

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE LOUISIANA SUPREME COURT
DEPARTMENT OF JUSTICE NUMBER 171-32-17

I. BACKGROUND

- A. In May 2017, the Civil Rights Division of the U.S. Department of Justice received an administrative complaint alleging that the 24th Judicial District Court (JDC) in Jefferson Parish, Louisiana, failed to provide language access for limited English proficient (LEP)¹ individuals, including a failure to provide LEP litigants with qualified interpreters in civil proceedings.
- B. The Civil Rights Division and the United States Attorney's Office for the Eastern District of Louisiana (DOJ) reviewed the complaint. DOJ determined that the complaint alleged a violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d to 2000d-7, and its implementing regulations at 28 C.F.R. Part 42, Subpart C (together, Title VI) and that the 24th JDC and other state courts in the Louisiana Judiciary directly or indirectly receive federal financial assistance from DOJ and other federal agencies.
- C. DOJ conducted a preliminary review of the Title VI complaint by gathering information from witnesses, conducting an on-site visit, reviewing court rules and policies that address foreign language interpretation, and documenting incidents involving LEP individuals in other Louisiana state courts.
- D. DOJ identified Title VI concerns that extended beyond the 24th JDC during the preliminary review and, in October 2017, initiated a formal Title VI investigation of the Louisiana Judiciary.
- E. For a number of years, LSC has had a Language Access Coordinator (LAC), who is responsible for developing and managing the language access program for the LSC and who serves as the Title VI Coordinator. LSC has now retained a full-time dedicated attorney to serve as the LAC, and she is primarily responsible for continuing to improve LSC's efforts and initiatives concerning compliance with Title VI.
- F. In March 2018, DOJ and the LSC engaged in an informal process in an effort to address the concerns identified during the preliminary review. The LSC committed to take steps that will permit the LSC to achieve voluntary compliance with Title VI.

¹ As used herein, limited English proficient refers to individuals who, owing to national origin or ancestry, have a primary language other than English and who have a limited ability to read, write, speak, or understand English.

- G. By way of example, in September 2018, LSC issued a revised language access judicial bench card, a two-page resource for state judges to use while they are on the bench, which addresses how Title VI applies to court proceedings and operations. LSC created the revised bench card at the request of DOJ after it began its Title VI investigation. Appendix A includes this bench card.

II. INTRODUCTION

- A. This Memorandum of Agreement (MOA) memorializes the LSC's commitment to work with lower courts in the Louisiana Judiciary to phase-in a language access program that will provide language assistance services² at no cost to LEP individuals in all state court proceedings and operations (LEP Commitment). The LSC will develop a language access program with DOJ composed of policies, plans, and procedures that will implement the LEP Commitment and Title VI.
- B. Title VI prohibits discrimination based on race, color, or national origin, in any program or activity that receives federal financial assistance from DOJ and authorizes DOJ to investigate and resolve discrimination complaints. 42 U.S.C. § 2000d-4a; 28 C.F.R. §§ 42.104(b), 42.107(c)-(d); 28 C.F.R. § 42.203(b)-(c).
- C. The parties to this MOA are the United States of America and the LSC, and the person(s) signing represent(s) that they are authorized to bind the parties to performance of the terms in this MOA.
- D. This MOA does not constitute an admission by the LSC with regard to any specific allegations investigated in this matter. The LSC denies all allegations made in the referenced complaint.
- E. In consideration of the terms of this MOA, the United States agrees to refrain from undertaking further investigation or taking steps toward the filing of a civil suit in DJ #171-32-17 against the Supreme Court of Louisiana on the allegations lodged against the 24th Judicial District Court, except as provided in this MOA.
- F. In order to avoid the burdens and expenses of further investigation and possible litigation, the parties hereby agree as follows:

III. MUTUAL COMMITMENTS

- A. The parties agree that a collaborative relationship has been established, satisfactory progress is being made, and they will benefit from a mutual commitment to continued collaboration. This MOA sets forth additional actions to be taken by the parties.
- B. The LSC will implement its LEP Commitment and will comply with Title VI.

² As used herein, language assistance services refer to both oral and written services.

- C. The LSC will conduct a language access self-assessment of the Louisiana Judiciary within **90 days** from the effective date of this MOA and will then work with DOJ to develop a language access program, based on the self-assessment, that is consistent with the LEP Commitment and Title VI.
- D. The LSC will develop a centralized complaint process within **90 days** from the effective date of this MOA for LEP individuals who believe that they have been denied access to the Louisiana Judiciary, as required by the LEP Commitment and Title VI.
- E. The LSC will appoint a Language Access Stakeholder Committee (LASC), a Committee of the Louisiana Supreme Court, within **120 days** from the effective date of this MOA that will meet quarterly. The LASC will work with the LAC to develop and implement a language access program that complies with the LEP Commitment and Title VI.
 - 1. The LASC will include the LSC Judicial Administrator, the LAC, a private attorney, a public interest attorney, a public defender, a district attorney, a district court judge, a court interpreter, a professional translator, two community advocates who work with LEP individuals, and any other participants that the LSC deems appropriate.
 - 2. The first meeting of the LASC will take place within **75 days** of its appointment and LSC staff will maintain agendas and written minutes for each quarterly meeting.
 - 3. The LSC will provide DOJ with advance notice of the first eight meetings of the LASC at least **5 business days** prior to the meetings, and also forward minutes of the meeting to DOJ.
- F. The LSC will deliver written quarterly communications to the Judicial Administrators for each state court in Louisiana (Court Staff), regarding the LEP Commitment and the MOA, including the following communications, within **180 days** from the effective date of this MOA:
 - 1. The Chief Justice of the LSC will inform, in writing, Court Staff and the Clerks of Court for each state court in Louisiana of this MOA and the LEP Commitment.
 - 2. The LSC will inform, in writing, Court Staff and the Clerks of Court for each state court in Louisiana about the language access self-assessment, the development of the language access program, and the role of the LAC.
- G. The LSC will develop and provide bi-annual Title VI language access training to all Louisiana state court judges and other Court Staff, in person or online, with the first training occurring within **180 days** from the effective date of this MOA, except as otherwise provided.
 - 1. LSC will develop the content of any Title VI language access training. For **365 days** after the effective date of this MOA, LSC will send the training content to DOJ for its review.

2. LSC will share the final version of these training materials with Court Staff.
 3. LSC will continue its work with the Louisiana State Bar Association's Access to Justice Commission to collaborate on improving language access in Louisiana's Judiciary.
- H. Within **365 days** from the effective date of this MOA, and consistent with the LEP Commitment and Title VI, the LSC will develop a Language Access Plan (LAP) and publish the LAP on the Louisiana Judiciary public website.
1. LSC will develop the draft LAP and seek input from the LASC and DOJ.
 2. The LAP developed by the LSC will contain a phased-in approach to expand and improve language assistance services, consistent with the LEP Commitment and Title VI.
 3. The LAP will address how to provide LEP individuals with translated paper and electronic notice about how to access interpreter services, provide translated paper and electronic court forms and information, explain the process for each court to collect and report interpreter use information to the LSC, and create a process for language access complaints.
 4. The LAP will include a language access plan template that each state court in Louisiana may use in developing an individual court language access plan that addresses the unique needs of that specific court.
- I. The LSC will provide to DOJ copies of all draft language access policies, plans, procedures, and training materials, including amendments to existing documents, before they are issued or implemented. DOJ will provide LSC technical assistance and feedback on all drafts received within a reasonable amount of time. Upon request of either party, the other party will provide additional supportive information regarding the draft or feedback and will meet in person or by telephone to discuss any concerns or questions.
- J. The parties will continue to meet, in person or by telephone, at least every six months and, upon request of either party, will meet, in person or by telephone, to discuss LSC's progress in executing the MOA, problems encountered, and recommendations for further improvement.
- K. The DOJ will provide technical assistance to LSC on all aspects of this MOA.

IV. MONITORING AND REPORTING

- A. The LSC will provide DOJ bi-annual MOA monitoring and status reports for two years following the publication of the LAP submitted in accordance with paragraph III.H.

1. DOJ and the LSC will agree on the format and content of the report within **180 days** from the effective date of this MOA.
 2. DOJ and the LSC will agree on the reporting and feedback schedule within **180 days** from the effective date of this MOA.
- B. DOJ will review each MOA monitoring and status report and will provide timely feedback to the LSC.
1. DOJ will provide the LSC feedback on the MOA monitoring and status report within a specified number of days.
 2. The LSC will address any DOJ questions or concerns regarding the MOA monitoring and status report within **60 days** of receipt of DOJ feedback.

V. GENERAL TERMS

- A. This MOA will be applicable to, and binding upon, the parties to this Agreement, their officers, agents, employees, assigns, and successors in office.
- B. This MOA is a public document and the parties will make it available to any person upon request. DOJ may publish this MOA on its public websites.
- C. This MOA resolves DOJ complaint 171-32-17 and is limited to the facts and issues presented in that complaint and investigation. This MOA does not affect the LSC's continuing obligation to comply with Title VI and all other federal laws, including the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and applicable regulations, or preclude DOJ from taking appropriate action to evaluate the LSC's compliance with any laws enforced by DOJ.
- D. LSC acknowledges its obligation, independent of this MOA, to ensure that all LSC programs and activities, and the programs and activities of all entities that receive federal financial assistance directly or indirectly from LSC, comply with Title VI.
- E. This MOA constitutes the entire agreement between the parties on the matters raised herein, and no other statement or promise, either written or oral, made by either party or agents of either party regarding the matters raised herein, that is not contained or referred to in this MOA, will be enforceable. The MOA may be amended only in writing. Failure by a party to enforce this entire MOA or any provision thereof, with regard to any deadline or any other provision herein, will not be construed as a waiver of the party's right to enforce the deadlines and provisions of this MOA.
- F. Should any provision of this MOA be declared or determined by any court to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions will not be affected. The parties will not, individually or in combination with another, seek to have any court declare or determine that any provision of this MOA is invalid.

- G. If at any time DOJ believes that the LSC or any of its components has failed to comply in a timely manner with any obligation under Title VI or this MOA, DOJ may issue to the LSC a notice of alleged non-compliance and provide LSC a reasonable opportunity of no less than **45 days** to respond. The parties will attempt to resolve any issue in good faith, including but not limited to a cure or corrective period of no less than **six months**. Should the parties not be able to resolve any issue, DOJ and the LSC may pursue any action allowed by law or this MOA.
- H. This MOA is applicable to, and binding upon, the parties, their officers, agents, employees, assigns, and successors in office. The Chief Justice of the LSC represents that she is authorized to bind the LSC to the terms and conditions stated in this MOA.

VI. EFFECTIVE DATE AND TERMINATION

- A. The effective date of this MOA is the date of the last signature below. The MOA may be executed in counterparts.
- B. Except as otherwise set forth, all deadlines for action are counted from the effective date.
- C. This MOA will terminate two years after the LSC's publication of the LAP submitted in accordance with paragraph III.H above; provided that the LSC has (1) complied with paragraphs III.H. 1-4. and (2) provided all monitoring and status reports as described in paragraph IV.A.

[Signature Page Follows]

For the Louisiana Supreme Court

BY: Bernette J. Johnson

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Dated: 5 / 10 / 2019

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[Signature Page to Memorandum of Agreement between Louisiana Supreme Court and United States of America]



LOUISIANA'S LANGUAGE ACCESS JUDICIAL BENCH CARD

The Louisiana judiciary is committed to providing persons of limited English proficiency ("LEP") with meaningful access to court programs and activities. To demonstrate that commitment, the Louisiana Supreme Court developed this bench card as guidance for the judiciary when working with LEP individuals.

WHEN IS AN INTERPRETER REQUIRED?

Title VI requires courts to take reasonable steps to provide meaningful access to a limited English proficient party in interest in court proceedings and court operations. Thus, qualified interpreters are required for any court proceeding that involves a party in interest who speaks a language other than English as his primary language and has a limited ability to read, speak, or understand English.

WHO IS A PARTY IN INTEREST?

Party	Victim	Witness	Parent, legal guardian, or custodian of a minor party	Legal guardian or custodian of an adult party
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WHO PAYS FOR THE INTERPRETER?

The United States Department of Justice interprets Title VI of the Civil Rights Act of 1964 to require the judiciary to provide interpreters free of charge in all civil and criminal court proceedings before a magistrate, commissioner, district court judge, the appellate court, or the Louisiana Supreme Court.

The costs for interpreting services shall not be charged to the parties.

Language access services required for all out-of-court communication involving private counsel, including all interviews, investigations, and other aspects of general case preparation, are outside of the scope of services provided or funded by the Louisiana judiciary.

To ensure equal access to all, private counsel are encouraged to privately retain the services of a Louisiana Supreme Court certified or registered interpreter by directly contacting an interpreter from the LASC's roster which is available online at www.lasc.org or by scanning the QR Code below.

LOUISIANA CERTIFIED AND REGISTERED INTERPRETERS

A list of interpreters who have successfully completed the Louisiana Supreme Court's orientation, training, and testing is available on the Louisiana Supreme Court's website. The interpreter roster is also available by scanning the QR Code with your mobile device.



WHO SHOULD I CONTACT IF THERE ARE PROBLEMS?

Concerns or questions about the interpreters or their performance should be directed to the Supreme Court's Office of Language Access at ola@lasc.org or by phone at (504) 310-2348. Concerns or questions about scheduling should be directed to your court's local language access coordinator.

I. EVALUATING THE NEED FOR A COURT INTERPRETER

An interpreter should be appointed when a party in interest requests an interpreter; or when the court or participants have difficulty speaking or understanding each other, ***even when an interpreter is not requested.*** To help determine whether to require a court interpreter, the court should ask the LEP individual open-ended questions that cannot be answered with a simple yes or no. For example:

- What is the purpose of your court hearing today?
- How did you get to court today?
- Please tell me about your country of origin.
- What kind of work do you do?
- How did you learn English, and how comfortable are you proceeding with this matter in English?

2. ASSIGNMENT OF A COURT INTERPRETER

If the court determines that a party in interest has limited English proficiency, the court should require a court interpreter. Any doubts should be resolved in favor of the LEP individual, and an interpreter should be required. The court should first seek to use an interpreter from the Louisiana Supreme Court's list of certified interpreters. If no certified interpreter is available in the requested language, courts should then seek to use an interpreter from the Louisiana Supreme Court's list of registered interpreters. If neither a Louisiana Supreme Court certified or registered interpreter is available, courts may use other qualified interpreters.

- The court should never allow family members or friends to interpret inside the courtroom, nor should the LEP person's attorney interpret for the court.
- Only court personnel who are also certified or registered interpreters shall interpret inside the courtroom.

3. OBTAINING A COURT INTERPRETER

A request for an interpreter should be submitted to the local language access coordinator at least 10 business days prior to the scheduled proceeding, or as soon as the proceeding is placed on the court calendar, whichever occurs first. Counsel is responsible for submitting the request form for their LEP clients or witnesses. Court personnel should assist self-represented litigants with submitting the request form. Request forms are available at *District Court Rule 5.1 – Appendix 5.IB*. <http://www.lasc.org/rules/dist.ct/COURTRULESAPPENDIX5.IB.pdf>



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QUICK REFERENCE GUIDE

- Evaluate the need for an interpreter.
- Require an authorized court interpreter approved by the LASC.
- Establish interpreter qualifications, determine whether any conflicts exist, check the interpreter ID card and/or the Louisiana Supreme Court's website and administer the interpreter oath.
- Allow the interpreter to meet with the LEP individual briefly prior to the proceeding to confirm the ability to communicate, and to view the court file prior to the proceeding to become familiar with case terminology, names, and dates.
- Allow the interpreter to review any documents that will need to be sight translated during the proceedings. *Note:* Sight translations during a proceeding are limited to one page.
- Have the interpreter state his/her name and qualifications on the record.
- Explain the role of the interpreter to the parties, witnesses, and the jury on the record.
- Advise witnesses to speak clearly and at a moderate pace.
- Emphasize that the record produced by the court reporter or court recorder will be in English and is the official record of the proceeding.
- Provide breaks every 30 minutes for the interpreter.
- Team interpreting is required to maintain accuracy in any proceeding expected to last more than 2 hours.
- Observe the interpreter's conduct, communication, and interaction with participants; if problems arise, use a sidebar conference with attorneys and the interpreter or a recess to address and correct the problems.

YOU SHOULD CLARIFY THE INTERPRETER'S ROLE TO THE JURY:

"This court seeks a fair trial for all regardless of the language they speak and regardless of how well they may or may not speak English. Bias against or for persons who have little or no proficiency in English is not allowed. Therefore, do not allow the fact that the party requires an interpreter to in any way influence you. Although some of you may understand the non-English language used, it is important for all jurors to consider the same evidence. Therefore, you must **base your decision on the evidence presented in the English interpretation**. Do not rely upon your own interpretation of the witness' words."

YOU SHOULD CLARIFY THE INTERPRETER'S ROLE TO THE WITNESS:

"I want you to understand the role of the interpreter. The interpreter is here only to interpret the proceedings. The interpreter will say only what is said in your language and will not add, omit, or summarize anything. The interpreter will say in English everything that you say in your language, so do not say anything you do not want everyone to hear. If you do not understand a question asked of you, request clarification from the person who asked it. Do not ask the interpreter."

"You are giving testimony to this court; therefore, please speak directly to the attorney or to me. Do not ask the interpreter for advice. Do not ask the interpreter any questions. Speak in a loud clear voice. If you do not understand the interpreter, please make your request to me, not to the interpreter. Please wait until the entire statement has been interpreted before you answer. Do you have any questions?"

YOU SHOULD VERIFY THE INTERPRETER'S QUALIFICATIONS:

Certified Interpreters: Qualifications can be verified through their listing on the LASC's website and/or their corresponding interpreter ID card. Full voir dire is not required.

Non-certified interpreters (i.e., registered interpreters): Qualifications can be verified through their listing on the LASC's website and/or their corresponding interpreter ID cards. These interpreters must be voir dired on the record to ensure qualifications.

Other Qualified Interpreters and Telephonic Interpreters: These interpreters must be qualified through voir dire.

SAMPLE VOIR DIRE TO ESTABLISH INTERPRETER'S QUALIFICATIONS:

- What is your native language?
- Are you listed on the Louisiana Supreme Court's registry as a certified or registered interpreter?
- Are you familiar with the *Louisiana Code of Professional Responsibility for Language Interpreters*?
- How many times have you interpreted in court?
- How did you learn both language skills?
- Have you worked in a legal proceeding before? If yes, please describe it.
- Do you understand you are to be a neutral party who is here to facilitate communication and that you should not offer advice or interject your opinion into these proceedings?

YOU SHOULD ADMINISTER THE INTERPRETER'S OATH

Do you solemnly swear or affirm that you will accurately, completely and impartially make a true interpretation to the person needing interpretation services of all the proceedings of this case in the language understood by said person, and that you will repeat, in as literal and exact manner as possible, said person's answers and statements to the court, counsel or jury, to the best of your skill and judgment? (*District Court Rule 5.1—Appendix 5.1C*)

<http://www.lasc.org/rules/dist.ct/COURTRULESAPPENDIX5.1C.pdf>