



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

June 5, 2024

Via Certified Mail Return Receipt Requested

The Honorable Elizabeth K. Lee
Presiding Judge
Superior Court of California, County of San Mateo
Department 17, Courtroom 2K
400 County Center
Redwood City, CA 94063

Re: [REDACTED] v. *Super. Ct. of Cal., Cty. of San Mateo* (22-OCR-0690)
Notice of Findings and Recommendations

Dear Presiding Judge Elizabeth K. Lee:

Thank you for the information the Superior Court of California, County of San Mateo (Court) provided to the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) in connection to the above-named administrative Complaint. The Complainant alleged that the Court discriminated against him on the basis of his national origin. OCR has completed a review of the information provided by both the Court and the Complainant. Because the issues have been resolved prior to the conclusion of the investigation, OCR is administratively closing the Complaint at this time. A summary of the Complaint, the response from the Court, OCR's legal analysis, actions taken by the Court, and OCR's recommendations are set forth below.

I. Summary of Complaint

The Complainant is a Tagalog speaker and has limited English proficiency (LEP). He appeared before the Court as a criminal defendant in [REDACTED] and on [REDACTED]. In a complaint to OCR, the Complainant alleged he was not provided any language assistance in his two criminal court appearances in November and December 2021. In both appearances, he said he was suddenly arrested and taken into custody during his court proceedings. He did not understand why he was arrested because the Court did not provide interpreter services at either proceeding. The Complainant stated he also appeared before the Court a few times in [REDACTED] and that the Court was able to provide an interpreter during his [REDACTED] appearances.

II. Response from the Court

OCR reached out to the Court in April 2023 requesting information in response to the Complaint. On May 5, 2023, the Court provided a written response to the allegations, case information regarding the Complainant, and the Court's language assistance plan.

The Court detailed how the Complainant's court records were flagged as needing the assistance of a Tagalog interpreter. Court records showed that the Complainant appeared in court on [REDACTED] and received language assistance from a Tagalog interpreter for his appearance. For his [REDACTED] hearing, the Court's interpreter coordinator reported that an interpreter was secured for the Complainant's hearing on [REDACTED], but the interpreter called in sick prior to the Complainant's hearing. There were only two certified Tagalog interpreters in the Bay Area. The coordinator called the other interpreter, but she was unavailable. The coordinator tried to secure one of the provisionally qualified Tagalog interpreters, but none were available. The coordinator could not recall if she informed the courtroom for the Complainant's [REDACTED] hearing that the scheduled interpreter would be absent. However, the Court stated in its written response that it is their regular practice to do so.

A. Complainant's Court Hearings

The Court sent OCR an audio recording of the Complainant's [REDACTED] hearing. In its written response to OCR, the Court emphasized that "at no point is an interpreter mentioned by the [Complainant] or the Court." That response also stated the Complainant can be heard conversing in English with his Court-appointed attorney, a Sheriff's Deputy, and Court Commissioner Borja.

Although the Court acknowledged that the Complainant can be heard saying, "I don't understand" at the time his remand into custody was ordered, the Court provided the following opinion: "based upon the totality of the conversations heard on the audio recording, [] the [Complainant] means he does not understand why he is being remanded, and it's not a reference to [sic] he does not understand English."¹

Although the Complainant can be heard responding in English, the responses were oftentimes incomprehensible. The Complainant's hearing began with Commissioner Borja asking the Complainant, "what is your last name?" After a five second pause, the Complainant responded, "yes, sir?" The Commissioner raised his voice and repeated his question, "what is your last name?" The Complainant responded, "[REDACTED]..." followed up by an unclear response. The Commissioner replied, "what?" The Complainant then tried to spell out his last name for the Commissioner a few times. The Complainant tried to ask the Court some questions, which again the Court could not understand. After this exchange, the Commissioner told the Complainant to "be quiet and sit down."

The Court-appointed attorney then asked the Complainant what his job was several times, asking first, "what do you do?" Not understanding the Complainant's response, she said, "I'm sorry?" She later asked the Complainant if he has counsel. The attorney could not understand the Complainant's response and replied, "What? I don't understand what you're talking about."

¹ Court Response 2, [REDACTED].

Towards the end of the hearing and upon his arrest, the Complainant said, “I do not understand. I do not understand what you [sic] saying--.” During his arrest, the Complainant again responded, “I do not understand. I do not understand everything [sic]. I do not understand.” Commissioner Borja, then ordered the following, “I’ll order-- then I’ll order a Tagalog interpreter” The Complainant responded incomprehensibly but is then heard again saying, “I do not understand, judge . . . I do not understand.” The Court then set the Complainant’s next hearing for [REDACTED].

The Complainant’s court records show “[n]o interpreter was requested or used” during the Complainant’s hearing on [REDACTED]. His records again show that “[n]o interpreter was requested or used” during his hearing on [REDACTED]. It is not until [REDACTED], the third hearing after [REDACTED], when his case records begin to show “Tagalog interpreter present and ordered for further appearances.”

B. Court’s Language Assistance Plan

The Court shared a copy of its language assistance plan, dated July 1, 2015 (2015 Plan). The 2015 Plan identified Tagalog as one of the four non-English languages most frequently used in the Court’s geographic area. The 2015 Plan also stated that “interpreters will be provided at no cost to court customers who need such assistance . . . [f]or litigants and witnesses in criminal hearings.” The 2015 Plan did not describe any procedures related to the absence of a scheduled court interpreter. However, the Court confirmed to OCR that they provide informal training on how to use provisionally qualified interpreters when a certified or registered court interpreter is absent. The 2015 Plan also adopted the recommended procedures from the California’s Standards of Judicial Administration to determine whether an interpreter is needed.

Further, the 2015 Plan stated that telephonic interpreting was available for court services outside the courtroom. However, the court explained in its written response to OCR that it had replaced telephonic interpreting with Voice-to-Text Translation (VTT) devices.

III. Legal Analysis

Title VI of the Civil Rights Act of 1964 (Title VI) and Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) prohibit recipients and subrecipients of federal financial assistance from engaging in national origin discrimination. The Superior Court of California, County of San Mateo (Court), receives federal funding from the Bureau of Justice Assistance (BJA) and must comply with Title VI and the Safe Streets Act, in all Court operations, which includes all hearings and cases.²

The denial of meaningful access to an individual with LEP is considered discrimination based on national origin. In *Lau v. Nichols*, 414 U.S. 563, 568-9 (1974), the U.S. Supreme Court held that language-based discrimination constitutes a form of national origin discrimination prohibited by

² The BJA award number is 15PBJA-21-GG-04279-VTCX and is a grant program covered by the Safe Streets Act.

Title VI. *See Colwell v. Dep't of Health & Hum. Servs.*, 558 F.3d 1112, 1116–17 (9th Cir. 2009). As a result, Title VI and the Safe Streets Act require each recipient of federal financial assistance to ensure that individuals with LEP have meaningful access to that recipient's programs and activities.

For three reasons, the Court's decision to proceed with the [REDACTED] hearing without a Tagalog interpreter raises serious concerns that the Complainant was not given meaningful access to the Court's programs and activities. First, the Court confirmed that the Complainant's court records were flagged as needing the assistance of a Tagalog interpreter. Second, throughout the hearing, the Complainant expressly and repeatedly stated that he did not understand. Third, Commissioner Borja and the court-appointed attorney appeared to have difficulty understanding the Complainant's responses.

Moreover, judging by the banter between Commissioner Borja and everyone in the courtroom on [REDACTED], OCR concludes that the Commissioner clearly heard and witnessed the difficulty the Complainant and his appointed attorney had while attempting to communicate with one another. Toward the end of the hearing, Commissioner Borja can be heard ordering a Tagalog interpreter, presumably for the Complainant's next scheduled appearance. At no point in the hearing did Commissioner Borja follow the procedures described in the Court's 2015 Plan on how to determine whether an interpreter was needed. These same procedures are also recommended by the California Standards of Judicial Administration. Only after the denial of meaningful access had occurred, did the Court decide that an interpreter was needed. Yet, even though an order for an interpreter was made and the Complainant's court records were flagged as needing language assistance, records provided by the Court show that the Complainant did not receive an interpreter at his next two hearings.

The Court asserted that they understood the Complainant's statement that he "did not understand" to mean that the Complainant did not understand why he was being remanded into custody and not that he did not understand English. Given the totality of circumstances, including the Court's own records that flagged his need for language assistance, the recording of the hearing which demonstrated people in the courtroom could not understand the Complainant's verbal responses, how the Complainant exclaimed he "did not understand" multiple times, and Commissioner Borja's late request for an interpreter, the Court was sufficiently made aware of the Complainant's limited English proficiency, rendering him unable to understand the court proceedings and the reason for his arrest.

The Court's 2015 Plan did not have a written policy that addressed what happens when a scheduled court interpreter is absent. The Court did mention in its written response that it is their practice for the interpreter coordinator to notify the Court of the interpreter's absence. If the interpreter coordinator did provide such notice to the Court for the [REDACTED] hearing, the Court did not acknowledge or reference the scheduled interpreter's absence in the audio recording.

IV. Actions Taken by the Superior Court

The Court cooperated with OCR throughout this investigation. Based on the Complaint OCR received and the initial response from the Court, OCR had serious concerns with how the Court would provide meaningful access to individuals with LEP when an interpreter is unavailable.

OCR provided the Court with technical assistance regarding the Court's obligation to provide meaningful access to a person with LEP at all hearings. After working collaboratively with OCR, the Court committed to updating its 2015 Plan and language assistance procedures. The updated Plan now includes written procedures under Section III(A)(2): "When an Interpreter is Not Available Upon Request."³ This section explains it is the Court's priority to reset the court matter for a later date. The Court also now allows the use of video remote interpreting services for short in-court proceedings or in other exigent circumstances when an in-person interpreter is unavailable. Section III(A)(2) also describes how a telephonic interpreter will be used to provide basic instructions and information, including the unavailability of an interpreter and information about the rescheduled court date. If a telephonic interpreter is unavailable, the court will use VTT devices.

Furthermore, Section III(A)(2) of the new Plan describes how a hearing may proceed with taking a waiver of the interpreter but puts in place procedural safeguards to limit the waiver. OCR appreciates that the Court adopted procedural safeguards that mirror the California Rules of Court, Rule 2.893(d)(4), requirements for the use of noncertified or unregistered interpreters. The Court's Section III(A)(2) waiver requires: 1) that a judge find on record that the person with LEP has been informed of their right to an interpreter, 2) that the person with LEP has waived the appointment, 3) that good cause exists to continue the hearing without an interpreter, and 4) that the waiver may only be used for a single brief, routine matter before the court.

Along with updating its language assistance plan, the Court trained its interpreter division on September 6, 2023, the courtroom division on October 19, 2023, and judges on October 20, 2023 on the changes in the plan. The training paid special attention to Section III(A)(2) of the plan and that the changes were made with the Complainant's experience in mind and to ensure similar issues do not occur again. The Court confirmed that the new plan will be part of its annual refresher training for its judges and staff as well as part of its regular judicial onboarding process. The Court also hired an additional certified Tagalog court interpreter.

V. Recommendations and Conclusion

OCR appreciates the Court's ongoing commitment to expanding and improving its language assistance services to ensure that individuals with LEP have meaningful access to Court proceedings and operations. Because the Court worked with OCR and has taken corrective actions to update its language assistance plan, trained its staff on new procedures, and hired an additional Tagalog interpreter, OCR finds that the issues in this investigation have been resolved.

³ Court, LEP Plan (last visited Apr. 30, 2024), <https://perma.cc/ZTT5-L83W>.

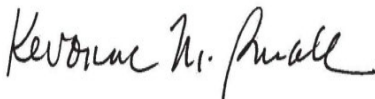
Although we are closing this investigation, we recommend the Court address two areas. First, OCR does not recommend the use of automatic or machine translation unless the translated content is first reviewed for errors by a competent human interpreter or translator and corrected before it is presented to the public. OCR appreciates that the Court will prioritize the use of in-person, video, and telephonic interpreting over VTT devices. Nonetheless, it is unclear what safeguards are in place to ensure that VTT devices do not produce errors when they are used, without the assistance of a competent interpreter or translator.

Second, the Court's training for court staff needs to address how an interpreter should be provided when court staff or any participant in a case or proceeding has difficulty speaking to or understanding each other, even when an interpreter is not formally requested by the participant or their attorney. The Court stated its recent trainings covered, and that future trainings will cover, the language assistance plan updates for when an interpreter is unavailable. These trainings should also focus on how to assess whether a court user is LEP, as described in Section III(A)(3) of the Court's language assistance plan, "Determining the Need for an Interpreter in the Courtroom."

Please be advised that the closure of this Complaint is limited to the specific facts of the matter and does not preclude DOJ from taking additional appropriate action to evaluate a recipient's compliance with any of the laws enforced by DOJ. Closing this Complaint does not affect the Court's requirement to comply with all applicable federal laws and regulations, provided that the Court remains subject to such laws and regulations. Federal law also protects persons who participate in OCR's investigation from retaliation for having provided information. OCR will initiate an investigation if it should receive credible evidence of retaliation.

For the reasons above, OCR is administratively closing this Complaint and thanks the Court for its responsiveness and cooperation. OCR is available to provide the Court with training and technical assistance in any of the areas referenced above. OCR will also share this letter with the Complainant and notify him of his right to file future complaints with OCR if he believes the Court discriminated against him based on his national origin or another protected class.

Sincerely,

A handwritten signature in black ink that reads "Kevonne M. Small". The signature is written in a cursive, flowing style.

Kevonne M. Small
Director
Office for Civil Rights
Office of Justice Programs
U.S. Department of Justice

The Honorable Elizabeth K. Lee, Presiding Judge
June 5, 2024
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cc:

DOJ, Civil Rights Division, Federal Coordination and Compliance Section
Judicial Council of California