

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE FLORIDA STATE ATTORNEY’S OFFICE, SECOND JUDICIAL CIRCUIT
DEPARTMENT OF JUSTICE NUMBER 171-17-39

I. BACKGROUND

- A. In June 2023, the United States Department of Justice (“DOJ”), notified the Florida State Attorney’s Office for the Second Judicial Circuit (“SAO”) that it had reviewed reports alleging that the SAO utilized guidelines for Primary Misdemeanor Plea Offers (“Primary Misdemeanor Plea Offers Guidelines”) that provided for less favorable primary misdemeanor plea offers and cost assessment to Hispanic individuals accused of driving without a valid driver’s license than other individuals accused of the same crime. These allegations raised concerns of alleged discrimination in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and its implementing regulations, 28 C.F.R. Part 42, Subpart C (“Title VI”).
- B. Title VI prohibits discrimination based on race, color, and national origin in federally-funded programs or activities. DOJ has jurisdiction under Title VI to investigate the SAO and, where appropriate, negotiate and secure voluntary compliance because the SAO receives federal financial assistance from DOJ.
- C. The SAO has fully cooperated with DOJ during the course of the review. To date, DOJ has reviewed information provided by the SAO, conducted interviews of SAO employees, conducted interviews of other interested parties and members of the public, and reviewed publicly available documents. DOJ has not made a finding of discrimination.
- D. The SAO affirms its commitment to complying with Title VI and denies any wrongdoing in violation of Title VI. In April 2023, State Attorney Jack Campbell learned of the alleged Primary Misdemeanor Plea Offers Guidelines, immediately took action to investigate the allegations and took steps to affirm the SAO’s commitment to nondiscrimination. The State Attorney affirmed that the Primary Misdemeanor Plea Offers Guidelines were not and have never been the policy of the SAO. The SAO verbally reprimanded the individual who drafted the Primary Misdemeanor Plea Offers Guidelines, committed to conduct nondiscrimination training, convened a working group with interested parties in the legal community to address the impact of the Primary Misdemeanor Plea Offers Guidelines, and sent letters to defendants who may have been impacted by the Primary Misdemeanor Plea Offers Guidelines. To further its commitment to continued compliance with Title VI the SAO desires to work with DOJ in its ongoing efforts of nondiscriminatory prosecution.

- E. The voluntary compliance framework of Title VI provides DOJ with the flexibility to support state and local law enforcement recipients as they implement practices designed to ensure nondiscrimination. This Memorandum of Agreement (“Agreement”) between the SAO and DOJ seeks to provide the SAO with additional tools and training to conduct its prosecutorial activities in a manner that avoids discrimination. In particular, this Agreement intends to encourage and support the SAO’s ongoing nondiscrimination efforts through the items identified below.
- F. In light of the above, DOJ and the SAO (collectively, the Parties) agree as follows:

II. COOPERATIVE AGENDA

- A. Consistent with its ongoing efforts to prohibit discrimination and unlawful bias in prosecution, the SAO affirms that it will continue to comply with Title VI, which prohibits discrimination against individuals based on their race, national origin, or color.

- B. Policy Review

The SAO will adopt a specific Nondiscrimination in Prosecution Policy within 60 days of the Effective Date of this Agreement. The Nondiscrimination in Prosecution Policy will specifically provide that discriminatory prosecutorial practices are prohibited, and for 1) regular training at least annually on nondiscrimination in prosecution, including obligations under Title VI and the Nondiscrimination in Prosecution Policy, 2) a public complaint process, and 3) other measures to ensure compliance and accountability with regard to such non-discrimination policies. The SAO will seek DOJ approval of its proposed Nondiscrimination in Prosecution Policy within 30 days of the Effective Date of this Agreement. Following adoption of the Nondiscrimination in Prosecution Policy, the SAO will, for the duration of this Agreement, provide any future proposed revisions to the Policy to DOJ for approval at least 30 days prior to proposed adoption. DOJ’s approval will not be unreasonably withheld.

- C. Public and Community Engagement

The SAO is committed to maintaining and strengthening its ties to the communities it serves. To further this commitment, within 30 days of the Effective Date of this Agreement, the SAO will reconvene a working group to: (1) advise the working group members of this Agreement and its requirements; (2) revise the original letter sent to defendants who may have been impacted by the Primary Misdemeanor Plea Offers Guidelines; and (3) continue its efforts to work with the SAO to develop best practices for working with the local community the SAO serves. This includes building partnerships and improving communications, as well as practices to address perceived bias incidents. The SAO will invite private defense counsel and community advocates supporting minority and immigrant populations and those with limited English proficiency to participate in the working group. The working group will meet quarterly, at a time that is mutually agreeable to all interested parties for the duration of this

Agreement. The SAO will document and retain the minutes of each working group meeting, and will include the minutes in its quarterly status reports to DOJ as discussed in part III, below.

D. Letters to Defendants Potentially Impacted by the Primary Misdemeanor Plea Offers Guidelines

1. The SAO remains committed to ensuring that no defendant was discriminated against with respect to any plea offer made for the charge of driving without a valid driver's license. The SAO will provide the working group with a copy of the letter that was sent to defendants who may have been impacted by the Primary Misdemeanor Plea Offers Guidelines, the list of defendants to whom it was sent, and the addresses to which it was sent. Within 30 days of reconvening the working group discussed in II.C. above, the SAO, in consultation with the working group, will identify any additional defendants charged with driving without a valid driver's license from January 2017 to April 2023 but who were not offered a plea of diversion. The working group will determine which individuals should receive additional correspondence, and will draft additional correspondence as necessary to ensure that all applicable defendants receive effective notice of the following information: (1) that the defendant is being contacted because it is possible that they were offered an incorrect plea and should have been offered a lesser plea, and (2) a description of the procedure by which the defendant or their counsel may seek an alternative disposition of the charge. The SAO will send the revised letter to the Public Defender's Office for the Second Judicial Circuit ("Public Defender") for review and comment. The working group will consider and accept or reject all of the Public Defender's comments, and will provide a written response to the Public Defender explaining the reasons for rejecting any of its comments. The additional correspondence will be accompanied by a certified translation for defendants whose records indicate limited English proficiency, and will be mailed to defendants and their counsel of record, if any. The SAO, in consultation with the working group, will develop a plan to track defendants' responses.
2. Within 45 days of reconvening the working group discussed in II.C. above, the SAO will send any additional correspondence to the identified defendants. The SAO will provide the draft correspondence, all comments provided by the Public Defender, the working group's written response to the Public Defender, list of recipients, and plan for tracking responses to DOJ for review and comment at least 15 days prior to sending any additional correspondence.
3. The SAO will review all responses received from all correspondence with defendants who may have been impacted by the Primary Misdemeanor Plea Offers Guidelines and determine whether any additional remedial actions are appropriate, including but not limited to, any changes to terms of plea offers. The SAO will continue to track the responses and take any necessary remedial actions throughout the term of the Agreement, and will report the results of its tracking and remedial actions in its quarterly status reports to DOJ as discussed in part III, below.

E. Training

1. Within 120 days of the Effective Date of this Agreement, the SAO will conduct mandatory training on nondiscrimination in prosecution, including obligations under Title VI, and on its Nondiscrimination Prosecution Policy for all SAO employees, contractors, and any individual working on behalf of the SAO who interacts with defendants or the public. The training will be provided by an independent, qualified third party, approved by the DOJ. The training curriculum will also be approved by the DOJ and will cover, at a minimum: an overview of Title VI's prohibition against race, national origin, and color discrimination; discussion of biased-based prosecution and discriminatory prosecution; examples of conduct that would constitute discriminatory prosecution and, in contrast, the types of indicators prosecutors and other staff may properly rely on, including in the misdemeanor plea offer context; best practices for prosecutors and other staff to ensure that they are not discriminating or acting with impermissible bias; prosecutor and community perspectives related to discriminatory prosecution; and resources for prosecutors and other staff who have questions about best practices and their obligations. The training will also include an overview of the Nondiscrimination in Prosecution Policy. The training will include an opportunity for training participants to ask questions about the material covered. The SAO will seek DOJ approval of the trainer and proposed curriculum at least two weeks before any scheduled training.
2. The annual trainings will be video recorded. Each newly-hired or contracted individual covered by the training requirements will receive training within 30 days of the date they begin their association with the SAO, either by attending the next regularly scheduled annual training, if it occurs within the 30-day period, or by viewing the video recording of the most recent live training and receiving copies of any written material provided for that training.
3. The SAO will maintain an attendance log for each training, and ensure that all individuals required to attend have done so. The attendance logs will be included in the SAO's quarterly status reports to DOJ discussed in part III, below.

III. FURTHER COOPERATION

- A. The SAO or his designee will meet with DOJ, if requested, on a quarterly basis to provide status reports to DOJ on the SAO's implementation of this Agreement, including the working group minutes (section II.C), tracking and remedial actions related to defendants (section II.D), training attendance logs (section II.E.2), and any other information related to this Agreement since the date of the last meeting, and will discuss if any further assistance from DOJ is warranted. The SAO will fully cooperate with DOJ in connection with any additional requests for information relevant to this Agreement.
- B. If concerns arise regarding this Agreement, the Parties will meet and confer to resolve those concerns cooperatively.

IV. GENERAL TERMS

- A. Each representative executing this Agreement certifies that they are authorized to enter into and consent to the terms of this Agreement and to legally bind their party to it. This Agreement may be executed in counterparts.
- B. This Agreement is applicable to, and binding upon, the Parties, their principals, officers, agents, employees, administrators, representatives, assignees, successors, and all legal representatives thereof.
- C. The Parties may, upon mutual written agreement, amend this Agreement to address changed circumstances.
- D. This Agreement completes this Title VI review, and is limited to the facts and issues presented during this review. This Agreement neither affects the SAO's continuing obligation to comply with Title VI nor precludes DOJ from taking appropriate action to evaluate the SAO's compliance with any laws or regulations enforced by DOJ.
- E. The SAO acknowledges its obligation, independent of this Agreement, to ensure that all of its programs and activities, and the programs and activities of any entity that receives federal financial assistance directly or indirectly from the SAO, comply with Title VI.
- F. Consistent with its policies, the SAO will not threaten, coerce, discriminate, or take other adverse actions against any individual for the purpose of interfering with any right or privilege secured by Title VI or because that individual has made a complaint, testified, assisted, or participated in any manner any investigation. The SAO affirms that it has not and will not take any such actions.
- G. This Agreement does not bar any individual from pursuing a Title VI complaint, or any other action allowed by law, against the SAO. Similarly, the execution and performance of this Agreement on the part of the SAO is not, and shall not be deemed to be, an admission of any unlawful or actionable conduct on the part of the SAO or its personnel.
- H. DOJ may review compliance with this Agreement at any time during the term of the Agreement.
- I. Failure by DOJ to enforce this entire Agreement, or any provision thereof with regard to any deadline or any other provision herein, will not be construed as a waiver of DOJ's right to enforce provisions of this Agreement.
- J. This Agreement is a public document that will be posted on DOJ's public website and available through a public records request to the SAO at sao2publicrecordsrequests@leoncountyfl.gov. After all parties have signed the agreement, the SAO will advise normal media contacts of the agreement and attach a copy of the agreement to the press advisory, including links for making a public records request as described herein.

- K. The Effective Date of this Agreement is the date of the last signature below.
- L. The Agreement will terminate two years from the Effective Date, provided that the SAO has demonstrated substantial compliance with the provisions of this Agreement. Not sooner than one year from the Effective Date, the SAO may submit a request to DOJ for an earlier termination.

[Signatures Appear on Following Page]

[Memorandum of Agreement – DOJ No. 171-17-39]

For the Florida State Attorney’s Office,
Second Judicial Circuit

/s/ Jack Campbell

JACK CAMPBELL, State Attorney

Dated:

6/17/2024

For the United States of America

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice



BY _____

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Dated: 6/20/2024_____