

1 R. ALEXANDER ACOSTA
 Assistant Attorney General
 2
 3 CAROL C. LAM
 United States Attorney
 TOM STAHL, CA Bar #078291
 4 Assistant United States Attorney
 Chief, Civil Division
 5 Office of the U.S. Attorney
 Federal Office Building
 6 880 Front Street, Room 6293
 San Diego, California 92101-8893
 7 Telephone: (619) 557-7140
 Facsimile: (619) 557-5004
 8

9 JOSEPH D. RICH, Chief
 JOHN TANNER, Special Counsel
 SUSANA LORENZO-GIGUERE, Trial Attorney
 10 Voting Section
 Civil Rights Division
 11 United States Department of Justice
 950 Pennsylvania Ave., N.W. - NWB-7254
 12 Washington, D.C. 20530
 Telephone: (202) 514-9822
 13 Facsimile: (202) 307-3961

14 Counsel for Plaintiff
 United States of America
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16 IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
 17

18 UNITED STATES OF AMERICA,)	CASE No. 04CV1273-IEG(JMA)
)	
19 Plaintiff,)	
)	
20 v.)	<u>NOTICE OF LODGMENT</u>
)	
21 SAN DIEGO COUNTY, CALIFORNIA;)	THREE JUDGE COURT REQUESTED
SALLY MCPHERSON, REGISTRAR OF)	[42 U.S.C. §§1973aa-2]
22 VOTERS, in her official;)	[CivLR 9.2]
capacity; and the SAN DIEGO)	
23 COUNTY BOARD OF SUPERVISORS,)	
)	
24 Defendants.)	
)	

25
 26 PLEASE TAKE NOTICE that on June 23, 2004, Plaintiff United
 27 States of America, lodged the Parties' Memorandum of Agreement
 28 concerning matters raised in the Complaint in this case. The

FILED
 04 JUN 23 PM 2:24
 U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 DEPUTY


1 Parties have exchanged signed copies of the Memorandum of
2 Agreement and have agreed that a fully executed copy shall be
3 lodged with the Court for its information.

4 Respectfully submitted this 23d day of June, 2004.

5 JOHN D. ASHCROFT
6 Attorney General

7 R. ALEXANDER ACOSTA
8 Assistant Attorney General
9 Civil Rights Division

10 CAROL C. LAM
11 United States Attorney
12 TOM STAHL, CA Bar #078291
13 Assistant United States Attorney

14 
15 JOSEPH D. RICH
16 JOHN TANNER
17 SUSANA LORENZO-GIGUERE
18 Attorneys
19 Voting Section
20 U.S. Department of Justice
21 Civil Rights Division
22 950 Pennsylvania Avenue N.W.
23 NWB-7254
24 Washington, D.C. 20530
25 (202) 514-9822

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement"), effective this ____ day of June 2004, is entered into by and between the United States of America ("United States") and the County of San Diego ("County").

RECITALS

WHEREAS, County has been subject to the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, for the Spanish language since 1992, 57 Fed. Reg. 43,213 (Sept. 18, 1992); and

WHEREAS, on July 26, 2002, the Director of the Census determined that San Diego County was covered by the Section 203 requirements both for Spanish heritage and Filipino (Tagalog-speaking) citizens; and

WHEREAS, County's coverage is based on a determination that more than 10,000 voting age citizens in San Diego County are members of each language minority group (Spanish or Hispanic heritage and Filipino) who do not speak English well enough to participate effectively in the English-language election process, and the illiteracy rate of these persons as a group is higher than the national illiteracy rate, 67 Fed. Reg. 48,871 (July 26, 2002); and

WHEREAS, since 1992, United States has sent San Diego County and other jurisdictions covered under Section 203 information regarding Section 203's requirements, and has met with County officials to discuss these requirements; and

WHEREAS, United States believes that, notwithstanding County's good faith efforts, it has not fully complied with the requirements of Section 203 for both Spanish-speaking citizens and Tagalog-speaking citizens residing in San Diego County by failing to: 1) make available in Spanish and Tagalog an audible ballot on its electronic voting machines for the March 2, 2004 federal primary election for voters unable to read the ballot; 2) provide for an adequate number of bilingual poll workers trained to assist Spanish- and Tagalog-speaking voters on election day at certain polling places where

such assistance was necessary; 3) make certain minority language materials available to all citizens who rely on such languages; and 4) translate certain election materials and information into Spanish and Tagalog; and

WHEREAS, United States and County both want to avoid litigation and have agreed that the issues raised by United States should be resolved without litigation through the terms of this Agreement; and

WHEREAS, the 2000 Census also showed a Vietnamese-speaking voting age population with limited English proficiency of 9,915, or only 85 below the 10,000 person statutory threshold, and San Diego County wishes to serve this growing community,

WHEREFORE, United States and County stipulate and agree as follows:

STIPULATION

1. County, its employees, agents, successors in office, and all persons acting in concert with them, agree to provide in Spanish and in Tagalog any "registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process, including ballots" that they provide in English, as required by Section 203 of the Voting Rights Act, as amended. 42 U.S.C. 1973aa-1a(c). The terms of this Agreement apply to all federal, state, and local elections administered by County, including County-run elections for city, school district, and other political subdivisions of County. Whenever County enters into an election services contract with any other entity, political subdivision, or political party to conduct an election on behalf of that entity, County shall require such other entity to agree to abide by the terms of this Agreement as if such entity were a party to this Agreement with United States, and consistent with the responsibility of each such entity to comply fully with Section 203.

Translation of Election Materials

2. County shall provide all "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," 42 U.S.C. 1973aa-1a(c), in the Spanish and Tagalog languages. County shall ensure that English, Spanish and Tagalog language election information, materials, and announcements provided by County are made equally available.

3. County shall employ trained translators who are familiar, respectively, with Spanish-language and Tagalog-language election terminology to produce clear and accurate written translations.

4. County shall develop and maintain glossaries of Spanish and Tagalog election terminology in consultation with bilingual members of the respective local minority language communities.

5. County shall adopt a checklist identifying each Spanish-language, Tagalog-language, and bilingual or multilingual material that County makes available to the public at each polling place. The checklist shall include for each item an attestation that the poll workers at the polling place posted or made available to voters these materials in both of the minority languages, or a detailed written explanation of why individual items were not posted or available. The inspectors for each polling place must complete and sign this document before the inspector receives payment for work in the election, subject to applicable state and federal law. County shall maintain a record of each failure to complete and sign the checklist.

Dissemination of Minority Language Information

6. County shall ensure that Spanish-language and Tagalog-language election information, materials, and announcements are provided to the same extent as they are provided in English. Spanish-language information shall be distributed in newspapers,

radio, and/or other media that exclusively or regularly publish or broadcast information in Spanish. Tagalog-language information shall be distributed in newspapers, radio, and/or other media that exclusively or regularly publish or broadcast information in Tagalog. These announcements need not be identical in all respect to English-language announcements, but shall be in the form, frequency, and media best calculated to achieve notice and understanding equal to that provided to the English-speaking population and to provide substantially the same information.

7. Subject to Paragraph 8 below, the official ballot and absentee ballots shall be translated bilingually into both English and Spanish, bilingually in Spanish and Tagalog, or multi-lingually; or, on electronic voting machines, shall offer the readily apparent options of a Spanish or a Tagalog ballot, and any audio version of the ballot on such machines shall be available in English, Spanish and Tagalog.

8. For the 2004 general election, County has determined that, because of time constraints and other factors, bilingual ballots cannot be produced and provided from regular, certified and proven sources and cannot be obtained from other sources without unacceptable risk of disruption of the election. County is continuing a diligent inquiry to test this determination, and shall provide to the United States a clear and detailed explanation of the specific problems and risks at issue by July 2, 2004. Accordingly, County shall, consistent with the Attorney General's minority language guidelines:

A. At each polling place identified by the existing County targeting system based on 2000 population, voter request, and voter survey as containing limited English proficient voters, and at each polling place with minority-surnamed registered voters constituting 25 percent of the number necessary for triggering a bilingual poll officials as set forth in paragraphs 14 and 26, County shall provide and make available official ballots in

Spanish and/or Tagalog appropriate to the need in such polling place, and assure that such minority language ballots are made visible and available on an equal basis with English language ballots, provided that the parties may agree to adjust this requirement in light of information that the actual language need in a particular polling place is lesser or greater than this standard;

B. At each precinct described in 8A above, County shall post and display facsimiles of the official ballot (“facsimile ballots”) in English and in the appropriate minority language(s), and County shall affix to the inside of each voting booth in such polling place clearly visible facsimile ballots in English and in each appropriate minority language(s). County shall post and display sample ballots in the appropriate minority language(s) and in English at each precinct described in 8A above, and, in addition County will make facsimile ballots readily available in English for voters to study, mark and take into the voting booth.

C. Such facsimile ballots shall contain a complete and accurate translation of the English ballot, and shall be identical in size, layout and typeface to the official ballot.

D. County shall publicize such procedures according to a program devised in consultation with the Advisory Groups. Such program shall include, among other things use of minority language media, and availability of voting machines and voting booth mock-ups at locations where minority language voters can view, test and practice such procedures.

9. Sample ballots shall be provided in English and Spanish to voters who request such materials or whose place of birth as noted on the voter registration form was

in a nation whose primary language is Spanish. Sample ballots shall be provided in English and Tagalog to voters who request such materials or whose place of birth as noted in the voter registration form was in the Philippines. Any such voter may request and receive instead a sample ballot in English only. County may send, prior to the mailing of sample ballots, a postcard inviting such voters to express a preference and “opt out” of receiving a bilingual sample ballot, subject to agreement by the United States with the form and content of such postcard.

Minority Language Assistance

10. Trained bilingual election personnel shall be available to answer voting-related questions by telephone without cost and during normal business hours and while the polls are open on election days.

11. County shall recruit, hire, and assign election officials able to understand, speak, read, and write Spanish fluently to provide assistance to Spanish-speaking voters at the polls on election days, and County shall recruit, hire, and assign election officials able to understand, speak, read, and write Tagalog fluently to provide assistance to Tagalog-speaking voters at the polls on election days.

12. County shall survey its employees to identify personnel who speak Spanish or Tagalog fluently and, to the extent such employees can be made available to provide assistance, allow and encourage such employees to serve at the polls on election day. As part of its obligation to ensure that entities on whose behalf it conducts elections are fully compliant with Section 203 in their elections, County shall request that each entity for which it conducts elections perform similar surveys of its employees;

13. County shall request that each school district or other educational entity with which County contracts to implement a program that allows and encourages selected bilingual students (as allowed by state law and as part of an educational program devised

by such district) to serve as poll officials on election day for all County elections, including election days that fall on school days, with such students receiving academic credit appropriate to their service as well as all pay and benefits of poll officials; and County shall request from such entities and maintain copies of all election-related materials and information created or disseminated by such entities for each election. County shall advise counsel for the United States of any entity that does not participate. County shall also invite eligible members of the Advisory Groups, discussed below, to serve as poll officials and to encourage other bilingual voters to do so.

14. To supplement the existing County targeting program, any polling place in which there are:

A. 100-249 registered voters with Spanish surnames according to the Bureau of the Census Spanish surname list shall be staffed by at least one Spanish speaking election official; and any polling place where there are 100-249 projected Filipino (projected from the Lauderdale and Kestenbaum Asian surname list of uniquely Filipino surnames, which captures 32 percent of all Filipinos, so that 32 such voters projects to 100), shall be staffed by at least one Tagalog speaking election official;

B. 250-499 registered voters with Spanish surnames shall be staffed by at least two Spanish-speaking election officials; and any polling place where there are 250-499 projected Filipino voters shall be staffed by at least two Tagalog speaking election officials;

C. 500 or more registered voters with Spanish surnames shall be staffed by at least three Spanish speaking election officials; and any polling place where there are 500 or more projected Filipino voters, shall be staffed by at least three Tagalog speaking election officials.

15. County shall employ bilingual personnel, trained in Spanish-language or Tagalog-language election terminology, as appropriate, who shall be on call and available to travel to a polling place not staffed by a bilingual poll worker to provide any necessary assistance to any Spanish or Tagalog speaking voter.

16. Because of the number of shared surnames among Hispanic and Filipino Americans, County shall consult members of the Advisory Group before each election and invite them to identify any necessary and appropriate variations from the formula in Paragraph 14 to more effectively and efficiently serve all minority language voters of County. Such variations may be made on written agreement of the parties.

17. Signs in English, Spanish and Tagalog shall be posted prominently at polling places stating that Spanish- and Tagalog-language assistance is available. At sites without bilingual staff, signs in English, Spanish and Tagalog shall be posted that explain how voters can obtain Spanish- or Tagalog-language assistance.

Election official training

18. Prior to each election, in addition to any required state or county training, County shall train all poll officials and other election personnel present at the polls on the legal requirements of Section 203 of the Voting Rights Act, including making minority language assistance and materials available to voters; and being respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities. In addition to the general training for poll officials, County shall train all bilingual poll officials on Spanish- or Tagalog-language election terminology, voting instructions, and other election-related issues. County shall maintain a record of which poll officials attend training sessions, including the time, location, and training personnel involved.

Response to Complaints About Poll Workers

19. County, upon receipt of complaints by voters, whether oral or written, shall investigate expeditiously any allegations of poll worker hostility toward minority-language voters in any election. The results of the investigation(s) conducted by County shall be reported to the United States. Where there is credible evidence that poll workers have engaged in inappropriate treatment of such voters, County shall remove the poll workers.

Program Coordinator

20. County shall employ an individual to coordinate County's Spanish language election Program ("the Spanish Coordinator"), and an individual to coordinate County's Tagalog language election Program ("the Tagalog Coordinator"), for all elections within County. County shall provide each Coordinator with transportation and other support sufficient to meet the goals of each Program. The Spanish Coordinator shall be able to understand, speak, write, and read fluently both Spanish and English, and the Tagalog Coordinator shall be able to understand, speak, write, and read fluently both Tagalog and English. Each Coordinator shall work under the supervision of the Registrar of Voters. Each Coordinator's responsibilities shall include: coordination of translation of ballots and other election information; development of an election glossary to ensure uniform use of election terminology in Spanish or Tagalog; development and oversight of Spanish or Tagalog publicity programs, including selection of appropriate minority language media for notices and announcements; recruitment and assessment of the minority language; proficiency of bilingual poll officials and interpreters; and managing other aspects of the respective Programs.

Advisory Group

21. Each Coordinator shall establish and chair an Advisory Group to assist and inform each bilingual Program. Each Coordinator shall invite participation from all interested individuals and organizations that work with or serve, respectively, the Spanish-speaking and Tagalog-speaking communities in San Diego County, to determine how most effectively to provide election materials, information, and assistance to minority language voters, and to publicize County's minority language election program. Each Advisory Group shall be open to any interested person or organization. Each Advisory Group shall meet at least once a month in 2004, and as each group determines is necessary in 2005-2006. Each Coordinator shall provide notice of all planned meetings to each member, including the time, location, and agenda for the meeting, at least 14 days in advance of such meeting, although members of the Advisory Group may agree to waive or shorten this time period as necessary. Within five days of each meeting, the Coordinator shall provide a written summary to all members and to the Registrar of Voters of the discussion and any decisions reached at the meeting. If the Registrar of Voters decides not to implement an Advisory Group suggestion or a consensus cannot be reached respecting such suggestion, the Registrar shall provide to the group through the appropriate Coordinator and maintain on file a written statement of the reasons for rejecting such suggestion.

22. County shall transmit to all interested members of each Advisory Group copies, in English and Spanish or in English and Tagalog, as appropriate, of all election information, announcements, and notices that are provided to the electorate and general public and request that the members share such information with their members or clientele.

Evaluation of Plan

23. The parties recognize that regular and ongoing cooperation and reassessment may be necessary to provide the most effective and efficient Spanish-language and Tagalog-language Programs. County shall evaluate each bilingual program after each election (e.g., following 2004 elections) to determine which aspects of such bilingual program are functioning well; whether any aspects need improvement; and how to make needed improvements. The United States shall be available to meet with County following each election to share information it learned through its federal examiners and observers or through other sources which will assist County in its ongoing reassessment pursuant to the Section. Either program may be adjusted at any time upon written agreement of the parties.

Retention of Documents and Reporting Requirements

24. During the duration of this Agreement, County shall make and maintain as public documents written records of all actions taken pursuant to this Agreement.

25. During the duration of this Agreement at least ten (10) days before each County-administered election held in the County, County shall provide to counsel for the United States a list of polling places to be used for such election, the number of poll official appointed and assigned to serve at each polling place who are bilingual, respectively, in English and Spanish and Tagalog; and the number of Spanish-surnamed and Filipino-surnamed voters on the registration list for each precinct and polling place. Within thirty (30) days after each election, County shall provide to counsel for the United States any updated report regarding changes, in these items that occurred at the election, and provide information about all complaints County received at the election regarding language or assistance issues. Unless otherwise specified, or as may be changed from time to time, all reports, notices or any other written communications required to be

submitted under this Agreement shall be sent to the undersigned counsel at the Department of Justice at the following address:

Voting Section
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Ave., N.W. – NWB-7254
Washington, D.C. 20530
Facsimile: (202) 307-3961

Voluntary Vietnamese Program

26. In addition to the actions to be undertaken by County, as set forth above, and notwithstanding that County is not at this time obligated under Section 203 of the Voting Rights Act to take such actions, County agrees to the following provisions, which shall be binding consistent with Paragraph 1 of this Agreement:

A. County shall perform all of the terms and conditions of Paragraphs 2 through 25 above, as they relate to Vietnamese voters, for elections in 2006, and for the November 2004 general election except as limited or defined herein;

B. With respect to paragraph 14 of the Agreement, County shall provide poll officials similarly fluent in Vietnamese and English at each polling place with 32 or more Vietnamese surnamed voters according to the Lauderdale and Kestenbaum surname list, with proportionate assignment of a second (80) or third (160) bilingual official;

C. With respect to the translation and dissemination of election materials for the November 2004 general election, County shall perform all of the terms and conditions of paragraphs 2 through 24 above to the extent possible; however, the parties acknowledge the practical constraints of time

for achieving complete translation of all materials; County shall provide in Vietnamese the following documents, posters and notices:

Voter Registration Affidavit

Official Ballot

Sample Ballot (w/out Voter Information Pamphlet)

California Official Voter Information Guide (State Pamphlet)

Voting Instructions to Absentee Voters

HAVA I.D. Instructions to Absentee Voters

Voting Instructions at the Polls

Provisional Voting Information

ID Badges

Telephone Cards (provides info on how to reach language assistance at the ROV)

Posters:

The Law

No Smoking

We Speak Vietnamese

Bilingual Poll Worker Recruitment Sign

Bilingual Voter Assistance Notice (used for voters to ask for language assistance)

Hours of Voting

Notices:

Notice of Argument Deadline

List of Polls and Officers

Where constraints of time and other practical obstacles arise that interfere with the full translation of all materials and information, County promptly shall advise the Vietnamese Advisory Group members and counsel for the United States of the details of such obstacles and solicit reasonable practicable means to disseminate such information.

Other Provisions

27. This Agreement shall remain formally in effect through March 31, 2007. San Diego County shall continue after that date to comply fully with all of its obligations under the Voting Rights Act.

28. The United States agrees to provide at least fourteen days written notice to County prior to any action to enforce this Agreement, and such notice only shall be given after County has had an opportunity to prepare, offer and discuss a plan or program adjustment to come into compliance with the provisions of this Agreement as permitted in paragraph 23, above.


29. This Agreement may only be modified by written agreement of the Parties.

Agreed to this 23rd day of June, 2004.


AGREED TO:

For UNITED STATES OF AMERICA

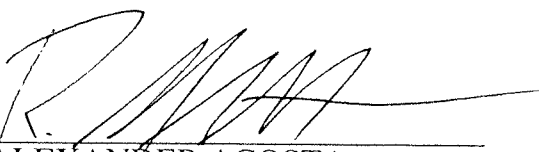
For COUNTY OF SAN DIEGO:



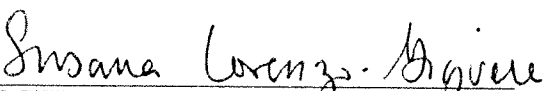
CAROL LAM
United States Attorney



JOHN SANSONE, County Counsel
1600 Pacific Highway, Room 355
San Diego, California 92101



R. ALEXANDER ACOSTA
Assistant Attorney General
Civil Rights Division



JOSEPH D. RICH, Section Chief
JOHN TANNER, Special Litigation Counsel
SUSANA LORENZO-GIGUERE, Trial Attorney
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