"ALTO, CABRÓN. A VER LAS MANOS"[1]: A POLICE OFFICER'S EXPECTATION OF INSTANT OBEDIENCE WHEN A CIVILIAN DOES NOT SPEAK ENGLISH—A COMMENT ON *UNITED STATES V. PARKER* (THE INDIAN GRANDFATHER CASE)

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1. *See infra* Parts I.A (Slang and Colloquial English); I.D (Cop-Speak under the First Amendment) *infra*. A rough translation of the Spanish-language words in our title would be "Hold it right there, asshole. Let me see your hands." We included this phrase, which embodies both a slang expression and an obscenity, as an invitation to a thought experiment. Imagine that you are strolling around a Mexican village during a vacation in that country. Like many American tourists, you have a little knowledge of basic Spanish, including such phrases as "Cuánto cuesta?" (How much does that cost?), "Donde está el baño?" (Where is the bathroom?), and "Cómo voy al museo?" (Can you tell me how to get to the museum?). Without warning, you find yourself the object of attention of a highly excited Mexican police officer, who seems to be laboring under the misconception that you are a Yankee tourist who, it turns out, has been looking to buy a large quantity of drugs and who resembles you in a few superficial respects.

The cop utters the very words of our title and looks at you expectantly. He clearly wants you to do something, but you have no idea what it is. Meanwhile, he is becoming more agitated by the minute. Some of the words he shouted are familiar to you, but others are not. "Alto," for example, means "high," but can also mean "stop." So, does he want you to raise your hands—or stop, i.e., more or less the opposite? And why does he think you are a "cabrón," which seems to be something bad? *See infra* notes 2–39 and accompanying text (describing the case of Sureshbhai Patel, an Indian grandfather who found himself in a similar predicament during a visit to the United States).

INTRODUCTION

In *United States v. Parker*,[2] federal district court Judge Madeline Hughes Haikala dismissed a federal civil rights lawsuit against a young Alabama police officer, Eric Parker, who had manhandled a slightly built fifty-seven-year-old Indian grandfather, Sureshbhai Patel, who was out for a walk in his son's middle-class neighborhood.[3] A visitor from the small town of Pij in Gujurat,[4] Mr. Patel, who spoke very little English, had been slow responding to the officer's orders.[5]

In response to a neighbor's report about a black man walking in yards, standing in driveways, and looking into garages, two officers arrived on the scene.[6] Seeing no one by that description nearby, one of them, Parker, a field training officer, approached Patel, who was walking on the sidewalk a short distance from where his son lived and about a block down the street from where the neighbor had reported seeing a suspicious figure. When the officers encountered him, Patel was strolling along the sidewalk, not the yards or driveways, and his clothing differed considerably from that of the man in the neighbor's report.[7]

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2. No.: 5:15-cr-55-MHH-HGD, 2016 WL 165713 (N.D. Ala. Jan 13, 2016).

3. The judge's dismissal followed two earlier mistrials, in the first of which the jury voted 10–2 for acquittal. *See* Robert Mackey, *Alabama Apologizes to India for Police Assault on Indian Visitor*, N.Y. TIMES (Feb. 18, 2015), http://www.nytimes.com/2015/02/19/world/asia/alabama-apologizes-to-india-for-police-assault-on-indian-visitor.html?_r=0 and incorporated videos. Mr. Patel's son, whom he was visiting, is a married engineer in the defense industry in nearby Huntsville, which is a center of science and technology. *Cummings Research Park*, HUNTSVILLE, http://www.huntsvillealabamausa.com/index.php?option=com_content&view=article&id=138&Itemid=271 (last visited May 19, 2016); *see* Richard Fausset, *Alabama Police Officer Indicted in Confrontation with Unarmed Indian Man*, N.Y. TIMES (Mar. 27, 2015), http://www.nytimes.com/2015/03/28/us/alabama-police-officer-indicted-in-confrontation-with-unarmed-indian-man.html. For the judge's discussion of the applicable standard for granting motions for judgment of acquittal, see *Parker*, 2016 WL 165713, at *1–2. The evidence relating to the reasonableness of Officer Parker's use of force must meet a reasonable-officer (objective) standard, while his willfulness in depriving Mr. Patel of his rights must only satisfy a subjective test (namely, what the officer actually intended). *Id.* at *3–5.

4. *See* Connor Sheets, *Indian Grandfather Injured by Police Followed a Well-Trodden Path to Alabama, but Found Only Tragedy*, AL.COM (Feb. 12, 2015, 4:45 PM), http://www.al.com/news/index.ssf/2015/02/indian_grandfather_injured_by_1.html (describing the family's origins and immigrant path to Alabama). Madison, Alabama, where the incident arose, has a substantial Asian population. *See id; see also Parker*, 2016 WL 165713, at *29 (noting that one of the officers considered "get[ting] one of them Indians from Chevron over here").

5. *Parker*, 2016 WL 165713, at *8–14 (noting that Patel told the officers that he did not speak English and that he was slow in following commands); Mackey, *supra* note 3.

6. *See Parker*, 2016 WL 165713, at *16 (discussing the neighbor's report of a "black male wearing a toboggan hat, white sweatshirt, and jeans"); VLAD TV (djvlad), *Alabama Cop Pleads Not Guilty to Beating Up Indian Grandfather*, YOUTUBE (Feb. 22, 2015), https://www.youtube.com/watch?v=AxgrgGH03kA [hereinafter VLAD] (showing the officers' arrival and the events that followed).

7. *Parker*, 2016 WL 165713, at *17 (describing the initial encounter). See VLAD, *supra* note 6, for a glimpse of Patel's clothing.

A much-watched video shows what happened next. Parker and a second officer, trainee Andrew Slaughter, approach Patel from behind and demand that he stop, which he does. One of the officers asks him for identification and whether he lives in the area. Patel responds to both questions with puzzlement and repeats "India" at least twice.[8] One of the officers asks what Patel is doing, to which he replies, "Walking, walking." One of the officers says, "He don't speak a lick of English."[9] One asks where he is going, to which Patel responds by turning around, pointing, and taking a few slow steps in the direction of his grandson's home. Parker then orders him to stop and to put his hands behind his back. When he does not comply, Parker yells at him to "stop jerking away" and threatens to "put [him] on the ground."[10] Then, without further warning, Parker throws his leg across Patel's trunk and, using his body as leverage, throws him to the ground.[11] After a few minutes, Officer Parker orders Patel, who is lying motionless face down on the sidewalk, to get up and tugs on him in an effort to get him to stand.[12] When he tries but fails, the officers attempt to haul him to his feet. When he collapses, one of the officers says something indiscernible and repeats that he cannot speak a lick of English.[13]

With Patel unable to stand unaided, the officers call for an ambulance, which takes him to a local hospital.[14] Doctors there diagnose swelling of his spine, which they treat by removing one of his vertebrae and fusing two

8. *See* Narayan Lakshman, *What the Patel Rap Says About America*, THE HINDU (Jan. 20, 2016), http://www.thehindu.com/opinion/op-ed/what-the-sureshbhai-patel-rap-says-about-america/article8124292.ece (noting that Patel managed to utter "India" three times and "No English" five times); VLAD, *supra* note 6. Parker was a training officer, *Parker*, 2016 WL 165713, at *8–9, and presumably experienced in making stops. Patel's behavior was "friendly," not menacing. *Id.* at *17. When the officers called out to him to stop, "he turned, waved, and walked toward [them]." *Id.*

9. *See* VLAD, *supra* note 6 (noting that the same officer repeated this phrase at least twice); *see also Parker*, 2016 WL 165713, at *8–9, *28 (noting that Patel repeated a number of times, "No English" or "India," and also "walking, walking"); *id.* at *16, *28–29 (noting that Officer Parker told Slaughter, "He's saying no English. He doesn't understand what you're saying," and that a few moments later, Parker told the medics that, as well—and still later his police colleagues the same).

10. *Parker*, 2016 WL 165713, at *17.

11. *Id.* at *15 (noting that he hit the ground, which was cold, and very hard). See *id.* at *14 for a discussion of Patel's effort to indicate where he had been going (namely to his son's home) by taking a few slow steps in that direction and pointing toward his son's home. Officer Parker later explained that his takedown was unintentional and a product of a slip that caused him to fall heavily against Mr. Patel. *See id.* at *15 (noting that Parker testified that he lost his balance and fell); Challen Stephens, *Alabama Set to Try Madison Police Officer Eric Parker in June*, AL.COM (Apr. 20, 2016, 1:08 PM), http://www.al.com/news/huntsville/index.ssf/2016/04 /alabama_set_to_try_madison_pol.html.

12. *See* VLAD, *supra* note 6.

13. *Id.*

14. *See* Sheets, *supra* note 4 (noting that an ambulance took Patel to Huntsville Hospital, where he received surgery for injuries to his spine); *see also* Stephens, *supra* note 11 (noting that Dr. Cheng Tao, a neurologist at the hospital, removed the C6 vertebra from Patel's neck and replaced it with a metal cylinder, a plate, and two screws).

others.[15] Mr. Patel is now confined to a wheelchair, has lost much of the use of his arms and legs, and is not expected to recover.[16]

The Indian community, both in the United States and abroad, exploded in indignation,[17] as did many U.S. commentators.[18] When the firestorm did not subside, the U.S. Department of Justice brought the first of three indictments against Parker.[19] The first two resulted in hung juries, and when the department filed a third action against him, Judge Haikala dismissed the case, explaining in a lengthy opinion why she believed further efforts at prosecuting Parker would prove futile.[20]

As her opinion puts it, a new jury would very likely find that Parker was merely doing his job.[21] Police officers have to make many split-second decisions,[22] and when Parker treated Patel as a noncompliant suspect, he was following protocol and doing what most other officers in his situation would have done.[23] If Patel did not speak or understand enough English to comply with lawful orders, the fault lies with him alone. Visitors to this country need to realize that they will be held responsible for knowing our laws and acting in accordance with them.[24] This includes obeying simple commands of police officers investigating possible criminal activity in the neighborhood in which the visitor finds himself.[25] Possibly, Patel should have taken the trouble to acquire at least rudimentary English-language skills before traveling to a country where that is the dominant language.

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15. *See* Sheets, *supra* note 4; *see also* Stephens, *supra* note 11.

16. Lakshman, *supra* note 8 (noting that his paralysis may be permanent).

17. For example, see Lakshman, *supra* note 8, describing this incident; a second incident centering on an Indian diplomat; and "many more stories," some of which did not even find their way into media coverage. *See also* Mackey, *supra* note 3 (noting the furor that the incident created in India, which did not die down when President Obama called for restraint).

18. *See* Fausset, *supra* note 3. Police use of force is a growing problem that has attracted considerable journalistic and scholarly attention. *E.g.*, L. Song Richardson & Phillip Atiba Goff, *Interrogating Racial Violence*, 12 OHIO ST. J. CRIM. L. 115 (2014).

19. Fausset, *supra* note 3 (discussing the first of the indictments); *see* United States v. Parker, No.: 5:15-cr-55-MHH-HGD, 2016 WL 165713, at *36 (N.D. Ala. Jan 13, 2016) (noting that the government had two previous opportunities to secure a conviction and failed).

20. *See Parker*, 2016 WL 165713, at *21–22 (summarizing the reasons for dismissal). Running more than thirty pages, the opinion reviews the evidence, the applicable law, and the two earlier trials on the way to explaining why the court will not entertain a third indictment.

21. *Id.* at *35 (noting that the officer apparently complied with policy and did not intend to injure Mr. Patel).

22. *Id.* at *4, *12, *14, *21, *34.

23. *Id.* at *4, *12, *21, *34–35 (describing testimony, which two juries apparently believed, that the officer was merely acting in accord with his training).

24. *Id.* at *19 (noting that Patel had ample opportunity to learn simple English commands and did not avail himself of these opportunities).

25. *See id.* (implying that by failing to learn English, Patel contributed to his own misfortune).

Judge Haikala's opinion analyzes several aspects of the case, including due process for Parker,[26] the requirement of willful conduct in a federal prosecution for violation of a suspect's civil rights,[27] whether noncitizen visitors are even entitled to protection under these laws,[28] and the role of race in the ill-fated encounter (which the judge ruled out of order).[29] But in this Article, we limit our attention to just one issue that cuts across many of the others—the role of language handicap in police–civilian encounters. As the U.S. population increases in diversity and the number of non-English speaking residents grows, the number of cases like *Parker* can only swell.[30] Part I discusses and critiques the decision. Part II considers measures that can enable law-enforcement authorities to reduce the number of encounters like the one that resulted in the grandfather's injury. It also shows why modifying police practices may benefit foreign relations, tourism, and the safety of all civilians subject to police jurisdiction.

I. SLOW ON THE UPTAKE? GET READY FOR TROUBLE

In absolving Officer Parker of criminal liability for his takedown of Mr. Patel, the federal judge highlighted a number of points. First, as noted, Patel was at fault for not having learned English.[31] Second, he had a sufficient command of English to follow orders, as evidenced by his responses (including replying "[n]o English") to the officers' questions and commands.[32] He also seems to have understood, at least, the words "stop" and "come." Finally, the officers deserved the benefit of the doubt because when responding to reports of criminal activity, they often need to make split-second decisions.[33] Consequently, when Patel turned around

26. *Id.* at *6, *18 (discussing an officer's duty to investigate once the officer receives a dispatcher's report of suspected criminal activity in a neighborhood).

27. *Id.* at *22, *25–26.

28. *Id.* at *23–25 (holding that noncitizen visitors are entitled to protection under the law).

29. *See* Challen Stephens, *Judge in Indian Grandfather Case was Troubled by Federal Focus on Race*, AL.COM (Jan. 15, 2015, 10:28 AM), http://www.al.com/news/index.ssf/2016/01/judge_in_indian_grandfather_ca.html.

30. *See infra* notes 130–132 and accompanying text (noting that about 25 million U.S. residents do not speak English fluently). This number does not include the many tourists and visitors who are in the country for short periods, sightseeing or visiting friends. Criminal liability of travelers and tourists for acts that are prohibited in their country of origin but not the country visited, or vice versa, is drawing increasing attention, in part because of the increase in sex trafficking. *See, e.g.*, I. Glenn Cohen, *Circumvention Tourism*, 97 CORNELL L. REV. 1309 (2012). But this complication does not arise here, since the reason for Patel's trip to the U.S.—to visit a new grandchild—was both legal and fully approved in both societies, India and the United States.

31. *See supra* note 24 and accompanying text.

32. *Parker*, 2016 WL 165713, at *9–10. The two findings are in conflict. If Patel was at fault for not having learned English, he cannot have acted defiantly in the face of the officer's orders since the first finding entails that he did not understand English at all.

33. *Id.* at *4, *12, *21, *34.

(according to Patel, to point in the direction of his son's home)[34] and allegedly did not take one of his hands out of his pocket when ordered to do so,[35] the police were entitled to treat him as a resister who required subduing.[36]

Seemingly aware that her decision could stir controversy, the judge ends by observing that hindsight is always 20–20.[37] Although the result—a harmless visitor rendered a possibly permanent paraplegic—is unfortunate, after all, these things happen.[38] Visitors can avoid a similar fate by learning English and responding quickly to an officer's commands.[39] Spread the word.

A. Parker *as an English-Only Opinion*

Judge Haikala's opinion creates, in effect, a requirement that civilians who encounter the police respond quickly to commands in English, whether they understand that language or not—essentially an English-only requirement for police encounters. Under it, civilians lawfully present in the United States are held responsible for complying with requests issued by officers in idiomatic English, including slang and cop-speak, regardless of whether they understand their meaning.

This ruling is in many respects broader and more punitive than an Arizona practice that a well-reasoned supreme court opinion from that state struck down. In *Ruiz v. Hull*,[40] the Arizona Supreme Court considered a constitutional amendment declaring English the official language of the state and requiring that "the state and its political subdivisions—including all government officials and employees performing government business—must 'act' only in English."[41] Any state worker who spoke to a constituent, in the course of official duties, in a language other than English was subject

34. *Id.* at *8–9 (describing Patel's response to the officer's initial questioning).

35. *Id.* at *10–11 (noting that the dash-cam video does not show Patel with his hands in his pockets, nor that the officers audibly commanded him to take his hands out of them).

36. *Id.* at *12–14. Officer Parker also testified that he did not intend to hurt Patel during the takedown. *Id.* at *28.

37. *Id.* at *18 (noting that events often look different in hindsight); *id.* at *36 ("Hindsight brings clarity . . . . If Mr. Parker or Mr. Patel could take that time back, both would surely do things differently.").

38. *Id.* at *36 ("The result in this case is by no means satisfying."). For the court, the result is little more than fate: "Hindsight brings clarity . . . . Mr. Patel's . . . arrival to begin a new life with his son was interrupted in two tragic minutes. If Mr. Parker or Mr. Patel could take that time back, both would surely do things differently and avoid the events that have forever changed . . . their lives." *Id.*

39. *See infra* notes 115–14 and accompanying text (noting that the judge believed Patel had ample opportunity to learn English but did not).

40. 957 P.2d 984 (Ariz. 1998) (en banc).

41. *Id.* at 987 (describing the amendment).

to a civil suit.[42] The Arizona Supreme Court struck the amendment down as a violation of the First and Fourteenth Amendments.[43]

The *Parker* case creates a regime that is even more exacting than the one struck down in Arizona. There, the state had only required that legislators, social workers, public schoolteachers, voting registrars, and other state agents speak in English when carrying out their duties.[44] Even if the worker was multilingual and knew that a constituent only spoke a foreign language, she was prohibited from using that language to communicate with him.[45] This prohibition may have been senseless and insulting, but the only consequence for violating it was a civil suit against the government worker who breached it.

This is what *Ruiz v. Hull* found fatally flawed. The Supreme Court of Arizona reasoned that English is important in our diverse American society to foster common bonds[46] and conceded that several federal laws require English proficiency.[47] But, even so, the court agreed with the Ninth Circuit's dictum in an earlier review of the case that "the American tradition of tolerance 'recognizes a critical difference between encouraging the use of English and repressing the use of other languages.'"[48]

To defend the Arizona amendment, the state's attorney general proposed a narrowing interpretation under which it would apply only to "official acts of government" such as the language in which legislators conducted official hearings or in which the state printing office prepared documents.[49] The court rejected this maneuver because it was at odds with the plain reading of the amendment, which was broadly drafted with only a few limited exceptions.[50] The measure's legislative history also belied the attorney general's interpretation[51] inasmuch as one of the stated ambitions of its backers was to avoid the "fears and tensions of language rivalries and ethnic distrust"[52]—a purpose that the supreme court found ran counter to

42. *Id.* at 1001.

43. *Id.* at 1000–02.

44. *See id.* at 987.

45. *Id.*

46. *Id.* at 990.

47. *Id.* at 990–91. For example, the Sixth Amendment permits courts to require jurors to demonstrate proficiency in English as a condition of service. United States v. Benmuhar, 658 F.2d 14, 18–20 (1st Cir. 1981). Further, English is a requirement for naturalization. 8 U.S.C. § 1423 (2012). And the Equal Education Opportunity Act of 1974 requires that school districts offer English-language classes for non-English-speaking students. 20 U.S.C. §§ 1701–58 (2012).

48. *Ruiz*, 957 P.2d at 991 (quoting Yniguez v. Arizonans for Official English, 69 F.3d 920, 923 (9th Cir. 1995), *vacated sub nom.* Arizonans for Official English v. Arizona, 520 U.S. 43 (1997)).

49. *Id.* at 992 (quoting Ariz. Att'y Gen. Op. 189-009, at 5–6).

50. *Id.* at 993.

51. *Id.* at 994.

52. *Id.* (quoting ARIZONA PUBLICITY PAMPHLET IN SUPPORT OF THE AMENDMENT, at 26).

our nation's values of diversity and culture. The attorney general's last-ditch effort thus "suffer[ed] from both ambiguity and implausibility."[53]

Moreover, the amendment was much harsher than English-only provisions in other states, many of which are either declaratory (like provisions naming an official bird or flower) or else govern only the speech of state representatives while talking to each other on official occasions.[54] Unlike Arizona, these other statutes specifically allow non-English speech between state officials and their constituents.[55] The Arizona law thus unconstitutionally restrained participation in governmental affairs.[56] It also violated the Equal Protection Clause of the Fourteenth Amendment, because "it unduly burden[ed] core First Amendment rights of a specific class [non-English speakers] without materially advancing a legitimate state interest."[57] It was not necessary for the plaintiffs to show discriminatory intent because the measure restricted fundamental rights, including the right to petition for redress of grievances[58] and to participate equally in the political process.[59] Those features made the amendment subject to strict scrutiny; thus the defendants had the burden of proving that it was narrowly tailored to meet a compelling state interest.[60] This Arizona was unable to do because promoting English as a uniting language did not require a broad prohibition of non-English languages.[61]

In a state like Alabama, following the *Parker* ruling, a non-English-speaking civilian is in an even worse predicament than one in Arizona who could not understand her social worker, legislator, voting registrar, or health care nurse. A non-English-speaking civilian in such a state (Alabama) faces the odds of encountering police with the risk of being manhandled for failing to quickly comply with orders the civilian does not

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53. *Id.* at 992.

54. *Id.* at 994–95, 1000. *See also* Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269 (1992). States that make English their official language nevertheless protect the right to speak other languages. See, for example, Montana's official English law, which provides:

> This section is not intended to violate the federal or state constitutional right to freedom of speech of government officers and employees acting in the course and scope of their employment. This section does not prohibit a government officer or employee acting in the course and scope of employment from using a language other than English, including use in a government document or record, if the employee chooses . . . .

MONT. CODE ANN. § 1-1-510 (2015). On the debate over official English, see Drucilla Cornell, *The Imaginary of English Only*, 53 U. MIAMI L. REV. 977 (1999); Perea, *supra*.

55. *See* MONT. CODE ANN. § 1-1-510.

56. *Ruiz*, 957 P.2d at 997.

57. *Id.* at 987, 1000–02.

58. *Id.* at 1000 (citing United Mine Workers of Am., Dist. 12 v. Ill. State Bar Ass'n, 389 U.S. 217, 222 (1967)).

59. *Id.* (citing Reynolds v. Sims, 377 U.S. 533, 560, 556–68 (1964)).

60. *Id.*

61. *Id.* at 1001.

understand. After the *Parker* ruling, civilians—in Alabama, at least—must learn English on penalty of incurring severe physical force from police officers if they are slow to comply with orders they find incomprehensible.

B. Colloquial English and Slang

During their ill-fated encounter, the officers approached Patel, and Officer Slaughter (Parker's partner) ordered, "Hey, bud. Let me talk to you real quick. Come here. What's going on, sir?"[62] A dash-cam video reveals that during this conversation, as Officer Slaughter says, "Come here," one of the officers motions with his hand for Mr. Patel to come toward them.[63] That Mr. Patel approached the officers in response, thus, does not mean that he understood the command, particularly the terms "bud," and "real quick," which are not standard English. Rather, it was likely that the officer's gesture enabled Patel to understand that they wanted him to approach and that he (Patel) was the "bud" in question.[64]

English is not the official language of the United States.[65] It is simply the one in most common use.[66] A police officer, then, is perhaps entitled to a presumption that a given civilian probably has some command of that language, a presumption that can dissolve if the civilian looks confused or repeats, for example, "India," over and over, as Patel did.[67] This is particularly likely to happen if the officer employs the kind of "cop-speak" that officers often do when speaking to individuals with whom they feel little affinity—for example, a person wearing nondescript clothing of an unfamiliar style and behaving in a tentative fashion, as many foreigners do when walking in an unfamiliar neighborhood.[68] When the officer opts to speak such an argot, the task of a hapless foreigner with only a rudimentary command of English increases in difficulty. The officer appears to be speaking in that language, but the other person is at a loss because he or she is unfamiliar with key terms like "bud," or "show me your hands."

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62. United States v. Parker, No.: 5:15-cr-55-MHH-HGD, 2016 WL 165713, at *8, *19 (N.D. Ala. Jan 13, 2016).

63. VLAD, *supra* note 6.

64. See *infra* notes 68–70, 82, 115–116, 121–130 and accompanying text, for further discussion of "cop-speak," an argot that police officers often use to communicate with suspects that they instinctively dislike.

65. *See* Perea, *supra* note 54, at 276–77.

66. *Id.*

67. *See Parker*, 2016 WL 165713, at *9, *17, *29.

68. Mervin F. White et al., *Theoretical Considerations of Officer Profanity and Obscenity in Formal Contacts with Citizens*, *in* POLICE DEVIANCE 225 (Thomas Barker & David L. Carter eds., 3d ed. 1994) (noting that officers may bring pre-existing beliefs, presumptions, attitudes, and prejudices to the type of citizen that an officer confronts on a particular occasion, and that profanity can worsen outcomes despite the belief that it can help achieve control).

The reader who has come this far but still is prepared to cut the police some slack in situations like the one that Mr. Patel faced is invited to enter, imaginatively, the world of cop-speak—but in another country, such as Turkey. Imagine, for example, that while out admiring the Hagia Sophia or scenery of Istanbul, a uniformed person of some sort approaches a tourist, namely you. He appears armed and is waving his arms at you and shouting.

What would you do? If this imaginary scene makes your blood run cold, you are in a position to understand better the predicament of a visitor to the United States, such as Mr. Patel, when confronted by two burly Alabama police officers. The visitor might know how to say a few basic phrases in English, such as how to ask for street directions or permission to use a bathroom, but little more.[69] Suddenly, he finds himself called on to respond to one or more of the following commands:

"Show me your hands, asshole."
"Hands on your head. Lock your fingers."
"Get on the ground, Buster."
"I said spread 'em."
"Relax."
"Up against the wall—move!"
"What's in your pocket?"
"Freeze!"
"Hands up!"
"Hands behind your back."
"Knock it off."
"Take it easy."
"Get down."
"Do me a favor and . . . ."
"Quit it."
"Move along."
"No more moves."
"Do you know how fast you were going?"
"Stop jerking away, or I'll put you on the ground."

Commands like these are common in police–citizen interactions;[70] indeed, a number were hurled at Mr. Patel. But imagine how you might you feel if a Turkish police officer yelled the equivalents of some of those phrases at you and, while you were looking up the local word for "freeze" in your pocket dictionary, was becoming more agitated by the moment.

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69. *See supra* note 1 (discussing a police encounter with a tourist in Mexico).

70. *See, e.g.*, White et al., *supra* note 68, at 232 (discussing some of the most frequent commands in cop-speak and their most common uses: to assert control, degrade, and exhibit aggression toward members of the public with whom the officer misidentifies). For a popular movie containing some of the language quoted above, see CRASH (Yari Film Group 2004).

C. Catch-22: The Immigrant Who Understands Some, but Not All, of What a Police Officer Tells Him to Do

In response to "[w]hat's going on, sir?" Mr. Patel responded, "India" and, a little later, "No English," making plain that he did not understand the question.[71] Moreover, after some further attempts to communicate with him, Officer Parker told Mr. Patel, "I can't understand you, sir" and asked him if he spoke English.[72] Patel replied, "No English"—a response that the officer deemed proof that Patel did indeed speak that language.[73]

When asked a moment later what he had been doing, Mr. Patel was able to state, "I am walking, walking."[74] Moreover, he was able to respond, "148" when Officer Slaughter asked him where he lived.[75] When the officers asked Mr. Patel about his destination, Mr. Patel raised his arm, pointed, and took a few steps in the direction of his son's house.[76] The officer and a sympathetic judge drew the conclusion that Patel may have been trying to evade the police by leaving the scene. But is it not just as likely that Mr. Patel was attempting nonverbal communication because his English skills were severely limited—as many of his answers must have made plain to anyone?[77]

Mr. Patel's efforts to solve the situation by attempting peaceful nonverbal communication were held against him. The district court opinion notes that the officers' suspicion "heightened when Mr. Patel tried to *walk away* from the investigation,"[78] although it seems equally plausible that Mr. Patel was merely trying to show the officers his home, having finally understood the question but finding himself unable to frame a response.[79]

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71. Or at least that he was claiming that he did not. *See Parker*, 2016 WL 165713, at *8–9.

72. *See* VLAD, *supra* note 6.

73. *Parker*, 2016 WL 165713, at *29. The judge seems to have sided with the officer on this position. *Id.* at *34.

74. *Id.* at *8.

75. *Id.* (noting that Patel testified to this effect, although his words are not audible on the video recording).

76. *Id.* at *9; *see also id.* at *12–13, *19–20, *28 (noting that the officers interpreted several of Patel's bodily movements as jerking away or attempts to resist the officers' pat down). The officers seemed predisposed to interpret Patel's every statement or movement as evidence of malign intent, even his initial response ("India, India") when asked where he was going. *Id.* at *8–9.

77. For example, his statements "no English," "India, India," and inability to respond to questions about his address or where he was going suggest his English skills were severely limited. He also responded slowly or not at all to commands such as to take his hands out of his pockets. *See supra* notes 72–76 and accompanying text.

78. *Parker*, 2016 WL 165713, at *20, *28 (emphasis added).

79. *Id.* at *9, *28 (noting that Patel at first responded to police directives with incomprehension). For example, he took two steps away from one of the officers after he asked him where he was going, and later replied "India, India" followed by "No English" to further questions. *Id.* at *9. He then walked a short distance away from the officer and stopped when the officer said, "Hey, come here." *Id.* He testified that he took the steps in an effort to "show them my house." *Id.* The officers seemingly did not consider this alternative explanation of his conduct (namely that he did not understand their brusque

Officer Parker proceeded to apply a leg sweep on Mr. Patel, throwing his body to the ground without allowing him to break his fall.[80] In effect, *Parker* holds that a non-English-speaking civilian merits a takedown from an officer who gives orders ("Hey, bud") in colloquial English unlikely to be understood by a foreigner who is here on perfectly legitimate business (visiting a new grandchild). The reviewing court merely needs to be satisfied that the officer could have believed that the foreigner was noncompliant or, worse, resisting arrest.

Cases like Patel's are not as rare as one might think, or hope. Though often underreported,[81] recent police encounters with persons with limited English ability demonstrate how an immigrant's or tourist's misinterpretation of cop-speak can easily lead to excessive use of police force. In 2012, a dash-cam video revealed Seattle police violently kicking and punching a Spanish-speaking man who was deemed to be resisting arrest.[82] The video shows police shouting "No, put your hands right there, on the seat. . . . I said put your fucking hands on the seat!" to which the offending driver, Rufino Ocampo Estrada, responded, "No speak English."[83] The officer quickly retorted, "Well you're speaking it right now."[84] Before prosecutors viewed the video, Ocampo Estrada had been charged with assault against the officer. However, a civil lawsuit filed against the city in response to the incident settled in October 2013 for $25,000.[85] The incident occurred before the Seattle Police Department entered into a consent decree with the U.S. Department of Justice to curb the use of excessive force.[86]

In another recent case from Minnesota, a Spanish-speaking man was forced to the ground, kicked, punched, and tased a number of times.[87] The

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commands), but instead quickly escalated the situation by applying near-lethal force on a hapless elderly immigrant.

80. *Id.* at *15–17, *21.

81. *See* Leigh Herbst & Samuel Walker, *Language Barriers in the Delivery of Police Services: A Study of Police and Hispanic Interactions in a Midwestern City*, 29 J. CRIM. JUST. 329, 331 (2001) (finding that Latinos are underrepresented in police complaints relative to their presence in the population because they have little understanding of the complaint process and fear that speaking up could result in immigration or employment problems).

82. Steve Miletich, *Seattle Releases Video that Spurred Criminal Probe into Officer's Use of Force*, SEATTLE TIMES (Nov. 25, 2015, 6:07 AM), http://www.seattletimes.com/seattle-news/spd-releases-video-that-prompted-criminal-probe-into-officers-use-of-force/.

83. *Id.*

84. *Id.*

85. *Id.*; *see also* Morales-Cayetano v. City of Seattle, No.: 13-2-37129-4 SEA (King Cty. Super. Ct., Wash. Oct. 31, 2013), https://assets.documentcloud.org/documents/2086462/negligence-complaint-morales-cayetano.pdf.

86. Miletich, *supra* note 82.

87. Randy Furst, *Roseville Cops Sued over Arrest Involving Use of Force, Taser*, STAR TRIBUNE (Apr. 17, 2014, 2:18 AM), http://www.startribune.com/mpls-man-sues-roseville-police-over-forceful-arrest-taser/255483241/.

man, Victor Hernandez, had been a passenger in a vehicle pulled over for speeding. The driver of the vehicle ran away but Hernandez, the passenger, stayed in the car until, more than a minute later, he slowly opened the passenger door with his hands raised.[88] As a confused Hernandez stood to get out of the vehicle, an officer ran toward him yelling, "Don't you move!"—an order that the confused Hernandez could not understand—before slamming him to the ground.[89] Afterward, the police filed misdemeanor charges against Hernandez for resisting arrest. The charges were dropped, and Hernandez filed a civil action for his own damages.[90]

1. The Special Case of Profanity

As we have seen, in an attempt to assert authority, officers often resort to the use of profanity, with excretory terms such as "asshole" and "turd" particular favorites among some departments.[91] An officer's use of aggressive profanity, even if not wholly understood, conveys a tone of violence and disrespect that sets the stage for unfavorable interactions between non-English speakers—especially those facing cultural barriers—and police. Mervin F. White and his co-authors note that interactions with citizens that include such language promote negative perceptions of the police on the part of the public and occur mainly with racial and ethnic minorities.[92] They also point to their use by police officers as expressions of aggression "intended to attack one's identity in a condescending fashion" or even to gain the upper hand through dehumanization.[93] Of course, even if a non-English speaker does not understand the actual words being spoken, they are likely to discern the undertones of aggression that they accompany and convey. This attempt at dominance is sometimes actually taught as an aspect of inculcating "command presence" and "command voice" as instruments of control.[94]

88. *Id.*

89. LillieNews, *Roseville Officers Sued for Excessive Force–5/26/13 Dash Cam Video*, YOUTUBE (Apr. 20, 2014), https://www.youtube.com/watch?v=5ecDpHCwlXk.

90. Furst, *supra* note 87. The case was settled for $60,000. *See* Mike Munzenrider, *Roseville Settles Police Brutality Suit for $60,000*, LILLIENEWS (Aug. 31, 2015, 1:29 PM), http://www.lillienews.com/articles/2015/08/31/roseville-settles-police-brutality-suit-60000.

91. See White et al., *supra* note 68, at 226–27, for a discussion of other harsh or obscene terms that police often use in encounters with civilians who strike them as divergent from the norm.

92. *Id.* at 225, 228.

93. *Id.* at 230, 234.

94. *Id.* at 235.

D. An Officer's Need for a Split-Second Reaction

Judge Haikala's ruling states, "although hindsight reveals that Mr. Patel was simply taking a walk . . . Officers Parker and Slaughter did not know that" at the time of their investigation.[95] But Mr. Patel's business—merely taking a walk—did not emerge only in "hindsight." Rather it came to light when the officers initially encountered him.[96] In fact, shortly before Officers Parker and Slaughter confronted Mr. Patel, a different officer, Spence, drove by the area and decided not to interrogate Mr. Patel despite having seen the same person doing the same things that Parker saw.[97] Officer Parker even "acknowledged to [his lieutenant] that he (Parker) did not see Mr. Patel go into a yard."[98]

The opinion gives remarkable deference to an officer's determination that a civilian lied when he stated that he did not speak English.[99] Although Officer Parker affirmed later to several persons that Mr. Patel did not speak or understand English,[100] the opinion states Officer Parker "never veered from his position that he did not believe" it to be true.[101] But Officer Parker certainly "veered" from this position, as any reasonable observer would conclude based on his statements to Patel, as well as to other officers and acquaintances before the trial.

During the two trials, Officer Parker testified that he doubted Mr. Patel's inability to speak English based on his having spoken two words in that language ("No English") in response to questioning.[102] But this inference hardly merits serious consideration. Many tourists arm themselves with a small vocabulary of essential words, including the phrase, "I do not speak . . . (Spanish, English, Turkish, Italian)." This hardly entitles an authority figure to throw the person to the ground a

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95. United States v. Parker, No.: 5:15-cr-55-MHH-HGD, 2016 WL 165713, at *18 (N.D. Ala. Jan 13, 2016).

96. *See id.* at *7 ("As Officer Spence drove farther into the Hardiman Place neighborhood, Officers Slaughter and Parker arrived in the neighborhood. Like Officer Spence, Officers Slaughter and Parker observed a male individual (who they later learned was Mr. Patel) walking on Hardiman Place Lane. The individual was wearing an outfit that matched the description from dispatch, but he was not walking into yards or looking in garages; he was just walking on the sidewalk." (citation omitted)). The match, in other words, was far from perfect. The clothing in the telephone call was similar to that Mr. Patel wore. But of course any number of walkers might have been wearing clothing of that general description (windbreaker, dark colored jeans). And the key behavioral part that gave rise to the caller's suspicion—walking into driveways and looking at garages—was entirely missing in Patel's case.

97. *See id.* at *6 (describing Officer Spence's earlier drive-by and decision not to investigate further). With over twenty years of experience as a patrol officer, Charles Spence did not deem Patel a likely suspect. *See id.*

98. *Id.* at *30.

99. *Id.* at *10, *19.

100. *Id.* at *17 n.20, *28–29.

101. *Id.* at *19.

102. *Id.* at *8–10, *11, *16.

fraction of a second after delivering a complex order of some kind. This, of course, would place the foreigner in a sizeable predicament: Should they attempt to apply the few words they know on penalty that police officers and the courts will not believe them when they say they do not speak the language of the country they are visiting? Or should they remain silent at the risk that their silence will be taken as evincing a sullen, defiant attitude toward authority?

This supposition is not fanciful. In another Alabama case, police officers attacked a deaf-mute civilian when they interpreted his inability to answer questions about a routine door-banging incident in a restaurant parking lot as supplying reasonable suspicion of defiance, hence criminal intent.[103] In that case, the deaf-mute made various efforts to communicate to the officers that he had not been the one who flung the door open, that he and his four-year-old daughter, who were eating inside the restaurant, had not fled the scene, and that he had not committed any crime.[104] All this made the police even angrier, with the predictable results—a request for back-up, an insistence that the deaf-mute file an immediate report admitting liability, and when he was slow in complying, his arrest, handcuffing, and resulting injuries.[105]

At different times, Mr. Patel was able to utter five simple words in English: "walking," "India," "no," "English," and "148." He also showed that he was capable of responding "148" in response to "house" and stopped in response to the command to "stop."[106] Of course, someone with limited English capacity can respond to simple messages containing words like "house," "stop," or "come here." Nevertheless, the opinion holds that because "Mr. Patel turned and walked toward [the officers]" when told to come toward them, he must have understood English—any and all of it—and further that he may have been harboring aggressive intentions.[107] This interpretation disregards the possibility that Mr. Patel was responding to nonverbal gestures, as shown by the dash-cam video, and not the officer's spoken instructions.[108]

The *Parker* opinion essentially rules that police officers may ignore a language barrier if a person can utter any word in English. But it arrives at this conclusion by merely noting how unreasonable it would be to require that a police investigation come to a halt simply because a suspect asserts

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103. McCray v. City of Dothan, 169 F. Supp. 2d 1260, 1266–69, (M.D. Ala. 2001), *aff'd in part, rev'd in part*, No. 01-15756-DD, 2003 WL 23518420 (11th Cir. Apr. 24, 2003).

104. *Id.*

105. *Id.* at 1266–73. The city settled the case for $575,000. *Alabama Briefs*, COLUMBUS LEDGER-ENQUIRER, Oct. 2, 2003, at A12.

106. *Parker*, 2016 WL 165713, at *8, *17, *19.

107. *Id.* at *19–20.

108. *See* VLAD, *supra* note 6.

that he does not speak English.[109] But that surely does not exhaust the possibilities open to an officer. She could call for an interpreter or reword the question, speaking more slowly this time.[110] She could observe carefully the civilian's clothing, manner, age, and nonverbal conduct for any indication of foreignness. She could use words of standard English—"sir," not "bud"; "now," not "real quick"; and the like.

The court's reasoning makes having a language barrier the equivalent of explicitly disregarding commands. When evaluating the totality of the circumstances, according to the opinion, an officer may "take into account the fact that an individual . . . disregards commands and walks away from officers."[111] Mr. Patel's failure to carry out what was asked of him led the officers to believe that he "did not want to cooperate in the investigation."[112] Officer Parker stated he did not believe Mr. Patel's assertion that he did not speak English, because Patel did not answer questions and was "refusing to cooperate."[113]

But a foreign-looking person of his age with a hesitant demeanor would have struck almost anyone as a likely visitor or immigrant, not a defiant miscreant. Thus, Patel's slowness to respond should not have been deemed a refusal to cooperate with the police, but rather the product of a language barrier that Officer Parker would have noticed had he been more observant. Mr. Patel was Indian-looking, elderly, not black as the caller described, appeared confused, spoke heavily-accented English, and employed a very limited English vocabulary.[114]

In order to justify the police's violent actions, the opinion analogizes a person with a language barrier to one who is intoxicated: for the police, both qualities (intoxication and foreignness) render an "encounter more difficult and potentially more dangerous."[115] This comparison is inapt. An intoxicated person is far more dangerous to deal with than one who is simply laboring under a language barrier. Intoxication renders many people

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109. *Parker*, 2016 WL 165713, at *9, *19.

110. Indeed, the court at least contemplated this option. *See id.* at *29.

111. *Id.* at *9.

112. *Id.*

113. *Id.* at *10.

114. VLAD, *supra* note 6. How can an officer determine when an individual is laboring under a language handicap? The characteristics just mentioned would certainly be a start. A Minneapolis policy, for example, encourages the police simply to ask the individual what language they speak or whether they have a language identification card. *See 7-1000 Persons with Disabilities and Limited English Proficiency*, MINNEAPOLISMN.GOV (May 6, 2015), http://www.ci.minneapolis.mn.us/police/policy/mpdpolicy_7-1000_7-1000. A Seattle policy provides similar guidelines. *See Seattle Police Department Manual: 8.100 - De-Escalation*, SEATTLE.GOV (Sept. 1, 2015), http://www.seattle.gov/police-manual/title-8—-use-of-force/8100—-de-escalation (urging police to be alert for a language barrier in cases of seeming resistance to an officer's directions).

115. *Parker*, 2016 WL 165713, at *9.

bellicose and unruly. Foreignness merely renders most ordinary persons tentative and cautious.

The ruling essentially places the burden on persons who have had the opportunity to become familiar with simple English commands to be able to understand cop-speak when approached by police officers. As the judge put it, "Mr. Patel had the opportunity to become familiar with *simple English* commands"—presumably like "stop," "come" "hey, bud," and "real quick"—because Mr. Patel had visited the United States twice before.[116] But this requirement would hold regular visitors to this country to the standard not only of being able to understand simple English, but also cop-speak ("hey bud," "real quick," "stop jerking away [or] I'll put you on the ground") on penalty of being manhandled. Only a foreigner with very extensive experience with police culture—perhaps one who has spent several hours a day watching police dramas on English-language TV in his native land—would be likely to have any familiarity with cop-speak. Holding foreign visitors to that standard is even less reasonable than the regime an Arizona court struck down,[117] because it places people with an imperfect command of English in extreme physical peril.

The opinion reasons that the situation confronting the Alabama police officers deserves special consideration because unlike legislators, social workers, teachers, and medical workers, police officers constantly put their lives at risk and must make split-second decisions regarding a suspect's intentions. But the officers in this situation had plenty of opportunity to ascertain whether Mr. Patel did not understand English or was just waiting for the opportunity to bolt. He was slightly built and in late-middle age, while the two officers were young and presumably physically fit. Even if he had been inclined to do so, he could not have run away from them, and the same is true for many immigrants and tourists.[118] In the unlikely event that he put up physical resistance, the two officers could have easily

116. *Id.* at *19 (emphasis added). This ruling is at odds with federal policy. The U.S. Citizenship and Immigration Services provides a number of "exemptions for English [naturalization] testing based on an applicant's age and time as a Permanent Resident." U.S. CITIZENSHIP & IMMIGRATION SERVS., A GUIDE TO NATURALIZATION 26 (2016), https://www.uscis.gov/sites/default/files/files/article/M-476.pdf. One exemption states that people fifty years of age or older who "have lived in the United States as a Permanent Resident for periods totaling at least 20 years . . . do not have to take the English test." *Id.* (emphasis omitted). They may instead take the test in their language of choice. *Id.* The federal government thus does not obligate noncitizens to learn English even after many years of living in the United States, whereas the federal judge hearing *Parker* apparently expects them to speak it after a few visits. *Parker*, 2016 WL 165713, at *19 (noting that "Trial testimony indicates that Mr. Patel had the opportunity to become familiar with simple English commands like 'stop' and 'come' because [he] had visited his son in Alabama twice . . . the more recent visit lasting eight months" and noting that Officer Parker wsa skeptical of Mr. Patel's inability to understand and comply with the officers' spoken commands).

117. *See supra* Part I.A.

118. Many immigrants and tourists will be middle-aged or elderly people like Mr. Patel, or children or women, few of whom will be fit enough to outrun young, well-trained policemen.

overcome him once he assumed, say, a boxing stance. They need not have reacted to his halting speech and failure to comply instantly with deadly force.[119]

As mentioned, the Alabama opinion relies heavily on a police officer's need to make split-second decisions and treats this need as a decisive consideration.[120] But surely this is no reason for placing all non-English speakers in physical danger. The *Parker* opinion concedes that non-citizens like Mr. Patel are subject to First Amendment protection.[121] Consequently if English-only is unconstitutional in Arizona, it must be so in Alabama, at least in connection with police encounters like Mr. Patel's, which present life-threatening risks for the foreigner whose command of English is imperfect.

E. Cop-Speak Under the First Amendment

The reader who is uncertain whether such an interpretation is fair or not is invited to revisit the world of cop-speak.[122] A previous section asked you to imagine yourself as a tourist in a foreign country, such as Turkey, confronted by an angry cop shouting at you in a foreign language. If you have trouble imagining this happening to you, imagine that you are an eighty-four-year-old Chinese immigrant who has lived in the United States for fifty years, but because you lived in a cloistered neighborhood, you have not had the opportunity to learn English. The only languages you speak are Cantonese and Spanish, which you were able to pick up while working on a Cuban farm during your youth. You cross a busy New York street, and as you reach the other side, a uniformed police officer approaches, shouting, "Hey, what the hell's going on? Why did you cross the street illegally? Let's see your I.D." You are able to discern "I.D." from the command, so you hand him your identification. But without saying another word, he begins to walk off with it. What do you do?

The above example does not occur in an imaginary world any more than Mr. Patel's case did. In New York, Mr. Wong, an octogenarian Chinese man who only spoke Cantonese and Spanish (for the

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119. The *Parke*r opinion relies heavily on police officers' need to make split-second decisions. But surely this does not necessitate placing every civilian in physical danger. The federal judge that presided over *Parke*r conceded that visitors like Mr. Patel are subject to constitutional protections while they are here. *See Parker*, 2016 WL 165713, at *23. Consequently if English-only is unconstitutional in Arizona, it must be so in Alabama, at least in connection with police encounters like Mr. Patel's that put a civilian in extreme peril.

120. *See supra* Parts I.C, I.D; *supra* notes 71–121.

121. *Parker*, 2016 WL 165713, at *23 (citing Bridges v. Wixon, 326 U.S. 135, 148 (1945) for the proposition that "resident aliens have First Amendment rights").

122. *See supra* Part I.A (discussing cop-speak as an obstacle to communication between a police officer and a civilian).

abovementioned reasons) was severely manhandled by the police after being stopped for allegedly jaywalking.[123] Shoved by several New York police officers against the wall of a building and pushed to the ground, he blacked out from the forcible impact.[124] Although his command of English was poor, he had been able to understand the officers' demand for I.D., but little more.[125] Like Mr. Patel, Mr. Wong was confused and did not understand why the police officers had stopped him.[126] After providing his identification, he was concerned that the police officers were walking away with it, which led him to repeatedly ask for it back.[127] The police officer responded to Mr. Wong's request, which he made in Cantonese, by taking out his handcuffs and calling for backup.[128] Things deteriorated from there with the abovementioned results.[129]

Mr. Wong was simply crossing an intersection, whose light was "green when he stepped off the curb . . . to cross, but . . . may have turned red by the time [he] reached the other side."[130] Like Mr. Patel, Mr. Wong was just walking down the street, without having committed any crime. Mr. Wong had lived in the same New York neighborhood for nearly fifty years. If New York had been following the *Parker* decision, Mr. Wong would have had ample opportunity to learn English, and therefore its police would have been entitled to throw him to the ground or against a wall as hard as they could.[131] New York, of course, soon dismissed the charges against Mr. Wong, exemplifying a major state taking a different course from Alabama's.

The reader inclined to support the use of force in cases like Patel's might want to consider that, had the officer who stopped him known how to identify non-English speakers and used situationally appropriate de-escalation tactics, rather than shouting incomprehensible commands followed by aggressive takedown maneuvers, Patel might still be a spry fifty-seven-year-old grandfather enjoying morning walks and playing with his grandchildren.

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123. *See* John Marzulli, *Manhattan Man, 84, Ticketed for Jaywalking to File $5M Lawsuit Against City*, N.Y. DAILY NEWS (Jan. 27, 2014, 3:00 AM), http://www.nydailynews.com/new-york/nyc-man-ticketed-jaywalking-file-5b-lawsuit-article-1.1592002.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *See id.* (discussing Mr. Wong's arrest, manhandling, and blacking out).

130. *Id.*

131. *See* United States v. Parker, No.: 5:15-cr-55-MHH-HGD, 2016 WL 165713, at *19–36 (N.D. Ala. Jan 13, 2016) (holding that the officer is entitled to a dismissal if the court finds reasonable doubt).

II. NERVOUS POLICE, CONFUSED IMMIGRANTS: BALANCING THE INTERESTS

As mentioned, Mr. Patel's predicament is apt to recur with increasing frequency as the country's population diversifies and the number of non-English speakers swells.[132] According to the Migration Policy Institute, about 25.1 million Limited English Proficient (LEP) people—ones who reported speaking English less than "very well"—made their homes in the United States in a recent year.[133] This figure does not include temporary visitors like Mr. Patel.[134]

When considering the plight of the non-proficient speaker of English, it is useful to consider case law concerning people who are deaf or hard of hearing.[135] In encounters with police, such individuals are particularly at risk because they can only communicate with their hands, gestures that officers may misperceive as threatening.[136] Even an action as simple as reaching for a pen and paper, or card that identifies them as deaf, may lead an officer to believe the individual is reaching for a weapon.[137] In an Indiana case, a deaf man whose actions struck the police as noncompliant was seized by his hair, pulled to the floor, handcuffed, and kicked, suffering severe internal injuries.[138] The court denied the city's motion for

132. *See supra* note 30 and accompanying text (noting that this number is growing); *see also* Bharathi A. Venkatraman, *Lost in Translation Limited English Proficient Populations and the Police*, POLICE CHIEF (Apr. 2006), http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=861&issue_id=42006.

133. Jie Zong & Jeanne Batalova, *The Limited English Proficient Population in the United States*, MIGRATION POL'Y INST. (July 8, 2015), http://www.migrationpolicy.org/article/limited-english-proficient-population-united-states. The study used Census Bureau data to compile this figure. *Id.*; *see also Limited English Proficiency (LEP): Frequently Asked Questions*, LEP.GOV, http://www.lep.gov/faqs/faqs.html#OneQ1 (last visited Oct. 3, 2016) (noting that the main criterion for LEP status was the inability to read, write, or speak well in English).

134. At the time we went to press, Alabama authorities were preparing to re-try Officer Parker in state court for misdemeanor third-degree assault. *See* Stephens, *supra* note 11 (noting that previous federal trials required proof of willful conduct, while state charges will only require proof of reckless behavior). The charging document (dated February 12, 2016) accuses Parker of recklessly "slamming subject [Patel] to the ground causing physical injury." *Id.* To this point, the only person who has been convicted (found in contempt) in connection with the events described in this Article is Madison's police chief, for communicating with witnesses—namely, his own subordinates—during the first trial. *Id.* A number of civil suits, including one by the Patel family against the city, await the conclusion of the criminal cases. *Id.*

135. *See supra* notes 103–04 and accompanying text.

136. *See supra* notes 103–04 and accompanying text; *see also* Kelly McAnnany & Aditi Kothekar Shah, *With Their Own Hands: A Community Lawyering Approach to Improving Law Enforcement Practices in the Deaf Community*, 45 VAL. U. L. REV. 875, 878 (2011).

137. McAnnany & Shah, *supra* note 136, at 878–79.

138. *Id.* at 880 (citing Lewis v. Truitt, 960 F. Supp. 175, 176 (S.D. Ind. 1997)). Although the defendant had informed the police that he was deaf, the officers did not believe him and thought he really did understand what they were telling him. *Id.*

summary judgment and allowed the plaintiff to proceed with his case.[139] Although cuffing a deaf person's hands behind his back deprives him of his one means of communication, some courts find the practice grounded in legitimate safety concerns for the officers.[140]

A. Best Practices

To avoid encounters like these and the one that resulted in Patel's injury, it behooves those concerned with the public welfare to consult the practices of well-run police departments around the country as well as research institutes that study criminal justice. The Vera Institute of Justice, which endeavors to make justice systems fairer and more effective through research and innovation, is an example of the latter. One of their initiatives addresses linguistic and cultural barriers in the criminal justice system.[141] Vera is working to develop resources and training materials for service providers and law enforcement.[142] Working in cooperation with the U.S. Department of Justice,[143] Vera found that more than 70% of law enforcement agencies interact with individuals with a limited command of English (LEP) on a daily basis.[144] The resulting report provides a national assessment of best practices employed by police departments serving these communities, highlighting the most effective practices of six of them, and providing an appendix of sample documents and resources.[145]

The organization provides a list of best practices, including the use of telephonic or in-person trained interpreters.[146] For example, Boise, Idaho receives a surprising number of refugees from all over the world and is home to four refugee resettlement agencies.[147] In response, the local police

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139. *Lewis*, 960 F. Supp. at 178–79.

140. *See* De Contreras v. City of Rialto, 894 F. Supp. 2d 1238, 1253–63 (C.D. Cal. 2012) (discussing handcuffs and tasers to control a deaf arrestee). On the rights of the deaf during police encounters, see McAnnany & Shah, *supra* note 136.

141. *See* Caitlin Gokey, *Translating Justice*, VERA INST. JUST., http://www.vera.org/project/translating-justice (last visited Oct. 3, 2016).

142. *Id.*

143. SUSAN SHAH & RODOLFO ESTRADA, CTR. ON IMMIGRATION & JUSTICE, BRIDGING THE LANGUAGE DIVIDE: PROMISING PRACTICES FOR LAW ENFORCEMENT (2009), http://www.vera.org/sites/default/files/resources/downloads/vera_bridginglang_FINAL_tagged-v2.pdf [hereinafter BRIDGING THE LANGUAGE DIVIDE]; *see also* SUSAN SHAH ET AL., VERA INST. JUST., OVERCOMING LANGUAGE BARRIERS: SOLUTIONS FOR LAW ENFORCEMENT 2 (2007), http://www.vera.org/sites/default/files/resources/downloads/Overcoming_Language_Barriers_FINAL.pdf [hereinafter OVERCOMING LANGUAGE BARRIERS] (noting how even relatively straightforward commands such as "[s]tay in the car and put your hands on the steering wheel" may be hard to grasp for someone with a slight command of English).

144. BRIDGING THE LANGUAGE DIVIDE, *supra* note 143, at 16 n.2.

145. *Id.* at 17.

146. *Id.* at 4, 8–9.

147. *Id.*

department employs paid civilian interpreters who are on call and readily accessible.[148] In Las Vegas, civilian translators equipped with dispatch radios can quickly respond to officers' calls at all hours.[149] Lexington, Kentucky offers a Spanish immersion program for police officers and other state employees.[150] It also seeks to deepen cultural awareness about how certain immigrants interact with law enforcement, including behaviors such as eye contact and signs of fear.[151] The Oklahoma City Police Department has created a specific bilingual unit in which officers with high levels of proficiency receive training in how to interpret for ones whose levels are lower.[152] Other departments offer salary boosts for bilingual staff who pass a proficiency exam[153] or—as one Alabama city did in the wake of the *Parker* case—equip their officers with hand-held devices that can connect to a translation service (LanguageLine) with a capacity of 180 different languages.[154]

These programs illustrate means (best practices) for improving police–civilian encounters in cases where language ability is a crucial element. Departments should consider these measures, and failure to do so should weigh against a police officer or department in a case like Patel's.[155] Taking steps like these will foster trust in law enforcement agencies—a quality that is vital with immigrant communities where mistrust and fear of law enforcement are pervasive.

B. Reducing Costs by Pooling Resources

Programs like these require time and resources and so might not be available to all departments. Consequently, some authorities recommend pooling resources with other agencies like first responder services, departments of public housing, and the courts.[156] The Anaheim Police Department, for example, collaborates with other law enforcement agencies in Orange County to share Vietnamese-speaking officers and provides

148. *Id.*

149. *Id.* at 10.

150. *Id.* at 8.

151. *Id.* at 12, 13–14.

152. *Id.* at 14–15.

153. *Id.* at 12.

154. Carol Robinson, *Hoover Police Hope to Avoid Repeating Madison's Mistake with New Translation Device*, AL.COM (Feb. 17, 2015, 4:37 PM), http://www.al.com/news/birmingham/index.ssf/2015/02/hoover_police_now_armed_with_d.html; *see also Our Clients*, RTT MOBILE INTERPRETATION, http://rttmobile.com/our-clients/ (last visited Oct. 3, 2016).

155. That is, arising in a community with a sizeable immigrant population, like Madison's. *See* Sheets, *supra* note 4 (noting that the Indian population in that town is much higher than that of the state as a whole).

156. OVERCOMING LANGUAGE BARRIERS, *supra* note 143, at 16 n.2.

some of its own American Sign Language interpreters in return.[157] Additionally, the city provides testing, bilingual certification, Spanish classes, and document translation to all agencies of its own government.[158]

C. When The Officer Cannot Call Upon a Translator or Interpreter

Even police departments with an abundance of bilingual staff are likely to encounter an esoteric language from time to time. Thus, it is imperative that departments train officers in strategies for encounters like Mr. Patel's, where an officer must take rapid action with a suspect whose native language is unknown. The Department of Homeland Security, for example, trains officers in how to recognize individuals who are not proficient in English.[159] It has also created cards with the words "I speak __" translated into 70 different languages, allowing suspects to select one showing which language they speak so the officer can request an interpreter with the requisite skill.[160] The department also trains officers on how to interact with immigrants and others who do not speak English well.

A number of police departments in major cities encourage their officers to look for specific indicators that a person needs language assistance, such as confusion, asking for an interpreter, repeating words over and over, talking to oneself, or saying "I don't understand."[161] Others train officers in how to issue commands in foreign languages that are common in the areas that they patrol.[162]

D. Cultural Awareness

Still other agencies train officers in the art of cultural awareness. Different countries and cultures have varied perspectives and attitudes toward speaking with authority figures such as police. The Department of Justice's Office of Community Policing Services (COPS), for example, describes several elements that come into play when speaking with Asian

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157. *Id.*

158. *Id.*

159. *LEP Resource Guide for Law Enforcement*, U.S. DEP'T HOMELAND SECURITY, https://www.dhs.gov/sites/default/files/publications/lep-resouce-guide-law-enforcement_0.pdf (last visited Oct. 3, 2016).

160. *I Speak . . . Language Identification Guide*, U.S. DEP'T HOMELAND SECURITY, https://www.dhs.gov/xlibrary/assets/crcl/crcl-i-speak-poster.pdf (last visited Oct. 3, 2016).

161. Phila. Police Dep't, *Directive 71: Limited English Language Proficiency (LEP)*, LEP.GOV (Dec. 9, 2015), http://www.lep.gov/resources/PhilaDirective71_1.pdf.

162. *E.g.*, HOUS. POLICE DEP'T, LANGUAGE ACCESS PLAN 12 (2014), http://www.houstontx.gov/ispeakhouston/dlap/Police.pdf; Laura Gunderson, *Should Oregon Police Issue Commands in Spanish When Facing a Suspect at Gunpoint?*, OREGONIAN (Dec. 23, 2014, 1:24 PM), http://www.oregonlive.com/pacific-northwest-news/index.ssf/2014/12/should_oregon_police_issue_com.html.

Americans.[163] They note that in "Low-Context" cultures, like "those of Americans or Germans, communication occurs predominantly through explicit statements."[164] In contrast, cultures like those of the Japanese and Chinese are

> characterized as 'High-Context' and include other communicative cues such as body language, the understanding of unspoken rules, and even silence. . . . Situation, behavior, and [non]verbal cues are integral parts of the communicated message. High-Context cultures are also characterized by 'slow information processing[,]' . . . with a delayed response often existing due to an 'extra' step [in] . . . recollecting contextual cues.[165]

San Francisco requires twenty-eight hours of classroom instruction in cross-cultural competence for all officers.[166]

E. Federal Funding

Police departments receiving federal funding are under an obligation to ensure meaningful language access under federal law.[167] In furtherance of this requirement, the Civil Rights Division of the Department of Justice has created a website and clearinghouse for information, tools, and technical assistance for LEP services.[168] It also recommends that a department use a number of factors to identify and prioritize language needs in its jurisdiction, including the number of foreign-language speakers living there, the frequency and seriousness of police contact with such speakers, and the resources available for providing language services.[169] Measures

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163. *Taking Cultural Competency into Account when Approaching the Asian American Community*, COMMUNITY POLICING DISPATCH (COPS: Cmty. Oriented Policing Serv., Washington, D.C.), Jan. 2009, http://cops.usdoj.gov/html/dispatch/January_2009/asian_culture.htm.

164. *Id.*

165. *Id.*

166. S.F. POLICE DEP'T & S.F. MAYOR'S OFFICE, SAN FRANCISCO COMMUNITY POLICING: A REPORT ON CURRENT EFFORTS, (2006), http://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/14702-REPORT%20ON%20COMMUNITY%20POLICING.pdf.

167. This requirement emanates from the Civil Rights Act of 1964, tit. VI, sec. 601, Pub. L. 88–352, 78 Stat. 252 (codified at 42 U.S.C. § 2000d (2012)), and Exec. Order No. 13166, 3 C.F.R. § 13166 (2000) (requiring that federal agencies identify individuals in need of LEP services and develop means to provide those services).

168. *See* LEP.GOV, http://www.lep.gov (last visited May 20, 2016).

169. *Planning Tool: Considerations for Creation of a Language Assistance Policy and Implementation Plan for Addressing Limited English Proficiency in a Law Enforcement Agency*, LEP.GOV, http://www.lep.gov/resources/Law_Enforcement_Planning_Tool.htm (last visited May 20, 2016).

like these can help departments develop the expertise necessary to avoid encounters like Patel's.

SUMMARY AND CONCLUSION: WHY CITIES SHOULD ALTER THE WAY THEY TRAIN POLICE AND WHY JUDGES SHOULD SCRUTINIZE THE USE OF FORCE MORE CLOSELY

Years ago, Derrick Bell showed how national self-interest, not conscience or the force of precedent, often determined the course of African-American fortunes, including Supreme Court victories like *Brown v. Board of Education*.[170] It stands to reason, then, that law enforcement officers are more likely to alter their treatment of foreign-looking minorities if the business community, foreign policy establishment, and other majoritarian interest groups strongly back doing so. Widely publicized incidents such as the one that befell Sureshbhai Patel reflect poorly on the community where they take place, discourage tourism, and complicate life for the foreign relations establishment.[171] States that treat immigrants in a more welcoming manner than that which the Alabama town afforded Mr. Patel are apt to attract more highly skilled immigrants, a necessity in a developing high-tech economy like the one that many states, particularly in the South, wish to develop. By the same token, a town or city whose police force treats all its citizens and visitors courteously and respectfully is likely to attract shoppers, visitors, and new residents.

Police–citizen interactions can be frightening, even for the motorist stopped for exceeding the speed limit during a routine excursion. If the officer reassures the motorist, pedestrian, or other subject that the officer merely wants some identification or an answer to a few questions, the encounter is apt to go better for both sides. Human relations are not a mystery. Coming to the United States is an arduous and expensive proposition. Most visitors are here for a legitimate reason. Treated

170. *See* Derrick A. Bell Jr., Comment, Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

171. *See*, *e.g.*, Mackey, *supra* note 3; *see also* Stephens, *supra* note 11 (noting that the Alabama governor wrote an apology to India over Patel's treatment); *supra* note 17 and accompanying text (discussing the international ramifications of the event). After the event, Officer Parker evidently suffered a bad conscience. *See* United States v. Parker, No.: 5:15-cr-55-MHH-HGD, 2016 WL 165713, at *31 (N.D. Ala. Jan. 13, 2016) ("To comply with Lieutenant Harrell's instruction, Officer Parker contacted Angela Sharp in the Madison 911 Call Center and asked her to do research to determine how many burglaries occurred near Hardiman Place Lane. Ms. Sharp asked Officer Parker if he basically needed her to 'stack [his] PC or probable cause.' Officer Parker replied, 'You're awesome.'" (alteration in original) (citations omitted)).

In short, Parker requested the dispatcher's help in making his rough treatment of the hapless Patel seem a legitimate response (probable cause) to a multitude of burglaries in the Hardiman Place neighborhood with its wide streets and neat, middle-class houses. But he asked for her help using coded language that an outside observer would not easily understand—argot to get himself out of a bad fix that arose when he used a different argot—cop-speak—with a foreigner unable to understand it.

respectfully, they will respond gratefully to courteous treatment and communication, if possible, in a language that they can understand.

Judges can and should encourage the above adjustment by scrutinizing police officers' deployment of lethal force on non-English speakers who did not comply quickly with commands that they simply could not understand. A host of options is available to an officer in such a situation short of throwing the individual to the ground. The United States is a polyglot country where dozens of languages are spoken and none is official, much less required. While this is so, a requirement that visitors respond instantaneously and with full comprehension to shouted instructions, often couched in slang, cop-speak, and coarse invective, is unreasonable, dangerous, and likely unconstitutional.[172]

172. *See* Ruiz v. Hull, 957 P.2d 984, 987 (Ariz. 1998) (en banc), discussed *supra* notes 40–63 and accompanying text.