

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE COLORADO OFFICE OF ADMINISTRATIVE COURTS,
AN OFFICE OF THE COLORADO DEPARTMENT OF
PERSONNEL AND ADMINISTRATION
DEPARTMENT OF JUSTICE NUMBER 171-13-70

I. BACKGROUND

- A. In April 2019, the United States Attorney’s Office for the District of Colorado and the Department of Justice, Civil Rights Division (together, “DOJ”), initiated an investigation of the Colorado Office of Administrative Courts (OAC) under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 and its implementing regulations found at 28 C.F.R. Part 42, Subpart C (together, “Title VI”). DOJ reviewed whether the OAC discriminated against limited English proficient (LEP) individuals on the basis of their national origin when OAC failed to provide qualified interpreters during OAC hearings, denying LEP individuals meaningful access to those hearings.
- B. The OAC, an office of the Colorado Department of Personnel and Administration, is Colorado’s centralized administrative court system. The OAC administers various proceedings, including workers’ compensation, public benefits, professional licensing, education, and campaign finance proceedings. The OAC also conducts mediations. The OAC consists of Administrative Law Judges and other court staff.¹ A Chief Administrative Law Judge (Chief Judge) oversees the OAC.
- C. The OAC’s Procedural Rules for Workers’ Compensation Hearings, 1 CCR 104-3, Rule 21 (Rule 21), appeared on its face to discriminate against LEP parties and witnesses at OAC hearings on the basis of their national origin, in violation of Title VI. Rule 21 required that all proceedings be conducted in English and that the OAC refrain from providing foreign language interpreters.

¹ As used in this MOA, “staff” includes OAC judges, as well as all other personnel who work at the OAC and/or have a role in implementing the mission of the OAC, including, but not limited to, other employees, contractors, and volunteers.

- D. DOJ's investigation included a review of the OAC's approach to language access and discussions with the Chief Judge about DOJ's concerns that the OAC was not complying with Title VI. The Chief Judge was forthcoming with information, cooperated fully, and committed to resolving DOJ's concerns related to language access at the OAC.
- E. From April 2019 to the present, DOJ and the Chief Judge have been engaged in a constructive dialogue, with DOJ providing intensive review and technical assistance to the OAC's efforts to bring its language access efforts into compliance with Title VI. The OAC has committed to take steps that will permit the OAC to achieve voluntary compliance with Title VI.
- F. For example, since the spring of 2019, the OAC has revised Rule 21 twice, with the intention of eliminating the OAC's requirement that hearings be conducted only in English and committing to provide OAC-contracted interpreters to LEP parties and witnesses at no cost. As explained in detail below, the OAC also has committed to taking additional steps toward voluntary compliance with Title VI.

II. INTRODUCTION

- A. This Memorandum of Agreement (MOA) memorializes the OAC's commitment to implement a language access program that will provide language access services² at no cost to LEP individuals in OAC proceedings and operations (LEP Program). The OAC will develop its LEP Program with DOJ. The LEP Program will be composed of policies, plans, and procedures that comply with Title VI.
- B. Title VI prohibits discrimination based on race, color, or national origin, in any program or activity that receives federal financial assistance and authorizes federal agencies to investigate and resolve discrimination complaints. *See* 42 U.S.C. § 2000d-4a; 28 C.F.R. §§ 42.104(b), 42.107(c)-(d), 42.203(b)-(c). The Department of Personnel and Administration receives federal financial assistance from the National Archives and Records Administration. The Civil Rights Division secured a delegation from the National Archives and Records Administration in April 2019 to investigate the OAC under Title VI. *See* 28 C.F.R. § 42.412(b).
- C. The parties to this MOA are the United States of America and the OAC (together, "the parties"). 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 OAC with regard to any specific allegations investigated in this matter.
- E. In order to avoid the burdens and expenses of further investigation and possible litigation, the parties agree as follows:

² As used in this MOA, "language access services" refer to both oral and written services.

III. 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 OAC will implement its LEP Program to comply with Title VI. The OAC and its staff shall take reasonable steps to provide LEP individuals with meaningful access to the OAC's programs and activities by offering timely language access services at no cost to LEP individuals.
- C. The OAC will issue a Language Access Policy and Plan (Policy and Plan) **by the effective date** of this MOA. The Policy and Plan shall establish and maintain minimum standards for programs and services provided by the OAC's staff and contractors, who are required to comply with OAC standards.
- D. **By the effective date** of this MOA, the OAC will distribute the Policy and Plan to all OAC staff and contractors and will post the Policy and Plan on the OAC's public-facing website.
- E. Within **60 days** of the effective date of this MOA, the OAC will provide effective notice to LEP individuals and communities regarding available language access services in at least the top eight languages commonly encountered in OAC hearings. The notice will include the process for requesting language access services.
- F. Within **90 days** of the effective date this MOA, the OAC will promulgate to all staff and contractors, and post to the OAC's public-facing website, another revision to Rule 21 that sets forth the OAC's obligation to offer qualified interpreters in OAC hearings at no cost to LEP individuals.
- G. In consultation with DOJ, within **180 days** of the effective date of this MOA, the OAC will post on the OAC's website relevant forms and other court information in multiple languages, information on filing a language access-related complaint, and other language access information consistent with Rule 21 and the Policy and Plan.
- H. The OAC will provide Title VI language access training annually to all OAC staff and contractors. The first such training will occur within **180 days** of the effective date of this MOA. The curriculum for the training will be developed in conjunction with DOJ and will include the information set forth in the Policy and Plan.
- I. Within **90 days** of the effective date of this MOA, the OAC will develop, with input and consultation of DOJ, performance measures to assess the effectiveness of its LEP Program.

- J. The Chief Judge and/or their designee is responsible for all aspects of the implementation of the LEP Program.
- K. The parties will meet in person, by video conference, or by telephone at least every six months, or more frequently upon the request of either party, to discuss the OAC's progress in executing the MOA, problems encountered, and recommendations for further improvement.
- L. The OAC will provide DOJ with copies of its Policy and Plan, and all other draft language access policies, plans, procedures, notices, complaint forms, bench cards, and training materials, including any amendments to existing documents or website content, before they are issued or implemented. DOJ will provide technical assistance and feedback on each item within a reasonable time. Upon request of either party, the other party will provide additional supportive information regarding the draft or feedback and will meet in person, by video conference, or by telephone to discuss any concerns or questions.
- M. DOJ will provide technical assistance to the OAC on all aspects of this MOA.

IV. MONITORING AND REPORTING

- A. The OAC will provide DOJ with monitoring and status reports **every six months** from the effective date of this MOA. The reports will address the OAC's implementation of its LEP Program.
 - 1. DOJ and the OAC will agree on the format and content of the reports within **60 days** from the effective date of this MOA. The reports will include, but will not be limited to, the following information: all requests for interpretation in the courtroom setting and the languages in which such interpretation services were requested; incidence of language access services provided by the OAC outside the courtroom setting; incidence of the need to use telephonic interpretation; incidence and resolution of complaints related to language access; any delays in interpretation services and the reason for such delays; any disparity in the quality or timeliness of interpretation services provided to different language communities; and training efforts.
- B. DOJ will review each monitoring and status report and will provide feedback to the OAC within a mutually agreeable timeframe. The OAC will address any DOJ questions or concerns regarding the monitoring and status report within 45 days of receipt of DOJ feedback.
- C. DOJ retains the right to review the OAC's language access program during site visits at DOJ's discretion. DOJ will provide the OAC with at least 21 days' notice prior to conducting a site visit and will observe all privacy requirements related to litigants and witnesses. The OAC will cooperate with DOJ site visits and associated requests.

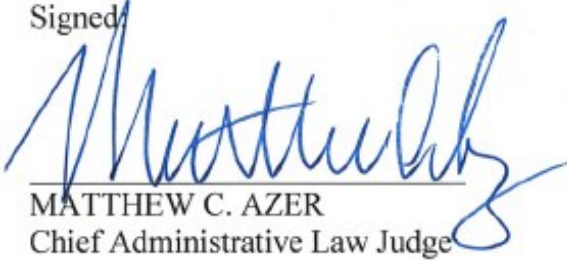
V. GENERAL TERMS

- A. 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.
- B. This MOA resolves DOJ matter 171-13-70 and is limited to the facts and issues presented in that investigation. This MOA does not affect the OAC'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 OAC's compliance with any laws enforced by DOJ.
- C. The OAC acknowledges its obligation, independent of this MOA, to ensure that all OAC programs and activities comply with Title VI.
- D. This MOA constitutes the entire agreement between the parties on DOJ matter 171-13-70, and no other statement or promise, either written or oral, made by either party or agents of either party regarding this matter, that is not contained or referred to in this MOA, will be enforceable. The MOA may be amended only in writing.
- E. Failure by a party to enforce this entire MOA or any of its provisions, with regard to any deadline or any other provision, 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 OAC has failed to comply in a timely manner with any obligation under Title VI or this MOA, DOJ may issue to the OAC a notice of alleged non-compliance and provide the OAC 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 three months. Should the parties not be able to resolve any issue, DOJ 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 Judge represents that they are authorized to bind the OAC 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. This MOA will terminate two years from the effective date, provided, however, that the OAC: (1) has complied with paragraphs III.B-L, above, and (2) has provided all monitoring and status reports as described in paragraph IV.A, above.

Signed



MATTHEW C. AZER
Chief Administrative Law Judge
Colorado Office of Administrative Courts



3/22/2021

CHRISTINE STONEMAN
Principal Deputy Chief, performing the duties
as Chief
ANNA MEDINA
Acting Deputy Chief
MARINA MAZOR
Attorney
BHARATHI VENKATRAMAN
Attorney
Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice
(on behalf of, and pursuant to a delegation
from, The National Archives and Records
Administration)

MATTHEW T. KIRSCH
Acting United States Attorney
District of Colorado



Digitally signed by
ZEYEN WU
Date: 2021.03.18
15:48:37 -06'00'

ZEYEN WU
Assistant United States Attorney
District of Colorado