

BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF CIVIL RIGHTS

THE LATIN AMERICAN COALITION,
MUSLIM AMERICAN SOCIETY OF
CHARLOTTE, and the VIETNAMESE
ASSOCIATION OF CHARLOTTE,

Complainants,

v.

THE STATE OF NORTH CAROLINA,
the NORTH CAROLINA JUDICIAL
BRANCH and its ADMINISTRATIVE
OFFICE OF THE COURTS,

Respondents.

**COMPLAINT UNDER
TITLE VI OF THE
CIVIL RIGHTS ACT
OF 1964**

Complainants are organizations whose members and constituents include language minority individuals entitled to equitable access to and meaningful participation in North Carolina judicial programs, activities, services, and benefits. They bring this complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, against the State of North Carolina and its Judicial Branch, to address Respondents' failure to take reasonable steps to ensure Limited English Proficient ("LEP") persons¹ in North Carolina have meaningful access to the state judicial system.

¹ Limited English Proficient (LEP) persons are "those individuals who have a limited ability to read, write, speak or understand English." See Department of Justice Final Guidance to Federal Financial Assistance Recipients, 67 Fed. Reg. 41455-72 (June 18, 2002).

The North Carolina courts have operated under a uniform policy under which, with few exceptions, no civil litigant may receive a free, court appointed interpreter, irrespective of their inability to speak or understand English.²

Under current North Carolina law and policy, the only individuals eligible for a free, court provided interpreter are:

- indigent criminal defendants in courtroom proceedings where counsel is provided;
- indigent defendants in criminal cases;
- indigents in juvenile proceedings regarding delinquency as well as abuse and neglect ;
- all parties in mandatory custody mediation (but not the actual custody litigation itself, should mediation prove unsuccessful);
- all plaintiffs in Domestic Violence (50B protective order) cases; and
- indigents in involuntary commitment proceedings.

There is no discretion left to the judges themselves whether or not to provide an interpreter, free of cost, to any LEP litigant in any other matter, including virtually all civil matters.

In sum, Respondents have, with few, limited exceptions, failed to provide foreign language interpreters at no cost to LEP civil litigants and criminal non-indigents in North Carolina courts, as well as failed to translate important court-related administrative documents and website pages necessary for litigants to meaningfully participate in the state court system, in violation of Title VI of the Civil Rights Act of 1964. These failures to provide meaningful access are not simply inadequacies of implementation; rather, they are enshrined in the explicit policies of the North Carolina courts, which directly contravene federal law.

² "Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System," Feb. 2007 ("NCAOC Policies and Best Practices"), at Section 7.3, "Instances in Which the State May Not Bear the Cost of a Foreign Language Interpreter" and Section 7.5, "Interpreter Fee in Cases Where the State is Not Authorized to Pay," available at <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf> (accessed May 13, 2011), and a copy of which is attached as Exhibit 1 to this Complaint.
See also North Carolina Domestic Violence Best Practices Guide for District Court Judges, NCAOC, July 2010, at p. 99, Appendix A ("Interpreting Services")
http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBESTPracticesGuide_Dec2010.pdf (last accessed April 5, 2011).

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I. INTRODUCTION

1. Complainants' members and constituents have been injured by the intentional refusal of the Judicial Branch, through its Administrative Office of the Courts and the State of North Carolina (hereinafter "the Respondents") to provide free foreign language interpreters to LEP persons litigating or attempting to litigate civil claims in North Carolina state courts. The State's long-standing and statewide policy and practice has denied, and continues to deny, LEP persons meaningful access to the state civil judicial system.³

2. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d ("Title VI"), prohibits national origin discrimination by recipients of federal financial assistance. Title VI provides that:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

42 U.S.C. § 2000d.

3. Title VI regulations further prohibit recipients from administering programs in a manner that has the effect of subjecting individuals to discrimination based on their national origin. See 28 CFR §§ 42.104(b)(2), 42.203(e). The term "national origin" has been interpreted by the Supreme Court to include language rights of Limited English Proficient (LEP) persons. Lau v. Nichols, 414 U.S. 563 (1974). In Lau, the Supreme Court held that failure to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin

³ For a detailed analysis of the systemic access problems faced by North Carolina's LEP population, see "An Analysis of the Systemic Problems Regarding Foreign Language Interpretation in the North Carolina Court System and Potential Solutions," May 5, 2010, Immigration and Human Rights Policy Clinic, University of North Carolina School of Law, ("UNC Law School Court Interpreter Analysis") available at <http://www.law.unc.edu/documents/clinicalprograms/foreignlanguageinterpretationproblemsnc.pdf> (last accessed April 2, 2011).

discrimination prohibited by Title VI regulations. Id. at 568. See also Sandoval v. Hagan, 197 F.3d 484, 510-11 (11th Cir. 1999) (holding that English-only policy for driver's license applications constituted national origin discrimination under Title VI), rev'd on other grounds, Alexander v. Sandoval, 532 U.S. 275 (2001); Almendares v. Palmer, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003) (holding that allegations of failure to ensure bilingual services in a food stamp program could constitute a violation of Title VI).

4. State courts receiving federal financial assistance must comply with Title VI, and its implementing regulations.⁴ Title VI prohibits discrimination on the basis of race, color, and national origin in such state court systems and programs. Under Lau and interpretive guidance by the U.S. Department of Justice ("USDOJ"), the failure by a state court system to address limited English proficiency among persons seeking access to the courts can constitute national origin discrimination.⁵

5. Respondents have thus had an ongoing legal obligation to take reasonable steps to provide meaningful access to LEP individuals under Title VI. It is also clear that the "federal requirement to provide language assistance to LEP individuals applies notwithstanding conflicting state or local laws or court rules."⁶

6. Here, Respondents' policy and practice of refusing to provide free interpreters in most civil cases has created a systemic barrier to LEP persons' ability to access to North Carolina courts. Given the extent and long-standing nature of the systemic denial as detailed in this Complaint, Respondents have failed to take reasonable steps to ensure that LEP persons

⁴ See Letter to Chief Justices and State Court Administrators from Thomas E. Perez, Assistant Attorney General, U.S. Dept. of Justice, Civil Rights Division, August 16, 2010, available at http://www.lep.gov/final_courts_ltr_081610.pdf ("Perez Letter") (last accessed on April 2, 2011).

⁵ Id. at p. 1

⁶ Id.

have meaningful access to our state court system. Respondents' systemic policy and practice therefore constitutes a violation of Title VI.

7. Complainants ask the USDOJ to fully investigate these claims in a timely manner, and to require the Respondents to cease their discriminatory refusal to provide free foreign language interpreters to LEP civil litigants and failure to translate necessary and important legal forms into languages other than English.

II. JURISDICTIONAL AND ADMINISTRATIVE FACTS

A. Parties

Complainants

8. The Latin American Coalition, Muslim American Society of Charlotte (MAS) and Vietnamese Association of Charlotte are each organizations in North Carolina whose members and constituents include adult individuals who are Limited English Proficient and who have been denied a free court appointed foreign language interpreter in a civil proceeding pursuant to Respondents' challenged policy and practice. They each have an immediate interest in seeing that Respondents cease their discriminatory actions and implement policies that provide equal access to the state court system for all civil litigants regardless of national origin and LEP status.

Respondents

North Carolina's Judicial Branch

9. Pursuant to the Judicial Department Act of 1965, the General Court of Justice was established as a unified judicial system in North Carolina for purposes of jurisdiction, operation and administration. N.C. Gen. Stat. § 7A-4. North Carolina's unified court maintains a uniform cost and fee structure, N.C. Gen. Stat. § 7A-304 through 339, and uniform process for payment of judicial related expenses, N.C. Gen. Stat. § 7A-300 through 301.

10. The North Carolina Administrative Office of the Courts (“NCAOC”) was created when the state courts were unified in 1963, as a constituent part of North Carolina’s General Court of Justice. N.C. Gen. Stat. § 7A-2(3). The primary functions of the NCAOC within the Judicial Branch include establishing uniform fiscal policies and administering the budget for the entire Judicial Branch.⁷ The NCAOC also creates and implements statewide policies within the Judicial Branch regarding the provision of foreign language interpreters to LEP persons in state court proceedings, controls the payment process for all foreign language interpreters and creates and disseminates all administrative forms available to litigants, including LEP litigants. See generally N.C. Gen. Stat. § 7A-340 et seq.⁸

11. According to the NCAOC’s website, it “is responsible for developing a single budget for the entire judicial branch of government. Centralized administration and budgeting permit uniform policy throughout the state.”⁹

The State of North Carolina

12. The State of North Carolina, through the state legislature, determines the nature and amount of any increase or reduction in revenue to be provided to the Judicial Department and Administrative Office of the Courts, including any such funds designated to contract with or employ foreign language interpreters for limited English proficient litigants in civil courts throughout the state.

⁷ See North Carolina Administrative Office of the Courts website, at <http://www.aoc.state.nc.us/www/copyright/aoc/descrip.htm> (last accessed April 2, 2011).

⁸ See “Interpreting Services Program,” North Carolina Administrative Office of the Courts website, at <http://www.nccourts.org/Citizens/CPrograms/Foreign/Default.asp> (last accessed March 10, 2011), and Exhibit 1, NCAOC Policies and Best Practices.

⁹ North Carolina Administrative Office of the Courts website, at <http://www.aoc.state.nc.us/www/copyright/NCAOC/judinfo.htm> (last accessed April 2, 2011).

B. Federal Financial Assistance

13. The North Carolina Judicial Branch has been a recipient of federal financial assistance for many years. A partial listing of federal funding received by the North Carolina Judicial Branch includes:

- North Carolina's Administrative Office of the Courts has received Court Improvement Project funding every year since 1995.¹⁰
- The North Carolina courts received Justice Assistance Grant ("JAG") funding in 2009¹¹ and Office of Justice Programs ("OJP") funding in 2010.¹²
- The North Carolina courts received money through the American Reinvestment and Recovery Act for 2009-2011.¹³

14. As a result of these federal funds received, the nondiscrimination provision of Title VI applies to the Respondents. This statute and its implementing regulations prohibit discrimination on the basis of race, color, national origin, sex, and religion and provide jurisdiction for the U.S. Department of Justice to investigate the Complainants' allegations.

¹⁰ See NC Court System, History of the Court Improvement Project in North Carolina, at <http://www.nccourts.org/Citizens/Cprograms/Improvement/History.asp> (last accessed March 10, 2011).

¹¹ See FY 2009 Recovery Act Justice Assistance Grant (JAG) Program, State Awards, available at <http://www.ojp.usdoj.gov/BJA/recoveryJAG/RecoveryActJAGStateAwards.pdf> (last accessed March 10, 2011) ("The North Carolina Department of Crime Control and Public Safety will use the Recovery Act JAG funds to: improve court operations through evaluation and training . . .").

¹² See FY 2010 Office of Justice Programs' program grant funds through the Omnibus Appropriations Act 2010, Public Law 111-117 to the NC Administrative Office of the Courts, available at http://www.ojp.gov/pfig?OCOM_BY_STATE_EARMARK&P_FISCAL_YEAR=2010&P_STATE=NC (last accessed May 1, 2011).

¹³ See NC State Budget, Recommended Operating Budget 2009-2011, p. 5, available at http://www.osbm.state.nc.us/files/pdf_files/bgt0911v4r.pdf (last accessed March 10, 2011) ("The Governor reports on the use of funding of up to \$750,000 to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) for evaluation of court processes and procedures and developing best practices for effective programs.").

III. RESPONDENTS' FAILURE TO TAKE REASONABLE STEPS TO ENSURE MEANINGFUL COURT ACCESS

A. Limited English Proficient (LEP) Persons in North Carolina

15. According to the most recent U.S. Census Bureau, American Community Survey conducted in 2009, more than 879,000 persons, or 10.1% of all North Carolinians over the age of five, speak a language other than English at home.¹⁴ From 2000 to 2009, North Carolina experienced an over 25% increase in the number of persons over the age of five who spoke a language other than English at home (8% to 10.1%).¹⁵

16. As of 2009, more than 397,000, or 4.6% of North Carolina's total population over the age of five, not only spoke a language other than English at home, but would also be categorized as LEP, in that they speak English less than "very well."¹⁶ The same Census data shows that more than 346,000 North Carolinians age 18 and over (constituting 51% of all North Carolinians who speak a language other than English) speak English less than "very well."¹⁷ As of the filing of this Complaint in 2011, the relevant LEP population in North Carolina is most probably even larger than noted by the 2009 data. These 346,000 or more individuals are included within the community of North Carolinians who are Limited English Proficient adults who have been or may become a plaintiff or a defendant in a civil proceeding and would need an

¹⁴ See U.S. Census Bureau, North Carolina Census Data 2010 on Household, Education, and Immigration, available at <http://www.uscensus2010data.com/37-north-carolina-household-education-immigration-demographics> (last accessed April 2, 2011). See also U.S. Census Bureau, American Community Survey 2009, available at http://factfinder.census.gov/servlet/ADPTable?_bm=y&-geo_id=04000US37&-qr_name=ACS_2009_1YR_G00_DP2&-context=adp&-ds_name=&-tree_id=309&-lang=en&-redoLog=false&-format= (last accessed April 13, 2011).

¹⁵ See U.S. Census Bureau, American Community Survey 2000, available at http://factfinder.census.gov/servlet/QTTable?_bm=n&-lang=en&-qr_name=DEC_2000_SF3_U_DP2&-ds_name=DEC_2000_SF3_U&-geo_id=04000US37 (last accessed March 10, 2011), and 2010 U.S. Census data at Fn. 13, *supra*.

¹⁶ See U.S. Census Bureau, American Community Survey 2009, available at http://factfinder.census.gov/servlet/STTable?_bm=y&-qr_name=ACS_2009_1YR_G00_S1601&-geo_id=04000US37&-context=st&-ds_name=ACS_2009_1YR_G00_&-tree_id=309&-lang=en&-format=&-CONTEXT=st (last accessed April 4, 2011).

¹⁷ *Id.*

interpreter to obtain meaningful access to our court system. The majority of the State's adult LEP population, or at least approximately 261,619 persons, are Spanish speakers.¹⁸

17. Underlying this growth in the Spanish LEP population is the growth of the Hispanic population in North Carolina overall. There are currently over 800,000 Hispanic residents in North Carolina, a growth rate of 111% since 2000.¹⁹ According to 2010 U.S. Census figures, Hispanics comprise 8.4% of the state's population;²⁰ furthermore, ten (10) North Carolina courthouses serve counties whose populations range from 12% - 20% Hispanic.²¹ Although still relatively small, North Carolina's Asian population has grown 83.8% since 2000, and now comprises 2.2% of all North Carolinians.²²

18. Respondents themselves have recognized the continuing and growing need for interpreters for LEP persons seeking to access the state court system. The NCAOC website statement regarding its Interpreting Services Program acknowledges the "growing numbers of non-English speakers in North Carolina" needing "access to justice in the courts" of North Carolina.²³ Respondents' NCAOC website also states:²⁴

As North Carolina's population becomes more diverse, the need for quality court interpretation in Spanish and several other languages continues to grow. The large increase in the Limited English Proficient (LEP) population and the shortage of qualified interpreters creates problems for our courts for which there are no easy answers.

¹⁸ Id.

¹⁹ See 2010 United States Census Data for North Carolina at Table 2, available at http://2010.census.gov/news/xls/cb11cn61_nc_2010redistr.xls (last accessed April 13, 2011).

²⁰ Id.

²¹ See 2010 United States Census Bureau, American FactFinder, GCT-PL1,ST05, available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?_afpt=table. The counties are Duplin (20%), Lee (18%), Sampson (16.5%), Greene (14.3%), Montgomery (14.1%), Durham (13.5%), Chatham (13%), Johnston (12.9%), Hoke (12.4%) and Mecklenburg (12.2%).

²² See <http://www.newsobserver.com/2011/03/02/1024384/2010-census-data-on-nc-redistricting.html>.

²³ See "Interpreting Services Program," North Carolina Administrative Office of the Courts website, at <http://www.nccourts.org/Citizens/CPrograms/Foreign/Default.asp> (last accessed March 10, 2011).

²⁴ See "Interpreter Services for Court Officials and Staff," North Carolina Administrative Office of the Courts website, at <http://www.nccourts.org/Citizens/CPrograms/Foreign/CourtStaff/Default.asp> (last accessed March 10, 2011).

19. In May 2008, the North Carolina Equal Access to Justice Commission, chaired by the Honorable Sarah Parker, Chief Justice of the North Carolina Supreme Court, also acknowledged the access problem experienced by LEP persons in North Carolina. Included among the Commission's express recommendations was "[i]mproving access to the courts for those with limited-English proficiency."²⁵

B. Respondents' Systemic Denial of Foreign Language Interpreters to LEP Persons in State Court Proceedings

20. The USDOJ, in interpreting the relevant statutes and regulations, has stated that Title VI requires state courts that receive federal funds to take reasonable steps to provide meaningful court access to LEP individuals, and at a minimum, every effort should be taken to (1) provide interpreters in criminal and civil matters for LEP individuals "during all hearings, trials, and motions during which the LEP individual must be and/or may be present," including critical encounters that occur outside of the courtroom;²⁶ and (2) provide the services of an interpreter free of charge.²⁷ The USDOJ, in its August 16, 2010 letter sent to every Chief Justice and State Court Administrator in the United States, including those in North Carolina, expressly reaffirmed the Title VI requirement that courts take reasonable measures to ensure meaningful court access to LEP persons, emphasizing the need for courts to provide such interpretation free of cost to the LEP persons involved.²⁸

21. It is clear that the Respondents, by their own express acknowledgement, have a statewide policy and practice of refusing to provide meaningful court access to LEP persons,

²⁵ See "The Initial Report of the North Carolina Equal Access to Justice Commission, Executive Summary, at 3, May 2008 available at <http://www.ncequalaccesstojustice.com/wp-content/uploads/2009/07/executivesummaryreport.pdf> (last accessed March 10, 2011).

²⁶ 67 Fed. Reg. 41455, 41471-72 (June 18, 2002).

²⁷ *Id.* at 41462.

²⁸ See Perez Letter at 2, at Fn. 4, *supra*.

through the denial of court appointed foreign language interpreters except in a few, very limited situations.

22. In 2006, the North Carolina legislature rewrote N.C.G.S. §§ 7A-314(f), to include several categories of litigants eligible for a free court interpreter: 50B domestic violence victims, and litigants in cases where the “Judicial Department is bearing the costs of representation.”

Also, per N.C.G.S. §7A-343(9c), the North Carolina legislature authorized the NCAOC to adopt mandatory policies and procedures to be applied uniformly throughout the state court system.

N.C.G.S. §7A-314(f) provides:

In any case in which the Judicial Department is bearing the costs of representation for a party and that party or a witness for that party does not speak or understand the English language, and the court appoints a foreign language interpreter to assist that party or witness, the reasonable fee for the interpreter's services is payable from funds appropriated to the Administrative Office of the Courts. In order to facilitate the disposition of criminal or Chapter 50B cases, the court may authorize the use of a court interpreter, paid from funds appropriated to the Administrative Office of the Courts, in cases in which an interpreter is necessary to assist the court in the efficient transaction of business. The appointment and payment shall be made in accordance with G.S. 7A-343(9c).

Id.

N.C.G.S. §7A-343(9c) in turn states that the duties of the NCAOC Director include:

[p]rescrib[ing] policies and procedures for the appointment and payment of foreign language interpreters in those cases specified in G.S. 7A-314(f). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so.

Id.

23. Pursuant to the above statutes, the NCAOC Director issued mandatory policies and procedures governing the appointment and payment of foreign language interpreters,

effective February 1, 2007,²⁹ stating that state court judges presiding in a court proceeding would no longer have authority to appoint foreign language interpreters for LEP litigants or authorize a payment rate for the interpreter.³⁰ Pursuant to the 2007 NCAOC mandated policies and procedures, courts have denied motions from LEP litigants seeking to have the state provide them an interpreter, and litigants have been informed to bring their own interpreters, as the court will not provide any such interpreters free of cost.³¹

24. Under the NCAOC's current statewide policy and practice governing all North Carolina courts, free court-appointed foreign language interpreters will only be provided to the below categories of cases and litigants, even if an interpreter is necessary in order to ensure a litigant with meaningful access to the court proceedings and the LEP litigant is otherwise unable to provide such an interpreter:³²

- indigent criminal defendants in courtroom proceedings where counsel is provided;
- indigent defendants in criminal cases;
- indigents in juvenile proceedings regarding delinquency as well as abuse and neglect;
- all parties in mandatory custody mediation (but not the actual custody litigation itself, should mediation prove unsuccessful);
- all plaintiffs in Domestic Violence (50B protective order) cases; and
- indigents in involuntary commitment proceedings.

25. According to the NCAOC's policy:

[the] Judicial Branch is not authorized to provide interpreters to parties who are required to bear their own costs of representation (for example, civil and domestic litigants, non-indigent criminal defendants). Because the legislature has not authorized or appropriated funds for these other contexts, it would not be

²⁹ See Exhibit 1, NCAOC Policies and Best Practices.

³⁰ See "New Policies and Procedures Related to AOC Foreign Language Interpreters," AOC Memorandum, January 16, 2007, attached as Exhibit 2, and incorporated by reference herein.

³¹ See, e.g., Order Denying Plaintiff's Motion to Appoint Translator, by the Hon. Yvonne M. Evans, (Gaston County) Superior Court Judge, dated January 24, 2011, attached as Exhibit 3 and incorporated herein. See also Affidavit of Attorney Matthew Stauff, attached as Exhibit 4 and incorporated herein by reference.

³² See NCAOC "Who Is Responsible for Bearing the Costs?" Diagram November 16, 2007, attached as Exhibit 5 and incorporated herein by reference.

appropriate for the court system to begin paying for these services on its own authority.³³

NCAOC's Policies and Best Practices further state that:

In civil and domestic cases where an interpreter is necessary, the court may appoint an interpreter on its own motion and *require the parties to bear the cost of the interpreter*. Rules of Evidence 604 and 706 provide the court with this authority.³⁴

26. Based on the Respondents' own statutes and policies, it is clear that they have a policy and practice of refusing to provide free foreign language interpreters to LEP persons not falling within one of the limited case categories approved by NCAOC.

27. Providing a free foreign language interpreter to the vast number of LEP civil litigants "would not be appropriate" in NCAOC's view, even if such an interpreter were necessary for the LEP person to meaningfully participate in the court proceedings, and even if the LEP person could not otherwise afford to retain such an interpreter. Although Complainants contend that Title VI compels Respondents to provide free foreign language interpreters for *all* LEP civil litigants, the lack of interpreters is particularly concerning in certain civil cases that may carry serious and immediate consequences for the litigants, such as contested custody cases and tenant eviction hearings.

28. Finally, as noted in the recent UNC School of Law report,³⁵ in addition to this systemic denial of free interpreters by Respondents, civil courts in North Carolina regularly permit, if not invite, family members or even other litigants waiting for their cases to be called to

³³ NCAOC Policies and Best Practices at Section 7.3, "Instances in Which the State May Not Bear the Cost of a Foreign Language Interpreter." See also North Carolina Domestic Violence Best Practices Guide for District Court Judges, NCAOC, July 2010, at p. 99, Appendix A ("Interpreting Services") http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBestPracticesGuide_Dec2010.pdf (last accessed April 5, 2011).

³⁴ *Id.* at Section 7.5, "Interpreter Fee in Cases Where the State is Not Authorized to Pay" (emphasis added).

³⁵ See Fn. 3, UNC Law School Court Interpreter Analysis at pp. 56-57.

serve as non-certified interpreters. Such a situation can result in unqualified and/or biased interpreters being used in court proceedings even where the LEP person is fortunate enough to have someone interpret for him or her.

C. Respondents' Claim of Inadequate Resources Is No Defense to Their Violation of Federal Law

29. Respondents' written policies and practice on their face deny court appointed foreign language interpreters to most LEP civil litigants in North Carolina. Respondents may attempt to justify their failure to provide foreign language interpreters to the overwhelming majority of LEP civil litigants needing such interpreters by asserting that North Carolina's General Assembly has not authorized funds for the provisions of foreign language interpreters, except in few limited circumstances. However, as explained below, such an asserted justification for the current denial of free foreign language interpreters is no defense to Respondents' violation of federal law.

30. The USDOJ, in recognition of the "unusual budgetary constraints" currently faced by state court systems, has acknowledged that it will consider "costs of the services and the resources available to the court as part of the determination of what language assistance is reasonably required in order to provide meaningful LEP access."³⁶ However, as noted in the USDOJ guidance letter, "[f]iscal pressures, however, do not provide an exemption from civil rights requirements."³⁷

31. Under this USDOJ analysis, consideration of a court system's compliance with language access standards in light of limited resources, may include the following factors:³⁸

³⁶ See Fn. 4, Perez Letter at 4.

³⁷ Id.

³⁸ Id.

The extent to which current language access deficiencies reflect the impact of the fiscal crisis as demonstrated by previous success in providing meaningful access

32. The current lack of meaningful access provided by Respondents reflects long standing funding decisions rather than the impact of any recent fiscal crisis. Prior to the State's current budget crises, even during years when Respondents' Total Judicial Branch Personnel and Total Judicial Branch Authorized Appropriations were greatly expanded,³⁹ upon information and belief, there was no action taken by Respondents to address the fundamental and systemic barrier to LEP civil court access other than the expansion of coverage to provide interpreters for 50B domestic violence victims that occurred in 2006.

33. In 2000, in recognition of "the growing numbers of non-English speakers in North Carolina," Respondents obtained \$169,316 in private grants funds for the 2000-2005 period, and the NCAOC began to attempt to address the lack of foreign language interpreters and resulting barrier to meaningful court access by LEP persons.⁴⁰ Also in 2000, the NCAOC requested funding and authorization from the North Carolina General Assembly to pay for foreign language interpreters for indigent participants in Chapter 50B domestic violence matters for that fiscal year.⁴¹ The General Assembly provided \$75,889 for that specific purpose.⁴² An additional \$775,000 in nonrecurring funds was appropriated by the General Assembly in 2006, per revision

³⁹ From FY 2005-06 through FY 2008-09, authorized appropriations for the Judicial Branch increased by 36.95% and total Judicial Branch personnel, minus Indigent Defense Services, increased from 5,497.2 to 6,856.67 positions. See NC Judicial Branch Annual Reports, FY 2005-06, 2006-07, 2007-08 and 2008-09 at <http://www.nccourts.org/Citizens/Publications/AnnualReports.asp> (last accessed April 4, 2011). General Fund spending by the state Legislature on the courts also increased by 40% during the period from FY 2002-03 through FY 2007-08 (from about \$310 million to over \$430 million). See Highlights: Fiscal and Budgetary Actions, 2007 Regular Session, NC Legislature, Fiscal Research Division, January 2008, at page 162.

⁴⁰ See Fn. 8

⁴¹ See "A Brief Recess," the newsletter of the North Carolina Judicial Branch, September 2000, <http://www.aoc.state.nc.us/www/copyright/aoc/sept00.pdf> (last accessed April 5, 2011)

⁴² Id.

of N.C.G.S. §7A-314(f), which included funds for covering 50B domestic violence plaintiffs among those entitled to free court appointed interpreters.⁴³

34. Upon information and belief, although funds were appropriated by the state Legislature over the past decade for litigants in some limited civil matters as described above, the NCAOC has never requested from the state Legislature an increase in State funds, or clarification as to its authority to allocate such funds from its existing budget, to expand NCAOC's foreign language interpreter program for civil court beyond the very limited civil circumstances for which the state already provides free interpreters. Nor have the Judicial Branch or NCAOC attempted on their own to revise their policies and procedures to address the lack of free interpreters for LEP civil litigants in non-50B cases.

35. In the 2009 Legislative Session, a bill entitled "Expand Interpreting Services" was proposed by certain legislators and adopted in the Judiciary I Committee of the state Senate.⁴⁴ The proposed bill would have expanded free foreign language interpreter services to all LEP parties and witnesses. However, no further legislative review or action regarding the bill was taken and it was never voted upon or enacted. An identical bill requiring the provision of free foreign language interpreters in most civil hearings was introduced during this current legislative session,⁴⁵ but upon information and belief, it too has lacked legislative support and has been withdrawn from consideration prior to any vote or discussion.

⁴³ Overview: 2006 Session Fiscal and Budgetary Actions (Revised), Fiscal Research Division, NC Gen. Assembly, at p. I-15, Line 61.

⁴⁴ See Senate Bill 510, attached as Exhibit 6 and incorporated herein.

⁴⁵ See Senate Bill 132, attached as Exhibit 7 and incorporated herein.

The extent to which the court system has secured additional revenues from fees, fines, grants, or other sources, and has increased efficiency through collaboration, technology, or other means

36. The court system has secured additional revenues from fees, fines, grants, or other sources, but has failed to appropriate any of those additional revenues to provide adequate and appropriate foreign language interpreter services to LEP persons in civil matters in North Carolina. During the period of July 2008 through October 2010, the North Carolina legislature increased court costs and fees on four separate occasions, in order to provide additional funding for the administration of the state judicial system (July 20, 2008, August 26, 2009, July 1, 2010, and October 1, 2010).⁴⁶ However, upon information and belief, Respondents did not allocate any revenue from those increased court costs and fees to expand the provision of free foreign language interpreter services to LEP persons in civil matters. Nor, upon information and belief, have Respondents even attempted to expand interpreter services to LEP civil litigants through any increased administrative efficiency.

Whether the court system has adopted an implementation plan to move promptly towards full compliance

37. Upon information and belief, Respondents have not adopted an implementation plan to move promptly (or otherwise) towards full compliance under Title VI. Guidance by USDOJ suggests that recipients of federal funds should develop a written implementation plan to address the identified needs of the LEP populations they serve.⁴⁷

⁴⁶ See NCAOC website, "Current Court Costs", at <http://www.nccourts.org/Courts/Trial/Costs/Default.asp>. (last accessed April 19, 2011) (data for fee and cost increases prior to 2010 can be accessed under "Prior Court Costs" listed on the same web page)

⁴⁷ See Fn. 4, Perez Letter at 4; Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455, 41461-41466, 41471-41472 (June 18, 2002).

38. Upon information and belief, not only have Respondents failed to develop a written implementation plan to address the identified needs of the LEP populations they serve through the state court system, Respondents have never even attempted to conduct a Title VI needs assessment regarding the language needs of persons accessing the state courts in North Carolina.⁴⁸ As of the filing of this Complaint, upon information and belief, the North Carolina court system lacks a Title VI needs assessment, lacks a Title VI compliance plan, and does not even have a Title VI compliance officer. This failure to act demonstrates Respondents' intentional failure to comply with the mandates of Title VI.

The nature and significance of the adverse impact on LEP persons affected by the existing language access deficiencies

39. Respondents, in requiring all LEP persons in North Carolina to pay for their own interpreter costs in civil proceedings outside the limited approved categories, have imposed an impermissible surcharge on all LEP litigants based on their English language proficiency. In addition, although the main focus of this Complaint is on LEP access to civil court, upon information and belief, Respondents require non-indigent criminal defendants to bear a cost of court (paying for their own interpreters) in advance, regardless of their guilt or innocence. Respondents' policy, upon information and belief, is also to instruct existing court interpreters not to provide free interpreter services for criminal defendants who have retained counsel.

⁴⁸ As part of Respondents' Court Performance Management System (CPMS), they have attempted to conduct an on-line survey of court users since 2006, consisting of the limited universe of North Carolinians who are aware of the [nccourts.org](http://www.nccourts.org) website's existence and are able to access the Internet. Included among the questions posed by the survey is whether "Reasonable efforts were made to remove language barriers to services." Unfortunately, the entire survey process, (including all instructions and the specific question regarding whether the court system has made reasonable efforts to remove language barriers), is in *English*. See NCAOC website, Court Performance Management System, "How Are We Doing: Citizen's Questionnaire," http://www.nccourts.org/_Surveys/CourtSurveys/courtsurvey05.htm (last accessed April 19, 2011). See also NCAOC Website, "Court Fairness: Statewide Responses", available at <http://www1.aoc.state.nc.us/cpms/survey.do?geo=State&surveyType=fairness> (last accessed April 19, 2011)

NCAOC guidelines recognize limited circumstances where a criminal defendant may be able to hire an attorney but not afford an interpreter. In such a situation, the court would be required to declare in a special order that the defendant was too indigent to afford an interpreter in order to justify state payment of an interpreter. Finally, Respondents require indigent criminal defendants who are found guilty to pay the costs of the interpretation services they received.⁴⁹

40. As noted in the Affidavits of Nicholas Faherty, Atiya Mosley and Sarah Carr, attached as Exhibit 8 and incorporated herein, the provision of foreign language interpreters in court proceedings is critically important to LEP persons in North Carolina. As shown in Mr. Faherty's Affidavit, in December 2010, six Spanish speaking individuals were unable to proceed in their Small Claims action for unpaid wages because the New Hanover Small Claims Court would not provide a free foreign language interpreter for them. See Faherty Affidavit, at ¶¶ 3-8. Similarly, Sarah Carr's Affidavits describes how her clients who are plaintiffs in domestic violence cases have been required by the Durham County Court to pay for their own interpreters in their consolidated domestic violence/custody hearing. See Carr Affidavit at ¶¶ 7-11. These individual situations are merely examples of a systemic problem.

41. Without such provision of free interpreters, LEP persons will not be able to meaningfully participate in state court proceedings in a manner equal to that of their English speaking counterparts. The NCAOC Policies and Best Practices work to the total exclusion of LEP persons seeking to obtain a foreign language interpreter in those civil court areas not approved by the NCAOC. One hundred percent (100%) of LEP civil litigants seeking court access regarding issues other than the limited categories mentioned in NCAOC Policies and Best

⁴⁹ Correspondence between C. Scott Holmes and NCAOC, September 2005 and June 2003, attached as Exhibit 9 and incorporated by reference herein.

Practices will be denied a free court appointed foreign language interpreter and denied meaningful access to North Carolina's state courts.

42. Although the NCAOC policy might be seen as a facially neutral practice of denying a foreign language interpreter to all persons seeking access in areas other than the limited examples noted about, it in fact has a disproportionate effect based on civil litigants' national origin/minority language status. NCAOC's policy disproportionately excludes and harms LEP persons seeking court access, as they have the greatest need for a foreign language interpreter in order to obtain meaningful access to the judicial system.

D. Respondents' Failure to Provide Important Legal Forms in Languages other than English

43. Respondents have also failed to provide translations of important and necessary legal forms into non-English languages. Of the 662 English-language forms listed by NCAOC as available for use by the public, a total of at most fifty (50) have been translated into Spanish.⁵⁰ See NCAOC's 3rd Quarter 2010 Electronic Forms Update, attached as Exhibit 10, and incorporated herein. Upon information and belief, no NCAOC legal forms whatsoever have been translated into any other non-English languages beyond Spanish. Furthermore, of the forty-four (44) Spanish-language forms available, only twenty-seven (27) are applicable for non-criminal cases. Therefore, out of a total of 475 forms for use in all civil cases, only twenty-seven (27) are in Spanish. Of those twenty-seven civil forms in Spanish, nine (9) are specifically for domestic violence cases; one concerns cases involving terminations of parental rights; and four specifically concern juvenile delinquency and abuse and neglect cases. That appears to leave a total of only thirteen (13) Spanish language legal forms for use by LEP litigants in all other civil

⁵⁰ See NCAOC website, at http://www.nccourts.org/Forms/Documents/formlist_Qtr03-10.pdf (last accessed April 19, 2011) (listing only forty-four (44) Spanish language documents in its the NCAOC's 3rd Quarter 2010 Electronic Forms Update, only forty (40) of which seem actually available from the NCAOC website).

case categories. Finally, to access even the Spanish language forms on the NCAOC website, an LEP litigant would have to navigate the “Forms” section of the website, which is entirely in English, including the instructions.⁵¹ Although the Spanish language legal forms listed on the NCAOC website (as well as possibly others) may be obtained by LEP civil litigants from the office of the Clerk of Superior Court in each courthouse, without bilingual court staff and/or specific Spanish language written instructions posted for public viewing, such alternative access may be very limited or not even possible.

44. NCAOC is to be commended for providing various bilingual brochures as well as a bilingual Question and Answer section on their website, regarding state court processes for use by Spanish speaking individuals.⁵² However, the limited number of Spanish language civil legal forms, and a seeming total lack of legal forms in any other non-English languages, clearly put LEP litigants at a substantial disadvantage in comparison to English-speaking litigants, who can navigate the NCAOC website and receive necessary forms in any case category, in their primary language.

E. Prior Attempts to Resolve the Problem and Notice Provided to Respondents

45. In 2006, Respondents were put on notice of their noncompliance with the requirements of Title VI by the filing of an administrative Complaint with the USDOJ by private attorney Ebher Rossi in Alamance County, North Carolina. Attorney Rossi’s Complaint challenged, in part, the statewide systemic denial of foreign language interpreters by the NCAOC. Since that time, Respondents have not taken reasonable steps to ensure voluntary compliance with Title VI mandates.

⁵¹ See NCAOC website, “Judicial Forms” at <http://www.nccourts.org/Forms/FormSearch.asp>.

⁵² See NCAOC website, “Bilingual Information” at <http://www.nccourts.org/Citizens/Spanish/Bilingual.asp>.

46. In addition, prior to filing the instant Complaint, the undersigned counsel notified the NCAOC by letter dated November 24, 2009, that Respondents' policy and practice of not providing free foreign language interpreters to LEP persons was a violation of Title VI. The undersigned counsel's letter requested that they meet with NCAOC officials in an attempt to address the systemic denial of interpreters and the Title VI violation noted in the letter.⁵³ It was not until five months later, on May 5, 2010, that NCAOC's Deputy Legal Counsel finally contacted the undersigned counsel and agreed to meet, as had been requested the previous year. However, at the May 2010 meeting, officials and counsel for NCAOC did not agree to change NCAOC's policy or otherwise address the lack of free foreign language interpreters for LEP civil litigants, whether indigent or not.

47. Finally, as recently as August 16, 2010, Respondents were formally notified by letter from the USDOJ as to what steps were necessary in order to ensure that our state court system provides meaningful access to LEP persons.⁵⁴ The USDOJ's Perez Letter specifically informed Respondents that foreign language interpreters must be provided to all LEP persons seeking to participate in any state court proceedings, in order for the state court system to be in compliance with the requirements of Title VI.

48. Despite guidance from the USDOJ, as well as the first Title VI Complaint filed in 2006, and despite communication from counsel for Complainants, the Respondents have: 1) refused to seek additional funds or allocate existing state funds to provide free foreign language interpretation necessary to ensure meaningful access to the courts by LEP persons in civil court; 2) continue to deny foreign language interpretation services to all LEP persons except for those limited circumstances which are outlined above, and 3) have also failed to translate important

⁵³ See letter from NC Justice Center and Legal Aid of NC to NCAOC, Nov. 24, 2009, attached as Exhibit 11 and incorporated herein.

⁵⁴ See Fn. 4, Perez Letter.

legal forms as well as essential sections of the NCAOC website into Spanish or any other language other than English.

IV. CONCLUSION

49. The Respondents' express refusal to appropriate funds or otherwise provide foreign language interpreters for most LEP persons in civil matters has an unjustified disparate impact on LEP persons in civil matters because of their national origin/minority language status.

50. Respondents, as federal funding recipients, are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons throughout the state. Based on Respondents' many admissions regarding their refusal to provide foreign language interpreters in most civil proceedings, it is clear that they have failed to take reasonable steps necessary to provide such meaningful court access to LEP persons.

51. The North Carolina court system, as part of its obligation under the law, should not permit assessment of interpreter costs to a litigant if a party or the party's witness is LEP. Respondents' existing policy and practice of doing just that, as well as denying free interpreters to LEP persons in most civil cases, and providing inadequate numbers of civil legal forms for non-English speakers to use, are prohibited by Title VI, as well as the regulations implementing it. Complainants respectfully request that the U.S. Department of Justice timely investigate these claims, require that Respondents cease their discriminatory practices, and implement less discriminatory alternatives to their current interpreter provision policies.

V. REMEDIES SOUGHT BY COMPLAINANTS

In order to remedy the Respondents' violation of Title VI, Complainants seek the following:

52. That the Respondents provide meaningful access to all LEP parties and witnesses in all cases before the North Carolina courts, regardless of an LEP individual's national origin or limited ability to speak, read, write, or understand English.

53. That the Respondents acknowledge their respective 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;

54. In conjunction with the USDOJ's review, that the Respondents shall develop and implement in a reasonable and timely manner, 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, and individuals seeking information or other assistance from court clerks.

55. That the Respondents shall at all times have designated at least one senior management staff member as its Title VI compliance officer with responsibility for:

- (i) Overall coordination and oversight of its compliance with the Title VI;
- (ii) Receiving and responding to complaints regarding the provision of interpreter services and related duties as assigned; and
- (iii) Acting as liaison between the NCAOC of the Judicial Branch and local community groups, advisory councils and associations serving LEP persons and

actively seeking their input on ways to improve the language services provided by the NCAOC.

56. That the Respondents conduct an annual LEP language needs assessment for all of North Carolina, to ensure eligible language minority populations in North Carolina are aware of, have equal access to and participation in recipient services and activities, and ensure that any related surveys or evaluations provided to court system users are conducted in Spanish and any other language deemed necessary to reach LEP populations in North Carolina.

57. That the Respondents' staff will inform any current or potential individual, as well as family members or companions involved in making decisions who are assessed as being LEP (in his/her first language), of his or her right to have a language interpreter at no cost.

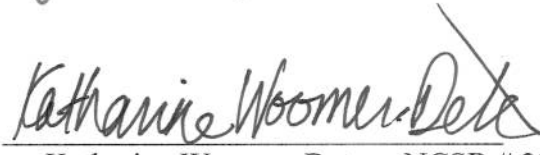
58. That the Respondents include a specific section on the NCAOC forms webpage in Spanish and other non-English languages such as Vietnamese, Chinese and Hmong, providing direction and instruction regarding accessing NCAOC forms, and that Respondents translate essential judicial forms into other non-English languages and translate a substantially greater number of their judicial forms into Spanish, for access via the Internet and by the public at local clerks of court.

DATE: May 16, 2011

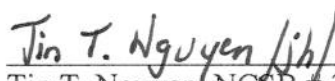
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Index of Exhibits

- Exhibit 1: Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System, NCAOC, Feb. 2007
- Exhibit 2: “New Policies and Procedures Related to AOC Foreign Language Interpreters,” AOC Memorandum, January 16, 2007
- Exhibit 3: Order Denying Plaintiff’s Motion to Appoint Translator, by the Hon. Yvonne M. Evans, (Gaston County) Superior Court Judge, dated January 24, 2011
- Exhibit 4: Affidavit of Attorney Matthew Stauff
- Exhibit 5: NCAOC “Who Is Responsible For Bearing the Costs?” Diagram, Nov. 16, 2007
- Exhibit 6: Senate Bill 510
- Exhibit 7: Senate Bill 132
- Exhibit 8: Affidavits of Nicholas Faherty, Atiya Mosley and Sarah Carr
- Exhibit 9: Correspondence between C. Scott Holmes and NCAOC, 2003 and 2005
- Exhibit 10: NCAOC’s 3rd Quarter 2010 Electronic Forms Update
- Exhibit 11: Letter from NC Justice Center and Legal Aid of NC to NCAOC, Nov. 24, 2009