



U.S. Department of Justice

Civil Rights Division

*Federal Coordination and Compliance Section
950 Pennsylvania Ave, NW
Washington, DC 20530*

February 19, 2021

VIA EMAIL

C. Erica White, General Counsel
Office of the State Courts Administrator
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399-1900

Re: Complaint No. 171-17-34

Dear Ms. White:

This is to notify the Seventh Judicial Circuit Court of Florida (SJCC) and the Office of the State Courts Administrator of the Florida Supreme Court of the disposition of the above-referenced retaliation complaint filed with the U.S. Department of Justice, Civil Rights Division (DOJ) against SJCC. Based on our investigation, DOJ finds that SJCC violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d – 2000d-7 and its implementing regulations, 28 C.F.R. Part 42, Subpart C (together, Title VI), when it fired Claudia Villalba.¹ This letter describes the background of the investigation, jurisdiction, legal standard, findings of fact, conclusions of law, and the recommended next steps SJCC may take to resolve this complaint.

I. Background

On February 28, 2019, DOJ sent a letter to SJCC's Chief Judge, SJCC's Court Administrator, Florida's State Courts Administrator, and the Office of General Counsel for the Office of State Courts Administrator notifying them that DOJ was opening an investigation of the above-referenced complaint. The complaint alleges that SJCC terminated Ms. Villalba's employment in retaliation for Ms. Villalba's support of SJCC's compliance with Title VI, including her involvement in DOJ's investigation into the Florida State Courts System's (FSCS's) compliance with Title VI. Ms. Villalba contends that in her tenure with SJCC she received largely positive performance reviews but, when she began assisting a limited English proficient (LEP) litigant with obtaining a court-appointed interpreter and assisting with a Title VI language access complaint filed with DOJ in July 2015, she was unexpectedly and abruptly terminated in retaliation.

DOJ's review and assessment are based on extensive fact-finding. During this investigation, DOJ reviewed a large body of written information, including nearly 700 pages of documents provided by SJCC. DOJ interviewed twenty-two individuals, including Ms. Villalba;

¹ Ms. Villalba consented to the inclusion of her name in this letter.

Mark Weinberg, SJCC’s Court Administrator; Anne Pierce, SJCC’s human resources manager; Shirley Olson, Ms. Villalba’s supervisor; current and former SJCC interpreters, judges, and magistrates familiar with Ms. Villalba and/or the retaliation allegations; and Kathy Card, who filed the Title VI complaint with DOJ alleging that FSCS failed to take reasonable steps to provide meaningful language access to LEP court users.

II. Jurisdiction

Title VI prohibits discrimination “on the ground of race, color, or national origin” in “any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d; 28 C.F.R. Part 42, Subpart C. SJCC is subject to the requirements of Title VI because it is part of the FSCS, which receives federal financial assistance from DOJ. At the time Ms. Villalba was terminated, DOJ had awarded FSCS at least \$4 million in federal financial assistance. Currently, FSCS is a recipient of at least \$1.9 million in federal financial assistance from DOJ. FSCS also receives federal financial assistance from the U.S. Department of Health and Human Services. Accordingly, DOJ has Title VI jurisdiction over this complaint.

III. Legal Standard

Retaliation is a form of intentional discrimination under Title VI. *See Peters v. Jenney*, 327 F.3d 307, 318 (4th Cir. 2003) (Title VI prohibits retaliation); *see also Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173-74 (2005) (upholding Eleventh Circuit Court decision that Title IX prohibits retaliation); *Cannon v. Univ. of Chicago*, 441 U.S. 677, 694-95 (1979) (“Title IX was patterned after Title VI Except for the substitution of the word ‘sex’ in Title IX to replace the words ‘race, color, or national origin’ in Title VI, the two statutes use identical language to describe the benefited class.”). For there to be “protected activity,” the evidence must show that a person opposed a recipient’s actions that the person reasonably and in good faith believed violated Title VI or participated in a matter that reasonably or in good faith alleged a violation. *Peters*, 327 F.3d at 320-21; *Bigge v. Albertsons, Inc.*, 894 F.2d 1497, 1503 (11th Cir. 1990). Additionally, DOJ’s Title VI regulation expressly prohibits retaliation: “No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by [Title VI], or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart.” 28 C.F.R. § 42.107(e).

In analyzing a retaliation claim under Title VI, DOJ considers: Whether the evidence establishes that (1) an individual engaged in statutorily protected activity, the individual suffered an adverse employment action, and the adverse employment action is causally related to the protected activity; (2) the recipient has identified a legitimate, nondiscriminatory reason for its adverse action; and (3) the recipient’s articulated reason is pretext for discrimination. *See Peters*, 327 F.3d at 320 (listing elements of a Title VI retaliation claim); *Bowers v. Bd. of Regents of Univ. Sys. of Ga.*, 509 F. App’x 906, 910 (11th Cir. 2013) (Title IX retaliation cases are analyzed under the same standard as Title VII retaliation cases); *see also McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973) (identifying elements of a Title VII retaliation claim).

When assessing whether a recipient's proffered reason is pretext, DOJ considers the totality of the circumstances, including factors such as temporal proximity, inconsistencies, contradictions, and witness credibility. *See Wilson v. Shell Oil Co.*, No. CIV. A. 94-3693, 1995 WL 505482, *7 (E.D. La. Aug. 24, 1995) (court considers totality of the circumstances to assess whether legitimate, nondiscriminatory reasons were pretext for retaliation); *McShane v. Gonzales*, 144 F. App'x 779, 791-92 (11th Cir. 2005) (plaintiff must demonstrate weakness, implausibility, inconsistency, incoherence, or contradiction in employer's proffered reasons for its actions to establish pretext).

IV. Findings of Fact

Below, we describe the facts as determined in our investigation.

In July 2004, SJCC hired Ms. Villalba as a supervising court interpreter. At the time of her hiring, Ms. Villalba was a Federally Certified Court Interpreter, a Master-Level Approved Interpreter in the State of New Jersey, and an approved rater of state and federal court interpreting exams by the National Center for State Courts.² All individuals we interviewed agreed that Ms. Villalba had outstanding credentials that were considered prestigious in the language assistance profession. Mr. Weinberg, Ms. Pierce, and Ms. Olson all remarked that Ms. Villalba's credentials were impressive and made her a standout applicant that motivated them to hire her. Individuals who observed Ms. Villalba's interpretation and translation skills remarked that she was highly skilled.

All interviewees also reported that Ms. Villalba was committed to and passionate about her work. Ms. Villalba advocated for SJCC compliance with Title VI, including pressing for an interpreter policy that provided LEP court users with interpreters in all criminal and civil matters. She viewed this advocacy as part of her job. When Ms. Villalba's efforts to achieve these goals failed within SJCC, she went outside of SJCC and began communicating with Kathy Card, a national language access advocate, who filed a Title VI complaint with DOJ in July 2015. Ms. Card alleged that FSCS failed to provide LEP individuals with meaningful access to court services. Ms. Card's complaint also included an account of an LEP mother ("LEP mother") who had been denied an interpreter for a child custody hearing at SJCC. Ms. Card and Ms. Villalba had tried to secure a court interpreter for LEP mother, as described more fully below. Ms. Villalba believed that her engagement with Ms. Card and LEP mother drove SJCC to fire her in retaliation, and Ms. Villalba immediately notified DOJ.

To provide context for Ms. Villalba's claim of retaliation in 2015 and to address the allegations raised in her complaint, below we discuss the SJCC interpreter policy through October 2015, Ms. Villalba's Title VI advocacy on behalf of LEP individuals, Ms. Villalba's performance reviews from 2010 to 2014, Kathy Card's Title VI complaint, Ms. Villalba's attempts to secure a court-appointed interpreter for LEP mother before Ms. Villalba was fired, Ms. Villalba's termination in August 2015, and new SJCC interpreter policies following Ms. Villalba's termination.

² Ms. Villalba obtained her Florida interpreter certification during her employment at SJCC.

A. SJCC Interpreter Policy Through October 2015

During Ms. Villalba's employment, SJCC's practice was to grant a court-appointed interpreter only to LEP defendants and victims automatically in criminal or juvenile delinquency proceedings (SJCC interpreter policy). During her tenure with SJCC, Ms. Villalba witnessed that LEP litigants in family law, drug court, traffic and landlord and tenant cases were not entitled to an interpreter under SJCC policy. In 2009, the Florida Supreme Court's Commission on Trial Court Performance and Accountability (TCP&A) formed a workgroup consisting of judges, court administrators, and interpreters to understand the court interpreter process in each circuit so that TCP&A could consider policy changes and best practices. SJCC's Court Administrator, Mr. Weinberg was a member of this workgroup, which conveyed its recommendations to TCP&A. In November 2010, TCP&A published a report, *Recommendations for the Provision of Court Interpreting Services in Florida's Trial Courts*, which recommended that the state courts revise existing policy to require that court interpreters be provided in all proceedings and operations involving an LEP party or witness.³ DOJ reviewed TCP&A's publicly available meeting minutes. The minutes DOJ reviewed reflect that TCP&A cited Title VI requirements and DOJ guidance as the primary reason for the recommended change to the interpreter policy.

In early 2012, the Florida Supreme Court responded to TCP&A's 2010 report by issuing the Administrative Order on Court Interpreting Services in Florida's Trial Courts, AOSC11-45, Jan. 30, 2012 (2012 Statewide Order). The 2012 Statewide Order provides in pertinent part: "when there is limited availability of spoken language interpreters, cases requiring interpreters shall be prioritized according to Rule 2.560, Florida Rules of Judicial Administration, and based on when an interpreter is requested, the time sensitive nature of the matter, and whether a fundamental interest is at stake." Standards of Operation, I.D.1. Rule 2.560 required:

- Appointment of interpreters for LEP litigants and generally, victims, in criminal and juvenile delinquency proceedings. Rule 2.560(a).
- For all other proceedings, an interpreter "shall be appointed if the court determines that the litigant's inability to comprehend English deprives the litigant of an understanding of the court proceedings, that a fundamental interest is at stake (such as in a civil commitment, termination of parental rights, paternity, or dependency proceeding), and that no alternative to the appointment of an interpreter exists." Rule 2.560(b).
- In making determinations regarding the appointment of an interpreter, "the court should ensure compliance with the requirements of Title VI." Rule 2.560(d).

Apart from the 2012 Statewide Order and Rule 2.560, it appears that SJCC had no written court interpreter policy until October 2015, after Ms. Villalba's termination, as detailed in Section IV.F, below.

³ Supreme Court of Florida Commission on Trial Court Performance & Accountability, *Recommendations for the Provision of Court Interpreting Services in Florida's Trial Courts* (Nov. 1, 2010), <https://www.flcourts.org/content/download/218216/file/2010TCPACourtInterpretingReport.pdf>.

B. Ms. Villalba's Title VI Advocacy on Behalf of LEP Individuals

From the beginning of her tenure at SJCC, Ms. Villalba advocated for expanded language assistance services in accordance with the requirements of Title VI. A former SJCC staff interpreter who worked with Ms. Villalba at SJCC from 2004 to 2008 reported to DOJ that Ms. Villalba was at the forefront of attempts to expand interpreter coverage at SJCC. Ms. Villalba and at least one other staff interpreter DOJ interviewed volunteered to assist the court by providing interpreter services in matters outside the scope of the SJCC interpreter policy. An SJCC judge told DOJ that, at the judge's request, Ms. Villalba or another interpreter volunteered to interpret in matters to which they were not officially assigned, when they were available. Mr. Weinberg recalled, however, that if an interpreter requested to interpret for an LEP court user whose matter was outside the scope of the SJCC interpreter policy, Mr. Weinberg would tell the interpreters not to provide the services.

As early as 2010, Ms. Villalba started referring LEP individuals who were denied interpreters because their cases were outside the scope of the SJCC interpreter policy to Mr. Weinberg. Ms. Villalba encouraged these individuals to voice their complaints regarding the policy directly to Mr. Weinberg.

Likewise, an SJCC judge with whom Ms. Villalba was friendly reported to DOJ that Ms. Villalba had a hard time with not being "the policy-setter" with respect to various court policies. He recalled having told Ms. Villalba, during an informal conversation, that her job was not to formulate policy, but to implement policy, and that there were other ways to approach her concerns. He further reported to DOJ that Ms. Villalba believed in what she was doing. He stated that he told Ms. Villalba that she would "complain herself out of a job." "I warned her," he recalled. Mr. Weinberg similarly reported that it was not Ms. Villalba's job to interpret the law or any SJCC policy. Mr. Weinberg stated that Ms. Villalba was not a lawyer and that her opinion was not legal expertise.

In related efforts to expand language assistance services, Ms. Villalba often informed judges of their ability to appoint court interpreters for matters outside the scope of the SJCC interpreter policy when needed. During formal presentations on language assistance or during informal meetings when she had an opportunity to speak with a judge about the SJCC interpreter policy, Ms. Villalba informed judges about their role in ensuring meaningful access. For example, in one case involving three juveniles who were charged as adults with murder, Ms. Villalba reported that she asked the judge to grant an interpreter to the LEP parents (who spoke only Vietnamese) because they would have received an interpreter if the matter had been in juvenile court. The judge agreed and ordered a court-appointed interpreter for the parents. However, both Ms. Villalba and Ms. Olson reported to DOJ that Ms. Olson, and possibly Mr. Weinberg, later persuaded the judge to rescind his order. Ms. Olson spontaneously reported this instance and, consistent with the Ms. Villalba's account, mentioned that she persuaded the judge to change his mind because the matter was outside the scope of the SJCC interpreter policy. When asked about this incident, Mr. Weinberg reported that he had only a vague memory of it and did not recall specifics. He stated, however, that he recalled other instances of asking judges to reconsider their orders granting interpreters if he believed the orders were outside the scope of the SJCC interpreter policy.

C. Ms. Villalba's Performance Reviews from 2008 to 2014

From 2008 to 2014, Ms. Olson wrote all of Ms. Villalba's performance reviews as her direct supervisor. In these reviews, Ms. Olson consistently praised Ms. Villalba for her interpretation skills and commitment to her profession. Along with this praise, as discussed below, many of Ms. Villalba's reviews contained areas for improvement. Below are highlights pertaining to Ms. Villalba's performance reviews from 2010 to 2014.

In February 2010, in contrast to her positive reviews from Ms. Olson over the preceding two years, Ms. Villalba received a poor performance review. Ms. Villalba's 2010 review identified two performance deficiencies: not following the chain of command and bringing "contraband," i.e., a cell phone, into a jail to take a picture of a sign that was translated incorrectly. The review also stated that Ms. Villalba had not regularly communicated with Ms. Olson and had not provided updates on certifications. Ms. Olson also submitted a memorandum to Ms. Villalba's personnel file detailing Ms. Olson's belief that Ms. Villalba had been hostile toward Ms. Olson, had voiced displeasure with policies, including opposition to the SJCC interpreter policy, outside the chain of command, and had communicated inappropriately with a subordinate. The memorandum asked Ms. Villalba to conduct herself professionally in the future, including by following the chain of command and being respectful. In conjunction with this 2010 performance review, Ms. Villalba also received her only performance improvement plan (PIP) in her employment at SJCC.

When Ms. Olson presented Ms. Villalba with her 2010 review, Ms. Olson asked SJCC's human resources manager, Ms. Pierce, to attend the review meeting. Ms. Pierce reported to DOJ that she rarely attended an employee's review and that the FSCS Personnel Regulations Manual did not include provisions for the presence of a human resources representative in an employee's review. At this review meeting, Ms. Villalba requested more time to review the documents and stated that she did not want to sign them, a position she was permitted to take under the personnel regulations. Ms. Villalba, however, signed the documents before leaving her review meeting. In response to Ms. Olson's memorandum regarding Ms. Villalba's professional conduct, Ms. Villalba sent a memorandum to Mr. Weinberg stating that she had been forced to sign her 2010 review "under protest and duress," refuting critical statements in Ms. Olson's memorandum and requesting that Ms. Olson's memorandum be removed from her personnel file. Mr. Weinberg did not respond to Ms. Villalba. Human resources did not record any follow-up to the PIP.

In March 2011, Ms. Villalba received a positive review stating, among other things, that she had increased her interactions with her manager and made efforts to communicate about circuit-wide matters. The review listed no areas for improvement.

A year later, Ms. Olson noted in Ms. Villalba's 2012 review that Ms. Villalba continued to voice concerns with policy, including the SJCC interpreter policy, outside the chain of command, which Ms. Olson found "not acceptable." When DOJ asked Ms. Pierce, Ms. Olson, and Mr. Weinberg about their chain of command practice, they reported that if an employee has a problem, the employee should go to his/her supervisor, then to the supervisor's supervisor, and so on. They also reported that an employee could side-step this process and bring the issue

directly to human resources, Mr. Weinberg, or anyone with whom the employee felt comfortable. When DOJ asked the three managers what policies they were referring to that Ms. Villalba dealt with outside the chain of command, they reported that Ms. Villalba would voice concerns about any policy she thought treated her or others unfairly, including the SJCC interpreter policy. The managers mentioned that Ms. Villalba, unlike the other staff interpreters, would voice her concerns about the SJCC interpreter policy to other departments and to judges and that this was not the managers' customary or preferred practice.

In March 2013, Ms. Villalba received another positive review, noting that she continued to improve her communication with Ms. Olson. The review listed no areas for improvement.

The following year, Ms. Villalba received another positive review. The only area noted for improvement in the 2014 review was that Ms. Villalba occasionally failed to inform Ms. Olson of personal leave requests.

D. Ms. Card's 2015 Title VI Complaint and LEP Mother's Interpreter Request

On July 6, 2015, Ms. Villalba spoke with Ms. Card by phone about Ms. Card's efforts to expand language services in Florida's state courts. Three days later, Ms. Card filed with DOJ a complaint against FSCS, alleging that FSCS fails to provide appropriate language assistance services to LEP individuals, denying LEP individuals meaningful access to court services in violation of Title VI. Around this time, LEP mother, an LEP litigant, contacted SJCC's interpreter office to request a Spanish-speaking interpreter for her child custody hearing scheduled for August 17, 2015. LEP mother reportedly feared that she would lose custody of her son. Ms. Villalba informed LEP mother that, under SJCC's policy, she was not entitled to a court interpreter and referred LEP mother to Ms. Card.

The morning of July 15, 2015, Ms. Card called Mr. Weinberg's office on behalf of LEP mother and spoke with Mr. Weinberg's assistant. According to an email from the assistant to Mr. Weinberg, Ms. Card stated that Ms. Villalba had denied LEP mother's request for an interpreter; that, under federal law, litigants were entitled to interpreters in all court programs and activities; that Ms. Card had contacted DOJ; and that Ms. Card would contact DOJ again if LEP mother did not receive an interpreter. Mr. Weinberg asked Ms. Olson to return Ms. Card's call.

That afternoon, Ms. Card visited SJCC's interpreter's office and spoke with Ms. Villalba about SJCC's language service policies. Mr. Weinberg and Ms. Olson were aware of Ms. Card's visit. Later that afternoon, Ms. Card emailed DOJ, copying Ms. Villalba, Ms. Olson, and Mr. Weinberg, among others, describing her unsuccessful efforts to secure an interpreter for LEP mother. Ms. Card stated that she had spoken with Mr. Weinberg's assistant and with Ms. Olson, both of whom had denied LEP mother's request despite Ms. Card's references to Title VI. In her message, Ms. Card accused Ms. Olson and Mr. Weinberg of discrimination for refusing to provide LEP mother an interpreter in her upcoming child custody hearing. Ms. Card added Mr. Weinberg and Ms. Olson to her DOJ Title VI complaint as alleged discriminators.

On the morning of July 16, 2015, Mr. Weinberg emailed then SJCC Chief Judge Terence Perkins, Ms. Olson, and Ludmilla Lelis, the court's communications officer, about the "Federal Compliance Complaint" Ms. Card filed with DOJ.⁴ Mr. Weinberg stated that he had been made aware of "the allegation" and that he would fill the others in when he was back in the office. He noted that he found it "interesting" that SJCC was being accused of not providing an interpreter for an event "that hasn't even happened yet." Later that day, Ms. Olson forwarded to Mr. Weinberg and Ms. Lelis an email from Ms. Card relaying to FSCS's language assistance coordinators that Ms. Card had filed with DOJ a language access complaint regarding the Florida court system.⁵ Ms. Card's email also noted that the day before, Ms. Olson had denied LEP mother's request for an interpreter.

On July 20, 2015, Ms. Card sent an email to Ms. Olson and Lisa Bell, the person who runs the Florida Supreme Court's court interpreter certification and regulation program, copying DOJ and the National Center for State Courts, reiterating Ms. Card's request for an interpreter for LEP mother. Ms. Card emphasized that LEP mother may lose custody of her child. Later that day, Mr. Weinberg responded to Ms. Card, stating that SJCC had no record of an interpreter request from LEP mother or an attorney of record. Ms. Card responded, reiterating that both Ms. Olson and Ms. Villalba had denied LEP mother's interpreter requests. Documentation and interviews confirm that LEP mother indeed had requested an interpreter. Specifically, Judge Michael Orfinger, the assigned judge, issued an August 10, 2015 order granting LEP mother an interpreter, which cites the document LEP mother filed requesting an interpreter. Judge Orfinger referenced this document during his DOJ interview. Mr. Weinberg's August 7, 2015 email to Judge Orfinger specifically acknowledges LEP mother's interpreter request: "[i]t seems that [Ms. Villalba] also made reference to needing the assistance of a 'translator' in a response she filed on December 12, 2014." LEP mother's July 22, 2015 email to SJCC also references this interpreter request.

The next day, Ms. Card emailed Mr. Weinberg, Ms. Olson, Ms. Villalba, LEP mother, and a news reporter, among others, reiterating that both Ms. Villalba and Ms. Olson had denied LEP mother an interpreter. Ms. Card stated that her organization planned to monitor SJCC courts with testers to ensure LEP court users' meaningful access to court proceedings and that all messages to her would become part of her DOJ complaint.

On July 22, 2015, Ms. Card added LEP mother to the Title VI complaint she filed with DOJ. She also sent to Mr. Weinberg and others a link to an *Orlando Weekly* story about the Title VI complaint and LEP mother. That same day, LEP mother sent three emails in Spanish to individuals including Mr. Weinberg and Ms. Olson. One of the messages that Mr. Weinberg and Ms. Olson received, stated that Ms. Villalba had referred LEP mother to Ms. Card. The same message identified Ms. Villalba as the only person helping LEP mother. After Ms. Villalba

⁴ Judge Terence R. Perkins served as SJCC's Chief Judge in 2015, including at the time of Ms. Villalba's termination. When DOJ attorneys interviewed Judge Perkins, he was no longer serving in that position.

⁵ Judge Perkins reported to DOJ attorneys that when he asked Mr. Weinberg about Ms. Card's Title VI complaint, Mr. Weinberg said he was investigating and that there was an organization that believed SJCC had an obligation to provide interpreting services in all court proceedings. Judge Perkins recalled asking Mr. Weinberg about the complaint on several occasions, most recently in 2017, prior to the conclusion of his time as Chief Judge.

translated the messages at Ms. Olson's request, Mr. Weinberg informed LEP mother on July 23, 2015—in an email written in English and pointing out that Mr. Weinberg does not speak or understand Spanish—that LEP mother's request would be referred to General Magistrate Denise Mensh for a determination.

On July 24, 2015, Ms. Olson asked Ms. Villalba to translate an additional message from LEP mother, in which LEP mother inquired about why her request for an interpreter required judicial authorization. Ms. Villalba translated the message within 30 minutes and Ms. Olson immediately forwarded Ms. Villalba's translation to Mr. Weinberg. Approximately 40 minutes later, Ms. Card sent a strongly worded message to Mr. Weinberg and others. Ms. Card's message cited Title VI, implored Mr. Weinberg to provide LEP mother with an interpreter and to communicate with LEP mother in Spanish, and stated that DOJ and the press were copied. Mr. Weinberg immediately forwarded the message to the General Counsel for the Office of State Courts Administrator.

Approximately 35 minutes after Ms. Card sent her message, Ms. Villalba emailed Ms. Olson and Mr. Weinberg, asking whether she could interpret for LEP mother's child custody hearing on her own time, taking unpaid leave to do so. She added that she understood that she had been asked to "refrain from taking any sides." Ms. Villalba stated that she felt "morally and ethically [that interpreting for LEP mother pro bono] is the right thing to do and professionally speaking, you have always known my position in regard to language access rights." Ms. Villalba states that she did not receive a response.

In an interview with DOJ, Mr. Weinberg reported that, with regard to the instruction not to take sides, Ms. Villalba was "being seen as an advocate" for LEP mother. He also stated that he did not think there was a moral or ethical obligation to provide LEP mother with an interpreter because "we do not take sides" to advocate for a particular party. He thought Ms. Villalba's offer was premature and that their job was to do what the rules, statutes, and the laws required them to do. Ms. Olson reported to DOJ that Ms. Villalba expressed her desire for the provision of services to LEP mother and that Ms. Olson told Ms. Villalba that the decision resided with Mr. Weinberg.

The next day, July 25, 2015, the *Daytona Beach News Journal* published a story regarding Ms. Card's Title VI complaint.⁶ The article named Ms. Olson and Mr. Weinberg, and discussed LEP mother's case, the English response to her interpreter request, and SJCC's mishandling of a case involving an LEP litigant in 2006. The following day, the *Orlando Sentinel* published a similar story.⁷ Over the next two days, Ms. Card forwarded these stories

⁶ Patricio Balona, *Volusia, Flagler circuit included in federal complaint over court interpreters*, DAYTONA BEACH NEWS-JOURNAL, Jul. 25, 2015, <https://www.news-journalonline.com/article/LK/20150725/News/605061510/DN>.

⁷ Bethany Rodgers, *Mount Dora woman files civil-rights complaint on court-interpreter policies*, ORLANDO SENTINEL, Jul. 26, 2015, <https://www.orlandosentinel.com/os-court-interpreters-federal-complaint-20150723-story.html>.

and other information about press coverage to Mr. Weinberg and others and renewed her request for an interpreter for LEP mother.

On July 31, 2015, Mr. Weinberg emailed General Magistrate Mensh for a “review and determination” of LEP mother’s request for an interpreter. The next day, Magistrate Mensh, who was scheduled to hear LEP mother’s matter on August 17, 2015, stated via email that she was not planning to appoint an interpreter at that time, but would consider an oral motion, if made, at the beginning of LEP mother’s hearing.

On August 3, 2015, Magistrate Mensh’s assistant sent an email to the family court manager, forwarding a voicemail that LEP mother had left for Magistrate Mensh’s chambers. The assistant stated that, “under the circumstances of this particular case I did not want to return LEP mother’s call without further instruction from Court Admin” and asked for instruction on “how or if I should proceed on this case in particular.”

Later that day, LEP mother again emailed Ms. Olson, Mr. Weinberg, and Ms. Villalba in Spanish, copying Ms. Card and DOJ.⁸ She expressed extreme distress at the prospect of being unable to express and defend herself at her child custody hearing. At Ms. Olson’s request, Ms. Villalba translated the message to English the next morning, which read, “Please, I beg you, HELP ME resolve something.”

On August 6, 2015, approximately two weeks after Ms. Villalba offered to interpret for LEP mother, Ms. Villalba received a performance review. The timing of this review was atypical, as all of Ms. Villalba’s performance reviews from at least 2008 were held in February or March.⁹ Overall, the review was positive, but Ms. Olson included that Ms. Villalba failed to consistently seek approval prior to using leave time and participating in other court-related events. Ms. Villalba signed the review under protest as to these two areas.

On August 7, 2015, Ms. Villalba responded to her review with an email to Ms. Olson, copying Mr. Weinberg and Ms. Pierce. The message criticized Ms. Olson’s management style for inconsistency and micromanagement and stated that Ms. Olson’s management style caused Ms. Villalba to feel anxious and depressed.

Meanwhile, later on August 7, 2015, Mr. Weinberg contacted the judge assigned to LEP mother’s case, Judge Orfinger. Mr. Weinberg requested a “review and determination” for LEP mother’s interpreter request. When asked, Mr. Weinberg reported to DOJ that this type of involvement in an interpreter request was atypical for him. A few hours later on August 7, 2015, Mr. Weinberg replied to Magistrate Mensh’s assistant, indicating that LEP mother would be advised that Judge Orfinger would be reviewing LEP mother’s interpreter request.

⁸ The DOJ email address was incorrect, however, and DOJ did not receive the email until May 29, 2019, as part of SJCC’s document production.

⁹ On June 9, 2020, DOJ requested SJCC to produce, among other items, “the date of each annual performance review for each individual Ms. Olson supervised between January 1, 2012 to August 19, 2015.” On July 22, 2020, SJCC produced documents related to this request. DOJ’s review of those documents shows that in 2014, Ms. Olson reviewed one other employee under her supervision outside of that employee’s normal review schedule.

On August 10, 2015, Judge Orfinger issued an order appointing an interpreter for LEP mother for the duration of her custody case. Around this same time, Ms. Villalba took approved leave for approximately one week to work as a rater for federal interpreter exams, as she had done in the past.

E. Ms. Villalba's 2015 Termination

Mr. Weinberg reported to DOJ attorneys that on August 18 or 19, 2015, less than a month after learning that Ms. Villalba had referred LEP mother to Ms. Card, he decided to terminate Ms. Villalba. He stated that he made the decision alone, but that he shared his plan with Ms. Olson and Ms. Pierce. Ms. Olson and Ms. Pierce reported to DOJ attorneys that they did not object to Ms. Villalba's firing because of what they described as a long history of Ms. Villalba not following court policy, not wanting to be managed, expressing discontent with court policies and procedures, and engaging in unprofessional behavior. Ms. Olson also reported that Mr. Weinberg's decision to fire Ms. Villalba was somewhat "surprising," but that she would not have objected to the firing at any point because Ms. Villalba was "probably the most challenging employee" Ms. Olson had ever had. Ms. Pierce also reported to DOJ that she suggested to Mr. Weinberg that he fire Ms. Villalba at least a year prior.

On August 19, 2015, Mr. Weinberg called Ms. Villalba to his office. Before this meeting, Ms. Villalba appears to have sent a text message to the above-mentioned SJCC judge with whom Ms. Villalba was friendly, stating that she had been called to Mr. Weinberg's office. The message continued:

I assume I'm in trouble again. Oh well. That's what happens when you work for assholes
 I had another disagreement with Shirley Alston [sic] because of her evaluation of me. I signed it under protest.
 I told her [sic] management style lacks consistency although she's always bragging about being consistent and she micromanages my operation.
 They will probably fire me today, who knows. One thing is for sure, if I get fired for doing the right thing, that is, what is morally right, I don't have a problem although I am nervous I must confess
 Regardless of the outstanding evaluations i [sic] get for my professional performance, she is always looking for blemishes that have to do with either the chain of command or my communications with her
 She is the only person with whom I have ever had any problems while I have been working here for 11 years now

When Ms. Villalba arrived for the meeting, Ms. Pierce was present. Mr. Weinberg informed Ms. Villalba that her services were no longer necessary. He offered her the choice of resigning or being fired. In interviews with DOJ attorneys, Mr. Weinberg stated that he did not provide Ms. Villalba with any specific reasons for her termination. Ms. Villalba similarly reported in interviews with DOJ attorneys that Mr. Weinberg told her she was not "seeing eye to eye with the administration and the

best thing was to let [her] go,” but that Mr. Weinberg did not provide any specific reasons.

Ms. Villalba requested time to consider her options. She also requested alternatives such as reporting directly to Mr. Weinberg instead of to Ms. Olson or changing her duties to work on the court’s language access plan and improve compliance. She also offered to help SJCC with its response to the Title VI complaint. Mr. Weinberg denied her requests. He ordered Ms. Villalba to surrender her keys and badge and to leave the building immediately without gathering her belongings, and he arranged for the delivery of her belongings.

After leaving the meeting, Ms. Villalba informed a DOJ attorney that she believed her termination was retaliatory.¹⁰

Ms. Villalba later informed SJCC that she chose the option of being fired. SJCC sent Ms. Villalba a termination letter dated August 24, 2015. The letter stated that Ms. Villalba was an at-will employee and provided no reason for her termination.

DOJ learned from documents produced by SJCC that prior to Ms. Villalba’s termination, four employees had been fired or had resigned in lieu of termination between January 1, 2010 and August 19, 2015. For all four of those employees, SJCC produced documentation of recent performance or other deficiencies, or records of prior discussions of potential termination. One employee was terminated approximately five months following a PIP and other documentation of performance and professionalism issues. A second employee resigned in lieu of termination approximately nine months after receiving a performance plan, approximately seven months after receiving a review identifying concerns with performance, and approximately one month after receiving an interim review describing continuing concerns with performance. A third employee was terminated following several weeks of conversations with the employee regarding the employee’s termination. A fourth employee resigned in lieu of termination approximately two weeks after being placed on administrative leave following allegations of criminal behavior. Moreover, according to termination letters for the two employees who were terminated, unlike Ms. Villalba, they were permitted to collect their personal belongings from the office prior to their departures.

Immediately following her termination, Ms. Villalba submitted the first of numerous requests to work as a contract interpreter for SJCC. At the time of her initial request, SJCC had never had any ban on hiring former employees as contractors. However, upon receiving Ms. Villalba’s request, Ms. Pierce discussed it with Mr. Weinberg, an individual from the Office of the State Courts Administrator, and possibly Ms. Olson. They discussed what the policy on such requests should be. In this conversation, Ms. Pierce recommended that Mr. Weinberg implement a 12-month ban,

¹⁰ In December 2015, DOJ informed the Chief Justice of the Florida Supreme Court, the State Courts Administrator, and the General Counsel for the Office of State Courts Administrator about Ms. Villalba’s retaliation complaint. The General Counsel denied that SJCC had a retaliatory motive. For unrelated reasons, DOJ stayed this investigation until 2018.

requiring previously terminated employees to wait 12 months prior to serving as contract interpreters. Mr. Weinberg readily replied, “Agreed.” Ms. Pierce also stated that she would never hire Ms. Villalba as a contract interpreter, despite her excellent interpreter skills. When DOJ attorneys asked for a copy of the policy describing the ban, Ms. Pierce conceded that the policy had never been officially written down and exists solely as part of an email exchange she had with Mr. Weinberg in March 2016. To date, SJCC has never responded to Ms. Villalba’s requests to serve as a contract interpreter, even though Ms. Villalba told Mr. Weinberg and Ms. Pierce that she had suffered financial hardship and had difficulty finding employment after being fired, and even though she reapplied 12 months after being fired.

F. New SJCC Interpreter Policy Following Ms. Villalba’s Termination

After Ms. Villalba’s termination, SJCC instituted an October 2015 expansion of the SJCC interpreter policy.

On October 21, 2015, SJCC expanded its SJCC interpreter policy through an administrative order (2015 SJCC Order) regarding the appointment of foreign language court interpreters. Judge Perkins signed the 2015 SJCC Order two months after Ms. Villalba’s termination and LEP mother’s child custody hearing. The order was SJCC’s first-ever written policy on interpretation services. The order expanded the SJCC interpreter policy specifically to automatically cover, among other things, cases like LEP mother’s—family law proceedings involving children.

When DOJ attorneys questioned Judge Perkins about the 2015 SJCC Order, he reported that he did not recall whether the impetus for the order was his own desire to have a policy or whether Mr. Weinberg suggested the order. Judge Perkins reported that Mr. Weinberg was the primary drafter of the order, although SJCC documents indicate that two other judges wrote the first draft of the order.

When we questioned Mr. Weinberg about the order, he stated that he did not remember working on it. SJCC documents, however, show that Mr. Weinberg was heavily involved in drafting the order. He reviewed and made “substantial changes” to the draft, as described in an email from one of the initial drafters of the order. Mr. Weinberg added that he did not recall who first suggested the order, but that it could have been him.¹¹ He also could not recall when SJCC began working on this order. Upon further questioning, Mr. Weinberg also stated that:

- LEP mother’s circumstances played a role in the order because SJCC believed that a clarification of the policy could avoid similar circumstances in the future,
- SJCC staff had some discussion about the verbiage to use in the order, and
- The order was not an expansion of interpreter services; it was merely a recitation of what the existing rules and policy required.

¹¹ DOJ requested all documents related to Mr. Weinberg’s and Judge Perkins’ work on the 2015 SJCC Order. SJCC’s response did not include any information regarding the impetus for the order.

When DOJ attorneys asked Mr. Weinberg whether LEP mother’s child custody case would be covered under the 2015 SJCC Order, Mr. Weinberg stated that it would not be included because the 2015 SJCC Order was an attempt to clarify the SJCC interpreter policy. Under the plain language of the 2015 SJCC Order, however, an LEP litigant like LEP mother is entitled to an interpreter in a child custody hearing.

SJCC documentation also shows that a prior version of the order contained language acknowledging that LEP individuals “require the assistance of court interpreters to meaningfully participate in court proceedings and/or access court services.” This language was removed after one of the drafters of the order expressed concerns about “inconsisten[cy]” in SJCC’s simultaneous acknowledgment of this critical need, yet provision of only limited interpreter coverage.

V. Conclusions of Law

DOJ finds that SJCC retaliated against Ms. Villalba in violation of Title VI. Ms. Villalba engaged in protected activity, she suffered the adverse action of termination, her termination was causally related to her protected activity, and SJCC’s reasons for Ms. Villalba’s termination are pretext. A summary of our analysis and findings follows.

A. Ms. Villalba Engaged in Protected Activity

DOJ finds that Ms. Villalba engaged in protected activity.

For there to be “protected activity,” the evidence must show that a person opposed a recipient’s actions that the person reasonably and in good faith believed violated Title VI or participated in a matter that reasonably or in good faith alleged a violation. *Peters*, 327 F.3d at 320-21; *Bigge v. Albertsons, Inc.*, 894 F.2d 1497, 1503 (11th Cir. 1990). Title VI regulations expressly prohibit retaliation “for the purpose of interfering with any right or privilege” secured by Title VI or the Title VI regulations, or because a person filed “a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing” pursuant to the regulations. 28 C.F.R. § 42.107(e).

As early as 2010, and up to her termination in August 2015, Ms. Villalba engaged in protected activity by expressing to numerous SJCC employees her opposition to the SJCC interpreter policy and the need to comply with Title VI to numerous SJCC employees, including to Ms. Olson and Ms. Pierce. Ms. Villalba’s belief was based on her many years of professional experience as an interpreter and information that she learned about courts’ language access obligations through her professional involvement with these issues throughout her career. She expressed her opposition to numerous SJCC employees including Ms. Olson and Ms. Pierce. Ms. Villalba also expressed her opposition to Mr. Weinberg, the person with the authority to, and who ultimately did, fire her. Notably, from mid-July to mid-August 2015, Ms. Villalba’s protected activity shifted to involve assisting with Ms. Card’s Title VI complaint filed with DOJ and assisting LEP mother with her efforts to secure an interpreter for her child custody hearing. Ms. Villalba’s senior managers—Ms. Olson, Ms. Pierce, and Mr. Weinberg—were aware of these actions at the time Mr. Weinberg fired Ms. Villalba. As SJCC’s court administrator,

Mr. Weinberg also had ongoing access to information about Title VI and DOJ's work with other state courts regarding compliance with Title VI. He had conversations with Judge Perkins about Title VI obligations and about Ms. Card's Title VI complaint. Thus, Mr. Weinberg should have known that Ms. Villalba's protected activity was in good faith.

B. SJCC's Adverse Action Was Causally Related to Ms. Villalba's Protected Activity

DOJ finds that SJCC took an adverse action that was causally connected to Ms. Villalba's protected activity.

An adverse action occurs when an employer takes action, such as terminating an employee, that would dissuade a reasonable person from making or supporting a charge of discrimination. *See, e.g., Clark v. S. Broward Hosp. Dist.*, 601 F. App'x 886, 891 (11th Cir. 2015) ("being fired is, of course, an adverse action"); *Bowers*, 509 F. App'x at 911-12 (defining adverse action in the context of a Title VI retaliation claim).

A causal connection is established when close temporal proximity exists between the protected activity and the adverse action. *See Ceus v. City of Tampa*, 803 F. App'x 235, 249 (11th Cir. 2020) (close temporal proximity between protected activity and adverse action is sufficient evidence of a causal connection); *Farley v. Nationwide Mut. Ins. Co.*, 197 F.3d 1322, 1337 (11th Cir. 1999) (seven and a half weeks is sufficient temporal proximity to satisfy causation).

Ms. Villalba suffered an adverse action when Mr. Weinberg fired her. Mr. Weinberg took this adverse action approximately four weeks after he became aware of Ms. Villalba's attempts to help LEP mother secure an interpreter and Ms. Villalba's connection to Ms. Card, who filed a Title VI complaint against SJCC with DOJ. This proximity is well within the timeframe necessary to satisfy causality. This then leads us to SJCC's proffered reasons for firing Ms. Villalba.

C. SJCC's Reasons for Firing Ms. Villalba are Pretext

DOJ finds that SJCC's reasons for firing Ms. Villalba are pretext.

To assert that it did not discriminate, SJCC can offer a legitimate, nondiscriminatory reason for its adverse action and the evidence must support that the articulated reason is not pretext for prohibited discrimination. *See McDonnell Douglas Corp.*, 411 U.S. at 802-804; *Rojas v. Florida*, 285 F.3d 1339, 1342 (11th Cir. 2002). An explanation of its legitimate reasons must be clear and reasonably specific so that the reasons can be evaluated to determine whether they are the real reasons for the adverse action. *See Tex. Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248, 255 (1981) (defendant's explanation of its legitimate reasons must be clear and reasonably specific so that a plaintiff has a full and fair opportunity to demonstrate pretext); *Conner v. Fort Gordon Bus Co.*, 761 F.2d 1495, 1500 (11th Cir. 1985) (employer's subjective reason is legally sufficient if it is capable of objective evaluation); *EEOC v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1280 n.17 (11th Cir. 2000) ("[E]mployment decisions may legitimately be based on subjective criteria as long as the criteria are capable of objective evaluation and are

stated with a sufficient degree of particularity.”). When assessing pretext, DOJ considers the totality of the circumstances, including inconsistencies, incoherencies, or contradictions in the proffered reasons. *McCann v. Tillman*, 526 F.3d 1370, 1375 (11th Cir. 2008); see *McShane*, 144 F. App’x at 791-92.

In his three interviews with DOJ, Mr. Weinberg never provided a clear, reasonably specific explanation for Ms. Villalba’s termination. He also never stated or suggested that his reasons for the termination were the result of a faulty memory because of a lapse of time. Instead, he provided only vague, unspecific remarks that he made his decision because Ms. Villalba was an at-will employee, because of “an amalgamation of things,” and because it became clear over time that Ms. Villalba “would be happier elsewhere.” We find these reasons insufficient, incapable of objective evaluation, and not legitimate—thus pretext for prohibited discrimination.

Our pretext determination is further reinforced by our findings of inconsistencies in SJCC’s actions and by credibility concerns. We provide a summary of those conclusions below.

First, from mid-July 2015 to mid-August 2015, Ms. Villalba continued to act as she had for years with the exception of assisting Ms. Card and LEP mother. She continued to voice her complaints about the SJCC interpreter policy. She continued to volunteer to interpret for an LEP litigant whose case was outside the scope of SJCC’s policy. She continued to follow her internal chain of command by notifying her senior managers of her opposition to the SJCC interpreter policy. She continued to seek a higher authority when she did not get the relief she reasonably believed that Title VI required. When she received what she perceived to be a negative performance review, she spoke out against it, including by drafting a response letter. This was the same action Ms. Villalba took in 2010 when she received her one and only PIP—a PIP SJCC never followed up on with Ms. Villalba. And, prior to August 2015, Mr. Weinberg did not document or otherwise inform anyone—Ms. Villalba, Ms. Olson, Ms. Pierce, or Judge Perkins—that he considered Ms. Villalba’s behavior serious enough to fire Ms. Villalba, an employee with more than a decade on the job, multiple relevant professional certifications, and otherwise satisfactory performance. Mr. Weinberg also relayed to DOJ that Ms. Villalba was being seen as an “advocate” for LEP mother. In fact, however, Ms. Villalba was engaging in protected activity by raising with the court the LEP mother’s legal right to a court-appointed interpreter at her child custody hearing. She was not taking sides on the merits of the family law case, she was advocating for SJCC’s compliance with Title VI.

Second, in contrast to Ms. Villalba’s consistent actions, Mr. Weinberg’s actions were markedly different from his typical course of business during the relevant time period. When presented with the problem that LEP mother’s request for an interpreter created for the SJCC, coupled with his knowledge of language access obligations under Title VI dating back at least to his participation with TCP&A, Mr. Weinberg uncharacteristically worked to assign an interpreter. Then, days after LEP mother’s August 17, 2015 hearing, he fired Ms. Villalba.

Mr. Weinberg strayed from his usual approach in other cases when it came to LEP mother’s request for an interpreter. In fact, he conceded to DOJ that LEP mother’s case was the only time he had ever worked to have an interpreter appointed for a matter outside the scope of SJCC policy. Moreover, judges, Ms. Pierce, Ms. Olson, and Mr. Weinberg himself stated that it

was unusual for him to get involved at all in an interpreter request, and when he had gotten involved, he had worked actively to persuade judges *not* to appoint interpreters outside the scope of SJCC's policy. In contrast, following receipt of Ms. Card's Title VI complaint naming him as an alleged discriminator, Mr. Weinberg proceeded differently from his usual response to other similar complaints. Under pressure from negative media attention for Mr. Weinberg and SJCC regarding SJCC's failure to provide an interpreter for LEP mother and Ms. Card's Title VI complaint, Mr. Weinberg contacted Magistrate Mensh. When Magistrate Mensh declined to appoint an interpreter immediately, Mr. Weinberg called Judge Orfinger, who ultimately ordered an interpreter. On August 19, 2015, less than a month after learning that Ms. Villalba had been pressing for an interpreter for LEP mother and assisting Ms. Card, Mr. Weinberg fired Ms. Villalba.

In yet another deviation from normal practice, unlike all four of the other SJCC employees who were given the option of resigning or being terminated between January 1, 2010 and Ms. Villalba's termination on August 19, 2015, Ms. Villalba received no written record of performance deficiencies or a discussion of termination in the months leading up to her termination. In the year prior to her termination, the only negative written comment about Ms. Villalba SJCC provided to DOJ was in her 2015 performance review. That comment stated that Ms. Villalba failed to consistently seek approval prior to using leave and participating in other court-related events. A similar comment appeared in Ms. Villalba's 2014 review, which also did not lead to termination or to a discussion of termination. Nor did Mr. Weinberg reference Ms. Villalba's reported failure to seek approval prior to taking leave or participating in other court-related events as a reason for Ms. Villalba's termination. Moreover, unlike the two other terminated employees, Ms. Villalba was not even permitted to collect her personal belongings from her office prior to departure.

Third, Mr. Weinberg's credibility is in question. When interviewed, Mr. Weinberg insisted that LEP mother never requested an interpreter, despite having received and sent communications to the contrary. For example, Mr. Weinberg's own August 7, 2015 email to Judge Orfinger and LEP mother's July 22, 2015 email to SJCC, which was forwarded to Mr. Weinberg, both confirm that LEP mother indeed had requested an interpreter. Mr. Weinberg's July 23, 2015 email to LEP mother—in English—saying that he does not speak or understand Spanish further confirms his knowledge that LEP mother could not communicate in English and required an interpreter. In addition, the August 10, 2015 order granting an interpreter to LEP mother indicates that she had made such a request. Mr. Weinberg's inaccurate assertions about an easily verifiable fact resulted in questions about his credibility and factored into our pretext analysis.

Accordingly, we find Mr. Weinberg's proffered reasons for firing Ms. Villalba to be pretext. Because Mr. Weinberg was the decisionmaker, we could end the inquiry there, even though Ms. Olson and Ms. Pierce identified alleged defects in Ms. Villalba's job performance during the course of our investigation. Never during over four hours of interviews did Mr. Weinberg indicate that he relied on those alleged defects in deciding to fire Ms. Villalba. Even if Mr. Weinberg had referred to Ms. Olson's and Ms. Pierce's concerns with Ms. Villalba's

performance, however, we would find that these were not the real or deciding factors that caused Mr. Weinberg to fire Ms. Villalba.¹²

In fact, despite Ms. Olson's allegedly challenging history supervising Ms. Villalba, Ms. Olson told DOJ that she never asked Mr. Weinberg to fire Ms. Villalba. Indeed, Ms. Olson relayed that she was surprised when Mr. Weinberg told her that he was going to fire Ms. Villalba. Ms. Olson had given Ms. Villalba a largely positive review just 13 days before she was terminated and less than two weeks after two media reports about LEP mother's case and the Title VI complaint.¹³ Moreover, although some of Ms. Villalba's fellow interpreters described difficulties working with her in the last 18 months of her employment, Mr. Weinberg does not appear to have taken these dynamics into consideration in his decision. In fact, he reported to DOJ that the culture in the interpreters' office was not his "objective." He was aware that "perhaps that office was not the friendliest but the job got done" and he appeared to have no problem with that dynamic. As such, SJCC cannot persuasively claim that these reasons justified its termination of Ms. Villalba.

DOJ also finds that SJCC's twelve-month ban on hiring former employees—a policy that exists only in an email and was created only after Ms. Villalba requested a freelance position—shows SJCC's animus toward Ms. Villalba. The three senior managers said that, as a freelance interpreter, Ms. Villalba, like all of the other freelance interpreters, would rarely if ever interact with them and therefore the alleged performance issues that Ms. Olson or Ms. Pierce raised likely would not be relevant if Ms. Villalba had been hired as a contract interpreter. Ms. Pierce, who recommended that Mr. Weinberg institute the ban, to which he readily replied, "Agreed," said that despite Ms. Villalba's excellent interpreter skills, she would never hire Ms. Villalba. Even when Ms. Villalba waited 12 months and again requested a freelance position, SJCC never responded to her requests.

Considering the totality of the circumstances, DOJ finds that but for Ms. Villalba's protected activity between mid-July 2015 and mid-August 2015, Mr. Weinberg would not have fired Ms. Villalba.

¹² For example, during her last interview with DOJ, Ms. Pierce speculated that an incident in which Ms. Villalba allegedly inappropriately applied lotion to her legs in front of a male visitor was the last straw for Mr. Weinberg. As an initial matter, Ms. Pierce never documented any such instance—despite her position as the human resources manager. For his part, Mr. Weinberg could not remember when this incident involving the lotion occurred. Although Mr. Weinberg stated that he thinks this incident was "likely" a factor in his decision to terminate Ms. Villalba, he did not recall it being a moment when he determined that "enough is enough," nor did he recall deciding to terminate Ms. Villalba because of this incident. Because neither Ms. Pierce nor Mr. Weinberg could definitively state that this incident resulted in the decision to terminate Ms. Villalba's employment, DOJ does not find dispositive that these speculative statements contributed to SJCC's decision.


¹³ This particular review occurred on August 6, 2015, outside of Ms. Villalba's normal review cycle. All of Ms. Villalba's reviews for the prior 11 years were conducted on a predictable cycle in February or March. The three other employees Ms. Olson supervised who were employed in early 2015 also received their reviews in February or March 2015 (rather than August), within their regular review cycle.

VI. Conclusion and Next Steps

Mr. Weinberg could have fired Ms. Villalba at any time because she was an at-will employee, but he could not fire her for an illegal reason. Ms. Villalba had been advocating for expanded language assistance services for LEP court users and had been experiencing challenges with Ms. Olson and some colleagues for most of her 11 years at SJCC. During this time, she received only one PIP—five and a half years before she was terminated—and Ms. Olson identified some unremarkable areas of improvement in otherwise positive performance reviews. Yet, less than one month after Mr. Weinberg learned that Ms. Villalba had been assisting both LEP mother with her interpreter request and Ms. Card with a DOJ Title VI complaint in which he was personally named as a discriminating official, Mr. Weinberg fired Ms. Villalba and provided no basis for her termination. DOJ concludes that SJCC was motivated to fire Ms. Villalba because of her protected activity and because of the negative media attention surrounding the Title VI complaint and LEP mother. Accordingly, DOJ has determined that the evidence is sufficient to establish retaliation in violation of Title VI.

To address the violations described above, DOJ invites SJCC to enter into a written memorandum of agreement in which SJCC agrees to take action which may include: (1) providing training to all staff on SJCC's responsibilities under Title VI, including SJCC's obligation not to retaliate against individuals who raise allegations of national origin discrimination, (2) providing to SJCC employees and court users written notice of SJCC's nonretaliation obligations, and (3) providing relief for its actions against Ms. Villalba. Please contact us within **30 days** of the date of this letter of findings to let us know if SJCC is interested in working with DOJ to voluntarily resolve this complaint. If SJCC is unwilling to resolve this matter voluntarily, we will take appropriate next steps. *See* 28 C.F.R. § 42.108(a). If you have any questions regarding this letter, please contact Ms. Kevonne Small at kevonne.small@usdoj.gov, (202) 616-9692 or Ms. Marina Mazor at marina.mazor@usdoj.gov, (202) 305-3347. We appreciate your ongoing cooperation in this investigation and look forward to speaking with you about resolving this matter.

Sincerely,



Christine Stoneman
Principal Deputy Chief, performing duties of Chief
Federal Coordination and Compliance Section