



U.S. Department of Justice

Civil Rights Division

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

January 10, 2017

Ms. Dianne Moratti
Chief, Deputy Attorney General
Corrections & State Police Section
Division of Law
Office of the Attorney General
Hughes Justice Complex - 2nd Fl.,
Trenton, N.J. 08625-0080

Re: Complaint Number No. 171-48-28
Garcia, et al. v. New Jersey Department of Corrections

Dear Ms. Moratti:

Thank you and your office for your cooperation and assistance during this investigation of national origin discrimination complaints from limited English proficient (LEP) inmates against the New Jersey Department of Corrections (NJDOC) under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation, 28 C.F.R. Part 42 Subpart C (together, Title VI). While language assistance services, both interpreters and translated materials, have improved at NJDOC facilities, NJDOC will need to address several issues of concern we identified during our recent on-site visit before we can close this investigation.

The Federal Coordination and Compliance Section of the Civil Rights Division at the U.S. Department of Justice (DOJ) initiated this Title VI investigation following receipt of several complaints from inmates who alleged that they were subject to national origin discrimination at NJDOC facilities based on their limited English proficiency. The inmates alleged that NJDOC did not provide appropriate language assistance services and did not have effective policies and procedures in place to provide meaningful access to NJDOC programs and services.

In October 2014, NJDOC entered into a memorandum of agreement (MOA) with DOJ to resolve this investigation.¹ In the MOA, NJDOC committed to implement updated language access policies and procedures NJDOC had developed with DOJ, agreed to designate a language access coordinator, and agreed to submit periodic reports to DOJ. The MOA also provided for an on-site visit by DOJ within two years to assess whether NJDOC had substantially complied with the requirements of the MOA. DOJ staff conducted this on-site visit of NJDOC facilities on September 26 and 27, 2016.

¹ Available at https://www.justice.gov/sites/default/files/crt/legacy/2014/10/16/101514_DOJ_MOA_NJDOC.pdf.

During the September on-site visit, DOJ staff met with NJDOC staff and inmates, both LEP and non-LEP inmates, to assess how NJDOC has implemented the language access policies and practices required by the MOA.² We identified many policies and practices that NJDOC has implemented to improve access for LEP individuals, but also several areas of concern that NJDOC must address in a report to DOJ on or before July 7, 2017, to ensure compliance with Title VI and NJDOC's own policies. Among our findings are the following:

- Most NJDOC staff knew how to request interpreters and how to use the telephone interpreter service provider pursuant to NJDOC policies and procedures;
- Most NJDOC staff we spoke with were aware of the current NJDOC language assistance policies and procedures and had received training on the requirements of these policies and procedures;
- Consistent with NJDOC policies included with the MOA, most staff told us that they do not rely on other inmates to serve as interpreters except for disciplinary hearings where trained inmate paralegals help LEP inmates;
- Most staff could identify the location of NJDOC language assistance posters and knew that these posters provided notice, in several languages, that NJDOC provides language assistance services at no cost;
- NJDOC staff use an inmate's classification FACE sheet to track which inmates need language assistance services and that NJDOC staff can enter this information in ITAG, the computerized database used to track an inmate's incarceration from inception to conclusion.

Inmates and staff we spoke with also shared several practices that raised concerns and were inconsistent with current NJDOC language access policies and procedures. NJDOC will need to address the concerns below and provide DOJ a report on those efforts on or before July 7, 2017:

- Policy Number SUP.004.001, Section IV.F, requires that “[i]nmates will be advised that the Department will provide LEP inmates free interpretation and translation services relative to inmate programming, safety, medical, and quasi-legal proceedings.” Yet LEP inmates who had recently arrived at NJDOC facilities informed us that NJDOC staff had not offered or provided them language assistance services during the initial intake interview process. When we discussed NJDOC policies and practices with LEP inmates who spoke languages other than Spanish, they told us that NJDOC staff does not consistently provide them language assistance services in their non-English language. Other LEP inmates we met with who spoke Spanish and Chinese detailed recent instances in which they were not provided interpreters in their non-English language for medical appointments at NJDOC facilities, a point noted in a recent state court decision.³

² DOJ provided and paid for an in-person Spanish interpreter for conversations with Spanish-speaking inmates and a telephone interpreter service to communicate with LEP inmates who spoke other non-English languages.

³ *Mejia v. N.J. Dep't of Corrs.*, 141 A.3d 1209, 1215 n.8 (N.J. Super. Ct. App. Div. 2016) (Quoting “Health Services Unit Internal Management Procedures,” which state: “For inmates with special communication needs staff will obtain permission from the inmate for use of an interpreter or telephonic translation service and arrange for such services,” but noting “Mejia’s actual mental health records reflect he was provided an interpreter for a mental health check-up on May 6, 2016, but had not been provided one for psychological check-ups previously.”).

Inmates also explained that LEP inmates were subject to discipline for failing to follow NJDOC staff orders provided only in English.

- Policy Number SUP.004.001, Section III, states that “[e]xcept in emergency circumstances, other inmates shall not be utilized to provide interpretation for LEP inmates in significant matters that include psychological, medical and safety. An exception may be made for trained counsel substitutes in disciplinary proceedings.” Some NJDOC staff shared that they sometimes use self-identified bilingual inmates to serve as interpreters for conversations between NJDOC staff and LEP inmates.
- Policy Number PCS.008.LEP.01, Section IV.B.1, requires that in the “event that a Civil Service Certified Bilingual staff, Spanish-speaking social services employee is not available, the Administrator will assign a bilingual NJDOC employee assessed to be competent to serve as an interpreter.” NJDOC staff told us that they sometimes relied on other staff who self-identify as “bilingual” to serve as interpreters for communications with LEP inmates and that there was no way to know if these NJDOC staff are competent to serve as interpreters. Only one NJDOC staff person we spoke with had their language skills assessed, in 1995, and that staff person informed us that they have not had those skills reassessed.

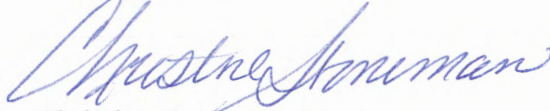
The decision to close this investigation is contingent upon the NJDOC’s report on the steps it is taking to address the concerns we identified in our recent on-site visit. We remain available to assist you.

We will continue to review any complaints or information we receive regarding the language assistance services NJDOC provides to LEP individuals. DOJ will closely scrutinize all allegations, and if necessary to assess compliance with Title VI, will open a new investigation or a compliance review. We are obligated to inform you that no one may intimidate, threaten, coerce, or discriminate against any individual because they have participated in this investigation or because they have taken any action to secure rights protected by Title VI or any other laws we enforce. Any individual alleging such harassment, intimidation, or retaliation may file a complaint with DOJ.

This letter does not address any other complaints or potential Title VI violations; nor does it affect NJDOC’s continuing responsibility to comply with Title VI and all other federal laws and regulations. The content of this letter does not preclude DOJ from carrying out its duties under Title VI or any other statute DOJ is authorized to enforce should a complaint be filed or any other information presented that alleges noncompliance. In addition, this letter does not affect any rights the complainants may have to file a private lawsuit in a court of law.

Please note that this letter is a public document and will be posted on DOJ websites. If you have any questions, please contact Mr. Michael Mulé at 202-514-4144 or by email at michael.mule@usdoj.gov.

Sincerely,



Christine Stoneman
Principal Deputy Chief
Federal Coordination and Compliance Section
Civil Rights Division

cc: Michael E. Campion, Chief
Civil Rights Unit, Civil Division
U.S. Attorney's Office
District of New Jersey