP) Individuals*, LEP.GOV, <https://www.lep.gov/faq/faqs-rights-lep-individuals/commonly-asked-questions-and-answers-regarding-limited-english> [https://perma.cc/P9TL-NHP4] (last visited Apr. 20, 2022).

¹¹ U.S. DOJ, DEPARTMENT OF JUSTICE LANGUAGE ACCESS PLAN 3 (2012), <https://www.justice.gov/sites/default/files/open/legacy/2012/05/07/language-access-plan.pdf> [https://perma.cc/D7ZC-K2TH] (defining “meaningful access” for LEPs as “access that is not significantly restricted, delayed or inferior as compared to programs or activities provided to English proficient individuals”).

¹² See Lee et al., *supra* note 9, at 9 (providing an example of language access in which written materials are translated into LEP individuals’ primary languages and interpretation is provided such that all members can “meaningfully participate” in the U.S. legal system).

¹³ See Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 16, 2000) (addressing the need to “improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency”).

¹⁴ *Id.*

¹⁵ See, e.g., MASS. GEN. LAWS ANN. ch. 221C, §§ 1-7 (West 2022) (establishing LEP individuals have “a right to the assistance of a qualified interpreter”); HAW. REV. STAT. ANN. §§ 321C-1 to -7 (West 2022) (“The purpose of this chapter is to affirmatively address, on account of national origin, the language access needs of limited English proficient persons.”); N.Y. Admin. Code ch. 10, §8-1003 (2003) (“The agency and all agency contractors shall provide free language assistance services as required by this chapter to limited English proficient individuals.”).

guidance for courts to implement language access measures.¹⁶ However, the current measures to address language access issues in the legal system do not and cannot ensure complete language access, and furthermore do not adequately account for differences between LEP groups.¹⁷

Specifically, for LEP Asian Americans and Pacific Islanders (“AAPIs”), cultural considerations and the vast linguistic diversity of the AAPI population in the United States pose unique challenges to accessing justice.¹⁸ There are over 2,300 languages spoken throughout the continent of Asia, and over 300 languages spoken in China alone.¹⁹ Partially as a result, the language access issues LEP AAPIs face persist despite existing efforts to address language access in the legal system.²⁰ Moreover, certain proposed solutions, specifically increasing funding for the Legal Services Corporation (“LSC”) and increasing certified court interpreters, are inadequate to fully address these issues for the LEP AAPI population.²¹ LSC funding, while beneficial to many legal services organizations in assisting low-income and marginalized clients, cannot be used

¹⁶ AM. BAR ASS’N, STANDARDS FOR LANGUAGE ACCESS IN COURTS I (2012) [hereinafter, AM. BAR ASS’N, STANDARDS] (introducing the standards as a means to “assist courts in designing, implementing, and enforcing a comprehensive system of language access services that is suited to the needs of the communities they serve”).

¹⁷ See *infra* Part II (discussing in depth the issues faced by LEP individuals in linguistic legal deserts and inadequacy of certain language access measures in addressing linguistic legal deserts).

¹⁸ See *Estimates of Undocumented and Eligible-to-Naturalize Populations by State*, CTR. FOR MIGRATION STUD., <http://data.cmsny.org/> [<https://perma.cc/Y5PH-UQFC>] (last visited Apr. 20, 2022) (listing, as of 2019, over 1.7 million undocumented Asian immigrants); *Unauthorized Immigrant Populations by Country and Region, Top States and Counties of Residence, 2019*, MIGRATION POL’Y INST., <http://www.migrationpolicy.org/programs/data-hub/charts/unauthorized-immigrant-populations-country-and-region-top-state-and-county> [<https://perma.cc/PM4L-GB5J>] (last visited Apr. 20, 2022) (listing over 1.6 million undocumented Asian immigrants).

¹⁹ *Asia*, ETHNOLOGUE, <https://www.ethnologue.com/region/Asia> [<https://perma.cc/YB9K-CTUZ>] (last visited Apr. 20, 2022) (listing 2,314 living languages in Asia); *Eastern Asia*, ETHNOLOGUE, <https://www.ethnologue.com/region/EAS> [<https://perma.cc/5FPX-2R95>] (last visited Apr. 20, 2022) (listing 305 living languages in China).

²⁰ MEREDITH HIGASHI, SUZAN CHAU, DANIEL HU, STACEY WANG, LES JIN, TINA MATSUOKA & NAVDEEP SINGH, NAT’L ASIAN PAC. AM. BAR ASS’N RSCH. INST., INTERPRETING JUSTICE: PROGRESS AND CHALLENGES ON LANGUAGE ACCESS 17 (2017) (noting persisting challenges in addressing language access issues, including limited language access requirements in federal courts, inconsistency of language access requirements between state and federal courts, and lack of written materials in AAPI languages).

²¹ See *infra* Section II.C (describing that, while these solutions do have some merit, increased LSC funding is uncertain, unreliable, and excludes vulnerable noncitizen LEP AAPIs, and increasing the number of interpreters only offers short-term solution, rather than addressing source of linguistic legal deserts).

to assist many noncitizens without legal immigration status.²² As nearly one in seven AAPI immigrants is within this group, this constitutes a large part of the AAPI population.²³ Focusing on increasing certified interpreters in courts would yield limited results given the vast linguistic diversity of LEP AAPIs and furthermore is a reactive response that does not substantively address the root issue of linguistic legal deserts, as will be discussed in this Note.²⁴

The inability to access legal assistance is not unique to LEP individuals.²⁵ Rural Americans face a similar, serious access-to-justice problem due to the lack of accessible legal assistance in rural areas.²⁶ The term “legal desert” has been used to describe this situation.²⁷ Though rural Americans and LEP individuals face distinct challenges, the concept of a legal desert is also applicable to describe the lack of access to adequate legal assistance for LEP individuals as a result of limited English proficiency.²⁸ In this Note, I apply the concept of a legal desert to LEP AAPIs and have created the term “linguistic legal desert” to describe this idea.

²² *Can LSC Grantees Represent Undocumented Immigrants?*, LEGAL SERVS. CORP., <https://www.lsc.gov/media-center/publications/can-lsc-grantees-represent-undocumented-immigrants> [<https://perma.cc/WY9R-5CTT>] (last visited Apr. 20, 2022) (noting that pursuant to Federal law, “LSC grantees can represent only U.S. citizens, with limited exceptions”).

²³ Karthick Ramakrishnan & Sono Shah, *One out of Every 7 Asian Immigrants Is Undocumented*, AAPI DATA BLOG (Sept. 8, 2017), <http://aapidata.com/blog/asian-undoc-1in7/> [<https://perma.cc/6WTV-WS5G>].

²⁴ See *infra* Section II.C.2 (describing in-depth the reasons why increasing the number of court interpreters is an insufficient solution to linguistic legal deserts for LEP AAPIs).

²⁵ LEGAL SERVS. CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 8* (2017) (listing seniors, rural residents, veterans, persons with disabilities, parents of minor children, and survivors of domestic violence or sexual assault as groups facing difficulties accessing legal assistance).

²⁶ Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15, 19 (2018) (“[T]hree-quarters of America’s low-income rural residents faced at least one civil legal problem in a year, while nearly a quarter of rural residents experienced six or more civil legal problems in a year. Yet only 14% of rural residents received adequate assistance for their civil legal problems, a rate less than half the national average.” (footnote omitted)).

²⁷ See *Legal Deserts: How Texas, New York Are Tackling the Problem*, A.B.A. (Feb. 15, 2020) [hereinafter *Legal Deserts*], <https://www.americanbar.org/news/abanews/aba-news-archives/2020/02/legal-deserts--how-texas--new-york-are-tackling-the-problem/> (defining legal deserts as large geographic areas with few lawyers).

²⁸ See Lee et al., *supra* note 9, at 3-6 (providing anecdotes and statistics that document the difficulties LEPs face in accessing legal services); Limited English proficiency also hinders LEP individuals’ ability to access court services. Lynn W. Davis & Scott A. Isaacson, *Ensuring Equal Access to Justice for Limited English Proficiency Individuals*, JUDGES’ J., Summer 2017, at 21, 22 (discussing language for LEP persons as “a barrier to court services” due to LEP individuals’ limited understanding of their “rights, rules, and . . . responsibilities”).

I propose a multipronged solution to address linguistic legal deserts for LEP AAPIs. Law schools should exercise their role in addressing linguistic legal deserts by actively recruiting AAPI students and students with language skills, and incorporating language access into their curricula and extracurricular programming. Law schools are institutions that shape the thought and future of the legal field,²⁹ yet taking advantage of their potential to address linguistic legal deserts has not been considered. Various forms of non-attorney legal assistance—specifically non-attorney legal practitioner programs, legal help centers in courtrooms, and technological legal assistance—that are specifically targeted at assisting LEP AAPIs should be implemented. While non-attorney legal assistance is certainly not a new idea,³⁰ I discuss its potential to assist LEP individuals specifically. Lastly, legal services organizations should partner with AAPI community organizations to bridge cultural distances to connect LEP AAPIs with linguistically adequate legal assistance.³¹ Other scholars have discussed the importance of such legal-community organization partnerships, and I agree that this is an important step to provide linguistically adequate legal assistance for LEP AAPIs.³² While this proposed multipronged approach is targeted towards addressing linguistic legal deserts for AAPIs, it is ultimately a partial solution. Linguistic legal deserts are complex and deeply rooted in the U.S. legal system, but their effects on LEP AAPIs and how to address them have not been widely acknowledged.³³ Further research and engagement with the issue of linguistic legal deserts are needed, and other innovative solutions may become relevant in that process.

As this Note discusses linguistic legal deserts as they affect Asian Americans and Pacific Islanders, a brief explanation and exploration of the term and its use is helpful. The United States Census Bureau defines “Asian” as “[a] person

²⁹ See Pruitt et al., *supra* note 26, at 147 (arguing that “[l]aw schools possess a level of human capital; student energy; name recognition; community status; and an inherent motivation to learn, build, and develop that lends itself to projects and initiatives beyond the capacities of other institutions”).

³⁰ See Jean C. Han, *The Good Notario: Exploring Limited Licensure for Non-attorney Immigration Practitioners*, 64 VILL. L. REV. 165, 173 (2019) (“Several areas of law exist in which the practice of law by non-attorneys is allowed and even encouraged, depending on the jurisdiction: real estate transactions; tax preparation help; appointment of guardians ad litem; and victim advocates who accompany domestic violence survivors to court to petition for temporary restraining orders . . .”).

³¹ See *infra* Section III.C (detailing legal and AAPI community organization collaboration).

³² See GABRIELLE HAMMOND, ASIAN PAC. AM. LEGAL CTR., EXPANDING LEGAL SERVICES: SERVING LIMITED ENGLISH PROFICIENT ASIANS AND PACIFIC ISLANDERS 16-18 (2003) (discussing the importance of partnerships between legal organizations and AAPI community organizations).

³³ There are few sources discussing language access issues in the legal field for AAPI individuals. See *generally id.*; NAT’L ASIAN PAC. AM. BAR ASS’N, INCREASING ACCESS TO JUSTICE FOR LIMITED ENGLISH PROFICIENT ASIAN PACIFIC AMERICANS (2007); HIGASHI ET AL., *supra* note 20.

having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent” and defines “Native Hawaiian and Other Pacific Islander” as “[a] person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.”³⁴ In this Note, I use the term “Asian American and Pacific Islander” to refer to both of these groups.

“AAPI” is one of several terms used to refer to Asian Americans and Pacific Islanders. It represents more than a simple classifying label. The term is “ultimately political and part of a dynamic, continuing process of self-determination and self-identification”³⁵ for this group, especially in light of the recent horrific surge in anti-Asian hate and violence.³⁶ However, it is important to note that use of the term AAPI can sometimes be inaccurate and problematic. The term has been at times used incorrectly to encompass Pacific Islanders when discussing issues that only affect Asian Americans, exclusive of Pacific

³⁴ *About the Topic of Race*, U.S. CENSUS BUREAU, <https://www.census.gov/topics/population/race/about.html> [<https://perma.cc/TP6E-SZHQ>] (last updated Mar. 1, 2022).

³⁵ ASIAN PAC. INST. ON GENDER-BASED VIOLENCE, ASIAN & PACIFIC ISLANDER IDENTITIES: DEFINITIONS & GROUPINGS 1 (2011), <https://s3.amazonaws.com/gbv-wp-uploads/wp-content/uploads/2017/07/20183008/API-identities-definitions-groupings-2011.pdf> [<https://perma.cc/79VK-VYQ8>]; see Anna Purna Kambhampaty, *In 1968, These Activists Coined the Term ‘Asian American’—And Helped Shape Decades of Advocacy*, TIME (May 22, 2020, 12:00 PM), <https://time.com/5837805/asian-american-history/> (discussing activist origins of term “Asian American,” stating “‘Asian American’ wasn’t just a handy umbrella term: by uniting those subgroups linguistically, it also helped unite activists in their fight for greater equality”).

³⁶ See, e.g., STOP AAPI HATE, STOP AAPI HATE NATIONAL REPORT MARCH 19, 2020-SEPTEMBER 30, 2021, at 1-3 (2021), <https://stopaapihate.org/wp-content/uploads/2021/11/21-SAH-NationalReport2-v2.pdf> [<https://perma.cc/9C4S-4MW6>] (noting “[o]ne in five Asian Americans . . . and Pacific Islanders . . . have experienced a hate incident the past year” and 10,370 hate instances were reported to Stop AAPI Hate between March 19, 2020, and September 30, 2021, and acknowledging because these numbers only reflect instances reported to organization, “they only reflect a small number of the hate incidents occurring nationwide”); Kimmy Yam, *Anti-Asian Hate Crimes Increased 339 Percent Nationwide Last Year, Report Says*, NBC NEWS (Feb. 14, 2022, 10:23 AM), <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-339-percent-nationwide-last-year-repo-rcna14282> [<https://perma.cc/X3PV-DYHN>] (“[A]nti-Asian hate crime increased by 339 percent last year compared to the year before, with New York, San Francisco, Los Angeles and other cities surpassing their record numbers in 2020.”). A poignant example of this surge was the March 2021 tragedy in Atlanta, where a white male shooter killed eight people, six of whom were Asian women. See Jiayang Fan, *The Atlanta Shooting and the Dehumanizing of Asian Women*, NEW YORKER (Mar. 19, 2021), <https://www.newyorker.com/news/daily-comment/the-atlanta-shooting-and-the-dehumanizing-of-asian-women>. However, while there has been a recent spike in anti-AAPI hate and violence, it is important to note that “[r]acist acts towards Asian Americans are not new.” Vinay Harpalani, *Can “Asians” Truly Be Americans?*, 27 WASH. & LEE J.C.R. & SOC. JUST. 559, 561-71 (2021) [hereinafter Harpalani, *Americans*] (describing rise in bias and hate crimes against Asians since the onset of the COVID-19 pandemic while acknowledging long history of racist acts towards Asian Americans).

Islanders.³⁷ In addition, while there are shared experiences across this group, the use of this term can erase the vast diversity of the group and the important distinctions between the over forty ethnic subgroups contained within Asian Americans and Pacific Islanders.³⁸ These include the significant disparities in educational attainment and healthcare outcomes among AAPI ethnic groups and the fact that AAPIs are currently the most economically divided racial group in the United States.³⁹ This can thus promote the harmful and erroneous model minority myth that all AAPIs are a singular monolith of “successful minorities,” which has been utilized to set AAPIs against other racial minorities in the United States.⁴⁰

Acknowledging this context, in this Note, I use the term “Asian Americans and Pacific Islanders” to describe both of these groups as a whole, while recognizing that linguistic legal deserts affect AAPI ethnic groups differently, because linguistic legal deserts nonetheless still do affect all groups of limited English proficient Asian Americans and Pacific Islanders. All LEP AAPIs face the consequences of the inability to access linguistically adequate legal

³⁷ See Li Zhou, *The Inadequacy of the Term “Asian American,”* VOX (May 5, 2021, 10:10 AM), <https://www.vox.com/identities/22380197/asian-american-pacific-islander-aapi-heritage-anti-asian-hate-attacks> [https://perma.cc/HD4U-6C7T] (noting, for example, that lumping Pacific Islanders into the larger AAPI category skewed statistics on higher education—“62 percent of AAPI adults . . . have completed an associate’s degree or higher, compared to 28 percent of Native Hawaiians and Pacific [I]slanders of the same age”).

³⁸ ASIAN PAC. INST. ON GENDER-BASED VIOLENCE, *supra* note 35, at 2 (“There is tremendous diversity, with Asia having more than 40 countries, and there are more ethnicities than countries, e.g., the Hmong are an ethnic group from Laos.”).

³⁹ See Zhou, *supra* note 37 (“Asian Americans not only have the largest income gap of any racial group but also massive health care, education, and economic disparities that rarely get addressed.”).

⁴⁰ *Id.* (describing model minority myth as “racist trope that suggests that all Asian Americans are well off and pits them against other groups”); Vinay Harpalani, *Asian Americans, Racial Stereotypes, and Elite University Admissions*, 102 B.U. L. REV. 233, 249 (2022) [hereinafter Harpalani, *Admissions*] (stating model minority myth “obscures the vast diversity among Asian Americans and masks the discrimination and inequalities that they face”); Kat Chow, *‘Model Minority’ Myth Again Used as a Racial Wedge Between Asians and Blacks*, NPR (Apr. 19, 2017, 8:32 AM), <https://www.npr.org/sections/codeswitch/2017/04/19/524571669/model-minoritymyth-again-used-as-a-racial-wedge-between-asians-and-blacks> [https://perma.cc/P99Q-L5MK] (describing utilization of Asian Americans as racial wedge, which has effect of “[m]inimizing the role racism plays in the persistent struggle of other racial/ethnic minority groups—especially black Americans”). While the model minority myth is important and relevant to linguistic legal deserts for AAPIs, further explanation is beyond the scope of this Note. For further discussion of the model minority myth, see, for example, Harpalani, *Admissions, supra*, at 245–49, describing the history and effects of the model minority myth, particularly in the elite university admissions context and Harpalani, *Americans, supra* note 36, at 563–65, discussing the model minority myth in the context of Asian American racial stereotypes.

assistance.⁴¹ Furthermore, the very fact that LEP AAPIs cannot access the same privileges, programs, and legal assistance as English-proficient individuals due to linguistic legal deserts, in addition to the fact that LEP AAPIs already experience lower levels of education and wages than English-proficient individuals, refutes the idea of universal affluence and access across AAPI subgroups that the model minority myth proclaims.⁴²

Part I of this Note further discusses legal deserts, LEP AAPIs in the United States, and language access in the United States legal system. Part II presents the issue of linguistic legal deserts for LEP AAPIs and examines two proposed solutions that do not adequately address the linguistic legal deserts that LEP AAPIs face: increasing funding for the LSC and increasing the number of certified interpreters in courts. Finally, Part III discusses law schools' role in addressing linguistic legal deserts, utilization of non-attorney legal assistance, and collaborations between legal services organizations and AAPI community organizations as solutions that should be taken together to address the linguistic legal deserts LEP AAPIs face.

I. LEGAL DESERTS, LIMITED ENGLISH PROFICIENCY, AND LANGUAGE ACCESS IN THE U.S. LEGAL SYSTEM

Difficulty in obtaining legal assistance is fundamentally an issue of access to justice. When a person cannot obtain adequate legal assistance, they are hindered in their ability to achieve just and equitable outcomes under the law.⁴³ This is the case for many LEP AAPIs, who often cannot obtain linguistically adequate legal assistance—without which there cannot be adequate legal assistance because an individual that cannot effectively communicate with their representative cannot receive effective legal assistance—even if legal assistance is physically available. Section I.A discusses the concept of legal deserts and proposes that LEP AAPIs face “linguistic legal deserts” in attempting to obtain

⁴¹ Many other sources discuss the term AAPI and differences between AAPI ethnic subgroups. See, e.g., Zhou, *supra* note 37 (discussing many reasons why “AAPI” is an insufficient and overly vague label used to represent a diverse group); Abby Budiman & Neil G. Ruiz, *Key Facts About Asian Origin Groups in the U.S.*, PEW RSCH. CTR. (Apr. 29, 2021), <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s/> [<https://perma.cc/ECN9-S7SG>] (highlighting diversity within Asian American population and breaking population statistics down by specific origin group).

⁴² See *infra* Section II.A (discussing how “LEP individuals experience higher rates of poverty and have lower levels of education than the general population”). While this Note does not focus on the model minority myth in particular, it is important to note that the existence of linguistic legal deserts for LEP AAPIs in themselves rejects and refutes the model minority myth.

⁴³ In *Powell v. Alabama*, 285 U.S. 45 (1932), the Supreme Court recognized the importance of legal assistance in legal proceedings, stating the “right to be heard [in legal proceedings] would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.” *Id.* at 68-69; see also Deborah L. Rhode, *Whatever Happened to Access to Justice?*, 42 LOY. L.A. L. REV. 869, 869 (2009) (“Litigants who remain unrepresented are less likely to obtain a fair outcome in court.”).

adequate legal assistance. Section I.B examines the U.S. LEP AAPI population, first discussing limited English proficiency generally, then turning to the LEP AAPI population specifically. Section I.C then explores the state of language access in the United States.

A. *Legal Deserts*

There is a dearth of legal services available in rural America.⁴⁴ While approximately 20% of Americans live in rural areas, many rural counties contain few or no lawyers.⁴⁵ Indeed, “40% of all counties and county-equivalents in the United States . . . have less than one lawyer per 1,000 residents.”⁴⁶ This situation is referred to as a “legal desert,” a large geographic expanse with few or no lawyers, specifically in rural America,⁴⁷ and captures the idea that rural Americans are an especially vulnerable population regarding difficulties in obtaining legal assistance.⁴⁸ In addition, rural Americans often face other obstacles to accessing legal assistance, including inadequate public transportation, internet, and mobile phone services.⁴⁹ This is an especially troubling condition given that rural communities are disproportionately affected by various social problems including poverty, health issues and outcomes, and educational disparities, all of which in turn can result in greater legal issues.⁵⁰

Moreover, while rural Americans suffer disproportionately from these and other social problems, only 14% received adequate legal assistance to address their civil legal problems.⁵¹ This issue can be demonstrated by the fact that, while an individual in Nevada’s Clark County (which contains Las Vegas) would have over 6,000 lawyers in their county, someone living only a couple counties away in Esmeralda County would have *one* lawyer in their county, with two neighboring counties, Mineral County and Nye County, having only three and thirty-one lawyers, respectively.⁵² This lack of accessible legal assistance for rural Americans exacerbates the already disproportionate struggles they face.

⁴⁴ See AM. BAR ASS’N, ABA PROFILE OF THE LEGAL PROFESSION 2020, at 2-22 (2020) [hereinafter AM. BAR ASS’N, ABA PROFILE] (discussing legal deserts).

⁴⁵ See Pruitt et al., *supra* note 26, at 22 (“While about 20% of our nation’s population lives in rural America, only 2% of our nation’s small law practices are located there.”).

⁴⁶ See AM. BAR ASS’N, ABA PROFILE, *supra* note 44, at 2.

⁴⁷ See *Legal Deserts*, *supra* note 27 (defining legal deserts as “huge areas with few lawyers, so rural residents have to drive far to find attorneys to handle [their legal matters]”).

⁴⁸ See LEGAL SERVS. CORP., *supra* note 25, at 8 (identifying rural Americans as vulnerable population warranting special focus).

⁴⁹ See Pruitt et al., *supra* note 26, at 22 (describing “vast distances, insufficient (or nonexistent) public transit, and lack of reliable communication tools, including cell phone service and broadband internet” as barriers to accessing lawyers (footnotes omitted)).

⁵⁰ *Id.* at 18-19.

⁵¹ *Id.* (noting that this rate is less than half the national average).

⁵² See AM. BAR ASS’N, ABA PROFILE, *supra* note 44, at 4; *Nevada County Map with County Seat Cities*, GEOLOGY.COM, <https://geology.com/county-map/nevada.shtml> [<https://perma.cc/MF7A-697P>] (last visited Apr. 20, 2022).

In addition, such a lack of access to justice may result in individuals not understanding their rights or not knowing they can seek legal relief for issues they face, further disenfranchising them from the legal system.⁵³ Furthermore, legal deserts also pose a strong risk to residents because “in situations where there is a known lack of access to justice, those in positions of power use the lack of a rule of law to exploit vulnerable populations.”⁵⁴

While the term “legal desert” has been used to describe the challenge that rural Americans face as a result of the scarcity of legal assistance in rural areas, I propose that the concept of a legal desert, and specifically the idea of “*linguistic* legal deserts,” may be used to describe a similar situation for LEP individuals. While LEP individuals may not face as high a bar as rural Americans do to physically accessing legal assistance,⁵⁵ LEP AAPIs are still a highly vulnerable group because they cannot access adequate legal assistance due to *linguistic*, rather than physical, distance.

B. *The Limited English Proficient Asian American and Pacific Islander Population in the United States*

1. Limited English Proficiency

“Language is perhaps the most conspicuous characteristic of cultural difference and is at the core of one’s identity.”⁵⁶ The United States contains vast linguistic diversity. Over 350 languages are spoken in the country with over 100 languages spoken in each of the fifteen largest metro areas.⁵⁷ Approximately

⁵³ See Pruitt et al., *supra* note 26, at 23 (“As a further consequence of so many barriers to access [to justice], individuals who live in areas without adequate or accessible legal representation may fail to know their legal rights or to recognize that legal recourse may be available for a particular problem.”).

⁵⁴ *Id.* (quoting Robin Runge, *Addressing the Access to Justice Crisis in Rural America*, HUM. RTS. MAG., Aug. 2014, at 15, 16); see Lexye L. Shockley, *Regulating Boss Hogg—Citizen Empowerment and Rural Government Accountability*, 4 SAVANNAH L. REV. 225, 231-32 (2017) (stating that, regarding public official accountability, while the law should require impartiality and responsibility from public officials and “‘level [the] playing field’ in the community by removing unfair advantages gained through the abuse of relationships with those in power within government,” in areas lacking strong rule of law and ethics standards, ethical breaches may occur without a method to address them (alteration in original) (quoting Vincent R. Johnson, *Ethics in Government at the Local Level*, 36 SETON HALL L. REV. 715, 723 (2006))).

⁵⁵ While rural Americans are physically unable to access legal representation due to their geographic location, LEP individuals in non-rural areas may be able to utilize interpreters to access legal assistance.

⁵⁶ Gillian Dutton, Beth Lyon, Jayesh M. Rathod & Deborah M. Weissman, *Promoting Language Access in the Legal Academy*, 13 U. MD. L.J. RACE RELIGION GENDER & CLASS 6, 9 (2013).

⁵⁷ Press Release, U.S. Census Bureau, *Census Bureau Reports at Least 350 Languages Spoken in U.S. Homes* (Nov. 3, 2015), <https://www.census.gov/newsroom/archives/2015-cb15-185.html> [<https://perma.cc/LN76-UB25>].

61.6 million individuals in the United States speak a language other than English at home, and about 25.1 million speak English less than “very well” and are thus classified as LEP.⁵⁸ In the AAPI community, 34% of individuals are LEP, with some ethnic subgroups having an even higher LEP rate.⁵⁹

An individual’s English proficiency is an important characteristic because it has significant effects on their life. It is highly tied to life outcomes including “earnings, occupational mobility, quality of health care, and the ability to participate in civic and political life.”⁶⁰ Furthermore, “[t]he inability to speak the dominant language has long served as motivation for anti-immigrant sentiment in the United States,” and “[t]hose who lack proficiency in English are often subject to disadvantage and discrimination, and accordingly suffer fundamental inequality.”⁶¹ However, it is important to note that the issue is not an individual’s limited English proficiency but rather the lack of adequate support for LEP individuals in the United States. This lack of support leaves LEP individuals especially vulnerable to exploitation for which legal recourse is deserved but often not received. In the healthcare setting, without an adequate interpreter, an LEP individual may receive inadequate, or fail to receive, health care due to barriers in patient-provider communication.⁶² Regarding governmental benefits, if an LEP individual’s benefits are wrongfully terminated and the agency notification is not sent in the individual’s language (which it likely is not), they

⁵⁸ Jie Zong & Jeanne Batalova, *The Limited English Proficient Population in the United States in 2013*, MIGRATION POL’Y INST. (July 8, 2015), <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states-2013> [https://perma.cc/PUJ3-97RP] (finding where “Limited English Proficient (LEP) refers to any person age 5 and older who reported speaking English less than ‘very well’ as classified by the U.S. Census Bureau,” and “English proficient refers to people who reported speaking English only or ‘very well’ . . . the LEP population represented 8 percent of the total U.S. population ages 5 and older”); see *Ability to Speak English (ENG)*, U.S. CENSUS BUREAU, <https://data.census.gov/mdat/#/search?ds=ACSPUMS5Y2019&cv=ENG&wt=PWGTP> [https://perma.cc/79BM-EMW7] (last visited Apr. 20, 2022) (reporting that, as of 2019, 25,624,151 individuals in the United States spoke English less than “very well” out of the 324,697,795 total national population).

⁵⁹ *Infographic—Percentage of Asian Americans with Limited English Proficiency (2017)*, AAPI DATA (May 28, 2020), <https://aapidata.com/infographic-limited-english-2-2/> [https://perma.cc/FV9Y-AX6W] (reporting some AAPI subgroups with lower levels of LEP status, and several groups with LEP rates above overall AAPI LEP rates where 38% of Hmong, 40% of Chinese, 40% of Cambodians, 46% of Koreans, and 50% Vietnamese are LEP).

⁶⁰ KARTHICK RAMAKRISHNAN & FARAH Z. AHMAD, CTR. FOR AM. PROGRESS, STATE OF ASIAN AMERICANS AND PACIFIC ISLANDERS SERIES: A MULTIFACETED PORTRAIT OF A GROWING POPULATION 34 (2014).

⁶¹ Dutton et al., *supra* note 56, at 9 (footnote omitted).

⁶² See Lee et al., *supra* note 9, at 6 (“Language barriers are harmful to health, with research showing that immigrants with limited English are more likely to report poor health than English speaking immigrants.”).

may miss the deadline to file an appeal because they cannot read or respond to the communication.⁶³

The legal system is no exception.⁶⁴ If an LEP individual is in court without legal representation, without an adequate interpreter there may be no way for the individual to even understand what is happening in the courtroom, much less effectively represent themselves. Or, in the potentially worse alternative, they may utilize an unqualified interpreter—sometimes a friend or family member, a child, or simply someone in the courtroom that speaks the language—which increases the risk of inaccurate interpretation and the potential of inserting interpreter biases and ulterior motives into the case.⁶⁵ This can have disastrous impacts on LEP litigants including affecting the outcome of their cases and requiring them to go through the expensive appeals process due to such interpreter errors.⁶⁶ Looking forward, it is projected that there will be 78 million immigrants in the United States by 2065, many of whom will be LEP.⁶⁷ As such, addressing access-to-justice issues facing LEP individuals will remain highly important for decades to come.

2. Limited English Proficient Asian Americans and Pacific Islanders

Within the LEP population in the United States, AAPIs are a notable subgroup. Between 2000 and 2019, the Asian population in the United States grew 81%, making it the fastest-growing racial group in the United States,⁶⁸ and AAPIs are projected to become the largest immigrant group by 2055.⁶⁹ Over 5.5 million of the 25.7 million LEP individuals are AAPI.⁷⁰ Moreover, the AAPI

⁶³ As an example, the Social Security Administration (“SSA”) sends notices to communicate important information including the agency’s decisions, the process to dispute decisions, and recipients’ rights and responsibilities. *Understanding Supplemental Security Income Social Security Notices and Letters--2021 Edition*, SOC. SEC. ADMIN., <https://www.ssa.gov/ssi/text-notice-ussi.htm> [<https://perma.cc/BM5W-DBL5>] (last visited Apr. 20, 2022). However, aside from English and Spanish, the SSA states that it “[does] not issue notices in any other languages.” *Program Operations Manual System (POMS)*, SOC. SEC. ADMIN., <https://secure.ssa.gov/poms.nsf/lnx/0910601225> [<https://perma.cc/X4FE-4XS7>] (last visited Apr. 20, 2022).

⁶⁴ See Lee et al., *supra* note 9, at 3-6.

⁶⁵ See HIGASHI ET AL., *supra* note 20, at 33.

⁶⁶ *Id.* at 28.

⁶⁷ *Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065*, PEW RSCH. CTR. (Sept. 28, 2015) [hereinafter *Modern Immigration Wave*], <https://www.pewresearch.org/hispanic/2015/09/28/modern-immigration-wave-brings-59-million-to-u-s-driving-population-growth-and-change-through-2065/> [<https://perma.cc/F93Y-UA3R>].

⁶⁸ See Abby Budiman & Neil G. Ruiz, *Key Facts About Asian Americans, A Diverse and Growing Population*, PEW RSCH. CTR. (Apr. 29, 2021), <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-americans/> [<https://perma.cc/5429-F559>].

⁶⁹ *Modern Immigration Wave*, *supra* note 67.

⁷⁰ See HIGASHI ET AL., *supra* note 20, at 4 (“The national LEP population has also increased

population in the United States is the population with the highest proportion of individuals that speak a language other than English in the home,⁷¹ and one in five AAPI households are “linguistically isolated,” meaning the household contains no individuals over the age of fourteen that can speak English at least “very well.”⁷²

In addition, while the national poverty rate is 13%, certain AAPI subgroups have poverty rates at or above this number including the Mongolian (25%), Hmong (17%), and Cambodian (13%) populations.⁷³ As a result, like many other low-income groups, low-income LEP AAPIs are “prone to being exploited and failing to assert their rights,”⁷⁴ posing a significant risk, given the high number of LEP low-income AAPIs.

AAPIs also have significant linguistic diversity, diversity of national origin,⁷⁵ and unique cultural considerations that impact LEP AAPIs’ access to legal assistance. After Spanish, AAPI languages are among the most commonly used non-English languages in court proceedings.⁷⁶ However, while Spanish is the predominant language in the majority of Latin American countries, there is no such common predominant language spoken throughout Asia.⁷⁷ Of the 350 languages spoken in the United States, over 100 are AAPI languages.⁷⁸ Moreover, 77% of AAPIs speak a language other than English in their households, a number higher than that of any other population group.⁷⁹

in the last 10 years . . . to nearly 26 million, of whom more than 5.5 million are [AAPI].” (footnote omitted)).

⁷¹ RAMAKRISHNAN & AHMAD, *supra* note 60, at 34.

⁷² *Id.* at 38 (“[A]bout one in every five Asian American households is linguistically isolated.”).

⁷³ *Mongolians in the U.S. Fact Sheet*, PEW RSCH. CTR. (Apr. 29, 2021), <https://www.pewresearch.org/social-trends/fact-sheet/asian-americans-mongolians-in-the-u-s/> [<https://perma.cc/4NXB-D6D4>]; Abby Budiman, *Hmong in the U.S. Fact Sheet*, PEW RSCH. CTR. (Apr. 29, 2021) [hereinafter *Hmong in the U.S.*], <https://www.pewresearch.org/social-trends/fact-sheet/asian-americans-hmong-in-the-u-s/> [<https://perma.cc/4APW-8J6M>]; Abby Budiman, *Cambodians in the U.S. Fact Sheet*, PEW RSCH. CTR. (Apr. 29, 2021) [hereinafter *Cambodians in the U.S.*], <https://www.pewresearch.org/social-trends/fact-sheet/asian-americans-cambodians-in-the-u-s/#u-s-cambodian-population-living-in-poverty-2019> [<https://perma.cc/7366-KBJL>].

⁷⁴ See HAMMOND, *supra* note 32, at 9.

⁷⁵ See RAMAKRISHNAN & AHMAD, *supra* note 60, at 34 (“Asian Americans and Pacific Islanders have significant national origin or ethnic group diversity, and this is also reflected in the linguistic diversity of these populations.”).

⁷⁶ HIGASHI ET AL., *supra* note 20, at 28.

⁷⁷ There are over 2,300 languages spoken in Asia, and over 100 AAPI languages spoken in the United States. *Asia*, ETHNOLOGUE, *supra* note 19; see HIGASHI ET AL., *supra* note 20, at 9 (“More than one hundred Asian, Native Hawaiian, and Pacific Islander languages and dialects are spoken in the United States.”).

⁷⁸ See HIGASHI ET AL., *supra* note 20, at 9.

⁷⁹ *Id.*

C. *The State of Language Access in the U.S. Legal System*

Various institutions have recognized language access for LEP individuals in the U.S. legal system as an issue that must be addressed.⁸⁰ Title VI of the Civil Rights Act of 1964 (“Title VI”) is the statutory basis of federal language access mandates.⁸¹ Title VI states, “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance,” including state courts and federal agencies.⁸² While Title VI does not explicitly prevent discrimination on the basis of language, the Supreme Court recognized in *Lau v. Nichols*⁸³ that Title VI’s prohibition of discrimination based on national origin encompasses discrimination against individuals on the basis of language.⁸⁴

In *Lau*, Chinese students who did not speak English brought claims against a San Francisco school district for violating Title VI because it failed to provide supplemental English courses.⁸⁵ The Supreme Court stated that, as a result of this failure, “students who do not understand English are effectively foreclosed from any meaningful education.”⁸⁶ Furthermore, the Supreme Court held that students who did not speak English were discriminated against on the basis of their national origin in violation of Title VI.⁸⁷

In addition to Title VI, in 2000, President Clinton issued Executive Order 13,166, “Improving Access to Services for Persons with Limited English Proficiency.”⁸⁸ This order directs federal agencies and recipients of federal funding to examine their services and develop and implement a system to “provide meaningful access to their LEP applicants and beneficiaries.”⁸⁹ Under

⁸⁰ See Dutton et al., *supra* note 56, at 6 (“Since the 1960s, the United States government has paid increasing attention to the rights of language minorities.”).

⁸¹ 42 U.S.C. § 2000d.

⁸² *Id.* The fact that federal agencies are bound by Title VI’s antidiscrimination mandate implicates legal issues because LEP status can result in erroneous governmental benefits terminations if the agency does not comply with Title VI mandates regarding discrimination on the basis of language as national origin discrimination. Indeed, legal services organizations contain units dedicated to assisting clients with obtaining and maintaining governmental benefits. See, e.g., *Welfare: Preserving an Income Safety Net and Assisting the Transition to Work*, GREATER BOS. LEGAL SERVS., <https://www.gbls.org/our-work/welfare> [<https://perma.cc/J3VD-JPV8>] (last visited Apr. 20, 2022) (describing how Welfare Law Unit helps clients with nutritional assistance, financial assistance, and childcare benefits).

⁸³ *Lau v. Nichols*, 414 U.S. 563 (1974), *abrogated by* *Alexander v. Sandoval*, 532 U.S. 275 (2001) (abrogating *Lau* only regarding its finding that § 601 of Title VI reaches “beyond intentional discrimination”).

⁸⁴ *Id.* at 568-69.

⁸⁵ *Id.* at 564.

⁸⁶ *Id.* at 566.

⁸⁷ *Id.* at 567-69.

⁸⁸ Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 16, 2000).

⁸⁹ *Id.*

the order's mandates, federal agencies are required to "prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons" detailing steps the recipient will take to ensure meaningful access to agency programs and activities.⁹⁰ For agencies receiving federal financial assistance, each agency must further draft Title VI guidance tailored to its recipients detailing how standards established by the Department of Justice will be applied to their recipients.⁹¹ The Department of Justice also issued a general policy guidance document, establishing compliance standards to assist recipients of federal funding in carrying out their responsibilities under Executive Order 13,166.⁹²

Outside of the federal government, states and professional organizations have taken their own steps to address language access. Many states have implemented language access measures for LEP individuals including certifying courtroom interpreters, translating court forms and websites, providing guidance for staff and judges on working with interpreters, requiring that interpreters be offered free of charge to litigants, and establishing measures to assist LEP individuals outside of the courtroom.⁹³ Currently forty-two states certify court interpreters, thirty-seven states require the use of certified interpreters when available for LEP individuals with key interests in the proceedings, and forty-two states require judges and court staff to offer language services when requested or if it appears a party is not fluent in English.⁹⁴ However, while many states have taken the positive step of requiring interpreters *when available*, not all states have done so, with thirteen states failing to require that interpreters be provided in all civil cases where needed.⁹⁵ Given the limited number of interpreters in courtrooms and high number of potential individuals that would benefit from an interpreter, many LEP individuals in need of language assistance will not receive it where interpreters are not required.⁹⁶ In addition, court interpreters are only provided in court proceedings. However, few cases arrive at the trial stage, and

⁹⁰ *Id.*

⁹¹ *Id.* ("Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice.").

⁹² 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 (Aug. 16, 2000) ("The purpose of this document is to set forth general principles for agencies to apply in developing such guidelines for services to individuals with limited English proficiency (LEP).").

⁹³ See *supra* note 15 and accompanying text (discussing examples of such measures).

⁹⁴ *Language Access*, NAT'L CTR. FOR ACCESS TO JUST., <https://ncaj.org/state-rankings/2020/language-access> [<https://perma.cc/2ELV-7JXN>] (last visited Apr. 20, 2022) (identifying the number of states with recommended policies "to ensure language access in the justice system").

⁹⁵ *Id.*

⁹⁶ See *infra* Section II.C.2 (acknowledging the need for additional certified court interpreters while critiquing an increase in such interpreters as a standalone solution).

linguistically appropriate legal assistance is needed much earlier than this stage for LEP individuals to understand their legal issues.⁹⁷

Professional associations have also addressed language access issues. In 2012, the ABA published its *Standards for Language Access in Courts*.⁹⁸ These standards are intended to “assist courts in designing, implementing, and enforcing a comprehensive system of language access services that is suited to the needs of the communities they serve.”⁹⁹ While these standards are not legally binding, they are influential, especially given that the ABA worked with the Conference of Chief Justices and the Conference of State Court Administrators in creating the standards.¹⁰⁰ In addition, the National Asian Pacific American Bar Association has published two reports on language access for LEP AAPIs.¹⁰¹

However, despite widespread recognition of the need to provide LEP individuals with meaningful access to the legal system and measures taken by federal and state governments and prominent associations, the need for linguistically adequate access to legal assistance for LEP AAPIs persists.

II. LINGUISTIC LEGAL DESERTS FOR ASIAN AMERICANS AND PACIFIC ISLANDERS

As discussed, the lack of adequate support for LEP individuals has a serious impact on various aspects of their lives, limiting their ability to access and utilize fundamental services.¹⁰² In the legal context, LEP AAPI individuals face a significant barrier to accessing justice due to the lack of linguistically adequate legal assistance.¹⁰³ Section II.A discusses the concept of linguistic legal deserts and the consequences they have for LEP AAPIs. Section II.B highlights the unique issues of linguistic diversity and certain AAPI cultural considerations that must be accounted for in addressing linguistic legal deserts for LEP AAPIs. Section II.C then comments on and critiques two popular solutions for addressing this issue: increasing LSC funding and increasing certified court interpreters. As these proposed solutions are insufficient to ensure adequate legal assistance to LEP AAPIs, linguistic legal deserts remain a significant problem for LEP AAPIs.

⁹⁷ See HAMMOND, *supra* note 32, at 16-18 (“Ideally, LEP legal services clients would be assisted by bilingual attorneys, advocates and paralegals. However, the reality is that there are far more LEP clients and languages than there are bilingual persons able and willing to serve them; also, few legal aid programs have the resources to hire staff in all needed languages.”).

⁹⁸ See generally AM. BAR ASS’N, STANDARDS, *supra* note 16.

⁹⁹ *Id.* at 1.

¹⁰⁰ *Id.* at foreword; see HIGASHI ET AL., *supra* note 20, at 14 (identifying the ABA’s 2012 Standards for Language Access in Courts as “influential standards within the legal community”).

¹⁰¹ See generally HIGASHI ET AL., *supra* note 20; NAT’L ASIAN PAC. AM. BAR ASS’N, *supra* note 20.

¹⁰² See *supra* Section I.B (discussing challenges that LEP individuals face in accessing government benefits and the legal system).

¹⁰³ See *infra* Section II.A (discussing concept of linguistic legal deserts).

A. *Legal Deserts and Linguistic Legal Deserts*

Rural Americans and LEP AAPIs face similar struggles that make the concept of a linguistic legal desert apt to describe the lack of access to linguistically adequate legal assistance facing LEP AAPIs and demonstrate the importance of addressing the issue. Like rural Americans, LEP individuals experience higher rates of poverty and have lower levels of education than the general population, and linguistically isolated households experience these financial and educational disparities at even greater levels.¹⁰⁴ This heavily impacts LEP AAPI communities because one in five AAPI households in the United States is linguistically isolated.¹⁰⁵ In addition, LEP status also affects LEP individuals' access to life necessities including employment and health care.¹⁰⁶ Like rural Americans, the lack of available legal assistance for LEP AAPIs also exacerbates these already disproportionate struggles.¹⁰⁷

However, while rural Americans face legal deserts as a result of physical distance from available legal assistance, LEP AAPIs face linguistic legal deserts as a result of a “linguistic distance” between themselves and linguistically adequate legal assistance. Realistically, only a very small subset of attorneys would be able to assist any given LEP AAPI individual in need of legal assistance. As discussed, the availability of legal assistance may depend on an individual's geographic location. The ABA reports that as of 2021 there are 1,327,910 active attorneys in the United States,¹⁰⁸ but these attorneys are not proportionately distributed according to state populations,¹⁰⁹ and states that

¹⁰⁴ PAUL SIEGEL, ELIZABETH A. MARTIN & ROSALIND BRUNO, U.S. CENSUS BUREAU, LANGUAGE USE AND LINGUISTIC ISOLATION: HISTORICAL DATA AND METHODOLOGICAL ISSUES 8 (2001) (stating that linguistically isolated households “are poorer and less educated than the national norm, and include more recent immigrants”); see Pruitt et al., *supra* note 26, at 19 (discussing similar findings for rural communities).

¹⁰⁵ The rate of linguistic isolation among AAPI households is similar to that of Latino households (21%) but far greater than that of other groups. For example, the rate of linguistic isolation among white households is 4%. Furthermore, certain AAPI ethnic subgroups in the United States have even higher rates: 34% of Vietnamese households, 30% of Chinese households, and 29% of Korean households are linguistically isolated. See RAMAKRISHNAN & AHMAD, *supra* note 60, at 38-39.

¹⁰⁶ Lee et al., *supra* note 9, at 6 (noting that individuals who speak a language other than English at home have higher rates of poverty than general population and that language barriers have negative impacts on various aspects of an individual's life including education and healthcare).

¹⁰⁷ See *id.* (“Unsurprisingly, access to justice has proven difficult for individuals who speak a language other than English at home, who have higher rates of poverty than the general population nationally.”).

¹⁰⁸ AM. BAR ASS'N, ABA NATIONAL LAWYER POPULATION SURVEY: LAWYER POPULATION BY STATE (2021).

¹⁰⁹ For example, in 2021, New York had 185,076 active attorneys with a population of around 20 million, while Alabama had 14,897 attorneys for its population of around 5 million. See *id.*; *Quick Facts: New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts>

contain large rural areas have many counties with few lawyers.¹¹⁰ As such, LEP AAPIs in rural communities face heightened obstacles to obtaining legal assistance given the combined issues of needing linguistically adequate assistance in areas where legal assistance generally is already often highly limited. Moreover, within the number of active attorneys in any given area, only a fraction of them will have the legal expertise to assist in any particular legal field or matter.

Furthermore, of the attorneys that are physically accessible and have the knowledge to assist with any given legal issue, likely only a small portion of them speak an AAPI language. Given the vast linguistic diversity of AAPI populations in the United States,¹¹¹ this poses an acute problem for those LEP AAPIs that speak a lesser spoken AAPI language or dialect, as the likelihood of finding an attorney with foreign language ability in that language or dialect is even smaller.¹¹² In addition, the number of attorneys that could assist LEP AAPIs is still narrower than this already limited subset given the level of proficiency needed to provide adequate legal assistance.¹¹³ Conversational fluency in a foreign language is not sufficient to provide adequate legal assistance to LEP individuals:

Law is intimately bound up in a particular cultural and legal context, and bilingual lawyers must do more than simply acquire a specialized vocabulary. Instead, a lawyer functioning in a foreign language must be able to understand how certain concepts are interpreted and applied within a foreign legal system or by a client with limited English proficiency.¹¹⁴

Thus, LEP AAPIs face severe limitations in obtaining legal assistance because of the scarcity of available linguistically adequate legal assistance.

/NY [<https://perma.cc/8SVC-SBZ5>] (last visited Apr. 20, 2022); *Quick Facts: Alabama*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/AL> [<https://perma.cc/SRB2-NRK4>] (last visited Apr. 20, 2022).

¹¹⁰ See *supra* notes 44-46 (discussing legal deserts across rural America).

¹¹¹ See *infra* Section II.B (discussing linguistic diversity among AAPI populations, which collectively speak over 100 languages in the United States).

¹¹² For example, according to the most recent data available from the U.S. Census Bureau, while approximately 487,250 people speak Mandarin in the United States, only about fifty people speak the Hsiang language in the country. *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and over: 2009-2013*, U.S. CENSUS BUREAU [hereinafter *Detailed Languages Spoken at Home*], <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html> [<https://perma.cc/JY87-KNLV>] (last visited Apr. 20, 2022) (download Microsoft Excel file titled “Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States”).

¹¹³ See S.I. Strong, *Review Essay—Bilingual Legal Education in the United States: An Idea Whose Time Has Come?*, 64 J. LEGAL EDUC. 354, 358 (2014) (discussing how conversational fluency and bilingual legal dictionaries are insufficient to “provide legal advice across linguistic barriers”).

¹¹⁴ *Id.*

Another aspect distinguishing linguistic legal deserts from rural legal deserts is that, while both rural Americans and LEP individuals face great difficulties obtaining legal assistance and may be left without legal representation at court, LEP AAPIs face another added barrier within the courtroom due to their limited English proficiency.¹¹⁵ The consequences of linguistic legal deserts extend into the courtroom, where LEP pro se litigants continue to experience the impact of lacking linguistically adequate legal assistance while attempting to navigate a legal proceeding with limited English abilities.¹¹⁶

While implementing language access measures in the courtroom, such as increasing the number of certified interpreters, is certainly important and necessary, the reactive nature of these measures renders them an incomplete solution to addressing linguistic legal deserts. Instead of addressing the core problem of the lack of linguistically adequate legal assistance for LEP AAPIs, this solution only provides remedial assistance needed because of the issue. Addressing linguistic legal deserts also requires providing legal representation and other legal assistance that will protect LEP AAPIs from the alternative of entering a courtroom without any needed help.

Linguistic legal deserts have severe consequences for LEP AAPIs. Limited English proficiency is itself a factor tied to the mental health of immigrants and ethnic minorities that both directly and indirectly influences patterns of psychological distress.¹¹⁷ Furthermore, while LEP status can affect psychological distress for individuals indirectly through discrimination, for AAPIs specifically, LEP status has a “strong independent effect on psychological distress over and above perceived discrimination of any form, demographic variables, [socioeconomic status], and immigration-related factors.”¹¹⁸ The stress of attempting to understand and resolve a legal issue as an LEP individual unable to obtain legal assistance would thus only heighten this psychological distress. In addition, a lack of available legal assistance for LEP AAPIs compounds the already disproportionate effect that poverty, inadequate health care, and other social ills have on LEP AAPIs.

Furthermore, similar to the way people living in areas without accessible legal assistance may not know their legal rights or recognize that legal recourse may

¹¹⁵ See HIGASHI ET AL., *supra* note 20, at 21 (“While more states are adopting or improving their language access plans, there continue to be significant barriers to language access in state courts.”).

¹¹⁶ See HAMMOND, *supra* note 32, at 18 (emphasizing that supports specifically for AAPI pro se litigants must be made available so that these litigants may represent themselves effectively in the absence of an effective advocate).

¹¹⁷ Wei Zhang, Seunghye Hong, David T. Takeuchi & Krycia N. Mossakowski, *Limited English Proficiency and Psychological Distress Among Latinos and Asian Americans*, 75 SOC. SCI. & MED. 1006, 1006-07 (2012) (“[Limited English proficiency] is increasingly recognized as one of the key correlates of health behaviors, self-rated general health, physical health, mental health, health-related quality of life and health service access and utilization. . . .” (citations omitted)).

¹¹⁸ *Id.* at 1011.

be available for a certain problem,¹¹⁹ LEP AAPIs are also at risk of being unaware of their rights and potential remedies. This lack of understanding results in their issues persisting and worsening without redress.¹²⁰ For example, individuals qualified to receive government benefits may unwillingly forego them, and victims of domestic violence may remain in unsafe environments at increased risk of harm.¹²¹ Also, LEP AAPIs are at heightened risk of being evicted from their homes due to not knowing their rights.¹²² Without knowledge of their rights and fear of retaliation from their landlords, many LEP AAPIs are unofficially evicted because “if a landlord wants a non-English speaker to vacate, the tenant might not fight; without English they simply can’t.”¹²³

The impact of a lack of access to legal assistance also extends beyond an individual legal issue that an LEP AAPI faces. At the heart of the issue of linguistic legal deserts is a lack of access to justice. Indeed, such a lack of access to justice can result in “a greater and entrenched lack of agency in one’s life, effectively snowballing to become a much greater handicap than the original unaddressed legal issue(s).”¹²⁴ Furthermore, it can erode the court’s legitimacy if individuals cannot be heard under a court’s policies or actions.¹²⁵ Likewise, if individuals cannot even access legal assistance for their legal issues, they become further alienated from the justice system before even entering a courtroom.

B. *AAPI Linguistic Diversity and Cultural Considerations*

The linguistic diversity within the AAPI population in addition to certain AAPI cultural considerations add complexity to the question of how to achieve greater access to justice for LEP AAPIs. As such, they must be considered in addressing the linguistic legal deserts LEP AAPIs face.

Regarding the linguistic diversity of the AAPI population, solutions for linguistic legal deserts facing this group must account for the fact that over 100 AAPI languages are spoken in the United States.¹²⁶ Furthermore, the

¹¹⁹ See Pruitt et al., *supra* note 26, at 23.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Amy Yee, *It’s a Myth that Asian-Americans Are Doing Well in the Pandemic*, SCI. AM. (Mar. 2, 2021), <https://www.scientificamerican.com/article/its-a-myth-that-asian-americans-are-doing-well-in-the-pandemic/> (“Limited English speakers also cannot advocate for themselves if landlords want to remove them. Thus, they are not counted in official eviction numbers, even if they are informally evicted.”).

¹²³ *Id.*

¹²⁴ Pruitt et al., *supra* note 26, at 23.

¹²⁵ U.S. DOJ, C.R. DIV., LANGUAGE ACCESS IN STATE COURTS 1 (2016) (“If a state court policy or action unjustly limits or burdens the ability of certain groups to be heard, it can erode the court’s legitimacy. Those who work in and through the state court system—including judges, lawyers, clerks, interpreters, and court staff—have a shared mission to maintain and uphold the legitimacy of the judicial system and to prevent miscarriages of justice.”).

¹²⁶ See *supra* Section I.B.2.

prominence of AAPI languages spoken in the United States is not homogeneous throughout the country—languages vary according to the demographic makeup of the AAPI population within different geographic areas.¹²⁷ While Mandarin and Cantonese are among the most frequently used languages in federal courts, this is not necessarily the case within state courts.¹²⁸ For example, in Arkansas, Marshallese is the second most requested language in state courts.¹²⁹ Thus, in response to the vast linguistic diversity of the AAPI population in the United States and varying prominence of AAPI languages in different geographic areas, addressing linguistic legal deserts for LEP AAPIs requires approaches tailored to address the linguistic needs of specific communities.

It is also important to acknowledge and account for AAPI cultural considerations that affect efforts to address linguistic legal deserts that LEP AAPIs face. A significant percentage of AAPIs—57% of all AAPIs and 71% of AAPI adults—are foreign-born,¹³⁰ arriving in the country from a multitude of Asian countries with cultures and sociopolitical contexts that are often very different from those of Western countries, specifically the United States.¹³¹ For AAPI immigrants and refugees that have recently arrived in the United States, their lack of familiarity with the country and cultural differences may result in a strong reluctance by LEP AAPIs to seek legal services, even upon encouragement.¹³² In addition, many AAPIs come to the United States from countries with harsher political systems than the United States, which contributes to a lack of trust in government services.¹³³ For example, many

¹²⁷ See Andy Kiersz, Ivan De Luce & Madison Hoff, *This Map Shows the Most Commonly Spoken Language in Every US State, Excluding English and Spanish*, BUS. INSIDER (Aug. 12, 2020, 10:22 AM), <https://www.businessinsider.com/what-is-the-most-common-language-in-every-state-map-2019-6> [<https://perma.cc/DZ2Q-HZLL>] (presenting commonly spoken languages in the United States). For example, the most common language outside of English or Spanish spoken in New Jersey is Tagalog, in Texas it is Vietnamese, and in Wisconsin it is Hmong. *Id.*

¹²⁸ See HIGASHI ET AL., *supra* note 20, at 36.

¹²⁹ See *id.* at 32. Marshallese is one of the official languages of the Marshall Islands. *The Marshallese Language*, MARSHALLESE.ORG, <https://marshallese.org/> [<https://perma.cc/ZN8K-NQFP>] (last visited Apr. 20, 2022).

¹³⁰ See Budiman & Ruiz, *supra* note 68.

¹³¹ See HAMMOND, *supra* note 32, at 13 (“Many [AAPI] immigrants and refugees came to the United States from countries with different — and often much harsher — political systems. Often suffering injustices in their home countries, these individuals lack trust in government services and/or have a different value system about interaction with government-funded agencies.”).

¹³² *Id.* (“Deep cultural differences, a general fear by many [AAPI] communities of government agencies, and a high rate of limited English proficiency are all factors that separate [AAPI] individuals from existing social or legal services.”).

¹³³ *Id.* at 15 (“[AAPI] communities that are newer to the United States or are largely comprised of refugees, distrust and may refuse to access services associated with or perceived to be associated with the government. Thus, traditional intake systems that rely on the client

AAPIs arrived in the United States as refugees in the 1970s and 1980s as a result of the Vietnam War.¹³⁴ These groups may purposefully distance themselves from mainstream support networks, including legal aid services, because of their perceived ties to the government.¹³⁵ As such, many LEP AAPIs are further isolated from legal assistance, and solutions for addressing linguistic legal deserts should also consider how to bridge this cultural distance and provide culturally appropriate assistance.

C. *Certain Proposed Solutions Are Inadequate to Address the Existence of Linguistic Legal Deserts for LEP AAPIs*

As mentioned, language access has been a noted issue in the legal system, primarily in courts and federal agencies, by the federal and state governments, and various organizations.¹³⁶ There have been many proposed solutions to address language access issues, and the National Asian Pacific American Bar Association has released reports proposing solutions to assist the LEP AAPI population in particular.¹³⁷ While these measures do have merit in addressing language access issues, some of these proposed solutions are not highly effective in addressing the unique needs of LEP AAPIs facing linguistic legal deserts. Specifically, I identify increasing LSC funding and increasing the amount of certified court interpreters as the most limited solutions in addressing linguistic legal deserts for LEP AAPIs. First, this Section examines the proposed solution of increasing LSC funding, noting that it is an unreliable solution that excludes many AAPI noncitizens from those that could benefit from the proposal. Second, this Section addresses increasing the amount of certified court interpreters as a

to initiate contact with the legal aid office will remain underutilized by — and thus underserve — low-income [AAPI] communities, especially the disproportionately poor refugee communities.”); *Asian Outreach Project*, GREATER BOS. LEGAL SERVS., <https://www.gbls.org/our-work/asian-outreach> [<https://perma.cc/6TKK-798M>] (last visited Apr. 20, 2022) (“[B]eyond language, low-income Asian immigrants also face distinct cultural issues to accessing legal services. Most come from countries where lawyers and the legal system are not accessible to ordinary people and some fear government agencies (including courts) because of past political persecution in their home countries.”).

¹³⁴ See NAT’L ASIAN PAC. AM. BAR ASS’N, *supra* note 33, at v (“The Asian Pacific American (APA) population in the United States was at 0.5% in 1960; 1.5% in 1980; 3.7% in 2000; and is at 4.5% now. It is projected to reach 9.3% by 2050. The reasons for the increasing [AAPI] populations are many. For example, many arrived in America as refugees resulting from the war in Vietnam and the rest of the South East Asian region in the 1970s and 80s.”).

¹³⁵ See HAMMOND, *supra* note 32, at 13.

¹³⁶ See *supra* Section I.C (discussing federal, state, and organizational efforts to address language access).

¹³⁷ HIGASHI ET AL., *supra* note 20, at 56 (“Congress should allocate funding to the federal courts to cover an expansion, through amendment to the Court Interpreters Act, of the court interpreter program to all civil cases. Funding should also enable the federal judiciary to certify interpreters in additional languages.”); NAT’L ASIAN PAC. AM. BAR ASS’N, *supra* note 33, at 54-65 (presenting seventeen policy recommendations to improve language access in judicial proceedings).

reactive measure to linguistic legal deserts that does not address the lack of linguistically adequate legal assistance that is at the root of linguistic legal deserts. To be clear, this Note does not argue that these solutions are completely ineffective or counterproductive. Instead, this Note argues that these solutions have limitations that demonstrate they are solutions that alone will not effectively address the linguistic legal deserts that the LEP AAPIs face, and that other more inclusive, substantive, and proactive solutions exist and should be adopted.

1. Increasing Legal Services Corporation Funding

The LSC is a nonprofit organization that is the largest funder of civil legal aid in the United States.¹³⁸ LSC funds are a significant source of funding for legal aid organizations throughout the country, and in 2019, LSC funds served 1.8 million Americans.¹³⁹ As many of these organizations' clients are LEP, LSC funding is thus important in providing legal assistance to many LEP individuals.¹⁴⁰ The LSC also notes that language access and cultural sensitivity are priorities in its programs, and that they should be for fund grantees as well.¹⁴¹ LSC programs must serve eligible clients in their native languages,¹⁴² and the LSC has released guidance to fund recipients regarding language access obligations.¹⁴³

However, while LSC funding is important in assisting many LEP AAPIs, funding restrictions and inconsistent funding render it a limited solution to address linguistic legal deserts. The Legal Services Corporation Act prohibits LSC programs from using LSC or private funds for certain activities.¹⁴⁴ Importantly, with limited exceptions, LSC funding restrictions bar grantees from

¹³⁸ *About LSC*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc> [<https://perma.cc/LQS7-5AWF>] (last visited Apr. 20, 2022).

¹³⁹ LEGAL SERVS. CORP., 2019 ANNUAL REPORT 6 (2019).

¹⁴⁰ *See* Lee et al., *supra* note 9, at 7.

¹⁴¹ *Language Access & Cultural Sensitivity*, LEGAL SERVS. CORP., <https://www.lsc.gov/grants-grantee-resources/resources-topic-type/language-access-cultural-sensitivity> [<https://perma.cc/Z4SD-UMPT>] (last visited Apr. 20, 2022) (describing how legal aid organizations should plan for providing meaningful access to language services).

¹⁴² Letter from Helaine M. Barnett, President, Legal Servs. Corp., to All LSC Program Directors (Dec. 6, 2004), <https://www.lsc.gov/sites/default/files/Grants/pdfs/progltr04-2.doc>; 42 U.S.C. § 2996e(b)(6) (“In areas where significant numbers of eligible clients speak a language other than English as their principal language, the Corporation shall, to the extent feasible, provide that their principal language is used in the provision of legal assistance to such clients under this subchapter.”).

¹⁴³ LEGAL SERVS. CORP., GUIDANCE TO LSC PROGRAMS FOR SERVING CLIENT ELIGIBLE INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY 6-13 (2004).

¹⁴⁴ Legal Services Corporation Act, 42 U.S.C. § 2996i(c) (“[A]ny funds so received for the provision of legal assistance shall not be expended by recipients for any purpose prohibited by this subchapter. . . .”).

providing legal services to noncitizens without legal immigration status.¹⁴⁵ This exclusivity severely limits LSC funding as an effective solution to linguistic legal deserts for LEP AAPIs.¹⁴⁶ Asian immigrants comprise 13% of the 11.1 million noncitizens in the United States,¹⁴⁷ and nearly one in seven AAPI immigrants is a noncitizen without legal immigration status.¹⁴⁸ Thus, the legal assistance provided by LSC funding grantees excludes a significant and vulnerable subset of the LEP AAPI population.¹⁴⁹ Furthermore, not only are recipients of LSC funding severely limited in their use of such funding to assist noncitizens without legal immigration status, they are also precluded from using public or even private funds to serve these individuals.¹⁵⁰ As such, LSC funding restrictions serve as a near complete block preventing assistance from reaching this particularly vulnerable group.

Thus, organizations that depend on LSC funding to provide legal aid cannot serve noncitizens¹⁵¹ without legal immigration status who do not meet an

¹⁴⁵ See *Can LSC Grantees Represent Undocumented Immigrants?*, *supra* note 22 (specifying exceptions for receiving funding assistance). Those with legal immigration status eligible to receive LSC funds include permanent residents, “[p]ersons married to, a parent of, or an unmarried child of a U.S [sic] citizen with a pending application for lawful permanent residence” and “[t]emporary Agricultural and Forestry Workers with H2A and H2B visas.” *Id.*

¹⁴⁶ Exceptions to the prohibition on use of funds to represent noncitizens include exceptions for victims of crime or abuse, under which LSC grantees “can only provide legal assistance directly related to preventing or obtaining relief” from the abuse or crime, and for “international child abductions and for certain Native American tribes and Pacific island nations.” *Id.*

¹⁴⁷ Jeffrey S. Passel & D’Vera Cohn, *Overall Number of U.S. Unauthorized Immigrants Holds Steady Since 2009: Birth Regions and Nations*, PEW RSCH. CTR. (Sept. 20, 2016), <https://www.pewresearch.org/hispanic/2016/09/20/1-birth-regions-and-nations/> [<https://perma.cc/RH8K-GFXZ>].

¹⁴⁸ Ramakrishnan & Shah, *supra* note 23.

¹⁴⁹ See *id.* (demonstrating the extent to which the prohibitions harm AAPI immigrants); Budiman & Ruiz, *supra* note 68 (“People from Asia made up about 14% of the 10.5 million unauthorized immigrants in the U.S. in 2017.”).

¹⁵⁰ See generally LEGAL SERVS. CORP., LSC RESTRICTIONS AND OTHER FUNDING SOURCES (2020), <https://lsc-live.app.box.com/s/whds6u09dcvquut3c5t40f48hzipjlj8y> (discussing various restricted activities and which funding categories are prohibited).

¹⁵¹ Noncitizens are:

uniquely vulnerable to illegal and abusive conduct by employers, landlords, con artists, spouses and others. Believing that the poverty and fear of deportation of many aliens will discourage them from seeking legal or police assistance, unscrupulous people seek them out as easy prey. Although various federal and state agencies have responsibilities for ensuring compliance with the laws that protect aliens and other people, they often lack the resources to effectively oversee everyone within their mandates.

Philip Gallagher, *Fact Sheet: The Restriction Barring LSC-Funded Lawyers from Assisting Certain Immigrant Groups*, BRENNAN CTR. FOR JUSTICE (Sept. 26, 2003), <https://www.brennancenter.org/our-work/research-reports/fact-sheet-restriction-barring-lsc-funded-lawyers-assisting-certain> [<https://perma.cc/A9MB-RS8A>].

exception.¹⁵² In areas without a non-LSC-funded legal aid organization, many noncitizen LEP AAPIs are left without legal assistance. While immigrants have a statutory right to legal counsel in immigration proceedings (at their own expense),¹⁵³ counsel is not guaranteed.¹⁵⁴ Immigrants with legal representation obtain better outcomes in these proceedings than unrepresented immigrants, but access to counsel in immigration proceedings is scarce.¹⁵⁵ Furthermore, noncitizens specifically face especially strong risks in navigating the legal system without assistance.¹⁵⁶ Immigration law is particularly complex, and making a mistake in the immigration process can result in severe consequences including loss of immigration status and removal from the United States.¹⁵⁷

Thus, while LSC funds benefit many LEP AAPIs, increasing LSC funds to legal aid organizations inevitably excludes LEP AAPI noncitizens without legal immigration status and does not solve the issue of linguistic legal deserts. Meaningful solutions should include the most vulnerable LEP AAPIs, and thus increasing LSC funding is an inadequate solution to address linguistic legal deserts for LEP AAPIs.

In addition, the uncertainty of LSC funding also makes increasing its availability an unreliable solution. Governmental funding decisions are largely dependent on the priorities of who is in office, and increased funding for the LSC has not received consistent support.¹⁵⁸ From 2010 to 2013, Congress lowered funding for the LSC by \$80 million,¹⁵⁹ and the Trump Administration

¹⁵² See *supra* notes 145-46 (describing prohibitions on funding usage).

¹⁵³ 8 U.S.C. § 1229a(b)(4) (“In proceedings under this section, under regulations of the Attorney General . . . the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings.”).

¹⁵⁴ As immigration courts are deemed civil courts, immigrants do not have constitutional Sixth Amendment protections afforded to criminal defendants, including the right to counsel. INGRID EAGLY & STEVEN SHAFER, AM. IMMIGR. COUNCIL, ACCESS TO COUNSEL IN IMMIGRATION COURT 1 (2016) (describing impact of lack of legal counsel on immigration proceedings).

¹⁵⁵ *Id.* at 2-3 (noting that “[n]ationally, only 37 percent of all immigrants secured legal representation in their removal cases,” and “[i]mmigrants with attorneys fare better at every stage of the court process”).

¹⁵⁶ See Gallagher, *supra* note 151 (discussing unique vulnerability of LEP AAPIs within legal system).

¹⁵⁷ See Han, *supra* note 30, at 167 (“A wrong step in this process can carry severe consequences. Immigrants stand to lose time, money, employment opportunities, and immigration status. In the worst case scenario, they lose the right to remain in the United States, leading to removal and long-term separation from their families and loved ones.”).

¹⁵⁸ See HIGASHI ET AL., *supra* note 20, at 47 (noting that, for example, President Trump’s proposed fiscal year 2018 budget eliminated LSC funding entirely).

¹⁵⁹ *Id.* This reduction caused LSC-funded organizations to “reduc[e] their headcount by 661 full-time employees, including 241 attorneys.” *Id.*

proposed eliminating LSC funding entirely in the fiscal year 2018 budget.¹⁶⁰ Furthermore, the allocation of funds to provide linguistically adequate aid depends on the budget and priorities of legal services organizations.¹⁶¹ While the LSC has noted that language access should be a priority for fund grantees, legal services organizations' changing budgets and shifting priorities fail to ensure consistent funding for language access measures.¹⁶²

As such, relying on increases to the LSC budget is not a stable solution because it depends on the political leadership of the country at any given time. Furthermore, relying on increases to the LSC budget could result in negative consequences for LEP AAPIs. LEP AAPI communities that gain greater access to legal services as a result of increased funding may come to rely on such services, and any LSC funding cuts by the government or lower allocations to language access measures by grantees in the future would be highly confusing and disruptive to these communities. Finding meaningful solutions to linguistic legal deserts cannot depend on such uncertain and undependable solutions.

Ultimately, increased LSC funding is an inadequate solution for addressing linguistic legal deserts because it excludes vulnerable noncitizen LEP AAPIs and is uncertain and unreliable.

2. Increasing the Amount of Certified Court Interpreters

Another proposed measure to increase language access in the legal system is increasing the number of certified interpreters in courts.¹⁶³ As discussed, there is a strong need for certified court interpreters for LEP individuals.¹⁶⁴ LEP individuals face grave consequences when inadequate interpretation is used in

¹⁶⁰ Debra Cassens Weiss, *Trump Budget Eliminates Legal Services Corp. Funding*, A.B.A. J. (Mar. 16, 2017, 8:45 AM), https://www.abajournal.com/news/article/trump_budget_eliminates_funding_for_legal_services_corp/ [https://perma.cc/EKW3-DUY] (describing President Trump's plan to cut LSC funding to pay for increased spending on defense and building wall along Mexico-United States border).

¹⁶¹ See Adiel Kaplan, *More People Than Ever Need Legal Aid Services. But the Pandemic Has Hit Legal Aid Funding Hard*, NBC NEWS (Apr. 15, 2021, 6:00 AM), <https://www.nbcnews.com/business/personal-finance/more-people-ever-need-legal-aid-services-pandemic-has-hit-n1264989> [https://perma.cc/HY2L-UFBT] (describing that legal services organizations facing tight budgets "are scrambling to fill budget gaps and trying to dodge staff cuts," focusing on survival rather than increasing budget allocations for specific items, including increased language access measures). Moreover, even before pandemic-related cases increased need for legal aid, legal services organizations did not have sufficient funding to meet the existing demand. *See id.*

¹⁶² *See id.* (discussing how the Legal Aid Society of Hawai'i's unemployment practice "went from almost zero to hundreds of cases and hundreds of inquiries" as a result of COVID-19-related unemployment claims, demonstrating the uncertainty and volatility of legal services organizations' priorities).

¹⁶³ *See HIGASHI ET AL.*, *supra* note 20, at 28.

¹⁶⁴ *See supra* Section I.B.1 (discussing limited English proficiency in AAPI communities).

legal proceedings.¹⁶⁵ An inadequate interpreter could taint the proceedings by inaccurate interpretation or introducing personal bias.¹⁶⁶ This faulty interpretation can result in an LEP litigant spending significant time and funds on appeals processes, if they even have the resources to do so, as a result of interpreter error.¹⁶⁷

However, while adequate interpreters are needed to assist LEP AAPIs in the courtroom, increasing the number of certified interpreters is another inadequate solution for addressing linguistic legal deserts. One issue is the feasibility of adequately addressing the sheer linguistic diversity of AAPI languages spoken in the United States. To become a certified federal court interpreter, an individual must pass the Federal Court Interpreter Certification Examination.¹⁶⁸ Federal certification programs were created for Spanish, Navajo, and Haitian Creole, but the Navajo and Haitian Creole certification programs have since been discontinued.¹⁶⁹ Certification programs at the state court level are more inclusive than the federal level, with the National Center for State Courts offering oral certification exams in eighteen languages, nine of which are AAPI languages.¹⁷⁰ However, given this is only a small fraction of the over 100 AAPI languages spoken in the United States, developing such exams and certification programs for the multitude of these languages in the near future is unrealistic.¹⁷¹

Another problem with increasing certified court interpreters as a solution to the issue of linguistic legal deserts is a lack of individual interest in becoming a court interpreter. The low compensation for contract interpreters and the high costs involved with certification both contribute to the shortage of individuals interested in becoming a court interpreter.¹⁷² For those AAPI languages that

¹⁶⁵ See HIGASHI ET AL., *supra* note 20, at 28 (describing risks of individuals pleading guilty for crimes they did not commit or going through costly appeals processes due to interpreter errors).

¹⁶⁶ See *id.* at 33 (noting that limited numbers of interpreters in small communities can cause conflicts of interest between parties).

¹⁶⁷ *Id.* at 28.

¹⁶⁸ *Interpreter Categories*, U.S. CTS., <https://www.uscourts.gov/services-forms/federal-court-interpreters/interpreter-categories> [<https://perma.cc/4C68-JL9S>] (last visited Apr. 20, 2022) (describing process to become certified interpreter).

¹⁶⁹ *Federal Court Interpreter Certification Examination*, U.S. CTS., <https://www.uscourts.gov/services-forms/federal-court-interpreters/federal-court-interpreter-certification-examination> [<https://perma.cc/97V5-K9TH>] (last visited Apr. 20, 2022) (“The Federal Court Interpreter Certification Examination is offered for Spanish/English testing only.”).

¹⁷⁰ NAT’L CTR. FOR STATE CTS., COURT INTERPRETER ORAL EXAMS (2019), https://www.ncsc.org/_data/assets/pdf_file/0024/19554/oral_exam_ready_for_administrati-on-may-2019-v2.pdf [<https://perma.cc/7Z3T-5R9N>].

¹⁷¹ See sources cited *supra* note 77 (discussing AAPI languages spoken in United States).

¹⁷² See HIGASHI ET AL., *supra* note 20, at 33 (“Low pay for contract interpreters makes it difficult for state courts to retain a sufficient supply of qualified interpreters, many of whom will instead use their skills for higher compensation in federal court or do freelance interpreting in other settings. The high costs of certification compound the shortage.”).

already constitute a minority language within AAPI languages,¹⁷³ this problem is compounded by the fact that within an already small pool of individuals that may speak a language, only a small number may be able or want to become certified interpreters.¹⁷⁴ In addition, in these communities there is more potential for conflicts of interest where there are fewer interpreters that speak the community's language.¹⁷⁵ As such, increasing the number of certified court interpreters would be difficult to implement as a solution to linguistic legal deserts for LEP AAPIs.

Cultural considerations also present a potential obstacle to utilizing more court interpreters as a solution. Many LEP AAPIs, especially foreign-born refugees, are distrustful of government systems.¹⁷⁶ This can make them reluctant to seek assistance from support networks they perceive to be tied to the government.¹⁷⁷ As such, an LEP AAPI may not feel comfortable with a court-provided interpreter, which may preclude effective communication in court proceedings, even if more qualified interpreters can be hired.

Furthermore, even if the number of certified court interpreters can be increased, this solution does not address the root source of linguistic legal deserts: the lack of access to linguistically adequate legal assistance, generally.¹⁷⁸ While it is clear that more courtroom interpreters are required, these court employees are not equipped or allowed to provide legal advice. Therefore, because the lack of language access affects LEP AAPIs before they even enter a courtroom, any comprehensive solution to linguistic legal deserts must proactively address this underlying gap.

There is an urgent need for adequate solutions to address the serious consequences linguistic legal deserts have on LEP AAPIs. The limitations inherent in proposals for increased LSC funding and increased certified court interpreters as potential solutions serve to illuminate the persisting need for more inclusive, substantive, and proactive solutions to linguistic legal deserts.

¹⁷³ For example, as of 2019, the Hmong population was about 327,000 people. *Hmong in the U.S.*, *supra* note 73. While Hmong is the most spoken language after English and Spanish in Wisconsin, less than 1% of the state population speaks it. Mary Kate McCoy, *For Hmong Speakers, Keeping Wisconsin's Third Most Commonly Spoken Language Alive Is Essential*, WIS. PUB. RADIO (Sept. 30, 2020, 5:00 AM), <https://www.wpr.org/hmong-speakers-keeping-wisconsin-third-most-commonly-spoken-language-alive-essential> [<https://perma.cc/H9YF-HMEQ>].

¹⁷⁴ *See* HIGASHI ET AL., *supra* note 20, at 33.

¹⁷⁵ *Id.* (“Potential conflicts of interest can arise in smaller communities or where there are fewer interpreters for a particular language in the area.”).

¹⁷⁶ *See supra* notes 133-35 and accompanying text (discussing how many AAPI refugees who fled government persecution in their countries of origin are hesitant to access or rely on government services going forward as well).

¹⁷⁷ *Id.*

¹⁷⁸ *See supra* Section II.A (explaining the fundamental lack of lawyers who are prepared to assist clients who speak an AAPI language).

III. ACCESS TO JUSTICE FOR LIMITED ENGLISH PROFICIENT
ASIAN AMERICANS AND PACIFIC ISLANDERS:
ADDRESSING LINGUISTIC LEGAL DESERTS

The existence of linguistic legal deserts is an issue deeply rooted in our legal system, and meaningful solutions to eliminate linguistic legal deserts must increase the availability of adequate legal assistance for all LEP AAPIs. Section III.A discusses the role law schools can play in addressing linguistic legal deserts. Section III.B recommends utilizing various methods of non-attorney legal assistance to meet the needs of LEP AAPIs. Section III.C then recommends increased collaboration with community organizations to increase LEP AAPI access to legal assistance.

A. *Law Schools' Role in Addressing Linguistic Legal Deserts*

As institutions that shape the future of the legal field, law schools carry strong potential as institutions that can and should be utilized to address linguistic legal deserts.¹⁷⁹ As such, law schools should consider how efforts to eliminate linguistic legal deserts can be incorporated into their mission and operation.¹⁸⁰ Section III.A.1 discusses increasing AAPI legal representation in the legal field through law school recruiting efforts and incentivizing individuals to do work that provides legal assistance to LEP AAPIs. Section III.A.2 then recommends incorporating and emphasizing language access issues in law school curricula and opportunities.

1. Increasing AAPI Representation in the Legal Field

The legal profession remains disproportionately white and unrepresentative of the country's population.¹⁸¹ According to the ABA, in 2020, white lawyers accounted for 86% of all lawyers in the United States while 60% of the United States population was white in 2019.¹⁸² Meanwhile, over the past decade, the number of lawyers of color has grown less than 3% in the United States.¹⁸³ AAPI

¹⁷⁹ See Pruitt et al., *supra* note 26, at 147 (stating that, in regard to rural legal deserts, “[l]aw schools possess a level of human capital; student energy; name recognition; community status; and an inherent motivation to learn, build, and develop that lends itself to projects and initiatives beyond the capacities of other institutions”).

¹⁸⁰ Similar to how “law schools should consider how rural perspectives and opportunities can permeate every aspect of their mission and operation, from recruitment to the classroom to career services counseling,” law schools should also consider how LEP perspectives and opportunities to eliminate linguistic legal deserts can be elevated at their institutions. *See id.* at 146.

¹⁸¹ See AM. BAR ASS'N, ABA PROFILE, *supra* note 44, at 33 (“White men and women are still overrepresented in the legal profession compared with their presence in the overall U.S. population.”).

¹⁸² *Id.*

¹⁸³ *Id.* (“The percentage of lawyers who are men and women of color – Hispanic, African American, Asian, Native American and mixed race – grew slowly over the past decade.

lawyers, specifically, comprised only 2% of all lawyers in the United States in 2020, while the AAPI population in the United States was almost 6%.¹⁸⁴ Moreover, currently there are no positive indications suggesting an increased AAPI presence in the legal field in the future. While AAPIs constituted the largest minority group in law schools for a large part of the 2000s, AAPI enrollment has dropped more severely than any other racial or ethnic group since 2009.¹⁸⁵ Furthermore, though the number of AAPI attorneys has been increasing for the last four decades, one study predicts that the number of AAPI lawyers in the United States will begin to stagnate by the end of this decade.¹⁸⁶ AAPIs are the group most likely to speak AAPI languages and to come from communities affected by language access issues.¹⁸⁷ As the number of AAPI individuals in the United States continues to rise,¹⁸⁸ this stagnation of AAPIs entering the legal field will exacerbate existing language access issues for LEP AAPIs and make the issue of linguistic legal deserts harder to address.

To address the lack of linguistically adequate legal assistance that lies at the heart of linguistic legal deserts for LEP AAPIs, it is necessary to increase the number of lawyers that speak AAPI languages in the United States. This may be achieved through outreach to AAPI communities by law schools as well as bar associations, affinity groups, and other organizations.¹⁸⁹ Law schools could also

Collectively, the number of lawyers of color grew less than 3 percentage points in the past 10 years, from 11.4% of all lawyers in 2010 to 14.1% of all lawyers in 2020 . . .”).

¹⁸⁴ *Id.* (noting that “2% of all lawyers are Asian – up slightly from 1.6% 10 years earlier – while the U.S. population is 5.9% Asian”).

¹⁸⁵ See Miranda Li, Phillip Yao & Goodwin Liu, *Who’s Going to Law School? Trends in Law School Enrollment Since the Great Recession*, 54 U.C. DAVIS L. REV. 613, 618 (2020) (“Asian Americans have experienced the largest percentage decline in enrollment of any racial or ethnic group. Whereas Asian Americans were the largest minority group in law school throughout much of the 2000s, their numbers have trailed both African American and Hispanic enrollments in recent years.”).

¹⁸⁶ *Id.* at 655 (“As a result of this decline [in AAPI law school enrollment], the number of Asian American lawyers is expected to stagnate around the year 2030 after several decades of robust growth.”).

¹⁸⁷ The AAPI population is the population with the highest proportion of individuals that speak a language other than English in the home; in fact, around 70% of AAPI individuals speak a language other than English at home. See RAMAKRISHNAN & AHMAD, *supra* note 60, at 34 (explaining that in 2014, around 70-77% AAPI residents of the United States spoke a language other than English at home, more than any other ethnic group); Budiman & Ruiz, *supra* note 68 (showing that from 2017-2019, about 66% of AAPI individuals in the United States speak a language other than English in their home).

¹⁸⁸ Studies suggest that AAPI immigrants will be the largest immigrant group in the U.S. by 2055. See Budiman & Ruiz, *supra* note 68.

¹⁸⁹ The criteria for an under-represented minority (“URM”) for law school admissions varies. Some schools consider URM groups those whose proportion of the population at the school is lower than its proportion in the national population. *URM (Under-Represented Minority) Application FAQ*, TOP L. SCHS. (June 2010), <https://www.top-law-schools.com/urm-applicant-faq.html> [<https://perma.cc/R3Z2-MVJ2>]. Other schools

consider applicants' linguistic abilities as a factor for admissions and offer scholarships for multilingual students. Realistically, similar to the issue of increasing the number of certified court interpreters, the number of AAPI individuals that possess AAPI language capabilities sufficient to assist LEP AAPIs is limited.¹⁹⁰ However, while increasing court interpreters is a response to linguistic legal deserts, increasing the number of AAPI attorneys in the United States is a proactive solution directly addressing the cause of linguistic legal deserts. While not every AAPI attorney has sufficient language capabilities to represent an LEP AAPI client, some may, and others may be willing to learn.¹⁹¹

Moreover, even if the number of AAPI attorneys with AAPI language capabilities is limited, supporting greater numbers of AAPIs joining the legal field will increase the number that can assist LEP AAPIs over time. By considering applicants' language ability in admissions and increasing AAPI enrollment in law schools, and thus the legal profession, ultimately more attorneys with AAPI language abilities will be able to assist LEP AAPIs. In addition, increasing AAPI attorneys is a solution that may minimize the issue of cultural differences potentially preventing LEP AAPIs from trusting a court-assigned interpreter. An LEP AAPI individual would likely be more trusting given that the attorney is not assigned by the court, especially if the attorney is

determine URM groups by comparing a group's proportion of the legal profession with its proportion in the national population. *Podcast: Introduction to Law School Admissions for Under-Represented Minority (URM) Applicants*, SPIVEY CONSULTING (Nov. 23, 2020), <https://blog.spiveyconsulting.com/intro-to-urm-admissions-podcast/> [<https://perma.cc/JA3L-ZRSS>] (defining URM "in reference to the racial and ethnic makeup of U.S. attorneys versus the racial and ethnic makeup of the United States as a whole"). Additionally, some schools differentiate between specific Asian ethnicities, while others do not. *See id.* A December 2021 report of the Law School Admission Council estimated that the AAPI population comprised 5.6% of the United States population and 8.8% of law school applicants, but only 5.2% of lawyers nationwide. LAW SCH. ADMISSION COUNCIL, DIVERSITY IN THE US POPULATION & THE PIPELINE TO LEGAL CAREERS (2021), <https://report.lsac.org/View.aspx?Report=DiversityPopulationandPipeline&Format=PDF>. [<https://perma.cc/X7GW-ZYXD>]. As such, AAPIs may be considered a URM group for admissions purposes at some law schools, but not at others. Regardless, AAPIs remain underrepresented in the legal profession as a whole.

¹⁹⁰ To illustrate this point, while most Asian immigrants speak a non-English language in the home, about two-thirds of AAPI individuals born in the United States speak only English in their homes. *See* Budiman & Ruiz, *supra* note 68.

¹⁹¹ *See, e.g.,* Zena Yen Wozniak, *I Thought Not Speaking Chinese Made Me a Bad Asian American. It Doesn't.*, ESQUIRE (May 27, 2021), <https://www.esquire.com/news-politics/a36557765/asian-american-identity-language-assimilation-reclamation/> [<https://perma.cc/VJ9Q-MA9Q>] (describing several AAPI individuals' feelings of guilt and shame for not learning their ethnic languages and their desire to do so); Jenny Liao, *Forgetting My First Language*, NEW YORKER (Sept. 3, 2021), <https://www.newyorker.com/culture/personal-history/forgetting-my-first-language> (describing a Chinese-American woman's regret upon losing her ability to speak Cantonese, stating, "[f]or many children of immigrants[,] to 'succeed' in America, we must adopt a new language in place of our first—the one our parents speak best—without fully considering the strain it places on our relationships for the rest of our lives").

of the same ethnicity and/or community as the client. This relationship can be the foundation for meaningful legal representation for LEP AAPIs.

In addition, targeted recruitment can make an especially strong impact on certain AAPI groups that are most underrepresented in the legal field and thus face the impact of linguistic legal deserts most acutely within the AAPI population. An effective way “to add a lawyer to a particular community is to educate and train a person who hails from that community and wishes to return.”¹⁹² However, certain AAPI groups that have generally arrived in the United States more recently are disproportionately deprived of opportunities to pursue legal careers, further exacerbating the issue of linguistic legal deserts for these groups.¹⁹³

A targeted approach seeking to recruit individuals with certain language abilities would also be impactful for AAPI communities whose languages are spoken by a relatively low number of people.¹⁹⁴ Linguistic legal deserts pose an especially strong problem for these groups because there is an extremely limited number of people that would be able to provide linguistically adequate assistance. As such, efforts to increase AAPI enrollment in law school and AAPI representation in the legal field generally are especially pressing for these

¹⁹² Pruitt et al., *supra* note 26, at 147.

¹⁹³ See HAMMOND, *supra* note 32, at 15 (“[M]embers of newer [AAPI] communities, including refugee communities like Cambodians, are disproportionately deprived of opportunities to pursue law degrees or legal careers.”). Indeed, only 5% of Cambodians in the United States over twenty-five years old have obtained a postgraduate degree, while 55% have a high school degree or less. *Cambodians in the U.S.*, *supra* note 73. Certain AAPI subgroups arrived in the United States relatively recently, after the Immigration and Naturalization Act of 1965 altered immigration quotas, resulting in more immigrants and refugees from Asia coming to the United States. See Sukanya Basu, *Wage Assimilation of Immigrants: A Comparison of “New” and “Old” Asian Source Countries*, 5 MIGRATION STUD. 1, 1 (2017) (discussing how “new” Asian immigrants from previously underrepresented countries immigrated in higher numbers after passage of 1965 Act). The deprivation of opportunities to pursue legal careers for these groups stems from multiple causes. Immigrants assimilate as communities, not just individuals, and the less time an immigrant community has been established in another country, the more difficult the adjustment process is for that community. *Id.* at 2 (“The longer a specific immigrant community has been established in a host country, the easier the adjustment process for new cohorts of this group.”). Furthermore, certain “Southeast Asian populations such as Cambodian, Hmong, and Laotian Americans—who predominantly came to the United States as refugees with limited educational attainment in their home countries—have relatively high levels of poverty and low levels of household income.” RAMAKRISHNAN & AHMAD, *supra* note 60, at 84. Unfortunately, however, the Law School Admissions Council (“LSAC”)—like many organizations and institutions—does not disaggregate its “Asians” category into more specific categories. As such, there is no specific information available about these underrepresented AAPI ethnic groups specifically, and they may not be classified as URM, despite disproportionately low representation in the law school population, because AAPIs as a whole may not be considered a URM at a certain school. See sources cited *supra* note 189.

¹⁹⁴ See *supra* notes 173-74 and accompanying text (discussing lack of Hmong speakers nationwide as an example of a language with relatively few speakers in the United States).

groups.¹⁹⁵ Assuming that some members of communities with large LEP populations would want to return to their communities to practice, law school recruitment efforts should also target these areas to have an impact on these LEP AAPI communities. Thus, focusing on increasing AAPI attorneys will ultimately add to the pool of attorneys that do speak AAPI languages that could potentially assist LEP AAPIs, in turn addressing linguistic legal deserts for LEP AAPIs.

However, it is not sufficient to simply recruit multilingual AAPIs to enter the legal field. It is also important to incentivize them to do work that aids LEP AAPIs in need of legal assistance. Attending law school is a significant financial commitment for most students,¹⁹⁶ and law school debt influences many students' career paths.¹⁹⁷ Law schools can encourage multilingual AAPI students to assist LEP AAPIs during their law school careers and upon graduation by providing financial incentives. Many law schools already offer school-funded post-graduate fellowships to provide financial assistance for graduates working in public interest positions.¹⁹⁸ Schools should offer such fellowships specifically for graduates that will work to assist LEP AAPIs to incentivize individuals to

¹⁹⁵ While the importance of disaggregation of data on AAPI communities is beyond the scope of this Note, of relevance is the difficulty of knowing the exact extent to which AAPI language minorities overlap with AAPI subgroups that are disproportionately deprived of opportunities to enter the legal profession because LSAC does not disaggregate the "Asian" category for its purposes. However, as an example, Cambodians comprise an academically disadvantaged AAPI subgroup that also constitutes an AAPI language minority, as only 212,167 people in the United States spoke Khmer as of 2015. *Detailed Languages Spoken at Home*, *supra* note 112. Disaggregation of data for AAPI subgroups is crucial to capture important differences between them. Indeed, as an example, AAPIs are currently the most economically divided racial group in the United States. See Rakesh Kochhar & Anthony Cilluffo, *Income Inequality in the U.S. Is Rising Most Rapidly Among Asians*, PEW RSCH. CTR. (July 12, 2018), <https://www.pewresearch.org/social-trends/2018/07/12/income-inequality-in-the-u-s-is-rising-most-rapidly-among-asians/> [<https://perma.cc/7MM4-CUH6>] (reporting that Asians' 90th percentile of income distribution had 10.7 times the income of Asians at 10th percentile, which is greater than ratio among Black people (9.8), white people (7.8), and Hispanic people (7.8)).

¹⁹⁶ The 2021 ABA Young Lawyers Division Student Loan Survey reported the average law student's debt at graduation was \$108,000 in J.D. loans and \$130,000 in all loans combined. AM. BAR ASS'N YOUNG LAWYERS DIV. & ACCESSLEX INST. CTR. FOR LEGAL EDUC. EXCELLENCE, *STUDENT DEBT: THE HOLISTIC IMPACT ON TODAY'S YOUNG LAWYER* 4 (2021) [hereinafter *STUDENT DEBT*].

¹⁹⁷ *Id.* at 8 ("An overwhelming majority of borrowers—roughly 80 percent—indicated their debt influenced their choice of job or career in some way.").

¹⁹⁸ The ABA reports over fifty law schools offering law school-funded post-graduate fellowships. *Post-Graduate Fellowships & Awards*, A.B.A., https://www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/definitions/pi_postgrad_fellowships/ (last visited Apr. 20, 2022) (defining post-graduate fellowships as those that "provide financial assistance to law students who accept a public interest position upon graduation").

pursue this work.¹⁹⁹ Other fellowship programs and entities could sponsor such fellowships as well. Many law schools also offer loan repayment assistance programs (“LRAPs”).²⁰⁰ LRAPs are another existing tool that offer an opportunity for schools to incentivize graduates to work with LEP AAPIs.²⁰¹ Loan repayment assistance for individuals specifically engaging in legal work with LEP populations could help encourage and allow multilingual AAPIs to work to assist LEP AAPIs upon graduation.

Furthermore, increasing the amount of AAPIs in the legal field can foster greater awareness of linguistic legal deserts, as many may come from communities where the issue is prevalent.²⁰² It will also result in more AAPIs in policy-making spaces, which can lead to greater advocacy for policies benefitting LEP AAPIs. For example, several AAPI congressmembers, who are also attorneys, introduced several bills and resolutions addressing language access in the 116th Session of Congress.²⁰³

¹⁹⁹ For example, the Dow Fund has funded various projects “providing resources to the Asian American Community to ensure access to the legal system that is culturally and linguistically appropriate and relevant,” for over thirty-five years, including the Asian Immigrant Rights Initiative and the Harry H. Dow Asian Outreach and Advocacy Project, which serves immigrant households in the Worcester County area. *Programs*, DOW FUND, <https://www.dowfund.org/programs> [<https://perma.cc/REG9-LWV2>] (last visited Apr. 20, 2022).

²⁰⁰ See *Loan Repayment Assistance Programs (LRAP)*, A.B.A., https://www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/definitions/pi_lraps/ (last visited Apr. 20, 2022).

²⁰¹ LRAPs are defined as programs that “provide financial aid to law school graduates working in the public interest sector, government, or other lower-paying legal fields” to help them repay their educational loans. *Id.*; see, e.g., *Public Interest Loan Repayment Plan (PILRAP)*, AM. U. WASH. COLL. OF L., <https://www.wcl.american.edu/school/admissions/finaid/financial-literacy/pilrap/> [<https://perma.cc/2GKQ-CEMG>] (last visited Apr. 20, 2022) (“PILRAP helps offset the educational debt burden by providing loan repayment assistance to qualifying JD graduates who work full-time in certain non-profit or government positions.”); *Loan Repayment Assistance Program*, BOS. U. SCH. OF L., <https://www.bu.edu/law/current-students/financial-aid/loan-repayment-assistance-program/> [<https://perma.cc/RXE5-PP38>] (last visited Apr. 20, 2022) (“BU Law LRAP is available to JD graduates employed in law-related positions in government, except for temporary judicial clerkships, and non-profit organizations providing legal services.”).

²⁰² See sources cited *supra* note 187 (discussing how many AAPI individuals speak language other than English at home).

²⁰³ See, e.g., COVID-19 Language Access Act, H.R. 6623, 116th Cong. (2020) (introduced by Taiwanese-American Representative of the Sixth Congressional District of New York Grace Meng, proposing to “require all Federal agencies to translate COVID-19 materials into multiple languages” including several AAPI languages); Coronavirus Language Access Act, S. 4526, 116th Cong. (2020) (introduced by Japanese-American Senator of Hawai‘i Mazie Hirono, proposed to “ensure that COVID-19-related Federal programs and assistance provide for the translation of informational materials relating to awareness, screening, testing, and treatment for COVID-19 into priority languages”); A Resolution Condemning All Forms of Anti-Asian Sentiment as Related to COVID-19, S. Res. 580, 116th Cong. (2020) (introduced

Through recruiting AAPI law students with AAPI language abilities and incentivizing them to work with LEP AAPIs, law schools would directly increase the availability of linguistically adequate legal assistance for LEP AAPIs and increase awareness of linguistic legal deserts both within the law and on a broader national policy level.

2. Incorporating Language Access Issues in Law School Curricula

In addition to increasing AAPI representation in the legal field, law schools can also spread awareness of linguistic legal deserts through their course curricula and extracurricular opportunities. Law schools can emphasize the importance of language access in doctrinal courses and experiential offerings to expose students to the issue, which they may not learn about otherwise. As future practitioners, “[l]aw students should be aware both that there is a language access problem and that laws exist to address it,”²⁰⁴ and law schools should ensure that this happens. Language access is relevant to, and worthy of discussion in, many doctrinal courses including civil and criminal procedure, civil rights, immigration, constitutional, and administrative law.²⁰⁵ Including language access and linguistic legal deserts in the classroom can help introduce and keep these issues in future attorneys’ minds early in their careers, and it can help them notice how these issues arise and can be addressed in practice.²⁰⁶

by Indian-American and Black former Senator of California and current Vice President Kamala Harris, proposed in part to “prioritiz[e] language access and inclusivity in communication practices; and . . . combat[] misinformation and discrimination that put Asian Americans and Pacific Islanders at risk”).

²⁰⁴ Dutton et al., *supra* note 56, at 22.

²⁰⁵ *See id.* at 23 (“Language access is a practice issue in most areas of law, varying with the demands on and resources of each adjudication system.”). For example, in civil procedure, professors can address questions such as how a pro se LEP litigant can be expected to craft a well-pleaded complaint and what effects federal and state rules of civil procedure have on pro se LEP litigants. In administrative law, professors could raise the question of how limited English proficiency affects LEP individuals’ ability to meaningfully participate in the notice and comment rulemaking process. In constitutional or civil rights law, professors can discuss *Lau v. Nichols*, 414 U.S. 563 (1974), where the Supreme Court interpreted Title VI of the Civil Rights Act of 1964’s prohibition of discrimination based on national origin to encompass discrimination on the basis of language. *Lau*, 414 U.S. at 567-69.

²⁰⁶ This is similar to how critical legal studies courses generally aim to teach students to think critically about the legal system, to inform their future practice of, and engagement with, the law. *See, e.g., Critical Race Theory Colloquium (S)*, BOS. U. SCH. OF L., <https://www.bu.edu/law/courses/lawjd731/> [<https://perma.cc/Z8CW-JKYT>] (last visited Apr. 20, 2022) (describing Critical Race Theory Colloquium seminar at Boston University School of Law as aiming to teach students to “think carefully not only about race and racism, but also about sexism, classism, heterosexism, and other -isms” and “provide an opportunity . . . to challenge critically our most basic assumptions about race, law, and justice,” which students can continue to do in practice); *Critical Legal Thought*, COLUMBIA L. SCH., <https://www.law.columbia.edu/academics/courses/29159> [<https://perma.cc/PLE5-VKRB>] (last visited Apr. 20, 2022) (describing Critical Legal Thought course at Columbia Law

Law schools can also offer practice-oriented courses in non-English languages. Several schools already have “Spanish for Lawyers” classes aimed at providing students with the ability to communicate in Spanish in legal settings.²⁰⁷ Law schools could create such courses for certain AAPI languages, guided by which AAPI languages are most prominently spoken in the area²⁰⁸ and by the language capabilities of the student body. For example, in Minnesota, Hmong is the most commonly spoken non-English language after Spanish, with over 55,000 Hmong-speakers in the state and nearly 29,000 in Ramsey County alone.²⁰⁹ Minnesota law schools, like the Mitchell Hamline School of Law within Ramsay County, could recruit Hmong-speaking law students and offer a “Hmong for Lawyers” class to these students to utilize their language abilities to assist the significant LEP Hmong population in the area.

Outside the classroom, law schools can also offer extracurricular opportunities to increase awareness of linguistic legal deserts. For example, the University of North Carolina School of Law collaborated with community organizations to host a teach-in about linguistic rights.²¹⁰

In addition, law students with AAPI language abilities can expand the pool of individuals that can assist LEP AAPIs by serving as volunteers and interns in legal clinics and legal services organizations.²¹¹ Law schools can help in this

School as aiming to introduce students to “a range of critical approaches to law with the goal of giving them tools for testing legal arguments, assertions of legal pedigree, and the underlying normative premises that often make certain legal outcomes seem just, neutral, and objective, if not inevitable,” which can be used in practice).

²⁰⁷ See Dutton et al., *supra* note 56, at 42 (“[Spanish for Lawyers] classes are usually designed to equip students with the vocabulary and conversational skills needed to communicate in Spanish in a legal setting.”).

²⁰⁸ As a starting point, LEP.gov contains an interactive online “language map app” that displays state-by-state LEP population breakdowns as of 2015, showing the percent of LEP individuals of each state and languages spoken in the state with the corresponding number of speakers. *2015 Language Map App*, LEP.GOV, <https://www.lep.gov/maps/lma2015/Final> [<https://perma.cc/8N8P-JPMK>] (last visited Apr. 20, 2022).

²⁰⁹ See Ibrahim Hirsi, *Minnesotans Speak More Than 100 Languages at Home, New Data Finds*, MINNPOST (Nov. 5, 2015), <https://www.minnpost.com/new-americans/2015/11/minnesotans-speak-more-100-languages-home-new-data-finds/> [<https://perma.cc/P67W-TRCU>].

²¹⁰ See Dutton et al., *supra* note 56, at 38-39.

²¹¹ See HIGASHI ET AL., *supra* note 20, at 49. Some legal aid firms have Asian Outreach units that provide legal aid specifically to low-income AAPI individuals, many of whom are LEP. See, e.g., *Asian Outreach Project*, *supra* note 133 (describing the Asian Outreach Project of Greater Boston Legal Services, which “provides guidance, referral services and free legal assistance to nearly 1,000 low-income Asian immigrants each year”); *Asian Outreach and Advocacy Project*, CMTY. LEGAL AID, <https://communitylegal.org/projects/asian-outreach-advocacy-project/> [<https://perma.cc/N7MG-9QV3>] (last visited Apr. 20, 2022) (describing the Asian Outreach & Advocacy Project of Community Legal Aid, which provides free legal aid for Asian immigrant and refugee populations in Central and Western Massachusetts). Schools can partner with these organizations to create a clinical program for students with AAPI language abilities to engage in this work.

regard by connecting students with for-credit or pro bono opportunities aimed at assisting LEP AAPIs.

In summary, law schools should revise their curricula to address linguistic legal deserts for LEP AAPIs by incorporating language access issues into current course offerings, offering practical legal language-based courses aimed at preparing multilingual students to assist LEP AAPIs that are tailored to the LEP AAPI population in their communities, and offering extracurricular opportunities for students to learn about linguistic legal deserts and provide legal assistance to LEP AAPIs while in school.

B. *Non-Attorney Legal Assistance*

At the heart of the issue of linguistic legal deserts for LEP AAPIs is the lack of available legal assistance for this group. As discussed in Section III.A, it is important to increase the number of attorneys that can represent LEP AAPIs. However, legal assistance encompasses more than formal legal representation by attorneys, and non-attorneys can assist in addressing linguistic legal deserts in certain contexts. Section III.B.1 discusses the potential for greater non-attorney legal assistance through non-attorney legal practitioner licensing programs. Section III.B.2 highlights forms of legal assistance aimed at assisting pro se LEP AAPI litigants, including setting up legal help centers, providing translated documents before courtroom proceedings to assist LEP AAPIs, and assisting with virtual remote interpretation.

1. Non-Attorney Legal Practitioner Licensing Programs

Naturally, increasing the number of attorneys that can provide linguistically adequate legal assistance can alleviate the issue of linguistic legal deserts. However, recognizing the limitations of this solution arising from the limited number of attorneys that would be able to do so,²¹² providing legal assistance from non-attorneys can further help bridge the “linguistic distance” between LEP AAPIs and legal assistance.

Generally, the unauthorized practice of law by a non-attorney is prohibited in every state.²¹³ However, non-attorney representatives are utilized in certain areas to provide legal assistance to individuals, such as in immigration and assisting individuals with obtaining certain federal benefits.²¹⁴ Furthermore, Washington, Utah, and Minnesota have non-attorney legal practitioner programs that license

²¹² See *supra* Section III.A.1 (arguing that law schools should work to increase AAPI representation in the legal field).

²¹³ See Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 *FORDHAM L. REV.* 2581, 2587 (1999).

²¹⁴ See Han, *supra* note 30, at 173-75 (“Several areas of law exist in which the practice of law by non-attorneys is allowed and even encouraged, depending on the jurisdiction: real estate transactions; tax preparation help; appointment of guardians ad litem; and victim advocates who accompany domestic violence survivors to court to petition for temporary restraining orders, to name a few.”).

non-attorneys to assist individuals with certain legal issues, and other states are considering this possibility.²¹⁵ These kinds of programs can proactively address the issue of linguistic legal deserts by increasing the pool of linguistically adequate advocates for LEP AAPIs.

In 2014, Washington implemented a program to authorize Limited License Legal Technicians (“LLLTs”) to address the state’s need for civil legal aid for low-income individuals.²¹⁶ Under the program, LLLTs cannot appear in court but can assist with other legal tasks an attorney would normally handle, including consulting with and advising clients and completing court documents.²¹⁷ The Washington program is limited to family law²¹⁸ and requires that LLLTs take substantive legal courses, have practical experience, and pass three knowledge and skill exams.²¹⁹ A preliminary evaluation of the LLLT program found that, despite certain drawbacks, the program yielded overall positive results.²²⁰ The Washington court system is sunsetting the program in

²¹⁵ See *Limited License Legal Technicians*, WASH. STATE BAR ASS’N, <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians> [<https://perma.cc/BET2-AEHC>] (last updated Oct. 8, 2021) (describing how limited license legal technicians may “advise and assist people going through divorce, child custody, and other family law matters”); *Licensed Paralegal Practitioner Program*, UTAH STATE BAR, <https://www.utahbar.org/licensed-paralegal-practitioner/> [<https://perma.cc/D7BV-HZQS>] (last visited Apr. 20, 2022) (describing the licensed paralegal practitioner program, which allows licensed paralegals to provide legal assistance for clients in certain areas); *Legal Paraprofessional Pilot Project: Overview*, MINN. JUD. BRANCH, <https://mncourts.gov/Help-Topics/Legal-Paraprofessionals-Pilot-Project.aspx> (last visited Apr. 20, 2022) (“The Pilot Project permits legal paraprofessionals, under the supervision of a Minnesota licensed attorney, to provide legal advice and, in some cases, represent a client in court in two legal areas: landlord-tenant disputes and family law disputes.”); see also Han, *supra* note 30, at 177-78 (“Washington State graduated its first class of Limited License Legal Technicians (LLLTs) in May 2015. Other states, such as California, Colorado, Oregon, and New Mexico are also examining the same possibility.” (footnotes omitted)); LTD. LICENSED LEGAL TECHNICIAN BD., LLLT BOARD REPORT TO WASHINGTON SUPREME COURT 2 (2021) (“The Washington Supreme Court’s groundbreaking decision to implement the licensing of limited licensed legal practitioners has spurred jurisdictions all across the United States and Canada to consider the value of limited legal license programs.”).

²¹⁶ See Han, *supra* note 30, at 179-81 (discussing Washington’s LLLT program).

²¹⁷ *Id.* at 180 n.84 (“While LLLTs are not permitted to appear in court, they can ‘consult with and advise clients, complete and file necessary court documents, help with court scheduling, and support clients in navigating the legal system.’” (citing *Limited License Legal Technicians*, *supra* note 215)).

²¹⁸ *Id.* at 181.

²¹⁹ *Become a Legal Technician*, WASH. STATE BAR ASS’N, <https://wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/become-a-legal-technician> [<https://perma.cc/ZH52-QGTJ>] (last updated Oct. 8, 2021).

²²⁰ See LTD. LICENSED LEGAL TECHNICIAN BD., *supra* note 215, at 1-4 (acknowledging criticism against LLLT program, including “the cost of administering the program” and that it is “a profession of mostly white women,” while emphasizing the number of clients served and competent representation provided to those who otherwise would not have had access to legal representation).

2022, citing program costs and a low number of interested individuals as factors.²²¹ However, there is evidence that these concerns were not well founded, and the program's most fundamental issues were instead caused by political and structural limitations set by opponents of the program.²²² Utah has implemented a similar program to authorize non-attorney Licensed Paralegal Practitioners ("LPPs") to practice law and assist clients with family law, forcible entry and detainer, and debt collection matters.²²³

Allowing substantive non-attorney legal assistance through programs like the LLLT and LPP programs has unique potential as solutions to address linguistic legal deserts. First, these programs increase the availability of legal assistance by licensing non-attorneys to assist with legal matters.²²⁴ Second, the programs' comprehensive requirements for licensure ensure competent legal assistance²²⁵ but do not pose a significant barrier to entering the profession. Becoming a licensed non-attorney legal practitioner is still more accessible than becoming an attorney. Because these programs are significantly less expensive for participants than obtaining a Juris Doctor degree, they provide greater opportunity to assist those in need, including LEP AAPIs, by offering legal assistance at reduced rates compared to attorney representation.²²⁶ These

²²¹ Letter from Debra L. Stephens, C.J., Wash. State Superior Ct., to Stephen R. Crossland, Chair, Ltd. Legal Technician Bd., Rajeev Majumdar, President, Wash. State Bar Ass'n & Terra Nevitt, Interim Exec. Dir., Wash. State Bar Ass'n (June 5, 2020) ("[A]fter careful consideration of the overall costs of sustaining the program and the small number of interested individuals, a majority of the court determined that the LLLT program is not an effective way to meet these needs, and voted to sunset the program.").

²²² Many assert the Washington State Bar Association ("WSBA") that housed the LLLT program had "a long-standing, vocal group opposed to the program, thinking it would take away business." JASON SOLOMON & NOELLE SMITH, STANFORD L. SCH., *THE SURPRISING SUCCESS OF WASHINGTON STATE'S LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 2* (2021). Likewise, in response to the claim that the LLLT program was too costly, scholars note that the program cost was less than \$200,000 per year and "the cost to lawyers of administering the program was just \$7 per attorney per year, and less than 1% of the WSBA budget." *Id.* Furthermore, "[o]ver 200 students were in the LLLT pipeline when the court chose to sunset the program, with interest increasing" and the LLLT Board had proposed expanding the program, countering the claim of lack of interest in the program. *Id.*

²²³ See *Licensed Paralegal Practitioner Program*, *supra* note 215 (authorizing Licensed Paralegal Practitioners under the auspice of the program to perform legal tasks such as advising clients, advocating for clients in mediation, and completing settlement agreements).

²²⁴ For example, the Washington and Utah programs license non-attorneys to assist with family law and debt collection legal issues, respectively. See sources cited *supra* note 215 (discussing licensure process for LLLT and LPP programs).

²²⁵ See, e.g., *supra* note 219 (discussing requirements for LLLT program).

²²⁶ The average cost of law school tuition and fees for full-time private and in-state public programs for the 2021-2022 school year was \$53,034 and \$29,610, respectively. Ilana Kowarski, *Law School Benefits Versus Price: The Numbers*, U.S. NEWS & WORLD REP. (Mar. 30, 2022), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/law-school-cost-starting-salary>. Over the course of the three years an individual

programs have also effectively garnered participant interest and successes. For example, there were more than 200 students in the LLLT program pipeline prompting the LLLT Board to recommend expanding the program—plans that were thwarted when the Washington Supreme Court decided to end it.²²⁷ Additionally, these programs have had success expanding legal services to traditionally underserved communities, including LEP individuals.²²⁸ As such, non-attorney legal practitioner programs are attractive programs that would create greater opportunity for individuals with foreign language capabilities to enter the legal field and assist LEP individuals.

Unfortunately, there are also unqualified and ill-intentioned individuals who pose as legal professionals and take advantage of LEP individuals, particularly immigrants.²²⁹ In many Latin American countries, *notarios publicos* are individuals that have the equivalent of a law license and are authorized to represent others before the government.²³⁰ However, the literal translation of *notario publico* is “notary public,” and in the United States, a notary public is not authorized to practice law.²³¹ This unfortunately leads to the issue of *notario* fraud: “a type of consumer fraud that typically involves someone who represents

generally takes to obtain a Juris Doctor degree as a full-time student, these costs would be \$159,102 and \$88,830 without accounting for tuition and fee increases. In addition, the average law student graduates with \$108,000 of debt. *See* STUDENT DEBT, *supra* note 196, at 5 (finding J.D. graduates surveyed owed an average of \$108,000 in law school loans). By comparison, “the average cost of an LLLT education is only \$15,000 total. That number drops to around \$3,000 for those with at least their associate’s degree who only need to complete the requisite law school course work.” Rebecca M. Donaldson, *Law by Non-lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice*, 42 SEATTLE U. L. REV. 1, 25 (2018). Furthermore, legal practitioner licensing programs can also include a waiver of formal education requirements if participants have sufficient paralegal experience. *See Become a Legal Technician*, *supra* note 219 (discussing educational requirements for Washington LLLT program, including waiver of certain educational requirements for paralegals with ten or more years of experience).

²²⁷ *See* SOLOMON & SMITH, *supra* note 222, at 2.

²²⁸ *See, e.g., id.* at 1 (discussing Washington LLLT program’s success “expand[ing] legal services to traditionally underserved communities, including Washington’s immigrant communities”).

²²⁹ *See, e.g., Legal Experts Warn Immigrant Families: Beware of ‘Notario’ Scams*, NBC NEWS (Nov. 30, 2014, 9:41 AM), <https://www.nbcnews.com/news/latino/legal-experts-warn-immigrant-families-beware-notario-scams-n256671> [<https://perma.cc/6THY-B7GF>] (warning immigrants about “notario” fraud schemes that prey on immigrants’ “reluct[ance] to report fraud for fear of being deported”); *AAJC Warns of Immigration Notario Fraud*, ASIAN AM. PRESS (July 22, 2012), <http://aapress.com/national/aajc-warns-of-immigration-notario-fraud/> [<https://perma.cc/V7KC-R4EV>] (cautioning “notarios . . . claim they can assist applicants with deferred action process” but defraud undocumented immigrants).

²³⁰ *About Notario Fraud*, A.B.A. (Jan. 31, 2022), https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fightnotariofraud/about_notario_fraud/ (explaining how the term *notarios publicos*’ multiple meanings aids in the deception).

²³¹ *Id.* (explaining that a notary public is “authorized only to witness the signature of forms”).

[themselves] as qualified to provide immigration legal services that [they are] not actually qualified to perform.”²³² Moreover, fraudulent *notarios* may overcharge for services, charge for services they never plan to provide, and file inappropriate and inaccurate paperwork with U.S. Citizenship and Immigration Services.²³³ *Notario* fraud is certainly a concern for LEP individuals, especially immigrants. However, allowing more *certified* non-attorney legal professionals to provide legal assistance can help limit *notario* fraud. Encouraging partnerships between certified non-attorney legal professionals and local trusted community organizations would facilitate more referrals of LEP individuals to these qualified non-attorney practitioners and mitigate the issue of vulnerable LEP individuals seeking help from malicious people like fraudulent *notarios* seeking to take advantage of them.

In addition, legal practitioner licensing programs are well suited to provide tailored assistance to LEP communities.²³⁴ For example, one bilingual LLLT in Eastern Washington had a client population comprised of 90% Spanish speakers, showing much promise for the potential of these programs to serve LEP AAPIs.²³⁵ In one specific case, a bilingual LLLT was integral to providing legal assistance for an undocumented client, who previously assumed he had no enforceable custody rights due to his lack of legal immigration status.²³⁶ As these programs are run on a state level, they are especially well positioned to provide linguistically adequate legal support tailored to the prominent AAPI communities within the state.²³⁷ This would have a significant impact for LEP AAPIs that live in communities where an AAPI language is prominently spoken within the community but is not widely spoken in the country. For example, if Minnesota’s Legal Paraprofessional Pilot Project recruits Hmong-speakers to the program, the program has the potential to significantly expand access to legal services to LEP Hmong individuals given that Hmong is the second most commonly spoken non-English language in the state.²³⁸ These programs will

²³² Han, *supra* note 30, at 171.

²³³ *Id.*

²³⁴ SOLOMON & SMITH, *supra* note 222, at 17 (“Bilingual LLLTs are critical to helping undocumented immigrants access their rights.”).

²³⁵ *Id.* (emphasizing how the LLLT’s Spanish-speaking clients “could not engage with the court system prior to finding a LLLT because the court facilitator in their county – the person to whom judges often referred pro se clients to for assistance in organizing their papers – did not speak Spanish”).

²³⁶ *Id.*

²³⁷ *Cf. id.* (demonstrating how non-attorney legal practitioner programs can effectively provide linguistically adequate legal support to LEP individuals in the state).

²³⁸ See Lyle Moran, *Minnesota Will Launch Legal Paraprofessional Pilot Program*, A.B.A. J. (Oct. 1, 2020, 9:19 AM), <https://www.abajournal.com/news/article/minnesota-to-launch-legal-paraprofessional-pilot-program> [<https://perma.cc/E5RB-EZK2>] (“The Minnesota Supreme Court issued an order . . . approving a pilot project that will permit ‘legal paraprofessionals’ to provide legal services in two practice areas with a high percentage of self-represented litigants: landlord-tenant disputes and family law.”); Hirsi, *supra* note 209 (describing the prominence of Hmong speakers in Minnesota).

also draw from communities where participants, especially multilingual participants, are likely to remain in their communities to practice and assist LEP individuals, which would have a strong impact on LEP AAPI communities.²³⁹ Non-attorney legal practitioner licensing programs offer a strong solution to the problem of linguistic legal deserts by providing linguistically adequate legal assistance specifically tailored to specific states' LEP AAPI populations.

2. Other Forms of Non-attorney Legal Assistance

While solutions aimed at providing more substantive legal assistance may be impactful in addressing linguistic legal deserts by increasing access to legal assistance to LEP AAPIs, realistically there are not enough attorneys or potential non-attorney licensed legal technicians that can provide linguistically adequate legal assistance to each LEP AAPI individual in need,²⁴⁰ and thus many LEP AAPIs will still need to appear in court pro se. As such, providing legal assistance to pro se LEP AAPI litigants is essential in addressing linguistic legal deserts. Doing so will help LEP AAPI pro se litigants proceed more effectively and successfully within the legal system without representation.²⁴¹

One method for doing so is running legal help centers, where attorneys and advocates can provide limited legal assistance to pro se LEP AAPIs short of court representation.²⁴² For example, several Massachusetts courts host "Lawyer for the Day" programs where attorneys provide various forms of aid to pro se litigants including assisting with completing forms, advising pro se litigants, and representing pro se litigants in mediation.²⁴³ A focus on soliciting multilingual attorneys for these programs could be impactful for assisting unrepresented LEP AAPIs. Because these kinds of programs involve a limited time commitment,

²³⁹ See, e.g., SOLOMON & SMITH, *supra* note 222, at 18 ("Several current LLLT candidates have shared that they joined the program with the goal of returning to their communities to provide much needed bilingual legal services.").

²⁴⁰ For a discussion on the limited number of individuals capable of assisting LEP AAPIs, see *supra* Section III.A.1 (noting underrepresentation of AAPI and AAPI language-speaking law students and lawyers, reasons behind this underrepresentation, and suggested solutions).

²⁴¹ See *Pro Se Centers Help Even the Odds for Litigants Without Lawyers*, U.S. CTS.: JUDICIARY NEWS (Aug. 20, 2015) [hereinafter *Pro Se Centers*], <https://www.uscourts.gov/news/2015/08/20/pro-se-centers-help-even-odds-litigants-without-lawyers> [<https://perma.cc/AD7N-AEVA>] (noting disadvantages and difficulties pro se litigants face in federal court).

²⁴² *Id.* (discussing various court pro se legal assistance programs and their benefit to pro se litigants as well as courts).

²⁴³ *Lawyer for the Day Programs*, MASS.GOV, <https://www.mass.gov/service-details/lawyer-for-the-day-programs> [<https://perma.cc/5DDG-96FV>] (last visited Apr. 20, 2022); see also *Pro Se Centers*, *supra* note 241 (discussing Pro Se Legal Assistance Project in U.S. District Court in Brooklyn, New York and similar centers in other federal district courts, including Northern and Central Districts of California and Northern District of Illinois).

they may also attract attorneys with AAPI language abilities that otherwise cannot commit to fully representing an LEP AAPI client.²⁴⁴

In addition, non-attorney advocates with AAPI language skills could also offer limited legal assistance to LEP AAPI pro se litigants, including completing legal forms and answering legal questions, at these help centers.²⁴⁵ Such legal help centers also benefit the court systems that house them.²⁴⁶ Cases involving pro se litigants place heavy strain on courts, introducing issues including “excessive time demands, incomplete and illegible submissions . . . and limited understanding of court procedure.”²⁴⁷ The assistance these centers provide to pro se litigants helps courts avoid these problems, reducing procedural strain on judges, clerks, and court staff to increase courts’ efficiency.²⁴⁸

Furthermore, this solution would be feasible and cost-effective to implement. As discussed, legal help centers already exist in courts around the country, utilizing volunteer attorneys to assist pro se litigants. To assist LEP AAPI pro se litigants, these programs can target outreach to attorneys with language abilities that can assist LEP AAPIs.

Technology and other forms of assistance that do not involve individual personal help can also be utilized to assist LEP AAPI pro se litigants. Courts can and should translate and provide court forms and documents in AAPI languages, particularly those languages that are most prevalent within their state. In fact, the Department of Justice explained in its guidance that state courts should translate certain vital documents into languages commonly spoken by court users.²⁴⁹ In addition, technology holds great potential for addressing linguistic legal deserts.²⁵⁰ Virtual Remote Interpreting (“VRI”) allows courts to access a broader base of interpreters covering a wider selection of languages than solely

²⁴⁴ The Pro Se Legal Assistance Project “assists with strategizing, document drafting and procedural guidance, but does not directly represent litigants in court.” *Pro Se Centers*, *supra* note 241.

²⁴⁵ See HAMMOND, *supra* note 32, at 18 (describing legal aid center’s self-help center in California courthouse staffed by bilingual advocate to provide limited assistance pro se litigants).

²⁴⁶ See *Pro Se Centers*, *supra* note 241 (describing lessened procedural errors as result of legal help centers).

²⁴⁷ *Id.*

²⁴⁸ *Id.* (explaining difficulties of navigating litigation process without legal assistance and how providing this guidance helps reduce errors).

²⁴⁹ See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455, 41456 (DOJ, June 18, 2002) (explaining benefits of increased translated documents and considerations for determining whether certain documents should be offered in target languages); HIGASHI ET AL., *supra* note 20, at 5 (recommending that “translations of vital documents are part of [courts’] commitment to language access”).

²⁵⁰ See generally JESSICA SPERLING, MIGRATION POL’Y INST., COMMUNICATING MORE FOR LESS: USING TRANSLATION AND INTERPRETATION TECHNOLOGY TO SERVE LIMITED ENGLISH PROFICIENT INDIVIDUALS (2011) (analyzing advances in translation and interpretation technology and resulting benefits to language access professionals).

in-person interpreters.²⁵¹ In 2016, the National Center for State Courts released a national database including 1,335 qualified interpreters covering forty-nine languages.²⁵² This resource will be helpful in increasing the effectiveness and use of VRI technology in assisting LEP individuals. While providing courtroom interpretation to LEP individuals alone is a reactive solution to linguistic legal deserts, legal services providers can utilize VRI to virtually access interpreters that would otherwise not be available and to provide legal assistance to otherwise unreachable individuals, ultimately addressing legal deserts by providing greater access to linguistically adequate legal assistance for LEP AAPIs.²⁵³ VRI technology is particularly impactful for LEP AAPIs that speak languages not widely spoken in a given area.²⁵⁴ For example, while finding an interpreter for an LEP Vietnamese individual in Texas might be more easily accomplished because of the relatively significant Vietnamese population in the state, finding an interpreter for an LEP Nepali individual would be much more difficult even if they were able to find legal help.²⁵⁵ The use of VRI technology would allow this LEP Nepali-speaking individual to communicate with an attorney to obtain the legal assistance they need.

Implementing such forms of assistance for LEP AAPIs would also be feasible and cost-effective. Translating court documents into more languages can help reduce time and money costs courts face due to procedural errors committed by pro se litigants. In addition, virtual interpretation would simply require that courts obtain and implement the technology to support virtual interpretation, which courts have the capacity and adaptability to do, as seen by the transition of courts to virtual Zoom proceedings during the COVID-19 pandemic.

While providing linguistically adequate legal representation for LEP AAPIs most effectively addresses linguistic legal deserts, acknowledging the reality that the amount of attorneys and non-attorney legal representatives with AAPI language abilities to assist LEP AAPIs is limited, these forms of non-

²⁵¹ *The Future of Language Access in the State Courts*, NAT'L CTR. FOR STATE CTS., <https://www.ncsc.org/services-and-experts/areas-of-expertise/language-access/called-to-action/the-future-of-language-access-in-the-state-courts> [<https://perma.cc/U2DS-RCS6>] (last visited Apr. 20, 2022) (“Future initiatives will focus on increasing the overall number of interpreters and breadth of languages included in the database, as well as the identification of those interpreters available to state courts for remote interpreting, either via audio or video platforms. Such efforts will provide courts with an expanded cadre of qualified interpreters to meet their local needs.”).

²⁵² *Id.*

²⁵³ *See id.* (discussing benefits of using technological services to improve language access).

²⁵⁴ *Id.* (noting that national database of qualified court interpreters will increase access to those who speak “rare languages”).

²⁵⁵ This is because in Texas, over 190,000 individuals speak Vietnamese, while Nepali is not in the top ten non-English languages spoken in the state. Alexa Ura & Jolie McCullough, *As Texas Population Grows, More Languages Are Spoken at Home*, TEX. TRIB. (Nov. 26, 2015, 6:00 AM), <https://www.texastribune.org/2015/11/26/languages-spoken-texas-homes/> [<https://perma.cc/Y988-6C7G>].

representational legal assistance are important to provide legal assistance to LEP AAPIs in need.²⁵⁶

C. *Collaborating with Community Organizations*

Community organizations play a crucial role in assisting LEP AAPI populations with various community needs, and collaborations between legal services organizations and community organizations have proven successful in increasing access to legal assistance for LEP AAPIs.²⁵⁷ Community organizations have deep knowledge of the communities they serve and generally enjoy rapport with AAPI communities that legal organizations alone do not necessarily have.²⁵⁸ Thus, partnering with community organizations can also address some issues of cultural differences in the AAPI community that serve as an obstacle in connecting LEP AAPIs to legal assistance.²⁵⁹ Given AAPI communities' trust in local community organizations, legal services organizations partnering with these community groups can assist with connecting LEP AAPIs to legal services.

In addition, because of these organizations' relationship with their communities, LEP AAPIs may be more inclined to share their legal issues while interacting with these groups.²⁶⁰ As a result, their legal issues can be identified at an earlier stage, and a partnership with a legal services organization would thus allow LEP AAPIs in need to obtain assistance earlier. This would enable LEP AAPIs to address their issues while avoiding further complications that could arise as a result of waiting to seek legal assistance.

Partnering with local community organizations would also be an approach tailored to specific AAPI communities, thereby helping address AAPI linguistic diversity and the low number of individuals with language abilities to assist LEP AAPIs.²⁶¹ These organizations likely employ or have access to individuals with the much-needed linguistic abilities to assist LEP AAPIs and are especially tailored to meet the specific linguistic needs of the communities they serve.

²⁵⁶ See *supra* Section II.C.2 (acknowledging increasing number of AAPI-speaking court interpreters as important although not adequate solution to linguistic legal deserts alone).

²⁵⁷ See HAMMOND, *supra* note 32, at 21-27 (discussing various programs established to assist AAPI communities with legal needs).

²⁵⁸ See HIGASHI ET AL., *supra* note 20, at 48 (discussing "critical tools" to increasing legal assistance that are provided by community organizations).

²⁵⁹ See HAMMOND, *supra* note 32, at 18 (emphasizing necessity of partnering with community-based organization to more effectively reach AAPI clients).

²⁶⁰ See *id.* at 17 (stating that "[t]he most successful way to build trust between legal service organizations and [AAPI] communities is by working with [AAPI] community-based organizations to reach out to [AAPI] individuals," and discussing that because these community organizations create a "safe space" and have a position of trust with [AAPI] community members, "[t]his trust can extend to legal aid organizations that build strong relationships with [AAPI] community groups").

²⁶¹ See HIGASHI ET AL., *supra* note 20, at 32 (noting that Colorado court system engages with local community organizations to assist in recruiting interpreters).

Moreover, some AAPI populations largely only respond to outreach through personal networks, rather than other outreach efforts to connect them with services.²⁶²

Legal services providers partnering with community organizations can also facilitate connecting LEP AAPIs with legal assistance by potentially providing a single point of entry for LEP AAPIs to easily turn to when in need of assistance.²⁶³ Whether by in-person referral or through a dedicated hotline staffed by multilingual staff or playing pre-recorded messages in AAPI languages, an easy access point to linguistically adequate legal services would encourage LEP AAPIs to seek help.²⁶⁴ Without such an entry point, LEP AAPIs may get frustrated trying to navigate resources and find where to look for help and ultimately give up.²⁶⁵ If they have the capacity, community organizations could also assist with initial potential client case intake for legal services providers.

Partnering with community organizations is also a feasible solution. Both legal services and community organizations aim to benefit members of the community in need of assistance. As discussed, legal services organizations can provide legal assistance to LEP AAPIs while community organizations provide a connection to the community to assist individuals with their needs.²⁶⁶ This mutual benefit would incentivize such partnerships.²⁶⁷ This solution would also be cost-effective as it entails collaboration of resources and skills rather than requiring monetary contributions.

CONCLUSION

Linguistic legal deserts remain a prominent issue for LEP individuals. While this issue is by no means unique to LEP AAPIs, the linguistic and cultural considerations of this group within the United States are distinct and important factors to consider in establishing solutions. Though language access has generally been acknowledged as an issue within the legal field, many solutions fail to adequately address these factors and moreover are reactive measures focusing on responding to the effect of linguistic legal deserts on LEP individuals rather than increasing access to legal assistance. While these reactive

²⁶² See HAMMOND, *supra* note 32, at 23 (“The Cambodian population . . . is courted almost entirely through personal networks and relationships.”).

²⁶³ See *id.* at 18 (providing examples of single point of entry, such as single phone number or dedicated phone number for each particular AAPI language).

²⁶⁴ See *id.* (“A single point of entry in the native language of the clients also helps establish trust and mitigate cultural divides.”).

²⁶⁵ *Id.*

²⁶⁶ *Id.* at 17 (“In [AAPI] communities, social service, volunteer and faith-based groups provide critical services and programs to [sic] as well as create a safe space for community members.”).

²⁶⁷ Community organizations aim to assist the local community with its needs, some of which are legal, and legal organizations require client trust to be able to provide legal assistance. Thus, such a relationship would be beneficial. *Id.*

measures serve an important purpose and do assist LEP AAPI litigants, to meaningfully address the existence of linguistic legal deserts, solutions should primarily address the source of the problem by increasing linguistically adequate legal assistance for all LEP AAPIs. There is no easy solution to addressing linguistic legal deserts, and making progress will take time. However, by addressing linguistic legal deserts through tailored, proactive, and substantive solutions that increase effective legal assistance for LEP individuals, we can move towards ensuring that justice in this country truly is justice for all.