

# Justice in any Language

Nebraska Law Enforcement Agencies' Limited  
Implementation of Language Access Policies

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Fall 2021

**ACLU**  
Nebraska

This ACLU of Nebraska report examines Nebraska law enforcement agencies' efforts to provide meaningful language access to individuals with limited English proficiency (LEP), measured by five best practices identified by the U.S. Department of Justice (U.S. DOJ). It identifies concerns that language access needs are not being met and offers policy solutions to ensure that all Nebraskans who encounter law enforcement can effectively communicate their needs and concerns, and most importantly, exercise their rights.

## Executive Summary

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of *all* people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.

The ACLU of Nebraska works in coalition with other civil rights groups to educate and empower communities on issues of racial justice and immigrants' rights, litigates racial discrimination cases, and brings proactive policy reform solutions to the halls of power because Nebraskans of color and Nebraskans who are immigrants must not be excluded from our state motto of "Equality Before the Law." The fundamental constitutional protections of due process and equal protection embodied in our Constitution and Bill of Rights apply to every person, regardless of immigration status, primary language, or national origin.

Recent examples of our work grounded in racial justice and immigrants' rights include:

- A lawsuit on behalf of meatpacking plant workers seeking protections against COVID-19 in the workplace.<sup>1</sup>
- Rapid legal response support in the aftermath of the large-scale O'Neill immigration raid.<sup>2</sup>
- Active opposition to the Dakota County Sheriff's decision to join the Department of Homeland Security's (DHS) 287(g) program that converts local law enforcement officers into Immigration and Customs Enforcement (ICE) agents and invites racially biased policing and the separation of families.<sup>3</sup>
- A lawsuit against the Omaha Police Department, defending the free speech rights of Nebraskans calling for racial justice.<sup>4</sup>
- Support for historic state legislation that helps victims of crime who are immigrants gain status through the U and T visa programs.<sup>5</sup>
- Consistent advocacy for Nebraska Dreamers and comprehensive immigration reform.<sup>6</sup>

The United States is home to immigrants from across the world who speak a variety of languages, millions of whom do not speak English as their primary language.<sup>7</sup> Nationally, more than 25 million people ages five and older were considered individuals who do not speak English as their primary



Author: *Rose Godinez, ACLU of Nebraska Legal and Policy Counsel*

language and have a limited ability to read, speak, write, or understand English (“LEP”).<sup>8</sup>

**In Nebraska, nearly 5% (81,310) of the state’s population has LEP and 11.5% (225,572) of the state’s population speak a language other than English at home.**<sup>9</sup> In fact, the population of many of our state’s counties, including all of the counties we surveyed for this report, ranges from 12 to 45% Nebraskans who speak a language other than English at home.<sup>10</sup> As best stated by Supreme Court Justice Breyer, this linguistic diversity “complement[s] and support[s] [] our democratic institutions.”<sup>11</sup>

**Individuals with limited English proficiency (“LEP”)** are individuals “who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.”<sup>12</sup>

**NOTE:** Individuals with LEP include individuals who are deaf or hard of hearing and communicate with sign language, are blind or have visual impairments.<sup>13</sup>

While this report only focuses on required meaningful language access to persons with LEP, even stronger requirements exist for persons who are deaf or hard of hearing. The Americans with Disabilities Act (ADA) requires local and state agencies to provide effective means of communication with people who are deaf or hard of hearing.<sup>14</sup>

The ACLU of Nebraska periodically receives intakes and inquiries from Nebraskans with LEP who believe they have not been provided meaningful language access by law enforcement. Additionally, in recent years, the U.S. Department of Justice (U.S. DOJ) has embarked on investigations of law enforcement agencies’ policies and practices on LEP across the country, including at least one agency from Nebraska (Omaha Police Department), to help ensure individuals with LEP can communicate with law enforcement.<sup>15</sup>

As such, the ACLU of Nebraska conducted a first of its kind investigation to examine law enforcement agencies’ efforts to provide meaningful language access to individuals with LEP, focusing on counties with large numbers of Nebraskans who speak a language other than English at home. Our findings are outlined in this report. Additionally, this report offers policy solutions for all law enforcement agencies and policymakers in Nebraska to ensure we meet our shared public safety goals and ensure that all Nebraskans who encounter law enforcement can effectively communicate their needs and concerns, and most importantly, exercise their rights.

The ACLU acknowledges that Nebraska is fortunate to have many dedicated and hard-working law enforcement officers. However, the ACLU remains deeply concerned that law enforcement agencies are not meeting the language access needs of Nebraskans with LEP. It is important that all individuals encountering Nebraska law enforcement officers, no matter the reason (e.g., as



If the law and the citizen cannot communicate, the power will always be on the law's side, and only the law's side will be heard.

Lazaro Spindola,  
Executive Director,  
Nebraska Latino-American  
Commission

victims, witnesses, or system-impacted persons), can access their services and/or assert their rights regardless of the language they speak.

As stated by the United States Department of Justice's Community Oriented Policing Services ("COPS"): "[p]olice officers cannot perform their duties well when they cannot communicate with the people they serve."<sup>16</sup> Having open and effective communication is critical to building community and trust with law enforcement.<sup>17</sup> Moreover, our Nebraska Code of Professional Responsibility for Interpreters recognizes that "[i]t is essential that...[persons with LEP] are placed in the same position as similarly situated persons for whom there is no such barrier."<sup>18</sup>

## Language Access and Federal Law

Just as our laws prohibit discrimination, there is a long history in the United States of requiring language access. For example, Title VI of the Civil Rights Act of 1964 prohibits law enforcement agencies receiving federal financial assistance from discriminating against individuals "on the basis of race, color, or national origin."<sup>19</sup> Additionally, the Supreme Court in *Lau v. Nichols* interpreted Title VI as requiring federal financial assistance recipients, such as law enforcement agencies, to ensure individuals with LEP were not excluded from its benefits or services because of a language barrier.<sup>20</sup> Further, the Supreme Court has recognized the intersection between language and national origin, which can serve as a basis for a discrimination claim under Title VI.<sup>21</sup> Ultimately, Title VI requires law enforcement agencies receiving federal funds to provide individuals with LEP "meaningful access to their programs and services."<sup>22</sup> Providing meaningful language access involves a combination of interpretation and translation of important documents.<sup>23</sup> This requirement exists regardless of whether the federal funds are actually used to operate a specific program.<sup>24</sup>

Following the Supreme Court decisions interpreting Title VI to require federal financial recipients to provide meaningful language access, President Bill Clinton signed Executive Order 13166 in August of 2000, "Improving Access to Services for People with Limited English Proficiency."<sup>25</sup> The executive order and subsequent guidance from the U.S. DOJ outline four factors law enforcement agencies must first take into consideration to determine how to provide meaningful language access to individuals with LEP: 1) the number of LEP persons likely to encounter the law enforcement agency; 2) the frequency with which those encounters occur; 3) the "nature and importance" of the law enforcement services to the community; and 4) the resources available to the law enforcement agency and costs.<sup>26</sup> As to the fourth factor, the Attorney General's office has clarified that a lack of resources will not



Many of our immigrant and refugee neighbors come from countries with corrupt or ineffective justice systems where law enforcement is mistrusted or feared. Furthermore, undocumented individuals in the U.S. are often reluctant to contact local police out of fear it may trigger immigration enforcement. Where police and immigrants cannot communicate effectively, confusion and fear are made worse. Meaningful language accessibility for individuals with LEP is therefore critical to enabling immigrant and refugee community members to advance their rights, and to fostering trust and cooperation with law enforcement. **Our communities are safer when everyone, regardless of languages spoken, feels valued and heard by those entrusted to keep us safe.**

Anna Deal, J.D.,  
Legal Director,  
Immigrant Legal Center

negate the law enforcement agency’s responsibility to provide meaningful language access, stating “[l]anguage access is essential and is not to be treated as a ‘frill’ when determining what to cut in a budget.”<sup>27</sup>

## Language Access Best Practices in Law Enforcement

### Elements of an LEP Plan or Policy

While there are several ways a law enforcement agency can provide language access, the U.S. DOJ has provided law enforcement agencies with critical elements helpful in creating an LEP policy or plan. Those elements include:

- 1 identifying individuals with LEP who need assistance;
- 2 identifying the manner in which language assistance will be given;
- 3 training on language assistance;
- 4 public awareness of the language assistance available to individuals with LEP; and
- 5 continuously monitoring and updating a written LEP policy.<sup>28</sup>

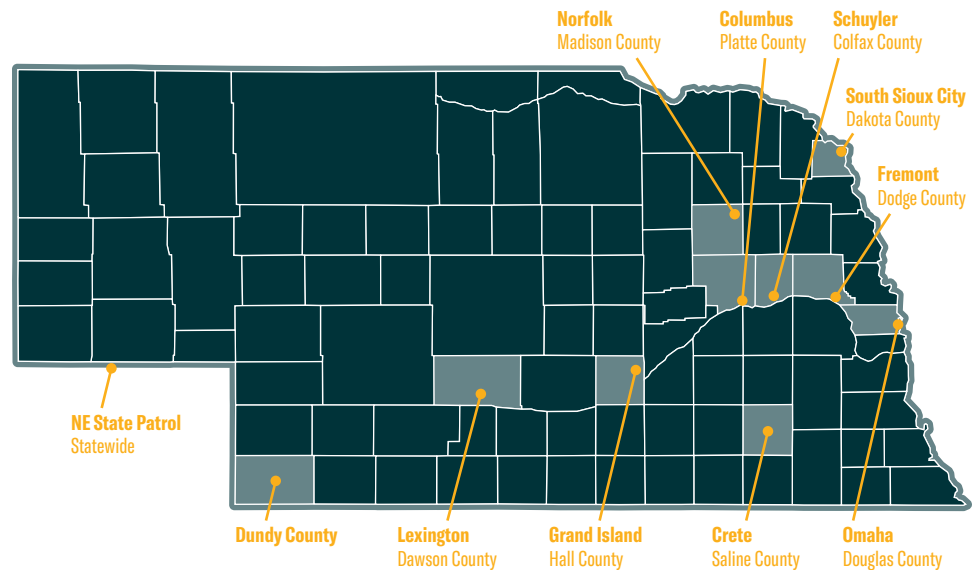
This report analyzes select Nebraska law enforcement agencies’ efforts in implementing these five elements in their plan or policy to ensure language access to all Nebraskans with LEP.

## Analysis of Select Nebraska Law Enforcement Agencies' Efforts to Provide Meaningful Language Access

### Methodology

To better understand the Nebraska landscape on law enforcement’s efforts to provide language access consistent with best practices, the ACLU of Nebraska utilized Census data to identify 10 of Nebraska’s counties with the largest population of people who speak a language other than English at home.<sup>29</sup> We sent an open records request to the local police department in the largest city of the county and to the sheriff’s offices in those 10 counties. Records were

requested from a total of 20 agencies that included city police departments, county sheriffs, and the Nebraska State Patrol. See **Appendix A** for a copy of our open records request. See **Appendix B** for a summary of law enforcement agencies' responses. One law enforcement agency, the Dundy County Sheriff's Office, disappointingly failed to respond to our open records request despite a clear requirement under state law, leaving the total number of responses to 19. Complete copies of the law enforcement agencies' responses are on file at the ACLU of Nebraska and available upon request.



Our open records request sought the following information from law enforcement agencies surveyed:

- 1) whether the agency has a policy or guidance for officers regarding interactions with persons with LEP;
- 2) whether the agency provides instructions to its officers on how to access Language Assistance Services (“LAS”) in different situations (e.g., traffic stops, investigations, interviews/interrogations);
- 3) whether the agency requires training regarding interactions with persons with LEP;
- 4) whether the agency provides notice to the public of its policy or LAS;
- 5) whether the agency employs bilingual or multilingual officers fluent in languages other than English; and
- 6) whether the agency tracks the number of times LAS are accessed.

## Survey Results for Nebraska LEP Policies

- **12 of the 19 (63%)** law enforcement agencies responding to our records request did not have a written policy on interactions with individuals with LEP.

- **7 of the 19 (37%)** law enforcement agencies responding to our records request had a written policy on interactions with individuals with LEP.

See **Appendix B** for a summary of law enforcement agencies' responses.

The U.S. DOJ and professional police organizations strongly recommend law enforcement agencies adopt and implement a written policy on providing language assistance to individuals with LEP.<sup>30</sup> The U.S. DOJ even provides a sample written policy that law enforcement agencies can quickly adopt.<sup>31</sup> A written policy ensures officers have a point of reference for how and when to use language assistance services.<sup>32</sup> Yet, a disappointing majority of the Nebraska law enforcement agencies responding to our survey did not have a written policy on providing language assistance to individuals with LEP.

While several law enforcement agencies provided copies of their instructions to staff on how to access a language line with interpreters in a multitude of languages, those instructions alone do not provide officers the necessary guidance to determine when a language line should be accessed, what to do in exigent circumstances, interviews, and interrogations or in other day-to-day situations in which officers would encounter individuals with LEP. In fact, our survey results found:

- **12 of the 19 (63%)** law enforcement agencies responding to our records request did not have instructions for law enforcement officers on how and when to access LAS in different situations (e.g., interviews, interrogation, or traffic stops).
- **7 of the 19 (37%)** law enforcement agencies responding to our records request had instructions for law enforcement officers on how and when to access LAS in a variety of situations, including civilian emergency calls, in the field, exigent circumstances, on police radio, and during interviews and interrogations.

See **Appendix B** for a summary of law enforcement agencies' responses.

## Survey Results for Nebraska Language Access Training

- **5 of the 19 (26%)** law enforcement agencies responding to our records request had at least one officer attend training on how to address situations with individuals with LEP.
- **14 of the 19 (74%)** law enforcement agencies responding to our records request did not have any officers attend training on LEP encounters.

See **Appendix B** for a summary of law enforcement agencies' responses.

Nebraska law requires that all verified law enforcement officers receive 22 hours of annual continuing education.<sup>33</sup> However, state law does not require specific training on language assistance.<sup>34</sup>

Compliance with Nebraska's 22-hour continuing education requirement is largely left up to each department and their officers, who decide what subjects they will choose to meet their continuing education requirements.<sup>35</sup> Recently, however, the law was changed to require two of the mandated training hours be allocated to a specific subject, anti-bias training,<sup>36</sup> thanks to groundbreaking work by the ACLU of Nebraska and the unparalleled leadership of Senator Ernie Chambers, who introduced the bill. The Nebraska Legislature unanimously passed the bill and Gov. Pete Ricketts signed it into law shortly after.<sup>37</sup>

The U.S. DOJ recommends that all law enforcement officers receive training on language assistance to facilitate interactions with individuals with LEP.<sup>38</sup> Moreover, training on language access will make officers' jobs easier and safer when they know and understand how to access language assistance services in a variety of situations in their diverse communities.<sup>39</sup>

## Survey Results for Nebraska Public Awareness of LAS/LEP Policy

- **3 of the 19 (16%)** law enforcement agencies responding to our records request make their policy or guidance on the availability of LAS publicly available.
- **16 of the 19 (84%)** law enforcement agencies responding to our records request did not make their policy or guidance on the availability of LAS publicly available.

See **Appendix B** for a summary of law enforcement agencies' responses.

For law enforcement agencies to provide meaningful language access, individuals with LEP first need to know language assistance is available.<sup>40</sup> Yet very few law enforcement agencies surveyed are currently informing the public of the availability of their language assistance services and those that are making their policy or guidance publicly available are only posting it on their website or in their offices.

## Survey Results for Nebraska Officers Fluent in Languages Other Than English

- **15 of the 19 (84%)** law enforcement agencies responding to our records request employ at least one multilingual officer.



- **4 of the 19 (16%)** law enforcement agencies responding to our records request do not employ a multilingual officer.

The majority of law enforcement agencies responding to our survey currently employ at least one multilingual officer. We commend the Nebraska State Patrol for their press release seeking to recruit multilingual individuals and offering a higher base pay for multilingual troopers.<sup>41</sup>

Recruitment and employment of multilingual officers are important first steps in providing language access.<sup>42</sup> However, individuals capable of speaking multiple languages have varying skill levels in doing so, making it important to ensure that those helping facilitate communication are sufficiently capable of speaking, interpreting, and translating in both languages.<sup>43</sup> The very complexity of law enforcement terminology, some of which do not have corresponding terms in other languages, further illustrates the heightened need for language services and training.<sup>44</sup> Multilingual officers must practice careful discretion in determining when they can effectively interpret or translate and when, considering the legal rights and interests at stake, a third-party interpreter or translator should be utilized.<sup>45</sup>

## Survey Results for Nebraska Tracking Number of LAS Services

- **7 of the 19 (37%)** law enforcement agencies responding to our records request track the number of times LAS are used and the languages requested.
- **12 of the 19 (63%)** law enforcement agencies responding to our records request do not track the number of times LAS are used.

See **Appendix B** for a summary of law enforcement agencies' responses.

A critical first step to provide meaningful language access is to track the language needs of the community.<sup>46</sup>

## Recommendations

The ACLU of Nebraska invites law enforcement agencies to use this report as an opportunity to review their policies and practices on providing language access to Nebraskans with LEP. Further, we encourage policymakers in Nebraska to pursue policy reform to ensure all Nebraskans can access law enforcement services and understand and assert their rights. Additionally, these suggested reforms will help law enforcement agencies comply with the “Equal Protection Clause” and “Due Process Clause” of the U.S. Constitution and the state’s obligations under Title VI of the Civil Rights Act. Policy reform solutions include, but are not limited to, the following:

**1. Ensure compliance with Title VI of the Civil Rights Act and U.S. DOJ guidance by mandating a written LEP policy.**

• *Compliance with Title VI and U.S. DOJ guidance*

The U.S. DOJ strongly recommends a written policy guiding officers on interactions with individuals with LEP and has published a model policy.<sup>47</sup> In providing a model policy, the U.S. DOJ has clearly identified components that a policy regarding interactions with the LEP community should contain, including how language assistance services should be accessed in the field, during interviews and interrogations and during other common scenarios officers encounter.<sup>48</sup> Yet, an underwhelming minority of law enforcement agencies surveyed have adopted a written policy.

With such a wealth of information readily available, we encourage the Nebraska Crime Commission to take a leadership role in updating its LEP plan drafted in 2015<sup>49</sup> to bring it in line with best practices. Second, we urge the Nebraska Crime Commission to reach out to all Nebraska law enforcement agencies and ensure every agency is in compliance with Title VI and its corresponding regulations, as well as Executive Order 13166. Agencies should be encouraged to adopt a consistent written policy on language assistance and encounters with individuals with LEP and continually review their policy to ensure they meet best practices.

• *Mandating a Written Language Access Policy*

Further, policymakers should consider a Nebraska law mandating law enforcement agencies receiving state funding to provide meaningful language access to individuals with LEP. This has been accomplished in other states, including California<sup>50</sup>, Hawaii<sup>51</sup>, and Maryland<sup>52</sup>. In light of the data above, Nebraska lawmakers should replicate these efforts aimed at ensuring all Nebraskans enjoy the equal protection of the law.

**2. Commence data collection to determine the number of times language assistance is requested and the languages most prominent in the community served.**

Very few law enforcement agencies are collecting data on the number of occasions they provide language assistance services or the languages requested by individuals with LEP. Law enforcement agencies can collect information on the LEP population from the Census and the American Community Survey, both of which are readily available to the public.<sup>51</sup> Better data collection would allow law enforcement agencies to understand and address language assistance needs in their community and comply with the Title VI requirement and U.S. DOJ guidance of providing meaningful language access to individuals with LEP.

**3. Publishing language access policy or plan.** All law enforcement agencies should publish their language assistance services available and their policy or plan on language access in multiple languages, preferably in the languages most common in their community or as tracked in their data collection, and in multiple locations. Additionally, agencies should proactively and regularly share their policy with community organizations to create awareness of the availability of language assistance in their services and to foster trust and communication with their diverse communities.

**4. Training officers on providing meaningful language access.** Training on providing language access should be provided by the Nebraska Law Enforcement Training Center (NLETC) at the beginning of all officers' careers and offered annually at each agency or online. Further, specialized testing on language access and training on law enforcement terminology should be required for all multilingual officers expected to use their language skills on the job.

## Conclusion

Nebraska law enforcement agencies have taken positive steps in diversifying their teams by recruiting and hiring multilingual officers and implementing some measures to provide language assistance. However, no Nebraska law enforcement agency is meeting all best practices recommended by the U.S. DOJ despite there being a wealth of information and tools available to law enforcement on how to provide meaningful language access. Nebraska law enforcement agencies must explore new strategies to understand and address language access to ensure public safety for all and to protect the constitutional rights of all Nebraskans.

# Appendix A: Open Records Request

July 27, 2021

Nebraska State Patrol  
Legal Division Public Records Request  
PO Box 94907  
Lincoln, NE 68509

**RE: Public Records Request**

Dear Legal Division:

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of *all* people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.

Our office continues to receive inquiries from concerned Nebraskans regarding state and local government entities' efforts to provide meaningful access to competent interpretation services to individuals with Limited English Proficiency ("LEP") who come into contact with law enforcement officers across the state. As such this is a request under Nebraska public records law, Neb. Rev. Stat. §84-712 to investigate these concerns and seek documents relating to the Nebraska State Patrol's (hereinafter "Department") guidance or policies regarding officers' or deputies' interactions with persons with LEP.

I am writing to you in your capacity as Superintendent of the Nebraska State Patrol. This is a request under Nebraska public records law.

In the following request,

**"Documents"** includes emails, notes, memos, faxes, letters, invoices, purchase orders whether in paper format or electronic format.

**"Language Assistance Services"** includes interpretation services and/or translation services provided by competent personnel to an individual with a LEP in their primary language to ensure effective communication.

**We request the following information from you:**

1. A copy of the Department's *current* policy or guidance regarding interactions with persons who have LEP.
2. Any Documents currently informing the Department's officers how to access Language Assistance Services in different situations, including when receiving or responding to requests for assistance,



Nebraska

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performing traffic stops, conducting investigations, interviews, or interrogations.

3. Any Document regarding the extent and nature of training *currently* required for your Department's officers or deputies regarding interactions with persons who have LEP.
4. Any Document reflecting how the public is *currently* made aware of the availability, if any, of the Department's policy or guidance regarding interactions with persons who have LEP and Language Assistance Services.
5. Any Document reflecting the number of bilingual officers or deputies *currently* on staff in your Department and the languages they are fluent in.
6. Any Document reflecting the number of occasions Language Assistance Services have been requested by a member of the public when interacting with an officer or deputy in your Department and the language requested *from July 1, 2019 to July 1, 2021*.

When the documents relevant to this request are ready, you may provide them in electronic form by emailing them to me at [rgodinez@aclunebraska.org](mailto:rgodinez@aclunebraska.org) or you may mail them to me at 134 S. 13th Street, Suite 1010, Lincoln NE 68508.

As you may know, Nebraska state law requires a response to an open records request to be made within four (4) days of receipt.

Please contact me should you have any questions regarding this request. We look forward to your response and thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rose Godinez".

Rose Godinez  
Legal & Policy Counsel

# Appendix B: Survey Results

Agency	LEP Policy	Accessing LAS	Training	Public Awareness	Multilingual Officers	Tracking LEP
NE State Patrol	X	X	X		X	
Colfax County Sheriff					X	
Columbus Police Department					X	
Crete Police Department						
Dakota County Sheriff	X	X			X	
Dawson County Sheriff						
Dodge County Sheriff					X	
Douglas County Sheriff	X	X	X	X	X	X (332)
Dundy County Sheriff	N/A	N/A	N/A	N/A	N/A	N/A
Fremont Police Department						
Grand Island Police Department					X	X (1104)
Hall County Sheriff	X	X	X	X	X	X (2)
Lexington Police Department					X	
Madison County Sheriff					X	
Norfolk Police Department					X	
Omaha Police Department	X	X	X	X	X	X (N/A)
Platte County Sheriff	X	X			X	X (314)
Saline County Sheriff			X		X	
Schuyler Police Department	X	X				X (649)
South Sioux City Police Department					X	X (19)

Red Text = Did not respond to our open records request in violation of Nebraska open records law.

(##) = Number of occurrences law enforcement agency reported to have provided language assistance services.

# ACKNOWLEDGMENTS

## We thank the following students for contributing legal/policy research and data analysis:

TANMAYEE CHENGALASETTY, University of Nebraska-Lincoln College of Law, Class of 2023  
MAX TIERNEY, University of Nebraska-Lincoln College of Law, Class of 2022

# ENDNOTES

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