

North Carolina Justice and Community Development Center
Immigrants Legal Assistance Project
224 S. Dawson Street
P.O. Box 28068
Raleigh, NC 27611-8068

Mattie C. Condray
Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
750 First Street, NE
Washington, D.C. 20002-4250

Dear Ms. Condray:

Please find attached to this letter our comments in response to the Legal Service Corporation's request for comments on Limited English Proficiency Guidance.

The North Carolina Justice and Community Development Center is a non-profit organization which provides direct litigation services to low-income North Carolinians, as well as policy and lobbying advocacy on behalf of low income North Carolinians in the state General Assembly. The Immigrants Legal Assistance Project of the Justice Center provides legal services to low-income immigrants in North Carolina, focusing on farmworker issues, political asylum, family-based petitions, and other immigration matters.

While the Justice Center does not receive LSC funding for its services, it does work very closely with the offices of Legal Aid of North Carolina to ensure that the full array of needs of low-income North Carolinians are being met.

Thank you in advance for consideration of our comments. If we need to do anything further to perfect the filing of these comments, please contact me at the number listed below.

Sincerely,

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Comments on Limited English Proficiency Guidance North Carolina Justice and Community Development Center

North Carolina has the fastest growing immigrant population in the United States. According to the 2000 Census, North Carolina's immigrant population grew by 274 percent during the 1990s, a rate of increase 62 percent larger than the national rate. Many of these immigrants arrive in North Carolina either completely unable to speak English or with a very limited level of proficiency with the English language. There is no question that the lack of proficiency in English presents these people with a distinct disadvantage in their struggle to live comfortably and securely in the United States. One of the areas in which they struggle the most is their access to our courts and their understanding of our legal system. As such, there are few areas of life in the United States for which immigrants need more help than with respect to the legal system.

The majority of recent immigrants have neither the education nor the contacts to immediately enter stable and remunerative employment in the United States. Furthermore, many of them have left their country of origin because of economic difficulty at home. They come, then, without money saved up and without the opportunity to earn incomes in the United States sufficient to pay for increasingly expensive private attorney services in this country. For these reasons, the ability of Legal Services organizations to handle their cases is extremely important if these immigrants are to have an equal opportunity to thrive in their new country.

The ability of legal services organizations to handle cases of recent immigrants is hampered by a lack of resources. This results in an enormous financial impediment to their ability to expand their services to include those of limited English proficiency. Legal services organizations already have to turn away large numbers of people who qualify for their services simply because they do not have the resources to handle their cases.

There is no question, however, that even with current budget constraints, legal service offices need to do more for LEP persons. A sustained ability of legal service organizations to provide equal service to limited English proficient clients would significantly improve the ability of such persons to become equal participants in local, state, and national affairs. As such, we believe that it is important that legal service

organizations do everything within their means to accommodate people of limited English proficiency. This should include a structured and complete LEP program.

LSC is Governed by Title VI

As an initial matter, LSC requested comments on whether Title VI of the Civil Rights Act, which mandates that all federally funded entities not discriminate on the basis of national origin, applies to its services.

At first blush, it seems odd that Title VI would mandate that legal service organizations offer services for LEP persons on the basis of preventing discrimination based on national origin, while other federal regulations prohibit the same offices from representing anyone who is not a permanent resident or citizen of the United States. The legality of those provisions is not at issue and will not be addressed in these comments.

We believe that LSC is governed by Title VI, and that it has a legal duty to ensure equal access to its services despite national origin or English proficiency. The language of Title VI is very broad, and it seems clear that at least part of the money received by local offices constitutes “federal funding”. It is therefore our opinion that Title VI is applicable and that LSC has a legal obligation to ensure that its constituent offices comply with the mandates of its provisions prohibiting discrimination based on national origin.

Conduct Studies at Local Level of Needs and Costs

The Justice Center advocates that the first step towards providing services to limited English proficiency persons should be to conduct studies at the local levels. While the United States is currently experiencing a level of immigration unmatched since the turn of the twentieth century, this wave is not hitting the beach evenly. Certain areas of the country are experiencing very high immigrant settlement while others are seeing relatively low settlement. Local offices should be required to conduct an assessment of the level of LEP services needed in their area.

These studies should be coordinated at the state and national levels through the issuance of guidance in how best to assess the need. LSC should issue guidance similar to that of the Department of Justice by which local offices can conduct their assessments. Given the limited financial resources of local offices, it may be necessary for LSC to obtain and provide additional funding to programs to conduct the studies without negatively impacting their services to clients.

In addition to assessing need, it is imperative that these studies further examine the cost of providing LEP services. While the cost of implementing and maintaining an adequate LEP program should not be the sole factor in determining feasibility, it should be a factor. Legal Service offices should not be expected to expend all their resources in the process of maintaining an LEP program, but neither should they be able to use cost as an excuse to help one group of potential clients over another. The goal of Title VI is to ensure equal access to federally funded services without regard to national origin. It is to be expected given current levels of funding and the lack of any increase in sight, that the implementation of an LEP program will result in fewer native English speakers being represented by LSC funded programs.

Local offices should also use this opportunity to report to LSC what they are currently doing to serve LEP persons. As most legal services offices want to help people of limited English proficiency, the majority of them are already doing whatever is within their financial ability to serve LEP persons. LSC should compile this information into a common database that could be shared with local offices to provide an inexpensive, community-based source of information aimed at immediately helping local offices augment their current levels of service by sharing translations of written materials and other resources.

Local offices should be required to submit the results of their studies to LSC within nine months of the issuance of the guidance. LSC can then use the studies to draft regulations more tailored to the reality of the situation facing local offices. LSC could also use the studies to procure additional funding from Congress to distribute to local offices to ensure that every office is capable of complying with the regulations.

Issue Temporary Guidance Tailored to Local LSC Needs

Until LSC is able to issue regulations based on the results of the studies, LSC should issue temporary guidance to assist local offices in immediately strengthening their LEP programs. While this guidance should be similar in nature to the guidance issued by the Department of Justice, LSC should issue separate guidance of its own which specifically addresses the legal service context.

This guidance should suggest relatively easy and inexpensive methods that local offices can use to either augment their current LEP efforts or start a basic LEP program if one does not exist. Examples of such methods could include recording outgoing voice mail system messages in English, Spanish, and other relevant languages, using translation services to translate important program pamphlets and information sheets into languages they encounter in their office, and contacting local immigrant community leaders to tap their resources in reaching out to various immigrant communities.

Temporary guidance is necessary because of the dire consequences to members of our community who are not able to access the justice system at the moment such a need occurs. Justice, in many situations, is extremely time sensitive. Temporary guidance can ensure that local offices receive some instruction in assisting LEP persons in need of legal representation immediately.

Issue Regulations After Further Study and Comment

After local offices conduct their studies and report their findings to LSC, LSC should publish a summary of the results of the studies and reopen the comment period to discuss what specific regulations are required. The importance of establishing a viable and comprehensive LEP program in every local office outweighs the administrative burden to LSC in gathering this data and compiling it into a form it can make public.

Regulations concerning LEP programs are necessary to ensure that all legal services offices are providing adequate LEP services. While many local offices are already working diligently to provide LEP services to their constituents, other offices simply are not. The process we are recommending will allow those offices that have committed themselves to serving LEP persons to get credit for what they have done. It

will also reveal to LSC those offices that appear to not want to establish LEP services, and will force them to provide equal services for all people.

Equally as important, the issuance of regulations will show that LSC is committed to serving LEP persons, despite the undeniable administrative headaches involved in the process. By issuing binding regulations, LSC can demonstrate that while other agencies and federally funded entities are content to provide the minimum level of services required by law, LSC will continue to fight to provide equal access to justice to all.

Conclusion

The Legal Services movement was founded on the idea that all persons living in the United States should have equal access to its system of justice. It acts as a broad safety net ensuring that nobody can slip through the cracks of justice. Any inability of legal services offices to serve LEP persons creates holes in the net for a large group of people, defeating the principles upon which the movement was founded.

It is the very importance of access to the legal system for everyone that mandates that LSC issue binding regulations concerning its subsidiaries' ability to serve LEP persons. However, it is premature to issue the regulations at this time. First, LSC should mandate that all local offices perform an assessment of the needs of their communities and the cost involved in meeting those needs fully. Second, LSC should issue temporary guidance based upon the Department of Justice guidance, but tailored to the unique legal services context. Third, LSC should compile the data from these studies and publish it in summary form. Fourth, LSC should propose new regulations concerning LEP services, and invite comment on those regulations.