



**U.S. Department of Justice**

Civil Rights Division

*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

MAR 08 2012

BY EMAIL AND CERTIFIED MAIL

Honorable John W. Smith  
Director  
North Carolina Administrative Office of the Courts  
P.O. Box 2448  
Raleigh, NC 27602

Re: Investigation of the North Carolina Administrative Office of the Courts  
Complaint No. 171-54M-8

Dear Judge Smith:

We write to report the findings of the Civil Rights Division's investigation of the North Carolina Administrative Office of the Courts (AOC), an office within the North Carolina Judicial Department. As the enclosed findings report explains, we have determined after a comprehensive investigation that the AOC's policies and practices discriminate on the basis of national origin, in violation of federal law, by failing to provide limited English proficient (LEP) individuals with meaningful access to state court proceedings and operations.

The AOC's policies and practices have significant consequences for LEP individuals who are parties or witnesses to North Carolina state court proceedings. Among the harms we identified in the course of our investigation are longer incarceration as a result of continuances caused by the failure to locate an interpreter; serious conflicts of interest caused by allowing state prosecutors to interpret for defendants in criminal proceedings; requiring pro se and indigent litigants to proceed with domestic violence, child custody, housing eviction, wage dispute, and other important proceedings without an interpreter; and other barriers to accessing court proceedings and other court operations. These harms are the function of not only a state interpreter policy that is unduly restrictive, but also of the failure to implement even this limited policy according to its terms. We further found that the AOC is aware of the harm caused by its court policies and practices on LEP individuals.

The Civil Rights Division conducted this investigation after receiving complaints alleging national origin discrimination in the North Carolina state courts. We investigated those complaints pursuant to our authority under Title VI of the Civil Rights Act of 1964 (Title VI), 42

U.S.C. §§ 2000d to 2000d-7, the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), 42 U.S.C. § 3789d(c), and their implementing regulations at 28 C.F.R. Part 42, Subparts C & D. Together, these statutes and regulations prohibit discrimination on the basis of race, color, national origin, sex, and religion by recipients of federal financial assistance. Such recipients must take reasonable steps to provide LEP individuals with meaningful access to their programs and activities. We notified the AOC of this investigation through several notice letters; requested and reviewed documentation regarding the AOC's practices and policies; and met with AOC staff and leadership on several occasions to discuss your policies and the requirements of federal law. We appreciate your cooperation with this investigation.

The AOC is subject to Title VI and the Safe Streets Act because it has accepted millions of dollars from the United States Department of Justice (DOJ) for its programs and activities, both as a direct recipient of DOJ grants, and as a recipient of subgrants made using DOJ funds provided to other North Carolina state recipients. The AOC also signed a contract for each grant of federal funds from DOJ, expressly agreeing that it would comply with Title VI, the Safe Streets Act, and their regulatory requirements.

The attached findings report explains in detail the nature of our investigation and the basis for our conclusion that the AOC has failed and refused to provide meaningful access for LEP individuals to the North Carolina state court system, and that this failure violates Title VI, its implementing regulations, and the related contractual agreements. The United States is deferring a formal determination of noncompliance with the Safe Streets Act and its regulations at this time to provide you an opportunity to voluntarily cooperate in resolving this matter so that your federal funding from DOJ is not immediately at risk. A formal determination of a Safe Streets Act violation initiates immediate administrative procedures to trigger recovery, suspension, or termination of federal funding from DOJ.

We would like to begin immediate negotiations to remedy the AOC's violations of federal law. We recognize that full compliance may take time, and for this reason a critical starting point for coming into compliance will be the AOC's commitment to a reasonable process for ensuring meaningful access to the court system for LEP individuals, through a comprehensive and enforceable agreement that involves the creation of a language access policy, implementation of that policy through a written plan, and effective oversight.

Adequate funding is a vital aspect of compliance, and we recognize that many state and local court systems around the country are struggling with budgetary constraints. The costs of services and the resources available to the court system are part of the determination of what language assistance is reasonably required in order to provide meaningful access. *See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41,455, 41,460 (June 18, 2002). However, fiscal pressures are not a blanket exemption from civil rights requirements, and our investigation has determined that financial constraints do not preclude the AOC from taking further reasonable steps to comply with its federal non-discrimination obligations, for several reasons.

First, according to the AOC's Senior Deputy Director, the AOC has estimated the cost of expanding interpreter services to be approximately \$1.4 million per year. A review of certified

budgets revealed that \$1.4 million would have been 0.3% of the AOC's fiscal year 2011 certified budget of \$463.8 million. *See* State of N.C., Office of State Budget and Mgmt., Post-Legis. Budget Summary 2009-2011, at 200 (2010). Second, as described in the attached findings report, our investigation found that the AOC has refused to provide interpreter services even when doing so would not involve *any* additional financial expenditure. Finally, any focus only on the financial costs of providing additional interpreter services ignores the significant fiscal and other costs of *non*-compliance with the AOC's obligation to take reasonable steps to ensure access to court operations for LEP individuals. It costs money and time to handle appeals and reversals based on the failure to ensure proper interpretation and effective communication. Similarly, delays in providing interpreters often result in multiple continuances, which needlessly waste the time and resources of court staff. And ineffective communication deprives judges and juries of the ability to make reliable decisions; renders victims, witnesses, and defendants effectively absent from proceedings that affect their rights; and causes other significant costs in terms of public safety, child welfare, and confidence in the judicial system.

Moreover, as we have discussed in the past, there are resources available to the AOC to improve access to court proceedings for LEP individuals. The Civil Rights Division has prepared and shared with you a table of federal funding resources that may be available to state court systems to provide language services to LEP individuals. The Division also provides technical assistance on the development of effective language access policies and the use of cost-saving practices, such as remote interpretation, and we have worked cooperatively with many other states to help implement these best practices. The AOC could also make more efficient use of infrastructures already in place in the North Carolina state court system, including broader use of staff interpreters and an already existing telephonic interpreter contract. Court systems in other states – including Colorado, Georgia, Maine, New York, and Pennsylvania – have taken advantage of these and other resources to provide greater access to their court operations for LEP individuals, despite facing similar financial constraints. Communication lies at the heart of the justice system, and language services must be considered part of the cost of doing business; a cost that can pale in comparison to the costs associated with appeals, reversals, delays, deprivations of liberty, and hazards to public safety, all of which are caused by the failure to ensure accurate and timely communication.

I am in receipt of your March 6 letter, in which you acknowledged your sensitivity to the need for interpreters in providing access to North Carolina courts. I also appreciate your willingness to work in good faith to resolve these issues. I respectfully disagree with your observation that “there appears to be a misunderstanding or failure of communication between the Judicial Branch of North Carolina and [our] office.” In responding to our concerns regarding compliance with federal civil rights law, you have been consistent in asserting that state-law barriers and financial constraints prevent you from expanding interpreter services. We respectfully disagree with your assessment that a state law supersedes and eliminates your civil rights obligations under federal law as a recipient of federal financial assistance. We are quite willing to explain further our legal position that federal law preempts the state-law provisions that you have cited as a barrier to compliance.

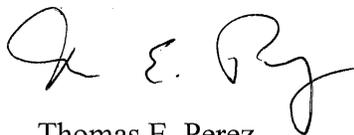
Time is of the essence, and we would like to initiate a process at the earliest opportunity to determine whether a voluntary comprehensive resolution is feasible. As a result, we would appreciate if you would notify us by March 29, 2012, if you are interested in voluntarily

remedying the violations of federal law that our investigation identified. If the AOC is not interested in voluntary compliance, or if we determine that efforts to achieve compliance by voluntary means are unsuccessful, the United States will take appropriate enforcement action as authorized by Title VI and the Safe Streets Act. The United States may initiate civil litigation pursuant to Title VI, the related contractual agreements, and the pattern-or-practice provisions of the Safe Streets Act, which authorize both injunctive relief and the termination of federal financial assistance. In addition, the United States may initiate administrative procedures to trigger recovery, suspension, or termination of federal funding from DOJ by making a formal determination of a Safe Streets Act violation or by making a determination, under Title VI, that compliance cannot be secured by voluntary means. As we have noted, we would prefer to avoid both litigation and the termination of federal financial assistance, and therefore continue to prefer that we enter into a settlement agreement that will voluntarily secure the AOC's compliance with federal law. We have worked successfully and collaboratively with other state court systems to address these issues, and hope to do so here as well.

In addition, we are aware that the AOC receives federal financial assistance from federal agencies other than DOJ, including the United States Department of Health and Human Services. Each federal agency is responsible for enforcing Title VI as to the financial assistance it distributes. We are accordingly providing a copy of this notice letter and findings report to the HHS Office of Civil Rights for any further action that office may consider appropriate. *See* 28 C.F.R. §§ 42.412, 50.3; Executive Order 12250, § 1-201, 45 Fed. Reg. 72,995 (Nov. 4, 1980).

Please note that this letter is a public document and will be posted on the Civil Rights Division's website. We look forward to working with you to resolve this matter. If you have any questions, please contact Deena Jang, Chief of the Federal Coordination and Compliance Section, at (202) 307-2222.

Sincerely,



Thomas E. Perez  
Assistant Attorney General

cc: Honorable Sarah Parker  
Chief Justice  
North Carolina Supreme Court  
Pamela Weaver Best  
Deputy Legal Counsel  
Administrative Office of the Courts

Enclosure

## REPORT OF FINDINGS

*Complaint No. 171-54M-8*

The Civil Rights Division of the U.S. Department of Justice (DOJ) has conducted an investigation of allegations of national origin discrimination by the North Carolina Administrative Office of the Courts (AOC), an office within the North Carolina Judicial Department. Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d to 2000d-7, the Omnibus Crime Control and Safe Streets Act (Safe Streets Act), 42 U.S.C. § 3789d(c), and their implementing regulations, 28 C.F.R. Part 42, Subparts C & D, together provide that programs or activities receiving federal financial assistance may not discriminate on the basis of race, color, national origin, religion, or sex. In order to comply with Title VI, the Safe Streets Act, and their implementing regulations, recipients of federal financial assistance must provide meaningful access to limited English proficient (LEP) individuals. The AOC is a recipient of federal financial assistance from DOJ.

This report describes our investigation of the AOC's language services policies, procedures, and practices; summarizes relevant federal law; and outlines our factual findings in order to provide notice of the categories of violations. As described more fully below, our investigation establishes that the AOC discriminates against national origin minorities by failing to provide meaningful access for LEP individuals to the North Carolina state court system. More specifically, we found that the AOC's policies, practices, and procedures fail to provide Latino and other national origin minority LEP individuals with meaningful access to court proceedings and operations. We have concluded that these practices violate Title VI, its implementing regulations, and related contractual agreements. The United States will defer a formal determination of noncompliance with the Safe Streets Act and its implementing regulations at this time, to provide the AOC with an opportunity to cooperate in resolving this matter so that federal funding from DOJ is not immediately at risk.<sup>1</sup>

### **I. Summary of Findings**

The AOC's language access policies, procedures, and practices affect a large segment of the population of North Carolina. Approximately 10% of North Carolina's residents speak a language other than English.<sup>2</sup> Over six hundred thousand people five years old and older in North Carolina speak Spanish, and more than half of these Spanish-speakers (308,429) speak English less than very well and are considered LEP.<sup>3</sup> Among other national origin minority groups in North Carolina with high incidence of limited English proficiency, 61% of the 19,945

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<sup>1</sup> Unlike Title VI, the Safe Streets Act's processes for suspending, terminating, and seeking repayment of federal funds are automatically triggered once a formal determination of noncompliance is made. *See* 42 U.S.C. § 3789d(c)(2); 28 C.F.R. §§ 42.208, 42.210, 42.212, 42.213. In the interest of giving the AOC an opportunity to comply with its nondiscrimination obligations voluntarily before the process of fund termination begins, we are deferring this final determination.

<sup>2</sup> U.S. Census Bureau, 2006-2010 American Community Survey 5-Year Estimates, Table S1601; using American Factfinder, <http://factfinder.census.gov>.

<sup>3</sup> U.S. Census Bureau, 2006-2010 American Community Survey 5-Year Estimates, Table B16001; using American Factfinder, <http://factfinder.census.gov>.

Vietnamese speakers, 46% of the 25,412 speakers of Chinese languages (such as Mandarin and Cantonese), and 33% of the 15,061 Arabic speakers report speaking English less than very well.<sup>4</sup>

The AOC's policies and practices violate the nondiscrimination provisions of Title VI and its implementing regulations, as well as the contractual obligations that the AOC agreed to as a condition of receiving grant awards from DOJ. National origin minority LEP individuals have difficulty participating in proceedings, face barriers to court services and programs, and incur delays, costs, and other disadvantages because of their language ability. We found:

- A. The AOC impermissibly restricts the types of proceedings in which the AOC will provide interpreters.<sup>5</sup> For instance, AOC policy does not provide interpreters in child custody hearings; child support hearings, civil no-contact order 50C proceedings, foreclosures, and divorce proceedings; in all small claims court matters, which can include wage disputes and eviction proceedings; to non-indigent defendants<sup>6</sup> for criminal and traffic matters, non-indigent respondents in domestic violence 50B proceedings and involuntary commitment proceedings, and non-indigent parents in juvenile proceedings; and in post-judgment services centers where a defendant's sentence is coordinated and monitored.
- B. The AOC does not ensure that even the limited requirements of current AOC policy are met across the state.
- C. AOC policy and practices result in numerous types of court proceedings moving forward without any language assistance for LEP individuals who therefore are unable to meaningfully participate in their case, causing harmful delays and outcomes.
- D. The AOC does not adequately notify LEP individuals of their right to an interpreter, ensure effective scheduling of interpreters, or translate all vital documents.
- E. Budget constraints do not excuse the AOC's failure to provide LEP individuals with meaningful access to court operations in this case.
- F. Despite knowledge of the adverse impact of its policy on LEP individuals, the AOC has not remedied these harms.

The evidence uncovered during our investigation supports the legal finding that the AOC's denial of meaningful access to LEP individuals constitutes discrimination on the basis of national origin in violation of Title VI and the Title VI implementing regulations, and is also a breach of the AOC's contractual agreement to comply with these obligations.

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<sup>4</sup> *Id.*

<sup>5</sup> For purposes of this letter, "provide" or "providing" an interpreter means appointing an interpreter free of charge to an LEP individual.

<sup>6</sup> North Carolina defines an indigent person as someone "who is financially unable to secure legal representation and to provide all other necessary expenses of representation in an action or proceeding[.]" N.C. Gen. Stat. § 7A-450(a). Judges have wide discretion in determining indigency. Factors for such a determination can include the severity of the crime, the cost of retainer for representation, the moving party's assets and liabilities, among others. We received reports in the course of our investigation that this standard is inconsistently applied.

## II. Legal Discussion

### A. Title VI, Safe Streets Act, and their Implementing Regulations

Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. The Safe Streets Act similarly prohibits discrimination on the basis of race, color, and national origin, as well as sex and religion, by recipients of federal financial assistance. 42 U.S.C. § 3789d(c). As implemented by DOJ regulations, these prohibitions include intentional discrimination as well as practices that have a discriminatory effect on the basis of protected grounds. *See* 28 C.F.R. §§ 42.104, 42.203.

The Supreme Court decided nearly four decades ago that the prohibition on national origin discrimination in Title VI and its implementing regulations can be violated by the denial of federally-funded program benefits on the basis of English proficiency. *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (“It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents’ school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by” Title VI regulations.). Other courts have likewise held that the failure by a recipient to provide meaningful access to LEP persons can violate Title VI’s prohibition of national origin discrimination. *See, e.g., Sandoval v. Hagan*, 197 F.3d 484, 510-11 (11th Cir. 1999) (holding that English-only policy for driver’s license applications constituted national origin discrimination under Title VI), *rev’d on other grounds sub nom. Alexander v. Sandoval*, 532 U.S. 275 (2001); *Almendares v. Palmer*, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003) (holding that allegations of failure to ensure bilingual services in a food stamp program could constitute a violation of Title VI); *Nat’l Multi Hous. Council v. Jackson*, 539 F. Supp. 2d 425, 430 (D.D.C. 2008) (“Longstanding Justice Department regulations also expressly require communication between funding recipients and program beneficiaries in languages other than English to ensure Title VI compliance.” (citing 28 C.F.R. § 42.405(d)); *cf. Ling v. State*, 702 S.E. 2d 881,884 (Ga. 2010) (“[A]s a recipient of federal funding, the court system in this State is obligated to provide persons who are ‘limited English proficient’ with meaningful access to the courts in order to comply with Title VI . . . [and the] Safe Streets Act . . .”).

DOJ guidance documents have also made clear that Title VI and the Safe Streets Act require meaningful access by LEP persons in all programs and activities that receive federal financial assistance from DOJ, including state court operations. Executive Order 13166 required each federal agency that extends financial assistance to issue guidance explaining the obligations of their recipients to ensure meaningful access by LEP persons to federally assisted programs and activities. *See* 65 Fed. Reg. 50,121 (Aug. 16, 2000). The DOJ guidance issued pursuant to this requirement states that recipients of financial assistance from DOJ should undertake “every effort . . . to ensure competent interpretation for LEP individuals during all hearings, trials, and motions.” *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41,455, 41,471 (June 18, 2002) (DOJ Guidance). And, the Assistant Attorney General for the Civil Rights Division issued a guidance letter in August 2010 to all Chief Justices and State Court Administrators describing the obligation of state courts under Title VI to provide LEP

individuals with meaningful access to court proceedings, notwithstanding any conflicting state or local laws or court rules. *See* Letter from Assistant Attorney General Thomas Perez to Chief Justices and State Court Administrators 2 (Aug. 16, 2010).

DOJ is authorized to investigate complaints to determine a recipient’s compliance with Title VI, the Safe Streets Act, and their implementing regulations; to issue findings; and where appropriate, to negotiate and secure voluntary compliance. *See* 28 C.F.R. Part 42, Subparts C & D. When DOJ is unable to secure voluntary compliance by a recipient, DOJ has the authority to suspend or terminate financial assistance or to bring a civil suit to enforce the rights of the United States. *See* 42 U.S.C. § 2000d-1; 28 C.F.R. § 42.108. A formal determination of a Safe Streets Act violation automatically initiates administrative procedures to trigger recovery, suspension, or termination of federal funding from DOJ, and the United States may file a pattern or practice suit under the Safe Streets Act at any time. *See* 42 U.S.C. § 3789d(c); 28 C.F.R. §§ 42.208, 42.210, 42.212, 42.213, 42.215.

## **B. Contractual Obligations**

Federal grant recipients are bound to comply with the nondiscrimination requirements of Title VI and the Safe Streets Act not only by statute, but also by contract. The Title VI regulations require that every application for federal financial assistance “shall, as a condition to its approval . . . , contain or be accompanied by an assurance that the program will be conducted . . . in compliance with all requirements imposed by or pursuant to this subpart.” 28 C.F.R. § 42.105(a)(1); *see also* 28 C.F.R. 42.204(a) (Safe Streets Act) (“Every application for Federal financial assistance to which this subpart applies shall, as a condition of approval of such application and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by an assurance that the applicant will comply with all applicable nondiscrimination requirements . . . .”). DOJ has the authority to enforce the contractual obligations attendant to receipt of its federal financial assistance. *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 603 n.24 (1983) (noting that “the Federal Government can always sue any recipient who fails to comply with the terms of the grant agreement” under Title VI) (opinion of White, J.).

Since 2000, the AOC has received at least \$19 million dollars in awards from DOJ alone.<sup>7</sup> Each application for federal financial assistance was accompanied by a contractual assurance that the program would be conducted in compliance with all of the requirements set forth in Title VI, the Safe Streets Act, and their implementing regulations. For example, as a recipient of several grants from the Office of Justice Programs and Office on Violence Against Women, the AOC assured DOJ that it will comply with Title VI and the Safe Streets Act. In connection with several current grant awards, the AOC was further notified of its obligation to

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<sup>7</sup> This number is a low estimate of funding that the North Carolina Judicial Department has received from DOJ, in that this figure does not include all awards in which the AOC was a subgrantee; all awards in which the AOC Director signed the award assurance but another entity, such as a specific judicial district, actually applied for the award; or awards provided to other entities within the Judicial Department. Including these awards would increase the total amount of federal financial assistance the AOC receives. The AOC also receives funding from other federal agencies, including from the United States Department of Health and Human Services. In 2008, the AOC received \$68 million in American Recovery and Reinvestment Act (ARRA) funds from various federal sources.

comply with civil rights requirements as set forth in a letter from the Office for Civil Rights in DOJ's Office of Justice Programs, which specifically identifies the Title VI obligation to provide meaningful access to LEP individuals. In addition, a recent grant from DOJ's Bureau of Justice Assistance to the AOC was approved subject to the AOC's certification that "Limited English Proficiency persons have meaningful access to the services under this program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary."

In addition, we have identified funds awarded to the North Carolina Department of Crime Control and Public Safety (NCDCCPS), such as STOP formula grants from DOJ's Office on Violence Against Women, that require NCDCCPS to provide at least five percent to the courts. Other awards, such as a Victim Assistance Formula Grant, were also awarded to NCDCCPS and sub-awarded to programs or activities of the North Carolina Judicial Department. As a sub-recipient of awards to NCDCCPS, the AOC is bound by the non-discrimination assurance agreements that the NCDCCPS signed as a condition of receiving its grants. 28 C.F.R. §§ 42.102(f), 42.105(b), 42.202(n), 42.204(a).

### **III. Investigative Background**

The AOC is the state's administrative agency for the Judicial Department. The AOC assists courts statewide by providing personnel, financial, and information services. In 2006, the General Assembly authorized the AOC to prescribe mandatory policies to be uniformly implemented for appointing and paying for foreign language interpreters. In February 2007, the AOC published a guidance document to comply with the legislature's authorization. *See Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System* (February 2007).<sup>8</sup>

In April 2007, the Civil Rights Division initiated a Title VI investigation of the AOC based on a complaint alleging the AOC failed to provide LEP individuals with meaningful access to their programs and activities and treated Hispanics unequally as a result of the AOC's mandatory policies. The complainant specifically alleged that the AOC utilized an interpreter who provided incomplete and unprofessional interpretations, and who referred to Hispanic individuals in a derogatory manner on a white supremacist website. The interpreter resigned. The complainant also alleged that the AOC does not provide interpreters for LEP Spanish speakers facing eviction. The AOC provided a response to our request for data in September 2007 and we conducted an onsite visit in February 2008. This onsite visit included meetings with AOC officials, Alamance and Wake County judges, court staff, interpreters, advocates, and practitioners. We also observed proceedings in Alamance and Wake County courts.

During our meeting with AOC officials, and in a series of follow-up telephonic and e-mail communications, we explained that the AOC's denial of language access in many court

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<sup>8</sup> This document is available online at [www.nccourts.org/citizens/cprograms/foreign/documents/guidelines.pdf](http://www.nccourts.org/citizens/cprograms/foreign/documents/guidelines.pdf).

proceedings and operations raised significant Title VI compliance concerns. Since the 2007 complaint, the AOC has made some advancements in ensuring certification of more Spanish language contract interpreters and setting deadlines for non-certified Spanish interpreters to become certified or risk being unable to interpret in the courts.<sup>9</sup> As described further in this findings report, these efforts alone are not sufficient for the AOC to meet its non-discrimination obligations; but the Division undertook to secure the AOC's voluntary compliance by providing guidance and offering technical assistance.

A second complaint was filed with the Division on May 16, 2011, alleging that the North Carolina Judicial Branch, through the AOC, fails to provide LEP individuals with meaningful access to the courts, including intentional refusal to provide free interpreters to LEP individuals litigating or attempting to litigate civil claims. On June 22, 2011, we notified the AOC that we would expand our investigation to include this complaint and to review the AOC's compliance with Title VI and the Safe Streets Act. This letter also included a request for documents and responses to a number of questions.<sup>10</sup> Since that time, our investigation has included three onsite visits and more than 80 interviews. During these visits, we have spoken with the AOC Director, senior AOC staff, judges, court staff, contract and staff interpreters, complainants, practitioners, advocates, and litigants. AOC counsel was present for the majority of interviews conducted with court officials and staff. We also visited courthouses and observed proceedings in central, eastern, and western North Carolina.

#### **IV. Factual Findings**

As described in more detail below, the AOC's language access policy establishes that the AOC will only provide an LEP individual with a free interpreter in a limited subset of court proceedings. The AOC admits that it does not authorize courts to provide interpreters free of charge in many types of proceedings in the North Carolina state courts. We also found that the AOC routinely fails to meet its own standards even in the limited circumstances where free interpreters are authorized.

Our investigation has concluded that because of these policies and practices, the AOC – through the AOC staff, local court staff, contract interpreters, and judges<sup>11</sup> – is conducting court

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<sup>9</sup> Our understanding is that there are no North Carolina state certified interpreters in any other language.

<sup>10</sup> The AOC sent us a response to our request for information; however, we found several of the responses to be incomplete. In particular, the AOC did not respond to our questions regarding policy, procedure, or practice differences among the various local courts. The AOC provided the number of non-Spanish interpreter assignments as requested but did not provide similar data regarding the number of Spanish-speaking individuals who requested language services, although we understand that staff and contract interpreters report this information to the AOC.

<sup>11</sup> The AOC has asserted that it has limited influence over judges because judges are independently elected constitutional officers. However, AOC has stated that per the General Assembly, the AOC's policies are mandatory and are to be applied uniformly throughout the state: "During the 2006 legislative session, the General Assembly authorized the Administrative Office of the Courts (AOC) to adopt mandatory policies and procedures for the appointment and payment of foreign language interpreters (G.S. 7A-314(f) and G.S. 7A-343(9c)). These policies and procedures are to be applied uniformly throughout the General Court of Justice." *Policies and Best Practices* 3. In addition, several judges told us in the course of our investigation that they consider AOC policies to be mandatory. For example, a Superior Court Judge stated that he considers the AOC "to be one of his bosses," and a District Court Judge told us that she and other judges follow the AOC language access policy and other policies and

proceedings and other court operations in a manner that results in an impermissible discriminatory impact on national origin minorities, and that fails to provide LEP individuals meaningful access to the courts. This failure to ensure meaningful access has resulted in severe consequences, including needlessly prolonging the amount of time one is incarcerated, and loss of custody rights, wages, and access to one's home. The AOC is aware that the limitations it places on language assistance services cause harm to national origin minorities and are inconsistent with DOJ's interpretation and guidance regarding Title VI and the implementing regulations.

**A. The AOC impermissibly restricts the types of proceedings in which the AOC will provide an interpreter to an LEP individual.**

We found that AOC policy and practice limits the types of proceedings in which it provides interpreters. The AOC's policy only provides interpreters in the following, limited circumstances:

- for state witnesses, victims, indigent defendants, or indigent defendants' witnesses for criminal and traffic matters;
- for all petitioners and indigent respondents in domestic violence 50B proceedings;<sup>12</sup>
- for parents ordered to child custody mediation; indigent respondents in involuntary commitment proceedings; and juveniles and indigent parents for juvenile proceedings.<sup>13</sup>

Although North Carolina law and the AOC guidance state that the AOC will provide interpreters in all instances where the state bears the cost of representation, *see* N.C. Gen. Stat. § 7A-314(f) (2011); *Policies and Best Practices* § 7.2, there are a number of instances in which the state bears the cost of representation but the AOC does not affirmatively state that it will provide an interpreter.<sup>14</sup> In addition, there are many types of cases in which it is the AOC's policy *not* to provide an interpreter, including:

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consequently spend a great deal of time trying to understand them. *See also Lopez-Solano v. Taylor*, No. 09-CVS-6903, Order Denying Plaintiffs' Motion to Appoint Translator (Superior Court for Gaston County, Jan. 21, 2011) (in denying plaintiffs' motion to appoint an interpreter, the court found that "Plaintiffs are indigent and Spanish is their native language," but held that the AOC's guidelines "prohibit the Court from providing foreign language interpreters at state expense in civil cases where the parties are required to bear their own costs of representation").

<sup>12</sup> A "50B proceeding" refers to a proceeding under Chapter 50B of the North Carolina General Statutes, which provides for civil remedies, including protective orders, in domestic violence matters. In a 50B proceeding, the court determines if a domestic violence protective order should be granted when there is a special relationship between the parties.

<sup>13</sup> The AOC policy also states that courts have the power to recoup interpreter fees from indigent defendants. *See Policies and Best Practices* § 7.4 (Assigning the Interpreter's Fee as Costs).

<sup>14</sup> These cases include certain proceedings to terminate parental rights pursuant to N.C. Gen. Stat. §§ 7B-1100 to 7B-1114 (2011), abuse cases involving incompetent indigent adults, and proceedings involving consent for an abortion on an unemancipated minor pursuant to N.C. Gen. Stat. §§ 90-21.6 to 21.10.

- Child custody hearings that are not mediations;<sup>15</sup>
- Child support hearings;
- Civil no-contact order 50C proceedings;<sup>16</sup>
- Non-indigent defendants for criminal and traffic matters;
- Non-indigent respondents in domestic violence 50B proceedings;
- Foreclosure proceedings;
- Divorce proceedings;
- All small claims court matters, which include wage disputes, eviction proceedings, and other proceedings where the claim is \$5,000 or less;
- Non-indigent respondents in involuntary commitment proceedings;
- Non-indigent parents in juvenile proceedings; and
- Post-judgment services centers where a defendant’s sentence is coordinated and monitored.<sup>17</sup>

In its September 2011 data response to DOJ, the AOC stated that it “acknowledges that interpreters are not provided at state expense in certain case types including civil cases and where the party is represented by private counsel.”<sup>18</sup>

In the course of our investigation, the AOC frequently stated its position that North Carolina state law directs interpreter coverage and limits its ability to expand its policy. The AOC interprets North Carolina General Statutes § 7A-314(f) to prohibit the provision of interpreters for any proceeding unless explicitly authorized. However, on its face, § 7A-314(f) does not expressly prohibit the appointment and payment of interpreters for all civil and criminal proceedings; the statute simply authorizes the AOC to provide interpreters for certain types of proceedings and is silent on whether other proceedings can be covered.<sup>19</sup>

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<sup>15</sup> As noted above, it is the AOC’s policy to provide an interpreter in child custody mediation. But if mediation fails and the parties must pursue the matter before a judge, the parties must do so *without* an AOC provided interpreter. We pointed out this inconsistency during our meeting with AOC staff on September 21, 2011, and the AOC’s Senior Deputy Director agreed that this particular policy was inconsistent.

<sup>16</sup> In a proceeding under Chapter 50C of the North Carolina General Statutes, the court determines if a no-contact order should be granted. For a no-contact order to be granted, the individual must show that there is non-consensual sexual conduct or stalking from someone with whom they do not have an intimate or familial relationship.

<sup>17</sup> Some post-judgment programs and activities are coordinated by other North Carolina state agencies and are not subject to this investigation. However, if those programs receive federal financial assistance, they are subject to the same Title VI obligations.

<sup>18</sup> This statement reflects the AOC’s inconsistent interpretation of its own policy regarding the provision of interpreters to indigent defendants represented by private counsel. AOC policy provides that a defendant who is represented by private counsel but can demonstrate indigency is entitled to an interpreter. *See Policies and Best Practices* § 7.2, at 22 (citing *State v. Boyd*, 332 N.C. 101, 107-09 (1992)). However, as discussed below, court staff and judges do not consistently allow criminal defendants represented by private counsel to obtain an interpreter by demonstrating indigency.

<sup>19</sup> *See* N.C. Gen. Stat. § 7A-314(f) (“In any case in which the Judicial Department is bearing the costs of representation for a party and that party or a witness for that party does not speak or understand the English language, and the court appoints a foreign language interpreter to assist that party or witness, the reasonable fee for the interpreter’s services is payable from funds appropriated to the Administrative Office of the Courts. In order to

More importantly, and as the AOC has acknowledged in a similar context, it is a well-established doctrine that regulations under federal laws such as Title VI preempt any inconsistent state law obligations. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 295-96 (1979) (agency regulations implementing federal statutes preempt state law under the Supremacy Clause); *Paul v. United States*, 371 U.S. 245, 253-55 (1963) (state must adhere to federal regulation when there is a conflict); *Free v. Bland*, 369 U.S. 663, 666 (1962) (“[A]ny state law, however clearly within a state’s acknowledged power, which interferes with or is contrary to federal law, must yield.”).

Indeed, the AOC has followed precisely this principle in reconciling the application of state law regarding sign language interpretation with the federal requirements under Title II of the Americans with Disabilities Act. In the “Legal Requirements” section of the AOC’s interpreter use manuals for public defenders and assistant district attorneys, the AOC specifically notes that, although North Carolina state law regarding sign language interpreters provides for less coverage than Title II of the Americans with Disabilities Act, the ADA’s greater obligations must be met. *See, e.g., District Attorneys’ Use of Court Interpreters in the N.C. Court System*, North Carolina Admin. Office of the Courts, at 8-9 (April 2011). The manuals emphasize that “[t]he Judicial Branch bears the cost for the accommodation for the deaf or hard of hearing person **regardless** of whether the proceeding is civil or criminal, and **regardless** of whether the person is indigent.” *Id.* at 9. Though the AOC claims that it cannot provide LEP individuals with interpreters for matters beyond those specifically identified in § 7A-314(f), the AOC does not hold such a limited interpretation when it comes to providing sign language interpreters for individuals who are deaf or hard of hearing.

**B. The AOC does not ensure that even the limited requirements of current AOC policy are met across the state.**

Even in circumstances clearly covered by the AOC’s limited language access policy, North Carolina state courts are not consistently providing language services. Although the AOC’s interpreter policy is mandatory, we found many inconsistencies among the judicial districts. We found instances of interpreters not being appointed in a timely manner; use of friends, family members, advocates, and other individuals to interpret even though their competency is not assessed;<sup>20</sup> and indigent defendants denied the opportunity to demonstrate

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facilitate the disposition of criminal or Chapter 50B cases, the court may authorize the use of a court interpreter, paid from funds appropriated to the Administrative Office of the Courts, in cases in which an interpreter is necessary to assist the court in the efficient transaction of business. The appointment and payment shall be made in accordance with G.S. 7A-343(9c).”).

<sup>20</sup> It is critically important to ensure that interpreters are competent and not merely bilingual. A bilingual person may inaccurately interpret or roughly interpret a summary of communications between the court and an LEP person, they may have a conflict of interest, or they may even be adverse. Under these circumstances, an LEP person is denied meaningful access to court operations in a way that a fluent English speaker is not. The DOJ Guidance emphasizes the importance of interpreter competency and states: “Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English.” DOJ Guidance, 67 Fed. Reg. at 41,461. The AOC guidance acknowledges that interpreter competency is vital and that “simply being bilingual is not enough.” The North Carolina Court System, <http://www.nccourts.org/Citizens/CPrograms/Foreign/Interpreters/Certification/Default.asp> (Nov. 8, 2011). In fact, the AOC’s district attorney guidance states: “Using a properly trained court interpreter

their indigency so that an interpreter could be provided by the court. Specific examples of these problems include:

1. We have spoken with a defense attorney whose indigent client remained in jail for several weeks as a result of continuances caused by failure to locate a Spanish-speaking interpreter. Court documents show that some of these continuances were granted because an interpreter could not be located. According to defense counsel and the victim's counsel, the judge in this consolidated domestic violence and criminal matter asked the victim's advocate to interpret, but defense counsel and the victim's advocate objected because of the conflict of interest. We informed AOC counsel about the defendant's prolonged period of confinement due to the lack of an interpreter. Our office received a response from AOC counsel on this time sensitive matter approximately a week after our initial contact, and an interpreter was eventually appointed.<sup>21</sup>

2. Several criminal defense attorneys reported that assistant district attorneys have interpreted for LEP defendants, which raises serious conflict of interest concerns. One attorney stated that she has seen an assistant district attorney in eastern North Carolina approach multiple LEP defendants and, in seeking to ascertain a plea, ask "leave, yes?"<sup>22</sup> Based on the response to this question, the assistant district attorney has interpreted for defendants in court and has advised judges that the defendants were pleading guilty. A Wake County court staff member also stated that he has seen assistant district attorneys in Wake County interpret for defendants; a practitioner in Durham County stated that it happens there as well.

3. AOC staff, court officials, a judge, defense attorneys, and others reported that many magistrates throughout the state are not providing interpreters for LEP defendants although the AOC has indicated that a telephonic interpretation service is made available to the magistrates.<sup>23</sup> Failure to provide interpretation to LEP defendants can cause significant harm given the wide range of proceedings over which a magistrate presides. In North Carolina, magistrates in criminal cases issue warrants, set bail, and accept guilty pleas for minor misdemeanors and traffic violations. In some counties, they preside over worthless-check proceedings. Judicial districts appear not to have consistent practices for providing language services in matters overseen by a magistrate, although we have found that family and friends are often used to

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ensures full and fair participation and improves access to justice for linguistic minorities in our courts. The court interpreter's purpose is to place the LEP party in a situation equivalent to that of an English-speaking party. Accordingly, the interpreter should interpret for the LEP party everything the party would hear if he or she was an English speaker." *District Attorneys' Use of Court Interpreters*, at 1.

<sup>21</sup> See also Bertrand M. Gutierrez, *Complaint says N.C. Courts Run Afoul of Civil-Rights Laws*, Winston-Salem J. (May 25, 2011), available at <http://www2.journalnow.com/news/2011/may/25/wsmain01-complaint-says-nc-courts-run-afoul-of-civ-ar-1062273/>.

<sup>22</sup> It is our understanding that in asking "leave, yes?," the assistant district attorney is seeking a guilty plea so that deportation proceedings can begin for a defendant not legally present in the United States.

<sup>23</sup> We acknowledge the AOC's efforts in providing language access through telephonic interpreting. In its September 2011 data response, the AOC states that "Magistrates' offices utilize a telephone interpreting service, which provides 24 hour access to interpreters for more than 150 languages."

interpret. The elected clerk in Duplin County informed us that magistrates may allow minors or jail inmates to interpret for LEP litigants in Duplin County.

4. According to criminal defense attorneys practicing in Wake County, indigent LEP defendants are routinely denied interpreters. For example, a practitioner who regularly appears in Wake County indicated that his clients have been denied AOC interpreters because the court refuses to allow requests for an indigency determination, although AOC policy provides for interpreters for indigent defendants with retained counsel. Other practitioners have indicated that certain Wake County courtrooms regularly impose such barriers to seeking an indigency determination.

5. It appears to be regular practice in Beaufort County court to proceed with domestic violence 50B hearings without an AOC certified or registered interpreter for either party. A Deputy Clerk in Beaufort County stated that she works with the local Legal Aid office to provide domestic violence petitioners with bilingual advocates in lieu of AOC certified or registered interpreters. The elected clerk in Duplin County, who the AOC lists as the Duplin County interpreter coordinator, stated that domestic violence petitioners are not provided with interpreters in Duplin because that would violate AOC policy. In addition, a victim's advocate reports that LEP litigants in Lenoir County court are not always provided with an AOC interpreter during domestic violence 50B proceedings. These litigants used friends, family members, advocates, and other individuals to interpret during court proceedings.

These examples demonstrate major gaps in access to competent interpreters, even when AOC policy provides for them.

**C. AOC policy and practices result in numerous types of court proceedings moving forward without any language assistance for LEP individuals who therefore are unable to meaningfully participate in their case, causing harmful delays and outcomes.**

Judicial officials sometimes proceed with a hearing without an interpreter present. This leaves an LEP individual without any means to meaningfully participate in the court proceeding. Among the harmful consequences of this practice that we identified in the course of our investigation are the following:

1. AA lost permanent legal custody of her two children as a result of a hearing in which she was denied an interpreter despite being LEP. Prior to this October 2010 Wake County hearing, AA had custody of her two children. When she attended her trial without an attorney or interpreter, AA indicated that she is LEP. The court transcript shows that AA had great difficulty communicating with the court and understanding the judge, opposing counsel, and witnesses. According to the transcript, AA had difficulty understanding why she was not granted a continuance to secure an attorney and an interpreter, and clearly struggled to communicate basic facts because of her limited English proficiency. AA also had difficulty following testimony and evidence introduced by opposing counsel, including testimony that others sexually abused AA's child while under her supervision. At the end of the permanent custody hearing, AA lost custody of her children, though AA did not understand the result until after the hearing when she spoke with a child services employee.

2. BB, an LEP Arabic speaker appearing without counsel, was twice denied an interpreter in domestic violence proceedings. Court documents show she filed a domestic violence protective order against her ex-husband in Wake County in April 2009. The court did not provide BB with an interpreter although she was entitled to one under AOC policy. According to witnesses, BB had difficulty communicating with the court, and the judge did not grant BB's request for a protective order in part because the judge could not understand her. In June 2009, BB's ex-husband, an English speaker represented by counsel, filed for a restraining order against BB in Guilford County. The court eventually dismissed the action but only after conducting a hearing without an interpreter present. According to BB, and as a recording of the proceeding makes clear, BB had difficulty understanding the court. When the judge asked BB if she needed an interpreter, BB responded "What is an interpreter?" The hearing proceeded without a court-provided interpreter and BB put forward her defense, including testifying and cross-examining her ex-husband, without the assistance of an interpreter.

3. According to a court recording, when CC attempted to fight an annulment in Chatham County court, the judge used her husband, an adverse party, as the interpreter and translator. In July 2011, shortly after CC's counsel explained to the judge that CC is LEP, the judge allowed CC's husband to question CC in English. When CC had difficulty communicating in English, the judge allowed CC's husband to question CC in English, interpret those questions into Spanish for CC, and then roughly interpret her answers for the court. In addition, the judge allowed CC's husband to translate key evidence that CC submitted to the court, including documentary evidence that the court relied on in holding that CC's husband had met his burden to show grounds for an annulment.

4. DD had no attorney or interpreter for a child custody hearing in July 2011 in Chatham County. A court recording shows that the judge asked DD if he needed an interpreter and DD said yes. Despite this answer, the judge proceeded without an interpreter. During the proceeding, opposing counsel asked to speak with DD outside the courtroom. The judge agreed when opposing counsel indicated she spoke a little Spanish. After meeting with DD, opposing counsel presented the court with a consent decree. The judge asked both parties in English if they understood the decree, but did not ask for an interpreter or translator to assist DD. The judge signed the consent decree.

5. An interview with EE and her attorney revealed that EE was evicted without being able to communicate with the court. During her small claims court eviction hearing in November 2010, the Wake County court refused to provide EE with an interpreter. As a result, EE had great difficulty understanding the court. EE was evicted during the proceeding but did not know this until it was explained to her after the hearing.

6. An advocate informed us that failure to provide interpretation for FF may have resulted in denial of a domestic violence protective order and an unfavorable verdict in a missed rental payments case. After her husband allegedly attacked her, FF sought a domestic violence protective order at the Gaston County court in 2010. According to witnesses, the judge did not provide FF with an interpreter and dismissed her case because she was unable to communicate to the court the allegations against her husband. In a separate matter, after FF was unable to pay her rent and vacated her home, she became a defendant to a Mecklenburg County small claims court case because she allegedly owed outstanding rent payments for the apartment she and her

children vacated. Knowing that she could not afford an interpreter for the hearing, FF prepared a translated written statement of facts with assistance from a local advocacy organization, but the magistrate refused to read her statement. She lost her case.

7. According to GG, he did not have an interpreter during a February 2011 small claims court hearing for unpaid wages. At the hearing, GG asked the magistrate in Spanish for a continuance to get an interpreter. GG thought that the magistrate agreed to his request but the magistrate did not grant a continuance and went on with the proceeding. GG did not understand what occurred and had difficulty communicating with the court. GG lost the case. At the time of the hearing, GG's income was below the federal poverty level.

These examples are illustrative, but not exhaustive, of the consequences we identified in the course of our investigation of the AOC's failure to provide interpreters in court proceedings.

**D. The AOC does not adequately notify LEP individuals of their right to an interpreter, ensure effective scheduling of interpreters, or translate all vital documents.**

The manner in which the AOC operates its language services program leads to additional denials of meaningful access to court proceedings. Our investigation identified systemic failures to provide notice to LEP individuals of their right to language services; inefficient scheduling policies that result in ineffective and inconsistent interpreter coverage; and an absence of translated forms that are necessary for many court proceedings.

**1. Notice**

We found few formal efforts to provide LEP individuals with notice of their right to language services or their obligation, per AOC policy, to pay for their own interpreter.<sup>24</sup> In response to our June 22, 2011 request for information regarding how the AOC provides notice of language services to LEP individuals, the AOC's only response was to provide an excerpt of the instructions provided to a court official if he or she uses the telephonic interpreting service during a first appearance. It is not clear how these instructions provide notice to anyone other than court officials utilizing the telephonic interpretation system for first appearances.

We further found that because of the absence of regular notice procedures, LEP individuals incur delays and greater costs even beyond those associated with paying for an interpreter. For example, according to an interview with HH and a review of court documents, HH sought \$2,000 in unpaid wages due to an allegedly bad check he received from his employer. HH did not know he had to bring a Spanish interpreter to his court hearing. HH had to pay a \$98 fee to file the claim in Mecklenburg County small claims court. The presiding magistrate told HH that he needed an interpreter and dismissed his case, but HH did not understand that his case

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<sup>24</sup> In Mecklenburg County, we obtained a notice given to LEP litigants at foreclosure hearings. The notice states that an interpreter will not be provided by the court, but a litigant can independently arrange for an interpreter to provide assistance at the next hearing. This informal notice is written in English and Spanish. In addition, as of May 2011, there was a sign outside a small claims courthouse in Wake County that reads in Spanish and English that if a litigant needs an interpreter, the litigant will need to bring one.

was dismissed. Subsequently, HH went to court again and paid another \$98 filing fee, and an additional \$160 for an interpreter. The magistrate at this hearing told him to go to arbitration. After this instance, HH went to an arbitrator, and paid an additional \$50 in fees as well as the cost of an interpreter. The arbitrator ruled in favor of HH and awarded him court fees, but not interpreter fees.

## **2. Inefficient practices in assignment of interpreters**

We also found that county courthouses follow a wide range of practices, that are largely ad hoc, for identifying LEP Spanish speakers. The Buncombe County staff interpreter, for example, attempts to identify interpreter need based on the last names of defendants listed on the criminal docket. A contract interpreter in Henderson County stated that she also reviews the last names of parties on the criminal docket, and spends a fair amount of time trying to determine interpreter needs through other inefficient processes, with little support from the AOC. That interpreter has made several attempts to create a system in which jail staff identifies whether any LEP individuals need interpreting assistance for first appearances, but these efforts have been met with resistance. In Duplin County, a contract interpreter stated that if she is in a courtroom and a person answers in Spanish, she will interpret; or an assistant district attorney or court staff member will notify her when she is needed. Our investigation has determined that these ad hoc practices, and the failure to implement systemic methods for identifying the need for interpreter services, have caused both case delays and the failure to provide necessary language services.

## **3. Forms**

Furthermore, the AOC denies LEP individuals access to many basic court forms. The vast majority of the AOC's forms are only in English, including the affidavit of indigency, which a criminal LEP defendant represented by counsel or appearing pro se would need to provide in order to get an interpreter.<sup>25</sup> The AOC has translated a limited number of court forms into Spanish, and none have been translated into any other language. The AOC told us in the course of our investigation that it will translate forms by request, but it is not clear how an LEP individual would know about this service because neither the AOC Web site nor AOC policy discusses it. Also, while those AOC forms that have been translated into Spanish are available on the AOC website, accessing these translated forms online presents further difficulties for LEP individuals, because the instructions on how to search for court forms are provided only in English.

These practices further demonstrate the barriers that LEP individuals face when attempting to access court services in North Carolina.

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<sup>25</sup> According to the AOC website as of March 2012, the Spanish translation of the indigency affidavit is "Unavailable – but under review." See North Carolina Court System, <http://www.nccourts.org/Forms/FormSearchResults.asp>.

**E. Budget constraints do not excuse the AOC’s failure to provide LEP individuals with meaningful access to court operations in this case.**

As noted, throughout our investigation, the AOC has identified fiscal constraints as one reason for its failure to expand interpreter services to provide greater access to court proceedings for LEP individuals. Although fiscal circumstances can, in some instances, be one consideration in determining whether a recipient of federal funds has fulfilled its obligation to provide meaningful access to all of its programs and activities, our investigation concluded that financial constraints do not preclude the AOC from taking further reasonable steps to comply with its federal non-discrimination obligations.

We are aware of the budget strain many state court systems are under. The Division has accordingly provided, as guidance, a non-exhaustive list of factors DOJ considers in determining when a state court system is making a reasonable effort to provide meaningful access to court operations, in light of fiscal realities. *See* Letter from Assistant Attorney General Thomas Perez to Chief Justices and State Court Administrators (Aug. 16, 2010). Those factors include:

- The extent to which current language access deficiencies reflect the impact of the fiscal crisis as demonstrated by previous success in providing meaningful access;
- The extent to which other essential court operations are being restricted or defunded;
- The extent to which the court system has secured additional revenues from fees, fines, grants, or other sources, and has increased efficiency through collaboration, technology, or other means;
- Whether the court system has adopted an implementation plan to move promptly towards full compliance; and
- The nature and significance of the adverse impact on LEP persons affected by the existing language access deficiencies.

We recognize that the AOC has faced significant fiscal pressures, recently made large cuts to staff, and some local court positions have remained unfilled during this time. However, even in years when the AOC budget was growing, only minimal increases in language services occurred<sup>26</sup> and, as discussed below, the AOC even restricted services and declined to take steps that would improve coverage at no or minimal cost.

The AOC informed the Division of a fee increase, most of which went to the general fund and none of which increased language access services in courts. Further, although the AOC has contracted with a telephonic interpreter service for use by magistrates to increase efficiency and

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<sup>26</sup> In 2007, the legislature added this language to § 7A-314(f): “In order to facilitate the disposition of criminal or Chapter 50B cases, the court may authorize the use of a court interpreter, paid from funds appropriated to the Administrative Office of the Courts, in cases in which an interpreter is necessary to assist the court in the efficient transaction of business.” Previously, that statutory provision, which did not provide for domestic violence 50B litigants, read: “In a criminal case when a person who does not speak or understand the English language is an indigent defendant, a witness for an indigent defendant, or a witness for the state and the court appoints a language interpreter to assist that defendant or witness in the case, the reasonable fee for the interpreter’s service, as set by the court are payable from funds appropriated to the Administrative Office of the Courts.”

improve service, the AOC's Program Manager for Interpreting Services told us that many judicial districts have not even requested the pass code to access the service. As stated above, we found that magistrates are moving forward with criminal proceedings with no interpreter present and without using the telephonic interpreter line. We would expect the AOC would make greater efforts to ensure usage of the telephonic interpreter service, including actively providing the access code to all districts. We also found that the AOC has not pursued other possible means to increase efficiency through collaboration, technology, or other means.

In response to our June 2011 letter, the AOC stated that it is considering whether there is need for one or more staff interpreters,<sup>27</sup> and is exploring using existing interpreters to cover more proceedings than currently allowed under AOC policy. While this is welcome news, the AOC Director separately told us that the AOC has no specific plans to provide interpreters in more types of proceedings or expand other language services.<sup>28</sup> The AOC is responsible for preparing budget estimates, including such items as are deemed necessary for the proper functioning of the Judicial Department. N.C. Gen. Stat. § 7A-300 (2011).

Further, the AOC has not taken proactive steps to identify language needs among its population or fully assess its current usage. For example, the AOC explained that it does not analyze demographics or other relevant data to anticipate language access needs. The AOC's current practice is to respond to interpreter service requests rather than identify foreign language needs in a more proactive manner. Additionally, in the September 2011 data response, the AOC stated that it does not maintain information on the number of individuals requesting or needing Spanish-speaking interpreters,<sup>29</sup> and yet noted its view that districts without staff interpreters "appear to have less than full time interpreting needs." It is unclear from the information the AOC provided to the Division, including the lack of data collection on interpreter requests, how this determination could be reached. Our investigation therefore concluded that the use of straightforward analysis and data collection regarding interpreter needs, as other states have implemented, would allow the AOC to reduce costs by improving planning for language assistance needs.

In addition, we found evidence that the AOC prevents courts from providing interpreters even when there would be no financial cost to do so. Specifically, the AOC has directed staff and contract interpreters not to interpret for LEP individuals in cases not covered by the AOC's

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<sup>27</sup> Court staff and AOC officials uniformly praised the efficiency and cost savings of staff interpreters. Since the AOC is authorized to "convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so," N.C. Gen. Stat. § 7A-343(9)(c) (2011), it is unclear why the AOC has not taken these steps.

<sup>28</sup> The AOC's Senior Deputy Director informed us that the AOC drafted language in a General Assembly bill proposing to expand interpreter services to cover civil cases and included appropriations for approximately \$1.4 million a year to cover the cost. *See* HB 1477, 2009-2010 Leg., 2009 Sess. (NC 2009). That bill has not passed and the AOC Deputy Director stated the AOC has not supported subsequent bills proposing expanded language services because no appropriations were included in those bills.

<sup>29</sup> In response to the same inquiry, the AOC did provide documentation for interpreter assignments for languages other than Spanish.

policy, even during an interpreter's working hours when he or she is not otherwise occupied.<sup>30</sup> The AOC Program Manager for Interpreting Services explained that the rationale for this denial of service is that if the AOC starts providing interpreter assistance beyond that required by the AOC policy, such assistance will become "expected rather than a favor." We find this approach to be inconsistent with the AOC's obligations under Title VI and the Safe Streets Act, and particularly troubling given that the AOC pays staff interpreters a fixed salary and assistance beyond what is in the limited AOC policy should not cost the AOC any additional funds.

The AOC's actions to limit language services prevent court personnel and officials from providing LEP individuals with meaningful access to court proceedings and operations. For example, we found that at least one judicial district, Judicial District 26 located in Mecklenburg County, previously provided language services for proceedings and court operations not approved in the AOC's policy. Recently, however, the AOC took specific steps to ensure that all judicial districts, including Mecklenburg, do not provide language services outside what is provided for in AOC policy.<sup>31</sup> Court staff in Mecklenburg County stated to us that the AOC's policy denies access to the court for LEP individuals.

Because the amount of funding that the AOC itself has estimated would be necessary to provide fuller interpreter coverage is relatively small; because the AOC has failed to take reasonable steps to ensure meaningful access to court operations and programs even where budget impact is nonexistent or limited; and because other states with similar fiscal challenges continue to take steps to provide LEP individuals with greater access to court operations,<sup>32</sup> we have concluded that the AOC's fiscal circumstances do not in this case justify its failure to take further reasonable steps to improve access to court proceedings for LEP individuals.

**F. Despite knowledge of the adverse impact of its policy on LEP individuals, the AOC has not remedied these harms.**

As set forth above, the AOC is aware of the requirements under federal law to ensure nondiscrimination against national origin minorities by providing meaningful language access. The AOC is equally aware that its policies and practices limit the types of proceedings and court operations in which interpretation and translation are provided for Latino and other national origin minority LEP individuals. The AOC has continued to pursue these policies and practices despite knowledge of the discriminatory effect on LEP individuals based on national origin.

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<sup>30</sup> We recognize that breaks are critical for interpreters and our focus is on those times when an interpreter is neither on a break nor otherwise occupied.

<sup>31</sup> The AOC alleges in its September 2011 data response that Mecklenburg County court staff did not appropriately manage interpreters, resulting in unnecessary overcharges. We take no position on whether that allegation is true. Regardless of the accuracy of the allegation, until the AOC took over oversight of the staff interpreters in Mecklenburg on February 15, 2010, we understand that interpreters were provided free of charge in a broader number of situations.

<sup>32</sup> DOJ has reached agreements with the Colorado Judicial Department and Maine Judicial Branch that identify specific steps those court systems agreed to take to ensure LEP individuals have meaningful access to their courts. Other state court systems, such as in New York and Georgia, and some county courts in Washington State, have recently taken independent steps to increase their provision of language services.

## **V. Conclusion**

As a recipient of federal funds from DOJ, the AOC is required to comply with civil rights obligations under Title VI, the Safe Streets Act, and their implementing regulations, and has signed contractual assurances specifically agreeing to comply with those obligations. Yet, as set forth in this report, the AOC has implemented policies and practices that discriminate against national origin minorities in violation of these laws and agreements.

Based on our investigation, we have determined that the AOC has violated the nondiscrimination prohibitions of Title VI and its implementing regulations. In addition, although the findings we have identified would support a Safe Streets Act violation, DOJ is deferring a formal finding under the Safe Streets Act in order to allow the AOC to voluntarily comply and avert litigation or immediate risk to federal funding. DOJ finds that the AOC's policies and practices violate the nondiscrimination provisions of Title VI and its implementing regulations, and are in breach of the contractual obligations contained in its grant awards from DOJ.