



U.S. Department of Justice

Civil Rights Division

Coordination and Review Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

February 4, 2009

Lilia G. Judson, Esq.
Executive Director
Indiana Supreme Court
Division of State Court Administration
115 West Washington Street, Suite 1080
Indianapolis, IN 46204

Dear Ms. Judson:

We are writing this letter in reference to *Arrieta v. State*, No. 10S05-0704-CR-139 (Ind. 2008), in which the Court ruled that limited English proficient (LEP) defendants are not entitled to receive interpreter services at the court's expense unless they are indigent. While we recognize that the Indiana Supreme Court relied on Constitutional and state law in reaching its decision, we are contacting you now as a courtesy to ensure that you are aware of your obligation to provide meaningful access to LEP individuals under other federal law. We are providing this information without addressing the merits of the *Arrieta* case.

Under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d to 2000d-7, and its implementing regulations, *see, e.g.*, 28 C.F.R. §§ 42.101-42.112, state courts, such as the Indiana Courts, that receive federal financial assistance from the Department of Justice and/or other federal agencies must comply with Title VI and its implementing regulations, which prohibit discrimination on the basis of race, color, and national origin in programs that receive federal financial assistance. As part of that obligation, a court system that receives federal financial assistance should not permit assessment of interpreter costs to a litigant if a party or the party's witness is LEP.

In order to comply with Title VI's prohibition against national origin discrimination, recipients of federal financial assistance must take reasonable steps to ensure meaningful access to their programs. On June 18, 2002, the Department of Justice issued final guidance to its recipients regarding the requirement under Title VI and the Title VI regulations, as well as under the Safe Streets Act, to take reasonable steps to provide meaningful access to LEP individuals. *See* 67 Fed. Reg. 41,455. With regard to courts, the DOJ Title VI LEP guidance states that "every effort should be taken to ensure competent interpretation for LEP individuals during *all* hearings, trials and motions." *Id.* at 41,471 (emphasis added). DOJ also generally considers charging LEP parties for the costs of interpreters to be inappropriate. The guidance emphasizes

the need for courts to provide language services free of charge: “[w]hen oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person.” *Id.* at 41,462. These principles apply to civil as well as criminal proceedings, regardless of state laws to the contrary. However, they are particularly compelling in the context of a felony criminal case against an LEP defendant. Court systems that charge interpreter costs to LEP persons impose an impermissible surcharge on litigants based on their English language proficiency.

We do understand that resources are a concern across every court system. However, the U.S. Supreme Court articulated the need for recipients of federal funds to provide meaningful access to LEP persons thirty-five years ago in *Lau v. Nichols*, 414 U.S. 563 (1974). In 2002, DOJ issued its LEP Guidance, reiterating the requirement that recipients of federal funds make their programs accessible to LEP individuals. With the passage of time, the need to show progress in providing all LEP persons with meaningful access is amplified.

Examples of Title VI compliance can be found in state courts that are providing interpretation free of cost to all LEP persons encountering the system (including parents of non-LEP minors), whether it be in a criminal or civil setting, and in important interactions with court personnel, as well as providing translations of vital documents and signage. Attached for your information is a recent Memorandum of Agreement between the Department and the Maine Judicial System, which issued an order ensuring that interpreters will be provided at court cost to all LEP witnesses and parties in all court proceedings.

The Department of Justice conducts administrative investigations and also provides technical assistance to court systems regarding the provision of meaningful access. We look forward to speaking with you about innovative approaches to providing quality language services for LEP individuals. Should you have any questions or need additional clarification, please feel free to call Attorney Linda Quash at (202) 514-4069, who is assigned to this matter.

Sincerely,

Merrily A. Friedlander

Merrily A. Friedlander

Chief

Coordination and Review Section

Civil Rights Division

Enclosure

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE STATE OF MAINE JUDICIAL BRANCH
DEPARTMENT OF JUSTICE NUMBER 171-34-8

A. SUBJECT MATTER OF THE AGREEMENT

Entities receiving federal financial assistance from the Department of Justice must take reasonable steps to provide meaningful access to limited English proficient (LEP) individuals under Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000d, et seq., (Title VI); the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. §3789(c) (Safe Streets Act); and their respective implementing regulations, 28 C.F.R. §42.101, et seq., and §42.201, et seq. The United States Department of Justice (Department) Civil Rights Division has conducted an administrative review of the State of Maine Judicial Branch (Judicial Branch) in response to a complaint filed in March 2003 alleging that the Maine courts failed to provide interpreters and other language access services to LEP individuals. As part of its review, Departmental personnel conducted an on-site visit to Maine from August 7 - 11, 2006. During the on-site, Departmental personnel visited Maine courts, observed various judicial proceedings, and met with members of the Judicial Branch and various community organizations representing LEP individuals.

The Judicial Branch has voluntarily undertaken a number of steps designed to ensure meaningful access to the Courts. The Chief Justice of the Maine Supreme Judicial Court ("SJC") established the Limited English Proficiency Task Force ("LEPTF") in May of 2005. In February of 2007, the Task Force made recommendations to the SJC with regard to development of a Limited English Proficiency Program and for the promulgation of rules, orders, statutes or policies relating to LEP. Effective October 11, 2006, the SJC promulgated Administrative Order JB-06-3, Guidelines for Determination of Eligibility for Court-Appointed Interpretation and Translation Services. Administrative Order JB-06-03 is available on the Judicial Branch's website on the internet.

This Administrative Order extends qualified interpretation, at the State's expense, to all LEP individuals who are parties or witnesses in any type of court case, parents of minors involved in juvenile actions, or court customers seeking information or other

assistance from court clerks. The SJC has also issued a Policy Concerning Standards of Professional Conduct for Interpreters Providing Services in Judicial Proceedings, effective January 1, 2005. This policy is modeled on the National Center for State Courts ("NCSC") LEP Consortium model code of conduct for interpreters.

The SJC has also conducted the following training for interpreters: Advanced Training in Court Interpreting, November 3 and 10, 2004, and Introductory Workshop in Court Interpreting, April 26 and 27, 2005. In addition the SJC has assigned the Director of Court Services and Programs to administer LEP access within the Judicial Branch and to chair the LEPTF. The Judicial Branch has also translated a variety of forms into French, Spanish, Khmer, Vietnamese, Somali and Arabic, has made video arraignment tapes in French and Spanish, has posted language line charts at all clerk's office counters and has implemented a pilot project LCD screen in the lobby of the Lewiston District Court which explains how LEP individuals can access language services and includes the following message in English, French, Somali and Spanish: "Do you need an interpreter? If you do then please tell the clerk's office that you require assistance and they will help you." Clerk staffs throughout the Judicial Branch have been trained on the requirement to provide LEP assistance when requested or when they identify a need for such assistance.

The subject of this Agreement covers implementing measures designed to enforce the Judicial Branch's Administrative Order JB-06-3, including, but not limited to, publication of procedures and instructions for all court personnel on providing access to LEP individuals; maintenance of professional and assessment standards for interpreters and translators; publication and dissemination of translated versions of vital court documents; forging contractual agreements with telephonic and other interpretation and translation services to provide LEP individuals meaningful access to courtroom proceedings, clerk counters, and other Judicial Branch resources; identification of in-house bilingual employees who can assist in informal communications with LEP individuals; and development of periodic training for all court staff on LEP policies and procedures.

The parties to this Agreement are the United States of America and the Judicial Branch. In order to avoid the burdens and expenses of further investigation and possible litigation, the parties hereby agree as follows:

B. JURISDICTION

The Department has determined that the Judicial Branch receives federal financial assistance from the Department of Justice. Therefore, the nondiscrimination provisions of Title VI and the Safe Streets Act apply. Together, these statutes and their implementing regulations, codified at 28 C.F.R. §42.101, et seq., and §42.201, et seq.,

prohibit discrimination on the basis of race, color, national origin, sex, and religion and provide jurisdiction for the Department to investigate the complainant's allegations.

The Department is authorized under 28 C.F.R. Part 42, Subpart C and Subpart D, to investigate the complaint in this matter to determine the Judicial Branch's compliance with Title VI and the Safe Streets Act, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance. Furthermore, the Department is authorized under 28 C.F.R. §42.108 and 28 C.F.R. §42.210; to suspend or terminate financial assistance to the Judicial Branch provided by the Department should the Department fail to secure voluntary compliance pursuant to Subpart C or Subpart D, or to bring a civil suit to enforce the rights of the United States under applicable federal, state, or local law.

C. REMEDIAL ACTION

1. The Judicial Branch acknowledges its obligation to comply with Title VI, the Safe Streets Act, and implementing regulations, and will provide meaningful access to all LEP parties and witnesses in all cases before the Maine courts, regardless of an LEP individual's national origin or limited ability to speak, read, write, or understand English.

2. The Judicial Branch acknowledges its obligation to take reasonable steps to ensure effective communication with and meaningful access for LEP persons in the language(s) in which they are proficient, by providing competent language services at the state's expense, in order to comply with Administrative Order JB-06-03, in the manner contemplated by the Department of Justice Final Guidance to Federal Financial Assistance Recipients, 67 Fed. Reg. 41455-41472 (June 18, 2002) ("DOJ Guidance").

3. In conjunction with the Department's review, the Judicial Branch has developed and implemented an Administrative Order extending qualified interpretation, at the State's expense, to all LEP individuals who are parties or witnesses in any type of court case, parents of minors involved in juvenile actions, or court customers seeking information or other assistance from court clerks.¹ The Judicial Branch agrees to comply with the terms of Administrative Order JB-06-03. The Department

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It should be noted that, unlike the definition of limited English proficiency contained in the Department of Justice Final Guidance to Federal Financial Assistance Recipients, 67 Fed. Reg. 41455-41472 (June 18, 2002), which defines persons with LEP as "those individuals who have a limited ability to read, write, speak or understand English," based on principles of national origin discrimination, the Maine Judiciary definition of persons with LEP also includes individuals who are deaf or hard of hearing. Accordingly, the Department does not consider the Administrative Order provisions relating to deaf or hard of hearing individuals as part of this Memorandum of Agreement.

acknowledges that the Judicial Branch has posted Administrative Order JB-06-03 on the Judicial Branch's internet home page and has distributed Administrative Order JB-06-03 to all Judicial Branch employees.

4. Within 180 days of the effective date of this Agreement, the Judicial Branch will draft, finalize, and distribute instructions and procedures to all court personnel on implementation of the Administrative Order. Such instructions and procedures will be developed using NCSC models and will provide detailed guidance to judges, clerks, marshals, and others charged with implementation of the Administrative Order. In addition, the instructions and procedures referenced herein will include specific information for judges on how to identify LEP witnesses and parties appearing before them.

5. The Judicial Branch has developed and implemented professional ethics and language proficiency qualification standards for interpreters, and will require interpreters to comply with these standards. In conjunction with this effort, within 120 days, the Judicial Branch will develop an interpreter application form using the NCSC certification and registration process as a guide.

6. Within 270 days of the effective date of this Agreement, the Judicial Branch will develop and distribute to all employees a list of interpreters who meet the qualification standards referenced in paragraph 5 above, as well as contact information for professional telephonic interpretation service providers, to include companies and qualified individuals who do telephonic as well as in-person interpreting.

7. Within 120 days of the effective date of this Agreement, consistent with the provisions of any applicable collective bargaining agreement and any applicable guidance from NCSC, the Judicial Branch will develop an in-house mechanism for identifying qualified bilingual court employees who can assist LEP individuals with informal communications and distribute a list of such individuals and their contact information to all court employees.

8. Within 180 days of the effective date of this Agreement, the Judicial Branch will develop and distribute to all employees a set of procedures to be utilized in the identification of LEP persons seeking to access court services inside and outside of the courtroom to include the use of language identification cards (or "I speak" cards), which invite LEP persons to identify their language needs to the Judicial Branch staff, and will post notices in commonly encountered languages notifying LEP persons of language assistance to encourage them to self-identify.

9. The Director of Court Services or other administrator as assigned by the State Court Administrator is responsible for identifying qualified translators. The Judicial Branch has identified an initial set of vital documents and has translated them into

languages frequently encountered by the courts, and has distributed those documents to all courts. The Judicial Branch will periodically update the list of vital documents and translate them into frequently encountered languages. Translated versions of those documents that are commonly accessed by the public will be made available to the public both in hard copy at clerks' counters and on the Judicial Branch's intranet and internet sites. The Judicial Branch will ensure that all translated materials are checked for accuracy. The Judicial Branch will also review its pilot LCD screen project and determine whether the project should be expanded to include other languages and other courts.

10. The Department acknowledges that the Judicial Branch has designated the Director of Court Services and Programs to oversee compliance with the Administrative Order and compliance with this Memorandum of Understanding.

11. The Department acknowledges that the Judicial Branch has conducted training for judges and court personnel relating to language access policies and procedures. As of November of 2006, all new judges have received LEP training. The Judicial Branch agrees that all new employees will receive LEP training as part of new employee orientation, beginning 90 days from the effective date of this agreement. The Judicial Branch agrees to continue to provide training for court personnel relating to language access policies and procedures to include at least one additional training during the term of this Agreement. For the term of this Agreement, and at the Department's request, the Judicial Branch agrees to include Department of Justice personnel on the training agenda. The Judicial Branch further agrees to provide the Department with at least 60 days notice in advance of trainings. In addition, within 180 days and with input from the Department, the Judicial Branch will devise an intranet training program, concerning its Administrative Order and language access measures, which will be mandatory for all judges and court personnel to complete.

D. IMPLEMENTATION AND ENFORCEMENT

1. Except as otherwise specified in this Agreement, 240 days after the effective date of this Agreement, and 30 days prior to the expiration of this agreement, the Judicial Branch will submit detailed written reports to the Department summarizing the actions the Judicial Branch has taken to enter into compliance with this Agreement, and actions consistent with the attached Administrative Order.

2. Prior to the expiration of this Agreement, the Department may review compliance with this Agreement. At the Department's written request, the Judicial Branch will furnish the Department with any additional information pertinent to the implementation of the attached Administrative Order on language access, or pertinent to

assessment of compliance with this agreement. For the term of this agreement, and at the Department's written request, the Judicial Branch will facilitate site visits for Department personnel.

3. If the Department believes that the Judicial Branch has failed to comply in a timely manner with any requirement of this Agreement, the Department shall inform the Judicial Branch and attempt to reach an informal resolution. The Department and the Judicial Branch shall attempt to resolve the issue or issues in good faith. If the attempt at informal resolution fails, then the Department shall notify the Judicial Branch in writing that the Department believes that the Judicial Branch has failed to comply in a timely manner with the terms of this agreement.

The written notice shall include a statement of the basis for the Department's determination and will allow the Judicial Branch thirty (30) days to either:

- a) Explain in writing the reasons for its actions and describe the remedial actions that have been or will be taken to achieve compliance with this Agreement; or
- b) Provide information that would cause the Department to review or change its determination.

On notice to the Judicial Branch, the Department may shorten the time frame outlined above, if it determines that a delay would result in irreparable injury to the complainant or to other affected parties.

If the Judicial Branch does not respond to the notice or, if upon review of the Judicial Branch's response, the Department finds that the Judicial Branch has not complied with the terms of the Agreement, the Department may, upon notice to the Judicial Branch:

- a) Re-open the investigation;
- b) Issue a Letter of Findings documenting the area of non-compliance and the steps that must be taken to correct the non-compliance;
- c) Initiate the administrative process to suspend or terminate Federal financial assistance which proceedings must include an opportunity for an administrative hearing; or
- d) Refer the matter to the litigation section to seek injunctive relief or pursue other enforcement proceedings to enforce the terms of this Agreement, or it may initiate appropriate steps to enforce Title VI and/or the Safe Streets Act.

4. Failure by the Department to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein shall not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.

5. This Agreement is a public document. Upon request, a copy of this document or any information contained in it may be made available to any person by the Judicial Branch or the Department.

6. This Agreement, including the attached Administrative Order, constitutes the entire Agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement, shall be enforceable. This Agreement does not purport to remedy any other potential violations of Title VI and/or the Safe Streets Act or any other federal law. This Agreement does not affect the Judicial Branch's continuing responsibility to comply with Title VI, the Safe Streets Act, or any other federal law.

7. In its Administrative Order, the Maine Judiciary includes in its definition of LEP, persons who are deaf or hard of hearing, which is not the definition in the Department of Justice LEP Guidance. This Agreement does not purport to remedy any potential violations under Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134, and its implementing regulations, 28 C.F.R. Part 35, as amended, which prohibit discrimination against qualified individuals with disabilities in services, programs, and activities of state and local governments, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, which prohibits discrimination against qualified individuals with disabilities by recipients of federal financial assistance.

8. Nothing in this Agreement shall be construed as an acknowledgment, admission, or evidence of liability on the part of the Judicial Branch or the State of Maine under Title VI, the Safe Streets Act, or the Constitution, or an acknowledgment, an admission, or evidence of liability of any Judicial Branch or State of Maine official under Federal or State law. The Department has not issued any finding of non-compliance against the Judicial Branch.

9. The effective date of this Agreement is the date of the last signature below.

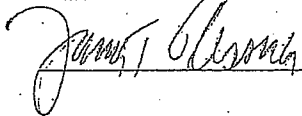
10. This Agreement will remain in effect for two years after the date of the final signature below.

11. The person signing for the Judicial Branch represents that he or she is authorized to bind the Judicial Branch to this Agreement.

12. This Agreement can only be enforced by the parties specified in this Agreement, their legal representatives and assigns. This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights. This Agreement shall not be used against the Judicial Branch in any proceeding other than a proceeding between the Department and the Judicial Branch.

For the Judicial Branch:

James T. Glessner
State Court Administrator
Maine Judicial Branch

 9/23/08

For the United States:

Grace Chung Becker
Acting Assistant Attorney General

By: Merrily A. Friedlander
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Date: 9/29/08

STATE OF MAINE
SUPREME JUDICIAL COURT

ADMINISTRATIVE ORDER JB-06-3

GUIDELINES FOR DETERMINATION OF ELIGIBILITY
FOR COURT-APPOINTED INTERPRETATION AND TRANSLATION
SERVICES

Effective: October 11, 2006

This Order sets forth the guidelines for determining when the Judicial Branch will provide an interpreter or other translation service in Maine's State Courts for persons with limited English proficiency, hereinafter identified as "LEP" individuals, who are: parties, potential litigants seeking assistance through the Clerks Offices, witnesses, or parents of minors in juvenile matters.

Limited English proficiency refers to the inability to adequately understand or communicate effectively in English in a court proceeding. This phrase applies to individuals whose primary language is a language other than English and whose ability to speak English is not at the level of comprehension and expression needed to participate effectively in court transactions and proceedings. While this phrase also applies to individuals whose primary language is American Sign Language, this Administrative Order does not apply to individuals who are deaf or hard-of-hearing. The interpretation and/or translation services for those individuals are governed by 5 M.R.S. § 48-A.

Nothing herein shall be understood to prevent a person from having his or her own interpreter or translation assistance in addition to the interpreter or translator appointed and funded by the court.

I. DETERMINATION OF ELIGIBILITY

Maine's state courts will provide all LEP individuals who are parties or witnesses in any type of court case, or parents of minors involved in juvenile actions, with an interpreter in all court proceedings related to that case, at the State's expense. "All court proceedings" includes case management conferences,

CADRES and judicially-assisted mediations, motion hearings, arraignments, commitment hearings, competency hearings, jury selection, trials, sentencing, appellate arguments, and any other court events or proceedings authorized by the presiding judge or justice.

When the LEP individual has court-appointed counsel, that attorney may request authorization from the presiding judge or justice to incur expenses for interpreter and/or translator services for client conferences, court authorized evaluations, and depositions.

Whenever an LEP individual who needs interpretation services requests information and/or assistance at a court clerk's window, the court clerk will provide the information and/or assistance by using an in person interpreter or other service, such as a telephone interpreting service.

Other requests for interpretation/translation services or other accommodation will be considered pursuant to the Judicial Branch's *Policy on Access for People with Disabilities* (Effective May 5, 2000).

Court clerks are authorized to arrange for interpreter or translation services whenever requested by a judge, an individual litigant, a litigant's attorney or representative, or when, in the clerk's estimation, an individual does not understand the information being provided or when the clerk does not understand the requests being made by the individual.

For the Court,

/S/

Leigh I. Saufley
Chief Justice

Promulgation Date: October 11, 2006