



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG - 3 2010

Alexandra J. Gill
Ogletree Deakins
2415 E. Camelback Rd., Suite 800
Phoenix, AZ 85016

Robert N. Driscoll
Alston & Bird LLP
950 F Street, NW
Washington, DC 20004

Re: Notice of noncompliance with the obligation to cooperate with the Department of Justice investigation pursuant to Title VI of the Civil Rights Act of 1964

Dear Counsel:

This is to notify you that the Maricopa County Sheriff's Office (MCSO) is not in compliance with its obligations under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, to cooperate in the investigation of alleged national origin discrimination undertaken by the Department of Justice Civil Rights Division (the Division). Absent MCSO's voluntary cooperation with this investigation within two weeks – by August 17, 2010 – the Department will file a Title VI civil action to compel access to the requested documents, facilities, and personnel. The legal and factual bases for this Title VI determination follow.

MCSO's Response to the Requests for Information. On March 10, 2009, the Division notified MCSO that it was investigating alleged violations of Title VI, the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d, and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. The Division's investigation pertains to allegations of unlawful searches and seizures, discriminatory police conduct, and failure to provide basic services to individuals with limited English proficiency. On March 25, 2009, the Division supplied MCSO with its First Request for Documents and Information (First Request), detailing the document and information requests necessary to carry out its investigation. On several subsequent occasions, both in writing and by telephone, the Division also requested access to MCSO facilities and personnel necessary to investigate the claims of national origin discrimination.

On May 12, 2009, MCSO provided the Division with eleven pages of documents that it deemed partially responsive to three of the fifty-one requests in the First Request. MCSO advised the Division that “MCSO will further respond to the DOJ’s First Request once MCSO has completed installation and training on [its litigation support] system.”

On May 29, 2009, however, counsel informed DOJ in writing that MCSO would “not respond to any document requests from DOJ . . . until appropriate assurances are made” that DOJ was not improperly coordinating its investigation with the Department of Homeland Security (DHS).¹ In a subsequent telephone conversation on June 22, 2009, counsel for MCSO reiterated that MCSO would not produce any documents or provide access to MCSO personnel. And on July 7, 2009, MCSO held a press conference at which MCSO Sheriff Joe Arpaio and counsel stated that MCSO would not cooperate with the Division’s investigation, would not produce additional documents, and would not provide any access to MCSO facilities or personnel. Subsequent communications from counsel reiterated MCSO’s position.

Since these communications, MCSO has continued its unwarranted refusal to cooperate with DOJ in this investigation. On June 14, 2010, fifteen months after the Division’s request, MCSO provided for the first time a position statement regarding the operation of its jail facilities. But this position statement falls far short of complying with MCSO’s obligation to cooperate with the Division’s investigation: it addresses only the allegations regarding jail services while saying nothing at all about the allegations of discriminatory police practices; it does not include any agreement to provide access to MCSO facilities and personnel; and the limited production of accompanying documents fails to respond to the First Request.²

MCSO’s Denial of Access Violates Title VI. Title VI prohibits discrimination in federally-assisted programs on the ground of race, color, or national origin. 42 U.S.C. § 2000d. DOJ’s Title VI implementing regulations require, among other obligations, that recipients of federal financial assistance permit access by DOJ to sources of information and facilities as may be pertinent to ascertain compliance with Title VI and the implementing regulations. 28 C.F.R. §§ 42.106 and 42.108. The Title VI implementing regulations also require that every application for federal financial assistance be accompanied by an assurance that the program will be conducted in compliance with all requirements imposed by Title VI and the implementing regulations. 28 C.F.R. § 42.105(a)(1). Pursuant to this requirement, MCSO signed contractual assurances agreeing to permit DOJ to examine relevant records. MCSO is also bound by the contractual assurances signed by any recipient, such as Maricopa County, through which MCSO is a subrecipient.

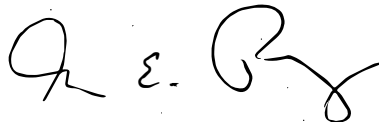
¹ In the same letter, counsel requested that the DOJ Office of Professional Responsibility (OPR) investigate alleged attorney misconduct in connection with the Division’s investigation of MCSO. MCSO’s unfounded allegations are not a basis for MCSO’s refusal to comply with its obligation to cooperate with the Division’s investigation. In any event, as explained in OPR’s June 16, 2010, letter to MCSO, OPR conducted an investigation of MCSO’s claims and concluded that no Division attorney committed professional misconduct or exercised poor judgment in connection with the Division’s investigation of MCSO.

² MCSO included approximately 800 pages of documents as exhibits to its position statement, but those documents are not – and do not purport to be – a complete response to the First Request.

MCSO's refusal to cooperate with the Division's investigation is a violation of Title VI, the Title VI implementing regulations, and related assurance agreements. The Division accordingly notifies you that absent MCSO's voluntary compliance to correct these violations within two weeks, the United States will conclude that compliance has not been achieved by voluntary means and will initiate civil litigation under Title VI to compel compliance. *See* 28 C.F.R. § 42.108(d). In the interest of seeking, to the fullest extent practicable, to assist MCSO in complying voluntarily with its obligations, the Division remains open to MCSO's cooperation with our request for information. In order to avoid litigation, please provide a complete response to the First Request and an agreement to permit access to all pertinent MCSO facilities and personnel no later than August 17, 2010.

MCSO's refusal to cooperate fully with the Division's investigation makes it an extreme outlier when compared with other recipients of federal financial assistance, which have uniformly recognized their obligation to cooperate with the Division's investigations of alleged discrimination. Although we would prefer voluntary compliance in this case as well, we will not hesitate to commence litigation after August 17, 2010, if MCSO continues to take the position that it need not cooperate with the Division's investigation. If you have any questions, please contact Judy Preston, Acting Chief of the Special Litigation Section, at 202-514-6258.

Sincerely,

A handwritten signature in black ink, appearing to read "T. E. Perez". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Thomas E. Perez
Assistant Attorney General

cc: Clarisse McCormick
Maricopa County Attorney's Office

The Honorable Dennis K. Burke
United States Attorney
District of Arizona