



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

May 11, 2009

Washington, D.C. 20531

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Sheriff Richard K. Jones
Butler County Sheriff's Office
705 Hanover Street
Hamilton, Ohio 45011

Re: Investigative Findings
[REDACTED] v. Butler County Sheriff's Office (08-OCR-0466)

Dear Sheriff Jones:

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) has completed its investigation into the above-referenced complaint of discrimination against the Butler County Sheriff's Office (BCSO or Recipient) in Hamilton, Ohio. Below, you will find our investigative findings summarizing the results of the investigation in which we have concluded that the findings do not support [REDACTED] ([REDACTED] or Complainant) national origin disparate treatment discrimination claims or his national origin claim as to the language services provided to him at the time of his arrest in March 2008. However, the OCR concludes that the BCSO failed to provide sufficient language assistance to [REDACTED] when it required him to sign an English-language court complaint/summons form and used an inmate to relay legal information to him after his arrest.

As you are aware, federal law prohibits services discrimination on the basis of race, color, religion, national origin, sex, or disability by recipients of federal financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), or the Office for Victims of Crime (OVC). The OCR has administrative responsibility for investigating complaints that allege that a recipient of OJP, COPS, or OVC funds has violated Title VI of the Civil Rights Act of 1964 (Title VI) or Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), as amended, and its implementing regulation. As a recipient of COPS and OVC funding, the BCSO is subject to the OCR's jurisdiction.

I. Procedural History

On May 15, 2008, [REDACTED] a limited English proficient (LEP) resident of Hamilton, Ohio, filed a complaint with the U.S. Department of Homeland Security (DHS) against the BCSO. The DHS forwarded [REDACTED] complaint to the Coordination and Review Section, Civil Rights Division, DOJ, which in turn referred it to the OCR for review. The Complainant also

completed the DOJ's standard complaint form, which provided additional information about his allegations against the Recipient. In connection with its initial assessment of the Complaint, the OCR interviewed [REDACTED] by telephone with the assistance of an interpreter provided by the Complainant's counsel.

On January 21, 2009, the OCR notified the BCSO that it would conduct a formal investigation of the allegations contained in [REDACTED] DOJ Complaint. Specifically, the OCR explained to the Recipient that it would investigate whether the BCSO acted properly in conducting its investigatory stop and arrest of the Complainant. The OCR also noted that it would assess whether the BCSO provided [REDACTED] with appropriate language assistance throughout his encounter with the Recipient, including during his arrest and subsequent detention at the Butler County Jail Complex (Jail) facility. The OCR sent a data request to the BCSO relating to [REDACTED] [REDACTED] allegations and reviewed the BCSO's subsequent response.

As discussed below, after considering all of the evidence provided to the OCR by the Complainant and the Recipient, the OCR issues this Letter of Finding, which concludes that (1) the evidence is insufficient to support a finding that the BCSO engaged in disparate treatment discrimination against [REDACTED] on the basis of national origin when he was arrested in March 2008, (2) the evidence is insufficient to support a finding that the BCSO failed to take reasonable steps to provide [REDACTED] with meaningful access to language assistance services during the Complainant's arrest; (3) the evidence is sufficient to support a finding that the BCSO failed to take reasonable steps to provide [REDACTED] with meaningful access to language assistance services when it required him to sign an English-language court complaint/summons form; and (4) the evidence is sufficient to support a finding that the BCSO failed to take reasonable steps to provide [REDACTED] with meaningful access to language assistance services when it used an inmate to provide legal information to him after his arrest.

II. Background Facts

A. The Complainant's March 2008 Arrest

On March 2, 2008, shortly before 9:00 p.m., the Complainant purchased several items, including lottery tickets and alcohol, at the Circle K Mart on State Route 747 and Route 4 in Hamilton, Ohio. Several other customers were also at the store. After [REDACTED] made his purchases, he sat in his parked car, which was turned on, and scratched off his lottery tickets. At approximately 9:02 p.m., while [REDACTED] remained on the Circle K Mart premises, a driver for Countryside Towing called the BCSO to report that an allegedly intoxicated male was passed out in a car in the Circle K Mart parking lot. The driver also reported that the individual had been stumbling inside the store and appeared to be very intoxicated.

Deputy Sheriff [REDACTED] was dispatched and quickly arrived on the scene. When the deputy sheriff arrived at the store parking lot, he pulled up beside [REDACTED] car and observed that the Complainant appeared to be passed out sitting in the driver's position of his vehicle. Deputy Sheriff [REDACTED] exited his vehicle and initiated contact with the Complainant by knocking on [REDACTED] car window.

During the initial exchanges between [REDACTED] and the deputy sheriff, both individuals communicated in English. When the Complainant opened his window, the deputy sheriff asked him what he was doing. [REDACTED] replied that he was scratching off lottery tickets. In response to a question from the deputy sheriff about whether he had been drinking, [REDACTED] noted that he had not been drinking. Once [REDACTED] provided the officer with his driver's license, which accurately reflected his address, and work authorization, the deputy sheriff returned to his vehicle.

Next, Deputy Sheriff [REDACTED] proceeded to administer the horizontal gaze nystagmus (HGN), walk-and-turn, and one-leg stand field sobriety tests. He returned to [REDACTED] car and asked him to exit his vehicle. After the deputy sheriff explained the tests to [REDACTED] and demonstrated each test for him, [REDACTED] acknowledged that he understood the officer's instructions.¹ First, Deputy Sheriff [REDACTED] administered the HGN test, which [REDACTED] failed. In conducting that test, the officer checked for equal pupil size and tracking and observed a lack of smooth pursuit in both eyes, nystagmus at maximum deviation in both eyes, and onset nystagmus prior to 45 degrees in both eyes. Deputy Sheriff [REDACTED] also observed that [REDACTED] had bloodshot eyes. Second, the officer administered the walk and turn test, which the Complainant also failed. He did not touch heel to toe, used an incorrect number of steps, turned around incorrectly, and stepped off the line three times. Third, Deputy Sheriff [REDACTED] administered the one-leg stand, which [REDACTED] passed. At some point, Deputy Sheriff [REDACTED] had arrived on the scene and also administered the HGN test, which the Complainant again failed.

Based on these circumstances, Deputy Sheriff [REDACTED] arrested [REDACTED] for operating a vehicle while intoxicated. While [REDACTED] was able to communicate with Deputy Sheriff [REDACTED] about the officer's preliminary questions, he did not comprehend that he was being arrested and spoke to the deputy sheriff in Spanish when he was being handcuffed. At that point, [REDACTED] believed that there was a communication breakdown. The deputy sheriff transported the Complainant to the Jail facility, although he was not booked or incarcerated in the Jail.

At approximately 9:29 p.m., Deputy Sheriff [REDACTED] made arrangements for Countryside Towing, the company that employed the individual who reported [REDACTED] purported intoxication, to impound the Complainant's vehicle.

B. Use of Inmate to Relay Legal Information to [REDACTED]

When [REDACTED] arrived at the Jail facility, the deputy sheriffs used an inmate who apparently spoke Spanish to provide *Miranda* warnings to him in Spanish,² to explain to him that he was arrested because the BCSO believed he was drunk or drugged in violation of Ohio law, and to note that the BCSO would administer alcohol and drug tests. In connection with these tests, the BCSO required the Complainant to sign its English-language Form 2255, Ohio Bureau of Motor Vehicles, Report of Law Enforcement Officer Administrative License Suspension/Notice of

¹ In November 2002, Deputy Sheriff [REDACTED] received a certification from the Sinclair Community College's Criminal Justice Training Academy that he successfully completed a thirty-two-hour course on alcohol detection, apprehension, and prosecution.

² According to the BCSO, *Miranda* cards also are translated into Spanish.

Possible CDL Disqualification/Immobilization/Forfeiture (Form 2255).³ [REDACTED] contends that the officers did not provide interpreter assistance to him in connection with his review and execution of Form 2255 and did not give him a choice regarding whether to participate or to decline to participate in the tests. However, in memorializing his recollection of the events related to the arrest of [REDACTED] Deputy Sheriff [REDACTED] asserts that he read the legal form to [REDACTED] in English while the inmate read the legal form to him in Spanish, that [REDACTED] acknowledged that he understood the legal form, and that [REDACTED] signed it. [REDACTED] notes that the BCSO did not give him a copy of Form 2255, which the BCSO does not contest.

The BCSO also required the Complainant to sign an English-language court complaint and summons form (Complaint/Summons Form). The Complainant asserts that the BCSO did not provide any interpreter assistance to him in connection with his review and execution of that document. In contrast to his specific reference to Form 2255 in his written summary of [REDACTED] arrest, Deputy Sheriff [REDACTED] does not suggest that he sought to provide language assistance, through an inmate or otherwise, to [REDACTED] regarding the Complaint/Summons Form.

[REDACTED] submitted to a breath test conducted by Deputy Sheriff [REDACTED] which subsequently showed that there was no alcohol in the Complainant's system. [REDACTED] then provided a urine sample for analysis, which was tagged and taken to the property room. After the deputy sheriffs received the results of [REDACTED] tests, which they did not disclose to him, they returned his driver's license and work authorization document and again communicated to him in English. [REDACTED] did not understand the officers. After the Complainant answered "yes" to a question that he did not understand, two deputy sheriffs drove him to his neighborhood and dropped him off.

The BCSO sent [REDACTED] urine sample to a crime laboratory, which reported that there was no alcohol or drugs in his system when he was arrested.

III. Findings and Recommendations Regarding Alleged Violations of Title VI and the Safe Streets Act

A. Finding Regarding Alleged National Origin Discrimination in Conducting Investigatory Stop and Arrest of the Complainant

In his Complaint, [REDACTED] alleges that the BCSO discriminated against him on the basis of national origin when it stopped and arrested him. In response to the Complainant's claims, the BCSO asserts that Deputy Sheriff [REDACTED] had a legitimate, nondiscriminatory basis to determine whether [REDACTED] was under the influence of alcohol or drugs and to arrest him. Specifically, the Recipient asserts that the deputy sheriff responded to a complaint from an identified witness that the Complainant appeared to be intoxicated, which provided sufficient justification for the investigatory stop. After Deputy Sheriff [REDACTED] arrived on the scene, he asked [REDACTED] pertinent background questions and appropriately administered three field sobriety tests, one of

³ While Form 2255 appears to be a double-sided document, the BCSO only provided the OCR with the first page of the form.

which was independently corroborated by a second deputy sheriff.⁴ Given Deputy Sheriff [REDACTED] observations of the Complainant and the results of the HGN and walk-and-turn tests, he concluded that probable cause existed to arrest [REDACTED] for operating a vehicle under the influence of alcohol and/or drugs.

The OCR concludes that there is no evidence that Deputy Sheriff [REDACTED] was motivated by an intent to discriminate against the Complainant on the basis of his national origin in connection with his arrest. Rather, the record shows that the officer was justified in conducting his investigatory stop of the Complainant. Further, the totality of the facts and circumstances were sufficient to cause a prudent person to believe that the Complainant violated Ohio law, which satisfies the BCSO's burden of establishing probable cause for [REDACTED] arrest. Given the lack of any evidence that Deputy Sheriff [REDACTED] was motivated by an intent to discriminate against [REDACTED] because of his national origin, and because the officer acted consistent with his federal constitutional obligations, we find that there is no violation of Title VI or the Safe Streets Act's prohibition on national origin discrimination in connection with the investigatory stop or arrest of the Complainant.

B. Finding Regarding Provision of Language Assistance During Administration of Field Sobriety Tests and the Complainant's Arrest

In his Complaint, [REDACTED] alleges that the BCSO failed to provide him with appropriate language assistance in connection with his March 2008 arrest. In evaluating the Complainant's allegations, the OCR assesses the adequacy of the oral and written language assistance provided to [REDACTED] during his arrest and subsequent detention at the Jail facility. To evaluate the appropriateness of the BCSO's response to [REDACTED] as an LEP person, the OCR relies on the guidance that the DOJ has published for its financial aid recipients about taking reasonable steps to provide meaningful access to programs and activities for LEP persons in accordance with Title VI and the Safe Streets Act. *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002) (DOJ Guidance).

The Complainant asserts that he understood Deputy Sheriff [REDACTED] during the field encounter until the point when he was placed under arrest. [REDACTED] states that he did not understand that he was being arrested and that he spoke to the officer in Spanish when he was being handcuffed. Both parties agree that the deputy sheriff made no effort to communicate with [REDACTED] through an interpreter or to provide him with other language assistance during the arrest.

The BCSO has no policy or procedure regarding how an officer is to respond to an LEP person during the course of an arrest, although the BCSO concedes that it has an obligation to provide some form of language assistance to LEP individuals during administration of field sobriety tests and in the context of an arrest. In responding to the OCR's data request, the BCSO explained that, during such encounters with LEP persons, it requires officers to seek the assistance of another BCSO employee or an employee of another local law enforcement agency. Depending

⁴ [REDACTED] does not assert that the field sobriety tests were not conducted in strict compliance with standardized testing procedures.

on the severity of the situation, the Recipient would seek assistance from another agency or VocaLink, a private vendor that provides telephonic interpreter services.

According to VocaLink's proposal to the BCSO for providing interpretation and translation services, it describes itself as follows:

The VocaLink Interpreting team's mission is to deliver linguistically and culturally appropriate services through highly knowledgeable, well-rounded, and confident interpreters who provide world class service. Our interpreters are screened for fluency in English and the target language, both written and oral. They are also trained and tested in the following areas: code of ethics, protocol, cultural competence, and subject-matter specific terminology. Yearly on-the-job performance assessments and continuous education programs are also executed to guarantee excellence in interpreting.

(VocaLink Proposal to the BCSO for Interpreting and Translation Services 2006, at 4-5.) In 2008, the BCSO paid \$8,956.81 to VocaLink for providing interpreter assistance.

Under the circumstances, the OCR concludes that the BCSO complied with its basic obligations under Title VI and the Safe Streets Act during its officers' field encounter with [REDACTED]. When the Complainant responded to the deputy sheriff's initial questions in English, there was no basis on which the officer could have concluded that [REDACTED] was LEP. However, once the Complainant sought to provide subsequent information in Spanish, he placed the BCSO on notice that he was LEP and would require language assistance. Since [REDACTED] understood the field sobriety tests and he was not given additional, substantive information until he arrived at the Jail facility, the OCR concludes that the BCSO did not have an obligation to provide language assistance to the Complainant at the moment of his arrest. Moreover, the OCR credits the Recipient for having a mechanism in place for communicating to LEP individuals during the administration of field sobriety tests and in the context of an arrest, although, as discussed below, the OCR recommends that the BCSO train its employees about when to contact VocaLink or another government agency for language assistance.

C. Findings Regarding Purported Use of Inmate to Provide Legal Information to the Complainant

[REDACTED] also contends that the BCSO failed to provide him with appropriate language assistance when it used an inmate to communicate with him regarding his *Miranda* rights, his review of pertinent legal forms, and the administration of alcohol and drug tests. In its responses to the OCR's data request, the BCSO suggests that no interpreters were available when [REDACTED] arrived at the Jail facility. Under those circumstances, the Recipient appears to assert that deputy sheriffs may use inmates to provide interpreter assistance to arrestees, rather than contacting VocaLink or another government agency for language assistance. Consistent with that practice, Deputy Sheriff [REDACTED] used a bilingual Hispanic inmate to explain to [REDACTED] in

Spanish his *Miranda* rights, the relevant legal forms that he was required to sign, and the administration of alcohol and drug tests.⁵

As an initial matter, the OCR must resolve a factual dispute between the parties regarding whether the BCSO relied on an inmate to provide interpreter assistance to ██████ regarding Form 2255 and the Complaint/Summons Form, which the BCSO required him to sign.⁶ Each form seeks to convey important legal and factual information to an LEP arrestee about his purported criminal violation of Ohio law and his attendant obligations to participate in the Ohio justice system. As such, both materials are vital documents for the purposes of the DOJ Guidance. ██████ asserts that the Recipient did not provide interpreter assistance to him in connection with his review and execution of those documents. The BCSO generally does not document when it provides interpretation or translation assistance to LEP persons. However, in seeking to memorialize his recollection of the Complainant's arrest, Deputy Sheriff ██████ prepared a statement in which he noted that "[o]nce at the jail another individual at the jail read the 2255 to ██████ (█████ in Spanish as I read in English." (█████ Stmt.) Notably, the officer does not reference the Complaint/Summons Form. Given the deputy sheriff's specific averments regarding Form 2255 and his contrasting silence regarding the Complaint/Summons Form, the OCR finds that the BCSO sought to use an inmate to assist ██████ in understanding Form 2255 but failed to comply with its obligation to provide adequate language assistance to the Complainant regarding the Complaint/Summons Form.⁷

Despite the BCSO's effort to use an inmate to relay information to ██████ about his *Miranda* rights, Form 2255, and related tests, based on the DOJ Guidance, the OCR finds that the BCSO failed to take reasonable steps to provide meaningful language assistance to him after he arrived at the Jail facility. The 2002 DOJ Guidance document, which has been the subject of various DOJ enforcement activities and technical assistance initiatives for more than six years, provides a clear caution to recipients of federal financial assistance about using an inmate to provide interpreter assistance. As it notes, "[r]ecipients . . . should take special care to ensure that . . . informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, . . . other inmates or other detainees are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise." DOJ Guidance, 67 Fed. Reg. at 41,462.⁸ Here, in seeking to make routine, foreseeable arrests of individuals for operating a

⁵ As a general matter, the BCSO asserts that it encourages officers to obtain training in alternate languages and that it has provided training in Spanish. Apparently, Deputy Sheriff ██████ did not obtain training in Spanish, from the BCSO or elsewhere, sufficient to enable him to communicate with ██████ in Spanish.

⁶ In its response to the OCR's data request, the BCSO does not assert that either document is available in Spanish.

⁷ In its response to the OCR's data request, the BCSO suggests that "[t]he arresting officer used a bilingual Hispanic inmate to translate forms and conversations while being tested for levels of alcohol." (BCSO Resp. at ¶ 9.) However, as discussed above, the record itself does not support the assertion that ██████ received interpreter assistance in connection with the Complaint/Summons Form.

⁸ In a further effort to discourage reliance on informal interpreters, such as inmates, the DOJ notes that informal interpreters, such as inmates, should be relied on to provide interpreter assistance "temporarily in unforeseen,

vehicle while intoxicated and to proceed with appropriate evidential tests consistent with Ohio law, the BCSO must ensure that arrestees are notified of their *Miranda* rights and understand, through the BCSO's review of Form 2255, the significance of the tests that will be administered regarding the potential presence of alcohol or drugs in their systems.

Of course, these legal requirements apply regardless of whether an individual reads, writes, speaks, or understands English. There is a critical need for interpreter quality and accuracy in providing legal information to LEP arrestees; miscommunication may have a substantial negative impact on the strength of any criminal prosecution and may result in adverse consequences to the LEP person. By relying on an inmate to relay legal information to an LEP arrestee, the BCSO used the inmate to perform a law enforcement function and transformed that individual into a potential witness in subsequent criminal proceedings. Moreover, the BCSO made no effort to address the inherent difficulties in relying on an inmate to provide interpreter assistance; namely, it apparently (1) did not discern whether the inmate was a competent interpreter, (2) failed to determine whether there was a preexisting relationship between [REDACTED] and the inmate, (3) did not assess whether the inmate was aware of his ethical obligations as an interpreter, and (4) failed to ensure that the inmate would not be provided with confidential information about the Complainant.

Under these circumstances, the OCR finds that the BCSO failed to provide sufficient language assistance to [REDACTED] when it required him to sign the Complaint/Summons Form and used an inmate to relay legal information to him after his arrest. To remedy these violations, the OCR recommends that the Recipient: (1) translate the Complaint/Summons Form into Spanish or, in the alternative, provide written guidance regarding how a BCSO employee should provide language assistance to an LEP person regarding the contents of the legal form; (2) translate Form 2255 into Spanish or, in the alternative, provide written guidance regarding how a BCSO employee should provide language assistance to an LEP person regarding the contents of the legal form; and (3) develop a written policy that (a) details the process for securing professional interpretation or bilingual officer assistance whenever an LEP person is arrested and taken to the Jail facility and (b) narrowly circumscribes the use of inmate interpreters to unforeseen, emergency circumstances while awaiting professional interpretation or linguistically competent bilingual officers.

emergency circumstances while awaiting professional interpretation or bilingual officers." See Sample for Discussion Purposes Planning Tool: Considerations for Creation of a Language Assistance Policy and Implementation Plan for Addressing Limited English Proficiency in a Law Enforcement Agency, at http://www.lep.gov/Law_Enforcement_Planning_Tool.htm at 5 (last visited Apr. 28, 2009); Sample for Discussion Purposes Planning Tool: Considerations for Creation of a Language Assistance Policy and Implementation Plan for Addressing Limited English Proficiency in a Department of Corrections, at http://www.lep.gov/resources/LEP_Corrections_Planning_Tool.htm at 5 (last visited Apr. 28, 2009); see also DOJ Guidance, 67 Fed. Reg. at 41,467 ("In emergency situations that are not reasonably foreseeable, the recipient may have to temporarily rely on non-recipient-provided language services."). The BCSO does not assert that the arrest of [REDACTED] constituted an unforeseen, emergency circumstance.

D. General Recommendations Regarding the BCSO's Language Assistance

In addition to the findings of noncompliance addressed in Section III.C., the OCR is concerned that BCSO employees do not know how to provide general language assistance to LEP individuals. The BCSO provided no written policy that explains when and how an employee should utilize various interpreter services in seeking to communicate with an LEP individual. For instance, despite the availability of VocaLink's services, the BCSO apparently has no written policy that explains when and how an employee should utilize the vendor's services. The BCSO also provided no evidence that deputy sheriffs in the field, such as Deputy Sheriff [REDACTED] can contact VocaLink directly or are even aware of its services. The lack of a department-wide policy increases the likelihood that employees will adopt inconsistent approaches to providing language assistance to the public.

1. Assess the BCSO's obligation to provide LEP services

In addition to its development of a written language access plan, the OCR recommends that the BCSO address the discrete analytical factors outlined in the DOJ Guidance. According to the DOJ Guidance, a recipient's obligation to take reasonable steps to ensure meaningful access to its programs and activities for LEP persons requires an assessment that balances four factors: (1) the number or proportion of LEP persons that are the likely beneficiaries of a recipient's services; (2) the frequency with which LEP persons come into contact with the recipient's programs or activities; (3) the nature and importance of the program, activity, or service provided; and (4) the resources available to the recipient and related costs. DOJ Guidance, 67 Fed. Reg. at 41,459-61. Because the BCSO already acknowledges the importance of providing language assistance to individuals who are arrested and given alcohol and drug tests, which is the inquiry contemplated by the third factor, the OCR recommends that the BCSO assess the remaining first, second, and fourth factors.

First, the BCSO should identify the number or proportion of LEP persons that are in Butler County. In its response to the OCR's data requests, the BCSO provided racial and ethnic demographic information about Butler County that it recently gathered from the U.S. Census Bureau, which included the following demographic breakdowns: 89.6 percent White; 6.9 percent Black; 2.5 percent Hispanic or Latino; and 2.1 percent Asian.⁹ While this data summary is an important initial step, the BCSO should analyze the latest data from the U.S. Census Bureau to determine more accurately the language assistance needs of its service population.¹⁰ Many

⁹ However, the BCSO conceded that it does not maintain information about the racial and ethnic demographics of Butler County in its normal course of business, nor could it identify the languages other than English that are spoken in Butler County.

¹⁰ Based on recent data from the U.S. Census Bureau, in 2007, Butler County, Ohio had an estimated population of 333,223 residents age five or older; of this group, 8,484 (2.5 percent) spoke Spanish, and more than half of this number (4,384) spoke English less than "very well," which the OCR considers LEP. Language Spoken At Home, 2007 American Community Survey, U.S. Census Bureau, at <http://factfinder.census.gov/> (last visited May 8, 2009). These data further reflect that 4,358 residents age five and older spoke other Indo-European languages, with 516 speaking English less than "very well;" 4,791 residents spoke Asian and Pacific Islander languages, with 1,657 speaking English less than "very well;" and 1,772 residents spoke other languages, with 692 speaking English less than "very well."

law enforcement agencies also have found helpful the data collected by local school districts regarding the languages spoken by enrolled students in a given area. These data provide information about the foreign language groups in a particular area and their relative size. In addition, the BCSO should periodically review LEP population shifts to determine whether it needs to revise certain aspects of its language assistance plan.

Second, the OCR recommends that the BCSO determine the frequency with which LEP persons are (1) arrested and (2) given alcohol or blood tests. In its response to the OCR's data requests, the BCSO acknowledged that it does not monitor the total number of LEP individuals to whom it provides language assistance services. The BCSO should implement a system for gathering information about how often language assistance is requested during the course of an arrest, as well as during the administration of alcohol or drug tests, which would allow it to assess more accurately the needs of Butler County's LEP population. It also should develop a procedure for gathering and recording data about all arrests and alcohol or blood tests of LEP persons, such as by modifying its existing reporting forms or by creating a new form. Regardless of how the BCSO chooses to track pertinent arrest and alcohol or drug test information, it should ensure that it includes information about the language spoken by the LEP person and the BCSO's response to the need for language assistance. The BCSO should then tabulate all of the data on an annual basis to determine the evolving language needs of its LEP service population.

Third, the BCSO should identify its available resources and evaluate the related costs of language assistance. The BCSO's fiscal year is from January 1 to December 31. According to the BCSO's data response, its total operational budget in fiscal year 2008 was \$28,490,734. While there is no line item in the BCSO budget for language assistance services, the agency paid VocaLink \$8,956.81 for its services in 2008. The BCSO should undertake a review of its human and capital resources in assessing how well it is responding to the needs of its LEP populations. One part of this review should include gathering feedback from the local LEP service population about how the BCSO can provide more effective language assistance services. The BCSO should also work with community groups serving LEP populations to determine what additional steps it can take to attract more bilingual employees capable of interpreting and translating, particularly in Spanish. The BCSO may also utilize community groups to identify all of the community resources that are available to provide cost-effective and reliable language assistance services to Butler County's LEP populations.

2. Translate vital written materials into Spanish

The OCR also is concerned that the BCSO has not translated into Spanish either of the documents at issue in the instant investigation.¹¹ Under the DOJ Guidance, a recipient of federal financial assistance may determine that an effective LEP plan should include the translation of vital written materials into the language of each LEP group that it frequently encounters. Here, as discussed above, the documents at issue provide notice to individuals about their legal obligations under Ohio law and constitute vital written materials under the DOJ Guidance.

¹¹ The BCSO provided data reflecting that 2.5 percent of its service population is Hispanic or Latino, which, coupled with the experience of ██████████ suggests that the BCSO frequently encounters LEP individuals who speak Spanish.

Because of the importance of these materials, the OCR urges the BCSO to translate them into Spanish.

The DOJ also encourages the BCSO to satisfy the "safe harbor" provision in its Guidance document when determining which documents to translate. *See* DOJ Guidance, 67 Fed. Reg. at 41,464. This provision states that recipients should translate "vital documents" for LEP groups that comprise five percent or 1,000, whichever is less, of the eligible service population. *Id.* Whether a document is "vital" depends on the "importance of the program, information, encounter, or service involved, and consequence to the LEP person if the information in question is not provided accurately or in a timely manner." *Id.* at 41,463. Examples of documents that may be "vital" are documents relating to a citizen's rights or the provision of consent and correspondence with complainants. In accordance with the DOJ Guidance, the BCSO should perform an inventory of all of its written materials, identify the documents it considers "vital," and, to the extent it has not already done so, translate these documents into the languages that meet the safe harbor threshold.

3. Develop an effective BCSO written plan on language assistance for LEP persons

In an effort to ensure that employees provide uniform language access services to LEP persons, the BCSO should establish a comprehensive, written language assistance plan that incorporates five critical elements. In these protocols, the BCSO should advise employees to obtain language assistance from qualified bilingual employees, VocaLink, or other identified sources and emphasize that employees should use family members, friends, or bystanders to interpret only in unforeseen, emergency situations while awaiting a qualified interpreter. According to the DOJ Guidance, an effective plan for providing language assistance to LEP persons has five elements: (1) identifying LEP individuals who need language assistance; (2) providing information about effective language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the plan. Moreover, regardless of whether the BCSO elects to prepare a written language assistance plan, the Recipient should train all employees about how to provide language assistance services to LEP persons. Following this initial training, the BCSO should provide periodic training focused specifically on providing language assistance services to LEP individuals during the course of an arrest.

In developing a written plan, the BCSO may wish to consult the DOJ Guidance, along with the following documents: (1) Planning Tool for Creating a Language Assistance Policy and Plan in a Law Enforcement Agency; (2) Limited English Proficiency Resource Document: Tips and Tools from the Field; and (3) a sample written language assistance plan. These documents are available at <http://www.lep.gov> and should assist the BCSO in preparing a language assistance plan or a general order on services to LEP persons. The OCR also suggests that the BCSO name one person on staff to be responsible for coordinating services to LEP persons. This individual's first task might be to review the OCR's recommendations in this Letter of Finding and to develop a formal language assistance plan that will become familiar to every BCSO employee.

As it drafts its written plan, the BCSO also should incorporate community feedback on its provision of services to LEP individuals. For example, the BCSO may want to develop a written

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survey of community groups serving LEP populations, or to convene a focus group of LEP individuals. The BCSO may also consider holding separate meetings with each LEP community, perhaps in collaboration with community, business, and religious leaders representing the LEP population, so that the BCSO can hear each LEP community's unique needs regarding outreach. The BCSO should work with ethnic media markets to relay public safety information to the public and should use these outlets to publicize community meetings and to inform LEP persons of the availability of free language assistance services and other important resources.

IV. Conclusion

The OCR has identified several areas of noncompliance with respect to the BCSO's obligations under Title VI and the Safe Streets Act. In an effort to secure voluntary compliance with the BCSO's legal obligations, the OCR has explained the steps that the BCSO must take to bring itself into compliance; the OCR is willing to explore proposals that may lead to a satisfactory resolution of this matter. No later than thirty days after receipt of this Letter of Finding, please notify the OCR in writing about the extent to which the BCSO has implemented both the required and the recommended corrective actions outlined in Sections III.C. and III.D. If the OCR cannot resolve this matter informally, it will secure the BCSO's compliance through the formal administrative process, which may result in an administrative decision to suspend or terminate, or refuse to grant or continue, federal financial assistance.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected under Title VI or the Safe Streets Act. Any individual alleging such harassment or intimidation may file a complaint with the U.S. Department of Justice. We would investigate such a complaint if the situation warrants.

This letter is not intended, and should not be construed, to cover any issues regarding compliance with Title VI or the Safe Streets Act and their implementing regulations which it does not expressly address. Under the Freedom of Information Act, it may be necessary to release, upon request, this Letter of Finding, as well as related documents. In the event that the OCR should receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

Thank you for your cooperation during the investigation process. If you have any questions, please contact Attorney Advisor Christopher Zubowicz at 202.305.9012.

Sincerely,

/S/

Michael L. Alston
Director

cc: Marianne Pressman, Esquire
In House Counsel, BCSO